

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THE SHANE GROUP, INC., et al.,)	
Plaintiffs, on behalf of themselves and all)	
others similarly situated,)	Case No. 2:10-cv-14360-DPH-MKM
)	
Plaintiffs,)	Honorable Denise Page Hood
)	
v.)	
)	
BLUE CROSS BLUE SHIELD OF)	
MICHIGAN,)	
)	
Defendant.)	
)	

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (the “Agreement”) is made and entered into as of this twenty-third day of June, 2014, by and between Defendant Blue Cross Blue Shield of Michigan (“BCBSM”), and Plaintiffs Michigan Regional Council of Carpenters Employee Benefits Fund, The Shane Group, Inc., Bradley A. Veneberg, Abatement Workers National Health and Welfare Fund, Monroe Plumbers & Pipefitter Local 671 Welfare Fund, and Scott Steele and Proposed Plaintiffs Patrice Noah and Susan Baynard, on behalf of themselves and all Settlement Class Members, each of the foregoing Parties acting by and through their respective counsel. By this Agreement, subject to Court approval, BCBSM and Plaintiffs intend to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Agreement.

WHEREAS, Plaintiffs are litigating the above-captioned action against BCBSM on their own behalf and on behalf of a proposed class;

WHEREAS, Plaintiffs have alleged in their Consolidated Amended Complaint (doc #78) (“CAC”) that BCBSM engaged in certain conduct in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL § 445.772, which caused damages to the Plaintiffs and Settlement Class Members, and for which Plaintiffs and Settlement Class Members seek an award of money damages and injunctive relief;

WHEREAS, BCBSM denies each and every one of Plaintiffs’ allegations of unlawful conduct, specifically denies all liability to Plaintiffs and the other Settlement Class Members, has not conceded or admitted any liability, has asserted affirmative and other defenses to each of Plaintiffs’ claims, and intends to continue with a vigorous defense of this Action in the event this Agreement is not approved by the Court;

WHEREAS, BCBSM, through its counsel, and Plaintiffs, through their counsel and on behalf of themselves and the other Settlement Class Members, have engaged in vigorous, arms’-length negotiations that led to this Agreement, which embodies all of the terms and conditions of the Settlement among the Parties, subject to approval of this Agreement by the Court;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding their claims and have concluded, after carefully considering the facts and circumstances of their claims and the applicable law, that a settlement with BCBSM according to the terms and conditions set forth below is in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, BCBSM, despite its belief that it is not liable for the claims asserted and that it has meritorious defenses to the claims alleged, has nevertheless concluded that it will enter into this Agreement solely to avoid the further expense, inconvenience and burden of protracted

litigation, and the distraction and diversion of its personnel and resources, and thereby to put to rest this controversy, and to avoid the risks inherent in uncertain, complex litigation;

WHEREAS, Plaintiffs and BCBSM agree that this Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by BCBSM or of the truth of any of the claims or allegations in the CAC or any prior complaint;

WHEREAS, Plaintiffs' motion to add Patrice Noah and Susan Baynard as additional named plaintiffs (Doc # 124) is pending in this Action;

WHEREAS, the Court entered an Order Adjourning all Deadlines (Doc # 146) on March 27, 2014;

WHEREAS, Plaintiffs will request that the Court add Patrice Noah and Susan Baynard as additional named plaintiffs and representatives of the Settlement Class;

WHEREAS, this Agreement, which is subject to the approval of the Court, sets forth all of the terms and conditions of the agreement between BCBSM and Plaintiffs and Proposed Plaintiffs, on behalf of themselves and the Settlement Class;

NOW, THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned, on behalf of BCBSM and on behalf of Plaintiffs, Proposed Plaintiffs and the Settlement Class, that the claims of Plaintiffs, Proposed Plaintiffs and the Settlement Class against BCBSM be settled, compromised and dismissed on the merits and with prejudice, without costs as to Plaintiffs, Proposed Plaintiffs, the Settlement Class, or BCBSM, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

The following terms, as used in this Agreement, have the following meanings:

1. “Action” means the above-captioned matter.
2. “BCBSM” means Blue Cross Blue Shield of Michigan.
3. “Claimants” means Settlement Class Members who do not timely and validly exclude themselves from the Settlement Class and who submit timely and valid claim forms to share in the Net Settlement Fund.
4. “Class Counsel” means The Miller Law Firm, P.C., 950 West University Drive, Suite 300, Rochester, MI, Cohen Milstein Sellers & Toll PLLC, 1100 New York Avenue, NW, Suite 500, Washington, DC; Gustafson Gluek, PLLC, Canadian Pacific Plaza, 120 South Sixth Street, #2600, Minneapolis, MN; and Wolf, Haldenstein, Adler, Freeman & Herz, LLC, 55 West Monroe Street, Suite 1111, Chicago, IL.
5. “Court” means the United States District Court for the Eastern District of Michigan, Southern Division.
6. “Escrow Agent” means Eagle Bank, a Maryland State Chartered Bank with offices located in the District of Columbia, including at 2001 K Street, NW, Washington, DC.
7. “Escrow Account” means the account maintained by the Escrow Agent in which the Settlement Fund shall be held.
8. “Execution Date” means June 23, 2014.
9. “Fairness Hearing” means the hearing held by the Court at which the Court will consider evidence and argument for the purposes of determining whether the Settlement encompassed by this Agreement and its exhibits should be finally approved, whether all claims

against BCBSM should be dismissed with prejudice, and whether a Final Judgment should be entered.

10. “Final Approval” of this Agreement means the last date by which all of the following have occurred:

(a) The Court has issued an order substantially in the form of Exhibit I attached hereto, without any modification objected to by Plaintiffs or BCBSM, finally approving the Settlement and dismissing with prejudice all claims against BCBSM (the “Final Approval Order”);

(b) The Court has entered a Final Judgment; and

(c) Expiration of the time for appeal or to seek permission to appeal from the entry of the Final Judgment or, if an appeal from the Final Judgment is taken, the affirmance of such Final Judgment in its entirety, without substantial modification, by the court of last resort to which an appeal of such Final Judgment may be taken, or by a lower appellate court and the time for seeking any further review has expired.

11. “Final Judgment” means an order granting final approval of this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure together with entry of a final judgment sufficient under Rule 58 of the Federal Rules of Civil Procedure dismissing the Action and all claims therein on the merits with prejudice as to all Settlement Class Members who do not timely and validly exclude themselves. Notwithstanding the foregoing, the Parties agree that the Court’s determination of the amount of any attorneys’ fee, expenses and incentive awards to be awarded to Plaintiffs or Plaintiffs’ Counsel, or the individual payments made to Settlement Class Members who submit claims pursuant to the terms of the Settlement, or any modification of such

attorneys' fees, expenses, incentive awards, or amounts of individual payments shall not affect whether a judgment or other order is deemed a final judgment.

12. "Michigan General Acute Care Hospital" means each of the hospitals in Michigan during the period January 1, 2006 through the Execution Date that BCBSM contemporaneously identified in its classification system as a Peer Group 1, 2, 3, 4, or 5 hospital. Each such hospital is listed in Exhibit G to this Agreement.

13. "Net Settlement Fund" means the Settlement Fund less any amounts for attorneys' fees, litigation expenses, settlement administration expenses (including Taxes and Tax Expenses), or plaintiff incentive awards.

14. "Notice" means the notices of Settlement to the Settlement Class Members described in the Notice Plan, attached hereto as Exhibit A, including notices substantially in the form of Exhibits B, C and D hereto.

15. "Notice Plan" means the plan for disseminating the Notice to Settlement Class Members, attached as Exhibit A hereto.

16. "Parties" means the parties to this Agreement: BCBSM, Plaintiffs and Proposed Plaintiffs.

17. "Plaintiffs" means Michigan Regional Council of Carpenters Employee Benefits Fund, The Shane Group, Inc., Bradley A. Veneberg, Abatement Workers National Health and Welfare Fund, Monroe Plumbers & Pipefitter Local 671 Welfare Fund, and Scott Steele.

18. "Plaintiffs' Counsel" means all counsel of record in this Action for the Plaintiffs.

19. "Plan of Allocation" means the plan by which the Net Settlement Fund shall be allocated to Settlement Class Members as described in Exhibit F hereto.

20. “Preliminary Approval” means the issuance of an order preliminarily approving the Settlement, substantially in the form of Exhibit H hereto, authorizing the distribution of the Notice, and setting a date for the Fairness Hearing.

21. “Proposed Plaintiffs” means Patrice Noah and Susan Baynard.

22. “Release” means the agreement to release claims described in Section H, below.

23. “Released Claims” means any and all claims or other matters described in Paragraphs 58-59, below.

24. “Released Parties” means BCBSM, as well as all of BCBSM’s past and present parents, predecessors, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of them.

25. “Releasers” shall refer jointly and severally, individually and collectively to Plaintiffs, the Proposed Plaintiffs, the Settlement Class Members who do not timely and validly exclude themselves, and the predecessors, successors, heirs, executors, administrators, and assigns of the foregoing.

26. “Settlement” means the agreement to settle this Action, as evidenced by this Agreement.

27. “Settlement Administration Expenses” means those expenses reasonably incurred to administer the Settlement.

28. “Settlement Administrator” means the entity approved by the Court to administer the Settlement according to its terms under the supervision of Class Counsel.

29. “Settlement Amount” means \$29,990,000.00 USD.

30. “Settlement Class” means “all Direct Purchasers of healthcare services from a Michigan General Acute Care Hospital from January 1, 2006 until June 23, 2014. Excluded from the Settlement Class are all Released Parties.” For purposes of this class definition, “Direct Purchasers” includes without limitation individuals who paid Michigan General Acute Hospitals in the form of co-pays, co-insurance or otherwise; insurers that paid Michigan General Acute Care Hospitals for their insureds; and self-insured entities whose health plan participants received healthcare services at Michigan General Acute Care Hospitals.

31. “Settlement Class Members” means the members of the Settlement Class.

32. “Settlement Fund” means the Settlement Amount plus any interest earned on that amount after it is paid by BCBSM. The Settlement Fund will be funded by two separate payments as described in Section B, below.

33. “Taxes” means any sums due to be paid to governmental taxing authorities from the Settlement Fund, including taxes, estimated taxes, interest and penalties.

34. “Tax Expenses” means any and all reasonable fees and costs due to be paid to tax preparers, tax consultants or others for determining the tax liability of the Settlement Fund.

B. Payment

35. No more than fifteen (15) days after Preliminary Approval, BCBSM shall pay, or cause to be paid, by wire transfer, one million U.S. Dollars into the Escrow Account. The purpose of this payment is to pay Settlement Administration Expenses in the period before Final Approval.

36. In the event that Final Approval does not occur for whatever reason, the payment described in Paragraph 35, plus any accrued interest, shall be returned to BCBSM, minus any Settlement Administration expenses incurred.

37. No more than five (5) days after Final Approval, BCBSM shall pay twenty-eight million, nine hundred and ninety thousand U.S. Dollars (\$28,990,000) into the Escrow Account.

38. Class Counsel shall instruct Eagle Bank to invest the Settlement Fund in instruments insured or guaranteed by the full faith and credit of the United States. All interest earned on the Settlement Amount shall become part of the Settlement Fund.

39. The only payments BCBSM is required to make under this Settlement are those in Paragraphs 35 and 37, and under no circumstances shall this Agreement be construed to require BCBSM to make any other payments.

C. Settlement Class Certification

40. In their motion for preliminary approval of this Settlement, Plaintiffs shall seek certification of the Settlement Class for the purposes of this Agreement only, and appointment of Class Counsel as co-lead class counsel under Federal Rule of Civil Procedure 23(g) for the Settlement Class. In addition, the motion for preliminary approval shall request that Proposed Plaintiffs Patrice Noah and Susan Baynard be added to the Action as additional named plaintiffs and class representatives.

41. BCBSM agrees not to oppose certification of a Settlement Class for settlement purposes only. BCBSM further agrees not to oppose (a) appointment of the law firms identified as Class Counsel in Paragraph 4 herein as co-lead class counsel for the Settlement Class; (b) Proposed Plaintiffs being added to the Action as additional named plaintiffs and class representatives; and (c) appointment of the Plaintiffs and Proposed Plaintiffs as representatives of the Settlement Class.

42. Plaintiffs, on behalf of themselves and the other Settlement Class Members, by and through counsel, acknowledge and agree that, in the event the Settlement is not given

Preliminary Approval and Final Approval, BCBSM has not waived, and has expressly reserved, the right to oppose class certification and seek an appeal under Fed. R. Civ. P. 23(f) of any litigation class certified in this Action. Nothing in this Agreement may be used in any judicial or administrative proceedings respecting the propriety of class certification other than for purposes of effectuating this Settlement. The Court's certification of the Settlement Class is not and shall not be deemed to be the adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of this Agreement, and shall not be considered as law of the case, *res judicata*, or collateral estoppel in this or any other proceeding unless the Final Approval Order approving the terms of this Agreement is entered and the Agreement receives Final Approval. In no circumstance is this Agreement, any documents, affidavits or submissions in support of this Agreement, or any Court order or action in this Action to be deemed an admission by BCBSM as to the propriety of class certification for any purpose other than this Agreement. In the event the Agreement is not given Final Approval for any reason, is materially modified in any fashion by the Court (including material revisions to the Exhibits hereto, unless Plaintiffs and BCBSM agree to such modification), or is otherwise terminated for any reason, or if any objection to a material term of this Agreement by a Settlement Class Member is sustained, then unless Plaintiffs and BCBSM otherwise thereafter agree: (1) this Agreement becomes null and void; (2) any Preliminary Approval Order shall be null and void and shall be vacated and thereafter no class will remain certified; and (3) this Action shall revert to its status held prior to the signing of the Agreement.

D. Effectuation, Approval, and Finality of this Agreement

43. The Parties shall use their best efforts to effectuate this Agreement, and Plaintiffs, in consultation with BCBSM, shall timely seek to obtain the Court's preliminary and final

approval of this Settlement. Plaintiffs shall use their best efforts to secure the prompt, complete and final dismissal with prejudice of the Action.

44. Within a reasonable time after the Execution Date, the Parties shall submit to the Court a motion requesting that the Court enter a Preliminary Approval Order substantially in the form of Exhibit H hereto. That motion shall request that the Court:

- (a) preliminarily approve this Agreement;
- (b) certify the Settlement Class for settlement purposes only;
- (c) permit the addition of the Proposed Plaintiffs as additional named plaintiffs in this Action, appoint Plaintiffs and Proposed Plaintiffs as representatives of the Settlement Class, and appoint Class Counsel as co-lead class counsel for the Settlement Class under Federal Rule of Civil Procedure 23(g);
- (d) appoint the Settlement Administrator to administer the Settlement under the supervision of Class Counsel;
- (e) appoint Eagle Bank to hold the Settlement Fund in the Escrow Account;
- (f) approve the form and content of the notices attached hereto as Exhibits B, C, and D, approve the Notice Plan attached hereto as Exhibit A, and direct that the Notice be provided to the Settlement Class Members in accordance with the Notice Plan;
- (g) authorize payment from the Settlement Fund of the expenses specified in Paragraph 70 herein as they are incurred;
- (h) set the date for a Fairness Hearing; and
- (i) stay all proceedings in the Action except those proceedings provided for or required by this Agreement.

45. Within ten (10) days of this Agreement's filing with the Court, BCBSM shall cause notice of the proposed Settlement that meets the requirements of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, to be served on the appropriate federal and state officials within the time period required by CAFA. BCBSM shall file with the Court a certification stating the date(s) on which the CAFA notices were sent.

46. Plaintiffs, in consultation with BCBSM, shall timely submit a motion for final approval of this Agreement to the Court, along with a proposed Final Approval Order substantially in the form of Exhibit I hereto. The proposed Final Approval Order shall comply with Fed. R. Civ. P. 23(c)(3), including by identifying all members of the Settlement Class who timely submitted valid requests for exclusion. The Final Approval Order shall request that the Court:

(a) approve finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

(b) direct that the Action against BCBSM be dismissed with prejudice and that all claims therein against BCBSM be dismissed with prejudice, and, except as provided for in this Agreement, without costs;

(c) reserve exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Settlement; and

(d) find that all persons and entities that timely and validly excluded themselves from the Settlement Class are not bound by the Settlement.

47. If this Agreement is finally approved by the Court in its current form, or in a form not materially different therefrom, the Parties agree not to take any appeal from entry of the Final Judgment.

E. Class Notice

48. Plaintiffs will propose that the Court direct them to disseminate the Notice to the Settlement Class as described in the Notice Plan. That Notice Plan is designed to comply with the requirements of Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States Constitution.

49. BCBSM shall have no liability with respect to the giving of any notice provided for in this Agreement.

F. Settlement Administration, Claims Process and Plan of Allocation

50. The Settlement Administrator shall administer the Settlement under the direction of Class Counsel. Class Counsel will consult with BCBSM's Counsel concerning the administration of the Settlement.

51. All costs, fees and expenses related to the administration of the Settlement, including the costs of notice, shall be paid from the Settlement Fund. Neither Plaintiffs nor the Settlement Class nor BCBSM, nor their respective counsel, shall have any responsibility for any such settlement administration payments.

52. The Net Settlement Fund will be allocated among the Claimants according to the Plan of Allocation.

53. All Settlement Class Members who seek payment from the Settlement Fund will be required to submit Claim Forms substantially in the form of either Exhibit E-1 or Exhibit E-2 hereto, subject to Court approval.

54. The Settlement Fund shall not revert, in part or in whole, to BCBSM as a result of the existence of undistributed portions of the Settlement Fund. BCBSM represents that it will make no claim for such a reversion.

G. Requests for Exclusion

55. The Settlement Administrator shall forward each request for exclusion from the Settlement Class to counsel for BCBSM and Class Counsel.

56. Each member of the Settlement Class who does not file a timely written request for exclusion in accordance with the procedures set forth in the Notice shall be bound upon Final Approval by all of the terms of this Agreement, including the Release set out in Section H herein and by all proceedings, orders and judgments in this Action, even if any of the Settlement Class Members has pending, or subsequently initiates, litigation, arbitration or any other action against BCBSM relating to the Released Claims.

57. No Party to this Agreement will make any effort, directly or through a third party, to influence any individual or entity to request exclusion from the Settlement Class.

H. Release and Discharge

58. In exchange for the relief included in this Agreement, upon Final Approval of the Agreement, and except as to such rights or claims as may be created by this Agreement, Releasers, jointly and severally, shall, and hereby do, fully release and discharge BCBSM and Released Parties from any and all claims, judgments, liens, losses, debts, liabilities, demands, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, indemnities, actions, causes of action, and obligations of every kind and nature in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, contingent or accrued, arising out of or in any way relating to Most Favored Nation Clauses, or any matter or event occurring up to

the execution of this Agreement arising out of the dispute which is the subject of this Action, whether in contract, tort, local law, or violation of any state or federal statute, rule or regulation, including without limitation, claims under the Sherman Act, Clayton Act or any Michigan antitrust statute, from January 1, 2006, through the Execution Date (“Released Claims”).

Released Claims include any unknown claims that Settlement Class Members do not know or suspect to exist in their favor, which if known by them, might have affected this Agreement with BCBSM and the release of Released Parties.

59. As used in Paragraph 58, “Most Favored Nation Clauses” means all agreements and arrangements between BCBSM and general acute care hospitals in Michigan that (a) Plaintiffs have alleged or contended in this Action are most favored nation clauses, (b) are within the definition of a most favored nation clause contained in Section 3405a(4) of 1956 PA 218, or (c) have the same purpose or effect as the agreements and arrangements described in clauses (a) and (b) of this Paragraph.

60. The Release described in Paragraph 58 is not intended to, and shall not, release any claims for medical malpractice, insurance coverage, product liability, personal injury, or similar claims.

61. The Parties intend that the Agreement shall be binding on all Settlement Class Members who do not timely and validly request exclusion, whether or not they actually receive a payment pursuant to the Agreement. This Agreement shall constitute, and may be pleaded as, a complete and total defense to any Released Claims if raised in any other action.

62. The failure of any Settlement Class Member to claim or obtain any relief made available under this Agreement shall not affect the validity, scope, or enforceability of the Release, herein, and all Settlement Class Members who do not timely and validly request

exclusion shall remain bound by said releases. BCBSM shall not be required to remit any additional consideration to any Settlement Class Members following or on account of such forfeiture by any Settlement Class Member.

63. As part and parcel of this Agreement, all Settlement Class Members who do not timely and validly exclude themselves will be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit in any state, territorial or federal court, or any arbitration or administrative or regulatory or other proceeding in any jurisdiction that asserts any of the Released Claims.

64. With respect to all Released Claims, Plaintiffs, on behalf of themselves and each of the other Settlement Class Members who do not validly request exclusion from this Settlement, agree that they are expressly waiving and relinquishing to the fullest extent permitted by law:

(a) the provisions, rights and benefits conferred by Section 1542 of the California Civil Code, which provides:

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

(b) any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable or equivalent to Section 1542 of the California Civil Code.

65. BCBSM and Plaintiffs, on behalf of themselves and the other Settlement Class Members, hereby expressly agree that all provisions of this Section H together and separately constitute essential and material terms of this Agreement.

I. The Settlement Fund

66. The Settlement Fund shall be paid and distributed in accordance with the orders of the Court and this Agreement, including the Plan of Allocation. BCBSM shall have no obligation, responsibility or liability with respect to the investment, management, allocation, administration or distribution of the Settlement Fund.

67. The Parties to this Agreement and their counsel shall treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1 for all periods after the date of initial funding of the Settlement Fund. The Parties and their counsel agree to take no action inconsistent with the treatment of the Settlement Fund in such manner. As required, the Parties shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Fund being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.

68. All interest earned by the Settlement Amount shall become and remain part of the Settlement Fund.

69. Each member of the Settlement Class who does not timely and validly request exclusion shall look solely to the Settlement Fund for compensation under this Agreement. Any Settlement Class Member who fails to file a claim, or whose claim is denied by the Settlement

Administrator for any reason, shall remain bound by the Settlement and subject to the Release, unless the Settlement Class Member has timely submitted a valid request for exclusion. Except as provided by order of the Court, no member of the Settlement Class shall have any interest in the Settlement Fund or any portion thereof.

70. Upon Court approval, the Settlement Fund may be distributed to pay the following expenses as they are incurred in administering the Settlement: Taxes, Tax Expenses, charges of Eagle Bank, charges of the Settlement Administrator, and the cost of implementing the Notice Plan.

J. Attorneys' Fees

71. Plaintiffs, Proposed Plaintiffs and Plaintiffs' Counsel shall be paid and reimbursed solely out of the Settlement Fund for all attorneys' fees, expenses, and plaintiff incentive awards. BCBSM shall not be liable for any fees, expenses, or incentive awards of any of the Plaintiffs, Proposed Plaintiffs, or Plaintiffs' attorneys, experts, advisors, agents, or representatives, and all such fees, expenses, and incentive awards as approved by the Court shall be paid out of the Settlement Fund. BCBSM agrees not to oppose a request by Class Counsel for: (a) attorneys' fees to be paid out of the Settlement Fund of up to one-third of the Settlement Fund; and (b) reimbursement of all reasonable expenses incurred in connection with this Action. BCBSM further agrees not to oppose a request for incentive awards to the Plaintiffs and Proposed Plaintiffs not to exceed \$50,000 for an entity or \$10,000 for an individual.

72. In no event shall BCBSM be obligated to pay anything in addition to the Settlement Amount, including without limitation, class notice costs, attorneys' fees, litigation expenses, plaintiff incentive awards, settlement administration costs, escrow costs, Taxes, Tax Expenses or any other expense arising from or to be paid as part of this Agreement, all of which

shall be paid from the Settlement Fund. Plaintiffs, Proposed Plaintiffs and Plaintiffs' Counsel will be paid and reimbursed solely out of the Settlement Fund.

K. Rescission

73. BCBSM and Class Counsel shall each, in their respective sole discretion, have the option to rescind this Agreement in its entirety if the Court declines to approve this Agreement or any material part hereof, or if such approval is materially modified or set aside on appeal, or if the Court does not enter the Final Judgment, or if the Court enters the Final Judgment and appellate review is sought and, on such review, such Final Judgment is not affirmed or is materially modified.

74. Any Party wishing to rescind pursuant to Paragraph 73 must provide written notice of rescission to the other Party or Parties no later than twenty-one (21) calendar days after the event giving rise to the option to rescind.

75. BCBSM, in its sole discretion, shall have the option to rescind this Agreement in its entirety if BCBSM determines in good faith that the total dollar amount of Relevant Purchases (as defined in the Plan of Allocation) by Settlement Class Members who validly request exclusion materially undermines the value of the Settlement to BCBSM. In the event that Aetna Inc. requests exclusion, BCBSM agrees that it will not include the Relevant Purchases of Aetna Inc. in determining whether the total dollar amount of Relevant Purchases by Settlement Class Members who validly request exclusion materially undermines the value of the Settlement to BCBSM.

76. If BCBSM wishes to rescind pursuant to Paragraph 75, it must:

(a) no later than twenty-one (21) calendar days after BCBSM has received from the Settlement Administrator all timely requests for exclusion, provide Plaintiffs in writing: (i) a

reasonable basis for concluding that those requesting exclusion are Settlement Class Members, (ii) the estimated dollar amount of the Relevant Purchases of each Settlement Class Member requesting exclusion, and (iii) a reasonable basis for the estimate; and

(b) no later than twenty-eight (28) days after BCBSM has received from the Settlement Administrator all timely requests for exclusion, provide final written notice of rescission to Plaintiffs.

77. If the Agreement is rescinded pursuant to this Section K, BCBSM shall be reimbursed the Settlement Fund, including any accrued interest, less any funds disbursed pursuant to this Agreement.

78. A modification or reversal on appeal of any amount awarded or approved by the Court from the Settlement Fund for (a) Plaintiffs' Counsel's fees and expenses, (b) Plaintiff incentive awards, or (c) distribution to Claimants shall not be deemed a modification of this Agreement or the Final Judgment for purposes of this Section K and neither Party shall have the right to terminate the Agreement based on such a modification or reversal.

79. In the event that the Agreement is rescinded pursuant to this Section K, then:

(a) the terms and provisions of this Agreement, with the exception of this Section K (which shall continue in full force and effect), shall be null and void and shall have no force or effect; and

(b) neither the existence nor the terms of this Agreement, nor any negotiations preceding this Agreement, nor any acts performed pursuant to, or in furtherance of, this Agreement, shall be used or offered in evidence in any action or proceeding for any purpose (other than to enforce the terms remaining in effect).

L. Taxes

80. Class Counsel shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, funds to pay Taxes. All Taxes due with respect to the income earned by the Settlement Fund shall be paid, when due, from the Settlement Fund; Class Counsel shall direct Eagle Bank to do so in writing. BCBSM shall have no responsibility to make any tax filings relating to the Settlement Fund and will have no responsibility to pay Taxes, unless the Settlement is not consummated and the Settlement Fund is returned to BCBSM. In the event the Settlement is not consummated, BCBSM shall be responsible for the payment of any Taxes.

81. As set out in Paragraph 67 herein, the Parties to this Agreement and their counsel shall treat, and shall cause the Settlement Administrator and Eagle Bank to treat, the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1.

M. Use of this Agreement

82. This Agreement and the Settlement, including all negotiations and discussions leading up to the Settlement, shall not constitute any admission of liability or other evidence of any violation of any statute or law or of any liability or wrongdoing by BCBSM or of the truth of any of the claims or allegations Plaintiffs and Proposed Plaintiffs have asserted against BCBSM in this Action.

83. Notwithstanding the foregoing, this Agreement may be used or offered in evidence in order to enforce the terms of this Agreement, or filed in any action in support of any

defense asserted by BCBSM or other Releasees based upon *res judicata*, collateral estoppel, release, waiver, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

N. Reservation of Claims

84. This Agreement does not settle or compromise any claims by Plaintiffs, Proposed Plaintiffs or the other Settlement Class Members against any person or entity other than the Released Parties. All rights of any Settlement Class Member against any person or entity other than BCBSM and Released Parties are specifically reserved by Plaintiffs, Proposed Plaintiffs and the other Settlement Class Members.

O. Miscellaneous

85. This Agreement, including the Exhibits, constitutes the entire agreement among Plaintiffs, Proposed Plaintiffs and BCBSM pertaining to the Settlement of the Action and supersedes any and all prior and contemporaneous undertakings of the Parties in connection therewith. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party hereto to any other person or entity concerning the subject matter hereof. This is an integrated agreement. This Agreement may be modified or amended only by a writing executed by Class Counsel and BCBSM and approved by the Court.

86. This Agreement and any orders by the Court implementing this Agreement are not and shall not be a concession or admission of wrongdoing or liability by any Party hereto and shall not be cited to or otherwise used or construed as an admission of any fault, omission, liability, or wrongdoing on the part of any Party hereto, except in a proceeding to enforce or interpret this Agreement.

87. The Parties agree that they will not issue any press release or press statement, or otherwise initiate media coverage, concerning the Action, the events underlying the Action, or this Settlement. However, the Parties may describe the litigation and settlement in public forums, such as their counsel's law firm websites, for purposes other than to seek media coverage and consistently with their agreement not to initiate media coverage. If the Parties receive media inquiries, they will respond by making the following statement or a substantively equivalent statement: "Blue Cross Blue Shield of Michigan and the Class Plaintiffs are pleased to announce that they have reached an amicable resolution of the Plaintiffs' lawsuit about most favored nation clauses in Blue Cross's contracts with Michigan hospitals. This settlement, the parties agree, is an amicable resolution reached before the court or the jury had decided the merits of either party's legal position."

88. All terms of this Agreement shall be governed by and interpreted according to the substantive laws of Michigan without regard to its choice of law or conflict of law principles.

89. The headings used in this Agreement are for the purposes of convenience and do not constitute part of the Agreement, and no heading shall be used to help construe the meaning of the Agreement.

90. The United States District Court for the Eastern District of Michigan, Southern Division, shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Agreement.

91. Neither BCBSM or its counsel nor Plaintiffs, Proposed Plaintiffs or their counsel shall be considered to be the drafter of this Agreement, or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

92. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Plaintiffs, Proposed Plaintiffs, the other Settlement Class Members, and BCBSM any right or remedy under or by reason of this Agreement.

93. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs, Proposed Plaintiffs, the other Settlement Class Members who do not timely and validly exclude themselves, and BCBSM.

94. Where this Agreement requires any Party to provide notice or any other communication or document to any other Party, such notice, communication, or document shall be provided by email, facsimile or letter by overnight delivery at the address reflected on the signature pages, with notice to be considered received on the day of receipt; provided, however, that any notice of non-delivery shall cause such notice to be invalid.

95. This Agreement may be executed in counterparts by Class Counsel and BCBSM, and a facsimile or electronic image of a signature shall be deemed an original signature for purposes of executing this Agreement.

96. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, by and on behalf of his or her respective clients.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Agreement as of the date first herein written above.

By: _____

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Interim Co-Lead Counsel for the Settlement Class