

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDREA SCHMITT; ELIZABETH
MOHUNDRO; and O.L. by and through her
parents, J.L. and K.L., each on their own
behalf, and on behalf of all similarly situated
individuals,

Plaintiffs,

v.

KAISER FOUNDATION HEALTH PLAN OF
WASHINGTON; KAISER FOUNDATION
HEALTH PLAN OF WASHINGTON
OPTIONS, INC.; KAISER FOUNDATION
HEALTH PLAN OF THE NORTHWEST; and
KAISER FOUNDATION HEALTH PLAN,
INC.,

Defendants.

NO. 2:17-cv-1611-RSL

DECLARATION OF
RICHARD E. SPOONEMORE IN
SUPPORT OF FINAL APPROVAL

**Note on Motion Calendar:
April 18, 2024 at 11:00 a.m.
(Fairness Hearing)**

I, Richard E. Spoonemore, declare under penalty of perjury and in accordance with the laws of the State of Washington and the United States that:

1. I am a partner at the law firm of Sirianni Youtz Spoonemore Hamburger PLLC and am one of the attorneys for Plaintiffs and the Class in this action. Unless otherwise stated, the facts in this declaration are based upon my personal knowledge.

1 2. No objections have been filed or received to either Plaintiffs' Motion for
2 Final Approval of Settlement Agreement or Plaintiffs' Motion for Attorney Fees, Costs,
3 and Class Representative Case Contribution Payments from class members or state
4 Attorneys General. Epiq, the Claims Processor, reports that it has received only five opt-
5 outs. Attached as *Exhibit 1* is a true copy of the opt-outs that Epiq has forwarded to us.

6 3. Defense counsel reported that it sent out the CAFA notice on or about
7 December 14, 2023. Attached as *Exhibit 2* is a true and correct copy of the CAFA notice
8 provided by defense counsel. We have received no comments or concerns in response
9 to the CAFA notice.

10 4. Both Epiq and my law firm posted websites related to the settlement. The
11 website maintained by my firm contained basic information about the case and
12 specifically directed class members to the Epiq website, via a link, for details where the
13 Motion for Attorney Fees was and other key documents were posted. Epiq reported
14 more than 10,000 views of its website.

15 5. In support of class counsel's Motion for Attorney Fees, my law partner,
16 Eleanor Hamburger, previously declared that we received and responded to many
17 emails or telephone inquiries since class notices were emailed. *See* Dkt. No. 176, ¶10.
18 Since then, we have continued to respond to many emails and phone calls from notice
19 recipients. We still have not received any negative comments about the settlement or the
20 motion for fees.

21 6. As of April 11, 2024, the Claims Processor has made a preliminary
22 calculation of the magnitude of the claims, after deducting claims that are facially
23 invalid, such as: (a) duplicates; (b) outside the Class Period; (c) for items that are clearly
24 not hearing aids or related services; or (d) for persons who are not class members. This
25 preliminary review was conducted for both timely and late claims received by April 10,
26

2024. Further processing is still required for the claims, which will likely uncover additional invalid claims.

7. Based on the preliminary calculation, we estimate, after deducting costs, requested fees, and expenses, members will receive at least 45% of their claims if only timely claims are allowed, and will receive at least 44% of their claims if both timely and late claims are allowed. That estimate is shown in the table below:

Total Settlement Amount:		\$3,000,000.00	
Estimated Cost of Class Notice and Claims Administration (includes \$178,166 advanced by class counsel):		\$539,301.00	
Requested Attorney fees (33 1/3%):		\$1,000,000.00	
Litigation Costs (excluding notice advance):		\$195,971.63	
Case Contribution Awards requested:		\$45,000.00	
Subtotal:		\$1,219,727.37	
Estimated Net for distribution	\$1,219,727.37		Percent of Claim Paid
Total Timely Claims	\$2,695,629.29		45.25%
Total Timely and Late Claims	\$2,725,397.23		44.75%
Unique Claimants:		913	
Average Payout to Claimant:		\$1,335.95	

8. The exact dollar amounts of the claims will change once all claims have been fully adjudicated, and the percentage of the claim paid will likely increase based on the result of further adjudications.

9. Our initial model suggested that fewer claims would be submitted and the dollar amount claimed would be less than the amounts actually claimed. Therefore, we had initially anticipated that claimants would receive 100%, or close to it, of their claimed amounts. As it turned out, the notice process was very effective at reaching people who

1 had never submitted a claim for reimbursement and class members submitted claims at
2 a much higher rate than would normally be anticipated. Despite the claims being subject
3 to a *pro-rata* deduction, there are a number of factors to consider: (1) if submitted to
4 Kaiser, claims would have been subject to various co-payments, deductibles, and other
5 cost-sharing arrangements such that “full” reimbursement is likely closer to 80% of the
6 amount spent, (2) many claims for hearing aids submitted by class members exceeded
7 \$3,000, the dollar limit under Hugo’s Law, the new Washington hearing aid statute,
8 (3) the notice process reached a remarkable 99.6% of class members, which drove more
9 claims, (4) settlement was obtained prior to class certification, and (5) this was a case of
10 first impression that advanced novel theories of recovery (that were initially dismissed
11 before being revived on appeal).

12 10. Class counsel strongly recommends approval of this settlement agreement.
13 Each member of the litigation team (Rick Spoonemore, Eleanor Hamburger, and Daniel
14 Gross) has decades of class action experience. In our collective view, this settlement
15 represents a substantial win for class members, particularly in light of the substantial
16 recovery for class members in a settlement that was reached prior to class certification.

17 11. As noted in the Motion for Final Approval, we are asking that late claims
18 be approved. I have served as class counsel in many class action settlements where the
19 court has allowed late claims, including many in the Western District of Washington,
20 such as *J.R. v. Blue Cross Blue Shield of Illinois, et al.*, No. 2:18-cv-01191, Dkt. Nos. 76, 81;
21 *C.S. v. Boeing*, No. C14-0574, Dkt. No. 54; *K.M. v. Regence*, No. 2:13-cv-01214, Dkt. No. 98,
22 ¶19; *R.H. v. Premera*, No. 2:13-cv-00097, Dkt. No. 90, ¶8; *A.M. v. Moda Health Plan, Inc.*,
23 No. 2:14-cv-01191-TSZ, Dkt. No. 52 (all health coverage class action cases in which the
24 claims deadline was extended to include late-filed claims). The prejudice to other class
25 members is minimal, and payment of the late claims serves the purposes of class action
26 distributions.

1 I declare under penalty of perjury that the foregoing is true and correct to the best
2 of my knowledge, information, and belief.

3
4 DATED: April 11, 2024, at Seattle, Washington.

5 /s/ Richard E. Spoonemore
6 Richard E. Spoonemore (WSBA #21833)
7 SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC
8 3101 Western Avenue, Suite 350
9 Seattle, WA 98121
10 Tel. (206) 223-0303; Fax (206) 223-0303
11 Email: rspoonemore@sylaw.com

12 *Attorneys for Plaintiffs*

Exhibit 1

To whom it may concern:

I wish to opt out of
this settlement, and the associated class.

NAME: DEREK PETERSON

UNIQUE ID: [REDACTED] 9662

Signed,

Di Data

DEREK PETERSON

Mr. Derek Peterson

Seattle, WA 98199

SEATTLE WA 980

12 MAR 2024 PM 3 L



Schmitt v. Kaiser Settlement Claims
PO Box 2479
Portland, OR 97208-2479

97208-247979



Please remove
from your
Mailing lists.

Thanks

Schmitt v. Kaiser Settlement Claims Processing
P.O. Box 2479
Portland, OR 97208-2479

Kaiser Hearing Aid Settlement

Dependent Name: PAUL D DREW, UniqueID:
[REDACTED] 3662 PIN: [REDACTED]



400709910001396528

PAUL D DREW

[REDACTED]
SPOKANE WA 99202 [REDACTED]

PRESORTED
FIRST CLASS MAIL
AUTO
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 2882

8
7264



Did you pay for hearing aids or associated medical services while covered by Kaiser between October 30, 2014, and December 31, 2023? If so, you may have a claim in a class action lawsuit that settled. This card describes your rights in that lawsuit and how you can obtain more information, file a claim, or take other action.

A court authorized this notice.

This is not a solicitation from a lawyer.

Why Did I Get this Notice?

You received this notice because you might be eligible to participate in a \$3 million settlement if you paid for hearing aids or associated medical care while covered under a health insurance plan issued by Kaiser between October 30, 2014, and December 31, 2023. Not all individuals who received this notice are members of the class. You must meet the class definition to be a member of the class. The class definition can be found here: www.KPHearingAidSettlement.com.

What Can I Do Because of This Settlement?

If you're part of this group, you can: (1) Ask for money (file a claim) as part of this Settlement, (2) Decide not to participate in this case or the Settlement (opt-out), (3) Remain in this case but object to the Settlement, or (4) Do nothing, which means you will (a) receive no money and (b) give up any claims you have against Kaiser related to the issues in this case.

How do I Learn More About This?

You can get more information about the case and your choices at www.KPHearingAidSettlement.com or email info@KPHearingAidSettlement.com.

How Much Money Could I Get?

If you are a class member and file an eligible claim, you may be eligible for up to 100% of the costs you paid for hearing aids and associated services from October 30, 2014, through December 31, 2023. Please see www.KPHearingAidSettlement.com for details.

How do I Make a Claim?

- (1) The best and fastest way is to go online at www.KPHearingAidSettlement.com and follow the instructions;
- (2) Or email us at info@KPHearingAidSettlement.com with your name and address;
- (3) Or call 1-888-339-4196 (Toll-Free), or 1-877-921-3669 (TTY), to obtain more information.

When Do I Need to Do Something?

If you want to file a claim, you must submit your request online at www.KPHearingAidSettlement.com or by mail on or before **April 4, 2024**.

- Request for Exclusion -

Hi,

My name is Amanda Bessler
and I would like to be excluded
(opt-out) of the Schmitt et al.
v Kaiser Foundation Health Plan
of WA et al.

My subscriber unique ID as noted
on my notice is [REDACTED] HFF4 PIN: [REDACTED]

Thank you,

Amanda Bessler

3/29/2024

Case 2:17-cv-01611-LRS Document 180-1 Filed 04/11/24 Page 8 of 10
Schiff v. Kaiser Settlement Claims Processing
P.O. Box 2479
Portland, OR 97208-2479

PRESORTED
FIRST CLASS MAIL
AUTO
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 2882

Kaiser Hearing Aid Settlement

Subscriber Name: KYRA M EATON, UniqueID:

██████████ A47C PIN: ██████████

3/23/24

- Please opt me
out.

Thank you,
Kyra Eaton

Signature: 



400709910010076731

KYRA M EATON

████████████████████
LACEY WA 98503 ██████████

77
83416



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When Do I Need to Do Something?

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[REDACTED]

From: Sara McCleary [REDACTED]@gmail.com>
Sent: Thursday, April 4, 2024 8:21 AM
To: info_KPHearingAidSettlement
Subject: Sara McCleary Opt-Out re Class Action/ Schmitt v. Kaiser, et al.

CAUTION: This email originated from outside of Epiq. Do not click links or open attachments unless you recognize the sender and know the content is safe. Report phishing by using the "Phish Alert Report" button above.

Good morning,

I (Sara McCleary) am opting out of the class action settlement. Thank you for the notice.

Kind regards,
Sara McCleary
[REDACTED]

Exhibit 2



Medora A. Marisseau
Attorney at Law
701 Fifth Avenue, Suite 3300
Seattle, Washington 98104
Direct: (206) 224 8045
Main: (206) 223 1313
Fax: (206) 682 7100
mmarisseau@karrtuttle.com

December 14, 2023

VIA U.S. CERTIFIED MAIL

Office of the Attorney General for the United States of America
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530

RE: Notice of Proposed Class Action Settlement in Schmitt et al v. Kaiser
Foundation Health Plan of Washington et al
U.S. District Court for the Western District of Washington
Case No. 2:17-cv-01611-RSL

To the Attorney General for the United States of America:

Pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, Defendants Kaiser Foundation Health Plan of Washington; Kaiser Foundation Health Plan of Washington Options, Inc.; Kaiser Foundation Health Plan of the Northwest; and Kaiser Foundation Health Plan, Inc., (“Defendants”) hereby provide this notice of a proposed settlement of the above-captioned class action, which is currently pending in the United States District Court for the Western District of Washington, Cause No. 2:17-cv-01611-RSL.

On October 30, 2017, Plaintiff Andrea Schmitt (“Schmitt”), on her own behalf, and on behalf of all similarly situated individuals (“Plaintiff”) filed this lawsuit alleging that, 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. Named Plaintiffs Elizabeth Mohundro (“Mohundro”), and O.L. by and through her parents, J.L. and K.L. (O.L), were added in subsequent amended complaints (“Plaintiffs”). Mohundro was added as a named Plaintiff in the Second Amended Complaint, filed on February 28, 2018. O.L. was added as a named Plaintiff in the Fourth Amended Complaint on December 15, 2020.

Defendants have denied and continue to 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. However, to avoid the burden, expense, inconvenience, and uncertainty of proceeding with the litigation, Defendants have concluded that it is in their best interests to resolve and settle this action.

December 14, 2023

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After engaging in mediation on July 20, 2023 before Judge Charles Burdell (ret), Mediator, a tentative agreement was reached on that date and the Court suspended all pending deadlines. The parties continued to negotiate over the short-form agreement which was executed on September 15, 2023, and a long-form Final Settlement Agreement was fully executed on December 5, 2023. On December 6, 2023, the parties filed their Proposed Settlement with the Court, along with Plaintiff's Unopposed Motion for Preliminary Approval, and a Proposed Notice to the Class (Including Short-Form and Long-Form Notices), which includes instructions for submitting a Request for Exclusion.

As required by 28 U.S.C. § 1715(b), Defendants hereby state as follows:

1. Plaintiffs' original October 30, 2017 Complaint is attached as **Exhibit A**. Plaintiffs' December 12, 2017 Amended Complaint, Plaintiffs' February 28, 2018 Second Amended Complaint, Plaintiffs' October 20, 2020 Third Amended Complaint and attachments, and Plaintiffs' December 15, 2020 Fourth Amended Complaint, and all materials filed therewith, can be accessed at the below link: <https://www.karrtuttle.com/class/>. Password: class1214

2. The Court has scheduled a Fairness Hearing to consider whether the parties' Proposed Settlement is fair, reasonable and adequate and should be finally approved, for April 18, 2024 at 11:00 a.m.

3. Plaintiff's Proposed Notice to the Class (Including Short-Form and Long-Form Notices), which include instructions for submitting a Request for Exclusion, and the proposed settlement of the class action, are attached hereto as **Exhibit B**.

4. A copy of the parties' proposed Class Action Settlement Agreement is attached hereto as **Exhibit C**.

5. Other than the Class Action Settlement Agreement referenced above, there are no contemporaneous agreements between counsel for Plaintiffs and counsel for Defendants.

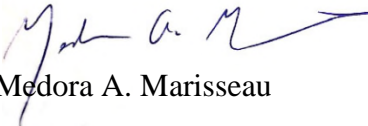
6. No final judgment or notice of dismissal has yet been entered in this case.

7. A list of names of putative Settlement Class members is not yet due to be provided until January 22, 2024 and is infeasible at this time. There are 1,033,013 total Settlement Class Members. A list of states of residence for the Class Members is attached hereto as **Exhibit D**. Subject to final approval by the Court, 100% of the Net Settlement Amount will be used to reimburse Class Members who make a claim to the Settlement Fund for their out of pocket costs incurred for hearing aids and related services, as determined by the Claims Processor as described in the parties' Class Action Settlement Agreement.

8. The Court's Amended Order Granting Preliminary Approval, is attached as **Exhibit E**.

December 14, 2023
Page 3

Best regards,



Medora A. Marisseau

Enclosures

cc. Client