



Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

FRANCES KIRBY, AUDREY)
LOGAN, DIOLI AZOFEIFA, JOHN)
DAVID MARKS, WANDA SILVA,)
TONYA BEACH, and DAVID)
FROHMAN, individually and on)
behalf of all others similarly situated,)

Plaintiffs,)

v.)

BLUE CROSS BLUE SHIELD)
HEALTHCARE PLAN OF)
GEORGIA, INC. D/B/A ANTHEM)
BLUE CROSS AND BLUE SHIELD)
AND AS SUCCESSOR IN)
INTEREST TO BLUE CROSS AND)
BLUE SHIELD OF GEORGIA, INC.)

Defendant.)

Civil Action No.: 19-1-02689-53

 **[PROPOSED] ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, currently before this Court is the motion of Plaintiffs, Frances Kirby, Audrey Logan, Dioli Azofeifa, John David Marks, Wanda Silva, Tonya Beach and David Frohman, individually and on behalf of all other similarly situated ("Plaintiffs"), to preliminarily approve a Settlement Agreement entered into with Defendant, Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. d/b/a Anthem Blue Cross and Blue Shield and as successor in interest to Blue Cross and Blue



Shield of Georgia, Inc. ("BCBS-GA"), to approve the form and method of providing notice to the Settlement Class of the proposed Settlement and to set a date for a fairness hearing on the proposed Settlement;

WHEREAS, the Court has reviewed the Settlement Agreement, together with its exhibits;

WHEREAS, the Settlement Agreement provides that BCBS-GA shall pay a total of \$9.9 million to settle all claims in this Action;

WHEREAS, the Settlement appears to be the product of informed, arms-length settlement negotiations between Class Counsel and counsel for BCBS-GA over a period of months with the help of two mediators;

WHEREAS, the Court is familiar with and has reviewed the record, the Settlement Agreement, Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and supporting declarations, and has found good cause for entering this Order; and

WHEREAS, unless otherwise specified, all capitalized terms used herein have the same meanings as set forth in the Settlement Agreement;

NOW THEREFORE, it is ORDERED and ADJUDGED as follows:

The Settlement Class and Class Counsel

1. The Court finds upon preliminary evaluation that it will likely be able to approve the proposed Settlement as fair, reasonable and adequate. The Court

finds that giving notice of the Settlement is justified pursuant to O.C.G.A. 9-11-23(c)(2). This Court finds that it will likely certify and/or confirm the following Settlement Class for purposes of judgment on the Settlement:

All Georgia residents who at any time were enrolled in an individual, family or small group Pathway health insurance plan issued by BCBS-GA ("Pathway Plan") effective during any period from January 1, 2016 to December 31, 2022 (the "Settlement Class Members" or "Settlement Class"). Excluded from the Settlement Class are (i) any judicial officer presiding over the Lawsuit and the members of his/her immediate family and judicial staff; (ii) BCBS-GA's counsel in this Lawsuit, their employees, and their immediate family; (iii) Class Counsel, their employees, and their immediate family; and (iv) any person who validly opts-out of the Settlement Class.

2. The Court determines for settlement purposes that the proposed Settlement Class meets all of the requirements of Rule 23(a) and (b)(3).

3. The Court appoints Plaintiffs, Frances Kirby, Audrey Logan, Dioli Azofeifa, John David Marks, Wanda Silva, Tonya Beach and David Frohman as representatives of the proposed Settlement Class going forward.

4. The following lawyers are designated as class counsel for the Settlement Class: Jason R. Doss of The Doss Firm, LLC and Jason Kellogg of Levine, Kellogg, Lehman, Schneider + Grossman. The Court finds that these lawyers are experienced and will adequately protect the interests of the Settlement Class.

Preliminary Approval of the Settlement

5. The Court preliminarily finds that the Settlement is the product of non-collusive, arm's-length negotiations between experienced class action attorneys who were well informed of the strengths and weaknesses of the Action, including through discovery and motion practice, and whose settlement negotiations were supervised by two experienced mediators. The Settlement confers substantial benefits upon the Settlement Class and avoids the costs, uncertainty, delays, and other risks associated with continued litigation, trial and/or appeal concerning the claims at issue. The Settlement falls within the range of possible recovery, compares favorably with the potential recovery when balanced against the risks of continued prosecution of the claims in the Action, and does not grant preferential treatment to Plaintiffs, their counsel, or any subgroup of the Settlement Class.

6. The Court preliminarily approves the Settlement as fair, reasonable, and adequate and in the best interest of Plaintiffs and the other Settlement Class Members, subject to further consideration at the Fairness Hearing to be conducted as described below.

7. The Settlement Amount shall be paid to and managed by the Settlement Administrator, JND Legal Administration, as detailed in the Settlement Agreement. All funds held by the Settlement Administrator shall be deemed and considered to

be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as such funds are distributed pursuant to the Settlement Agreement.

Manner and Form of Notice

8. The Court approves the Settlement Notice substantially in the forms attached as **Exhibits B and C** of the Settlement Agreement. The proposed notice plan, which provides for direct notice via first-class mail of the short form of the Settlement Notice and for publication of the long form of the Settlement Notice on the Settlement Website, will provide the best notice practicable under the circumstances. This plan and the Settlement Notice are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action; the effect of the proposed Settlement (including on the Released Claims); the anticipated motion for attorneys' fees, reimbursement of litigation expenses and service awards; their rights to participate in, opt-out of, or object to any aspect of the proposed Settlement. The plan and the Settlement Notice constitute due, adequate and sufficient notice to Settlement Class Members and satisfy the requirements of O.C.G.A. 9-11-23, due process and all other applicable laws and rules. The date and time of the Fairness Hearing shall be included in the Settlement Notice before dissemination. Non-material modifications to the Settlement Notice may be made without further order of the Court.

9. The Claim Form attached as **Exhibit E** to the Settlement Agreement is approved. Non-material modifications to the Claim Form may be made without further order of the Court.

10. The Court hereby appoints JND Legal Administration as Settlement Administrator to carry out the Settlement Notice program, effect payment to Settlement Class Members and otherwise perform all administrative tasks set forth in Section V of the Settlement Agreement.

11. Within 45 days after entry of this Order (“Preliminary Approval”), the Settlement Administrator shall cause to be established and maintained the Settlement Website, using a URL selected by BCBS-GA and subject to approval by Class Counsel, on which will be posted the long form of the Settlement Notice and Claim Form. The Settlement Notice shall direct recipients to the Settlement Website via a hyperlink.

12. Within 45 days of Preliminary Approval, the short form of the Settlement Notice shall be sent via postcard to the most recent mailing address as reflected in BCBS-GA’s reasonably available computerized records and/or data associated with the number. A National Change of Address update shall be performed before mailing. Skip tracing shall be performed for all returned mail. All costs of skip tracing will be considered an Administrative Cost.

13. All reasonable expenses incurred in notifying Settlement Class Members, as well as in administering the Settlement Fund, shall be paid to Settlement Administrator from the Settlement Fund as set forth in the Settlement Agreement.

14. The Settlement Administrator will require Settlement Class Members to timely submit the Claim Form, as required by the terms of the Settlement Agreement, in order to verify a Settlement Class Member's status as a Settlement Class Member and their eligibility for any benefits under the Settlement, in addition to any other purposes consistent with the Settlement Administrator's responsibilities under the Settlement Agreement.

15. The dates provided for herein may be extended by Order of the Court, for good cause shown, without further notice to the Settlement Class.

The Fairness Hearing

16. An approval hearing shall take place before the Special Master T.E. Cauthorn on March 20th, 202~~4~~¹, at 10:00 a.m./p.m. at [ADDRESS], to determine whether: (a) the proposed Class should be certified for settlement purposes pursuant to O.C.G.A. 9-11-23; (b) the Settlement should be approved as fair, reasonable and adequate; (c) full effect should be given to the releases contained in the Settlement Agreement and those provisions finally approved as contained therein; (d) this matter should be dismissed with prejudice; (e) Class Counsel's application for

attorneys' fees and expenses should be approved; and (f) the application for the class representatives to receive service awards should be approved, as well as (g) any other matters the Court deems necessary and appropriate.

17. Any Settlement Class Member who has not timely and properly excluded themselves from the Settlement Class in the manner described below may appear at the approval hearing in person or through counsel and be heard, as allowed by the Court, regarding the proposed Settlement; provided, however, that no Settlement Class Member who excluded themselves from the Settlement Class shall be entitled to object or otherwise appear at the approval hearing, and, further provided, that no Settlement Class Member shall be heard in opposition to the Settlement unless the Settlement Class Member complies with the requirements of this Order pertaining to objections, which are described below.

18. Papers in support of Class Counsel's application for attorneys' fees, reimbursement of litigation expenses and service awards shall be filed within 45 days after Preliminary Approval.

19. Class Counsel's motion for final approval of the settlement shall be filed no less than 30 days before the Fairness Hearing.

Objections and Appearances at the Fairness Hearing

20. Any member of the Settlement Class may appear at the Fairness Hearing and show cause why the proposed Settlement should or should not be

approved as fair, reasonable, and adequate, or why judgment should or should not be entered, or to comment on or oppose Class Counsel's application for attorneys' fees, reimbursement of litigation expenses, and service awards. No person shall be heard or entitled to contest the approval of the Settlement or, if approved, the judgment to be entered approving the Settlement, Class Counsel's application for an award of attorneys' fees, reimbursement of litigation expenses, and service awards, unless that person filed an objection with the Clerk of Cobb County electronically, in person, or by first-class mail postmarked within 60 days after the Notice Date (the "Objection and Opt-Out Deadline"). Absent leave of this Court, objections shall not exceed 20, double-spaced pages in length.

21. For the objection to be considered by the Court, the objection must be in writing and set forth:

- (a) The name of this proceeding (*Kirby v. Blue Cross Blue Shield of Georgia*, Case No. 19-1-02689-53, or similar identifying words such as "BCBS-GA Lawsuit");
- (b) That this is an objection to the Settlement
- (c) the Settlement Class Member's full name;
- (d) the Settlement Class Member's current address, email address, and telephone number;
- (e) the Settlement Class Member's personal signature (an attorney's signature is insufficient);
- (f) a statement indicating why the Settlement Class Member thinks that the Settlement Class Member is a part of the Settlement Class;

- (g) a statement with the reasons why the Settlement Class Member objects to the Settlement, accompanied by any legal or factual support for the Settlement Class Member's objection;
- (h) whether the objection applies only to you, or to the Settlement Class as a whole;
- (i) a statement identifying all class action settlements to which the Settlement Class Member has objected in the previous four years;
- (j) a statement as to whether the Settlement Class Member intends to appear at the Fairness Hearing, either in person or through a lawyer, and if through a lawyer, identifying the lawyer by name, address and telephone number, and four dates prior to the Fairness Hearing during which the Settlement Class Member is available to be deposed by counsel for the Parties; and
- (i) a detailed description of any and all evidence the Settlement Class Member may offer at the Fairness Hearing, including copies of any and all exhibits the Settlement Class Member may seek to introduce at the Fairness Hearing.

22. Additionally, if the objecting Settlement Class Member is represented by a lawyer and the lawyer intends to seek compensation for his or her services from anyone other than the objecting Settlement Class Member, then the objection letter must include:

- (a) the identity of all lawyers who represent the objecting Settlement Class Member, including any former or current lawyers who may be entitled to compensation for any reason related to the objection;
- (b) a statement identifying all instances in which the lawyer or the lawyer's law firm have objected to a class action settlement within the preceding five years, giving the case name(s), case number(s) and court(s) in which the class action settlement(s) were filed;
- (c) a statement identifying any and all agreements or contracts that relate to the objection or the process of objecting — whether written or



oral — between the Settlement Class Member, the Settlement Class Member's lawyer and/or any other person or entity;

(d) a description of the lawyer's legal background and prior experience in connection with class action litigation;

(e) a statement regarding whether the lawyer's compensation will be calculated on the basis of lodestar, contingency or other method;

(f) an estimate of the amount of fees to be sought;

(g) the factual and legal justification for any fees to be sought;

(h) the number of hours already spent by the lawyer and an estimate of the hours to be spent in the future; and

(i) the lawyer's hourly rate.

23. Any Settlement Class Member who fails to comply with the provisions in this Order will waive and forfeit any and all rights they may have to object to the Settlement, may have their objection stricken from the record and may lose their rights to appeal from approval of the Settlement. Any such Settlement Class Member shall also be bound by all the terms of the Settlement Agreement, this Order and by all proceedings, orders and judgments, including, but not limited to, the releases in the Settlement Agreement if final judgment is entered.

24. Counsel for any objector must enter a Notice of Appearance no later than 14 days before the Fairness Hearing.

25. Attendance at the Fairness Hearing is not necessary, but persons wishing to be heard orally in connection with approval of the approval of the Settlement and/or the application for an award of attorneys' fees, reimbursement of

expenses, and service awards must indicate in their written objection their intention to appear at the hearing.

Exclusions from the Settlement Class (“Opt-Outs”)

26. Any Settlement Class Member who wishes to Opt-Out (i.e., be excluded) from the Settlement Class must mail a written notification of his or her intent to Opt-Out to the Settlement Administrator at the address provided in the approved notice attached to the Settlement Agreement postmarked no later than 60 days from the Notice Date (the “Opt-Out Deadline”). Each written Request to Opt-Out must be signed by the Settlement Class Member seeking exclusion, can only request exclusion for that one Settlement Class Member and must contain the following information:

- (a) The name of this proceeding (*Kirby v. Blue Cross Blue Shield of Georgia*, Case No. 19-1-02689-53, or similar identifying words such as “BCBS-GA Lawsuit”);
- (b) their full name;
- (c) their current address, email address, and telephone number;
- (d) the words “Request to Opt-Out” at the top of the document or a statement that the Settlement Class Member does not wish to participate in the Settlement; and
- (e) and a personal signature.

27. Any Settlement Class Member who does not timely and validly Opt-Out from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Settlement Class Member who has not submitted a timely,



valid written Request to Opt-Out from the Settlement Class shall be bound by all subsequent proceedings, orders and judgments in this matter, including but not limited to the releases set forth in the Settlement Agreement and final judgment.

28. The Settlement Administrator shall provide the Class Counsel and counsel for BCBS-GA with copies of all opt-out notifications and, within 14 days after the Opt-out Deadline, shall provide counsel with a final list of all who timely and validly Opt-Out from the Settlement Class. All those Settlement Class Members who submit valid and timely Request to Opt-Out from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

Claims Process

29. The Settlement Agreement establishes a process for claiming benefits under the Settlement. To be eligible to receive any compensation, Settlement Class Members Not In Records must submit to the Settlement Administrator the approved Claim Form, attached as **Exhibit E** to the Settlement Agreement, within 60 days from the Notice Date. Settlement Class Members In Records do not need to submit a claim to be eligible for payment under the Settlement.

Termination of the Settlement and Use of this Order

30. This Order shall become null and void and shall be without prejudice to the rights of the parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not



approved by the Court or is terminated in accordance with the terms of the Settlement Agreement. In such event, the Settlement and Settlement Agreement, and all rights and obligations thereunder, including any releases, shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever by any person or entity.

31. This Order shall be of no force or effect if the Final Approval Order is not entered or there is no Effective Date under the terms of the Settlement Agreement; shall not be construed or used as an admission, concession or declaration by or against any party of any fault, wrongdoing, breach or liability; shall not be construed or used as an admission, concession or declaration by or against any settlement class representative or any other settlement class member that its claims lack merit or that the relief requested is inappropriate, improper or unavailable; and shall not constitute a waiver by any party of any defense or claims it may have in this litigation or in any other lawsuit.

32. No Party or counsel to a Party in this Litigation shall have any liability to any Settlement Class Member for any action taken substantially in accordance with the terms of this Order.

Reservation of Jurisdiction

33. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

34. The Court reserves the right to adjourn or continue the Fairness Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website by the Settlement Administrator.

Summary of Deadlines

35. The Settlement Agreement shall be administered according to its terms pending the Fairness Hearing. Deadlines arising under the Settlement Agreement and this Order include, but are not limited to, the following:

<u>EVENT</u>	<u>TIMING</u>
Deadline for BCBS-GA to provide Settlement Class Members' contact information to Settlement Administrator	[INSERT DATE]; 20 days after Court grants Preliminary Approval
Deadline for Settlement Administrator to establish Settlement Website	[INSERT DATE]; 45 days after Court grants Preliminary Approval
Deadline for BCBS-GA to pay \$9.9 million Consideration to Escrow Agent	[INSERT DATE]; 10 Business Days after Court enters the Final Order and Judgment
Deadline for Settlement Administrator to send short form of the Settlement Notice to the Settlement Class Members In Records	[INSERT DATE]; 45 days after Court grants Preliminary Approval



Deadline to file Class Counsel's motion for attorneys' fees, costs, expenses and service awards	[INSERT DATE]; 45 days after Court grants Preliminary Approval
Objection deadline	[INSERT DATE]; 60 days after Notice Date
Opt-out deadline	[INSERT DATE]; 60 days after Notice Date
Deadline for Settlement Class Members to submit Claim Forms to Settlement Administrator	[INSERT DATE]; 60 days after Notice Date
Deadline for Class Counsel to file motion for final approval of settlement	[INSERT DATE]; 30 days before Fairness Hearing
Deadline for Settlement Administrator to submit Affidavit stating that the Class Notice has been given	[INSERT DATE]; 14 Business Days after completing the distributions to Settlement Class Members
Deadline for counsel for any objector to file a Notice of Appearance	[INSERT DATE]; 14 days before Fairness Hearing
Fairness Hearing	[INSERT DATE]

RECOMMENDED FOR APPROVAL in Marietta, Georgia, this 10th day of Oct., 2025.



T.E. CAUTHORN
SPECIAL MASTER

DONE AND ORDERED in Marietta, Georgia, this 16 day of Oct., 2025.



HON. ROBERT LEONARD
SUPERIOR COURT JUDGE



CERTIFICATE OF SERVICE

This is to certify that I have this day served all interested parties in the within and foregoing matter by depositing a copy of the **order** dated the 16 day of October, 2025, in the regular United States Mail in the properly addressed envelopes with adequate postage thereon addressed as follows or via email through PeachCourt to counsel of record:

JASON DOSS, ESQ.
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This 16 day of October, 2025.



Mimi Scaljon, Esq.
Staff Attorney to
Judge Robert D. Leonard II