

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

E.S., by and through her parents, R.S. and J.S., and  
JODI STERNOFF, both on their own behalf, and on  
behalf of all similarly situated individuals,

Plaintiffs,

v.

REGENCE BLUESHIELD; and CAMBIA  
HEALTH SOLUTIONS, INC., f/k/a THE  
REGENCE GROUP,

Defendants.

NO. 2:17-cv-1609-RAJ

CLASS'S UNOPPOSED MOTION FOR  
FINAL APPROVAL OF SETTLEMENT  
AGREEMENT

**Note on Motion Calendar:  
March 20, 2026 at 9:00 am  
(Fairness Hearing)**

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## I. INTRODUCTION

With the claims process largely concluded, Class Counsel is pleased to report that Class members achieved an exceptional result. Under the Settlement Agreement, valid claims incurred during the eleven-year class period will be *paid in full*, without any deduction for copayments, deductibles, or other cost-sharing amounts that class members otherwise would have owed in the ordinary course. Declaration of Elizabeth Enlund Regarding Claims Processing, ¶8; Declaration of Eleanor Hamburger, ¶7. The average claim amount totals \$1,189.82. Enlund Decl., ¶6. In fact, even after payment of Class members' claims at 100%, the requested attorney fees, litigation costs, case contribution awards, and the costs of class notice and claims administration, significant funds will remain available for *cy pres* distributions to the Washington State Communication Access Project ("WashCAP") and potentially the Legal Foundation of Washington, thereby extending the settlement's benefits through continued advocacy for Washington residents who are hard of hearing. *Id.* And for Washington insureds going forward, hearing-aid coverage is now statutorily mandated.

That extraordinary monetary and prospective relief was achieved through a risky, long, hard-fought, first-impression case that included a successful appeal to the Ninth Circuit. *See Schmitt, et al. v. Kaiser Found. Health Plan of Wash.*, 965 F.3d 945 (9th Cir. 2020); *E.S. v. Blue Shield*, 812 F. App'x 539 (9th Cir. 2020) (linking this case to *Schmitt*). This litigation did more than secure relief for this Class; it helped catalyze similar challenges nationwide, including, most recently, a disability-discrimination action against Cigna challenging hearing-aid exclusions. *See, e.g., Rasin v. Cigna Health & Life Ins.*, No. 2:25-cv-00407-CDS-DJA, 2026 U.S. Dist. LEXIS 48571, at \*1 (D. Nev., Mar. 10, 2026). Put simply, this case not only broke new legal ground and secured full relief for class members, but also paved the way for similar actions aimed at ending disability discrimination in health coverage. That is precisely the kind of systemic change class actions are meant to achieve.

1 By any measure, the settlement is a resounding success. It is therefore unsurprising that  
2 only one individual objected, and that objection appears facetious. *See* Dkt. No. 99. No Class  
3 member objected to Class Counsel’s request for attorney fees, litigation costs, or case contribution  
4 awards. Hamburger Decl. ¶ 2.

5 The Class therefore respectfully moves for final approval of the Settlement Agreement,  
6 attorney fees, litigation costs, case contribution awards, the costs of Class notice and claims  
7 administration, and the proposed *cy pres* distribution. The motion is unopposed and should be  
8 granted.

## 9 II. FACTS

10 The Class provided a full description of the lengthy history of the case and the Settlement  
11 Agreement in Docket No. 88, Plaintiffs’ Unopposed Motion for Preliminary Approval of  
12 Settlement Agreement, etc., pp. 3–10. In brief, the Settlement Agreement provides for Regence  
13 to pay \$3 million into a Qualified Settlement Fund to be used to pay Class members’ valid claims  
14 for hearing aids and related services incurred during the Class Period (October 30, 2014–  
15 December 31, 2025), court-approved attorney fees, litigation costs, case contribution awards, cost  
16 of Class notice and claims administration as well as taxes.

### 17 A. Class Notice

18 On October 22, 2025, the Court preliminarily approved the Settlement Agreement. Dkt.  
19 No. 92. The Order appointed Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as Claims  
20 Processor. *Id.* Consistent with the Court’s Order, Epiq provided Class notice to Class members  
21 via email, short-form postcard notice, and long-form Class notice. *See* Dkt. No. 96.

22 A total of 399,520 general email notices were successfully delivered to approximately  
23 75.66% of the email addresses provided in the Class Data. *Id.*, ¶13. The remaining 118,449 email  
24 addresses that were undeliverable and for whom a valid physical address could be located, were  
25 mailed a postcard notice. *Id.*, ¶14.

1           Additionally, 424,429 postcard notices were sent to notice recipients who did not have an  
2 email address but had a valid mailing address. *Id.*, ¶18. Also, a long-form, Claims package was  
3 also mailed to claimants who requested one. *Id.*, ¶20. The Claims Processor estimates that  
4 approximately 98% of class notice recipients were reached by the notice process. Enlund Decl.,  
5 ¶2.

6           The Claims Processor and Class Counsel established web pages to provide information to  
7 Class members about the settlement. *Id.*, ¶¶24–26; see [www.wahearingaidsettlement.com](http://www.wahearingaidsettlement.com) and  
8 <https://www.symslaw.com/regencehearingaidssettlement>.

9           **B. Motion for Attorney Fees, Litigation Costs and Case Contribution Awards**

10           On February 18, 2026, Class Counsel filed their Motion for Award of Attorney Fees,  
11 Litigation Costs and Case Contribution Awards. Dkt. No. 97. Class Counsel sought payment of  
12 one-third of the Settlement Fund, or \$1,000,000, representing a multiplier of only 1.65 from its  
13 lodestar, in addition to litigation costs totaling \$39,976.28 and case contribution awards of  
14 \$15,000 per named Plaintiff for a total of \$30,000.

15           **C. No Substantive Objections to the Settlement or Class Counsel’s Proposed  
16 Attorney Fees, Litigation Costs and Case Contribution Awards were  
17 Received**

18           The deadline for objections was March 6, 2026. *See* Dkt. No. 92, ¶¶12-13. Only one  
19 objection to the settlement agreement was received and it was for “no reason.” *See* Dkt. No. 99;  
20 Enlund Decl., ¶5. While seven individuals submitted opt-out forms, it is not clear whether any of  
21 those individuals were actual Class members. *See* Enlund Decl., ¶4, *Attachment 1*. No objections  
22 to Class Counsel’s motion for attorney fees, litigation costs and case contribution awards were  
23 received. Hamburger Decl., ¶2.

**D. Preliminary Claims Data**

The Claims Processor has conducted a preliminary review of submitted claims, and the data indicates that 531 unique claims have been made claiming expenditures of \$2,119,559.81.<sup>1</sup> Enlund Decl., ¶6. Of those claims, 43 are Late Claims and their total unadjudicated claim amounts are \$213,104.31. Hamburger Decl., ¶6. To date, the total amount of claims submitted with substantiation documentation is approximately \$916,381.68. *Id.* This amount includes both timely and late claims and may increase as claimants submit additional information to substantiate their claims. *Id.*; Hamburger Decl., ¶7. *Id.*

Accordingly, the Claims Processor and Class Counsel estimate that ***claimants will receive 100% of their valid and approved claims – even including late claims.*** The estimate is described below:

Total Settlement Amount:	\$3,000,000.00
Estimated Cost of Class Notice and Claims Administration:	\$403,474.08
Requested Attorney Fees (33⅓%):	\$1,000,000.00
Litigation Costs (Excluding Notice Advance):	\$39,976.28
Case Contribution Awards Requested:	\$30,000.00
Subtotal:	\$1,473,450.36
Estimated Net for Distribution	\$1,526,549.64
Present Estimated Value of Approved Claims	\$916,381.68
Present Estimated <i>Cy Pres</i> Funds	\$610,167.96

*Id.*

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<sup>1</sup> This amount is unadjudicated, and includes potential duplicates and unsubstantiated claims.

### III. LAW AND ARGUMENT

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

Compromise of complex litigation is encouraged and favored by public policy. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Federal Rule of Civil Procedure 23 governs the settlement of certified class actions and provides that “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” Fed. R. Civ. P. 23(e). The Court must consider the settlement as a whole, “rather than the individual component parts,” to determine whether it is fair and reasonable. *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003); *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (“The settlement must stand or fall in its entirety”).

Factors to be considered by the Court should include:

[T]he strength of plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

*Staton*, 327 F.3d at 959. “In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *Nat’l Rural Telecomms. Coop., v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (quoting 4 A. Conte & H. Newberg, *NEWBERG ON CLASS ACTIONS*, § 11:50 at 155 (4th ed. 2002)).

#### B. All Factors Support Final Approval of the Settlement Agreement

##### 1. Only One Objection Lodged for “No Reason.”

The absence of any substantive objections establishes a strong presumption in favor of approval. *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 529. Where, as here, the class is “silent” regarding the terms of the Settlement Agreement, “the lack of objection of the Class Members favors approval of the Settlement Agreement.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d

1 1036, 1043 (N.D. Cal. 2007) (three objectors appeared out of 57,630 potential class members);  
2 *see, e.g., Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 577 (9th Cir. 2004) (45 objections out of  
3 90,000 notices sent); *Rodriguez v. West Publ. Corp.*, 2007 U.S. Dist. LEXIS 74767, at \*33 (C.D.  
4 Cal. Sept. 10, 2007) (54 objections out of 376,000 notices). Here, there was only one objection to  
5 the settlement and that objection was stated for “no reason.” *See* Dkt. No. 99. This factor strongly  
6 weighs in favor of approval.

7 **2. Class Members with Valid, Approved Claims Will Receive 100%**  
8 **Payment.**

9 If litigation continued, Class members were faced with several more years of litigation.  
10 Regence is ably represented by experienced class action counsel, and it is clear that absent a  
11 settlement, Regence was prepared to pursue this case to judgment and, if necessary, through the  
12 appellate courts. Regence mounted a vigorous challenge by filing *four* separate motions to dismiss  
13 and was poised to continue its aggressive litigation stance. The lawsuit, already pending since  
14 October 2017, was certain to take years to reach final judgment.

15 The Settlement Agreement ensures that *full compensation* for approved out-of-pocket  
16 expenses for hearing aids and related services is available for Class members without further  
17 delay. Class members will receive 100 % of their approved claims, for an average of \$1,189.82  
18 per claim. What is more, substantial funds will remain for *cy pres* distribution to the Washington  
19 State Communication Access Project and possibly the Legal Foundation of Washington to provide  
20 ongoing advocacy on behalf of persons who are hard of hearing. *See* Dkt. No. 88-1, ¶ 6.6. By  
21 any measure, this settlement is a resounding success.

22 Common fund settlements where only a fractional recovery is obtained are often approved.  
23 *See Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 628 (9th Cir. 1982) (“It is well-settled  
24 law that a cash settlement amounting to only a fraction of the potential recovery will not *per se*  
25 render the settlement inadequate or unfair.”); *see, e.g., In re Heritage Bond Litig.*, 2005 U.S. Dist.  
26 LEXIS 13555 (C.D. Cal. June 10, 2005) (approving a settlement fund that compensated class

1 members at 36% of their losses). Here, settlement with compensation at 100% without deduction  
2 for co-payments, deductibles or other cost-sharing is likely better than what the Class would have  
3 obtained at trial and is certainly preferable to the risks and delay involved with continued  
4 litigation.

5 **3. Strength of Plaintiff Class’s Case, Risk, Expense, and Duration of**  
6 **Further Litigation**

7 Class Counsel believes that, on the substantive merits, the case was strong. But the Class  
8 faced possibly years of litigation and further appeal before a final judgment could be reached. The  
9 case involved questions of federal and state insurance regulation, consumer protection law,  
10 damages calculations, and class certification issues that would have required adjudication by the  
11 Court. In sum, the case could involve expensive, motion-intensive litigation just to obtain a  
12 judgment, which could be appealed by Regence. Despite the strength of the case, Class Counsel  
13 anticipated that it could take years before any benefit could be realized from the litigation.

14 **4. Stage of Discovery and Proceedings**

15 This litigation was settled after years of litigation, and formal and informal discovery. Dkt.  
16 No. 91, ¶3. Sufficient data had been exchanged by the parties to make accurate estimates of the  
17 total amounts required to ensure that the Settlement Fund was sufficiently large to substantially  
18 compensate Class members. *Id.*, ¶¶3-10. The Class had obtained all the discovery it needed to  
19 settle the case and much of what it needed to litigate the case, and was prepared to do so. *Id.*

20 **5. Views of Counsel**

21 Class Counsel strongly supports final approval of the Settlement Agreement. Given the  
22 risks of continued litigation and the dire need of many Class members to receive financial  
23 compensation for their hearing aid-related expenses sooner, rather than later, this settlement  
24 makes good sense. *Id.*, ¶17; Hamburger Decl., ¶10. Class Counsel strongly recommends approval.  
25 *Id.*

1 **C. Payment of Attorney Fees, Litigation Costs, and Case Contribution Awards**

2 No objections from Class members were received regarding Class Counsel’s request for  
3 attorney fees of \$1,000,000, litigation costs of \$39,976.28, and case contribution awards to each  
4 named Plaintiff of \$15,000 for a total of \$30,000. Hamburger Decl., ¶2. Given the excellent  
5 outcome as a result of the Settlement Agreement’s claims process, the attorney fees, litigation  
6 costs, and case contribution awards are reasonable and should be awarded.

7 **D. Authorization of Adjudication and Payment of Late-Filed Claims**

8 The Class requests that the Court order acceptance, adjudication, and payment of valid  
9 claims received from Class members from February 4–March 11, 2026, to accommodate any  
10 delays class members may have experienced, such as those individuals whose email notices  
11 “bounced” and were sent a postcard notice later than the rest of the class members receiving  
12 postcard notice. *See* Dkt. No. 96, ¶14.

13 The Court has the inherent equitable authority to modify the terms of its Orders when  
14 justice requires. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 380, 112 S. Ct. 748, (1992)  
15 (courts have “flexibility in administering consent decrees”); *Sys. Fed’n No. 91 Ry. Emps.’ Dep’t*  
16 *v. Wright*, 364 U.S. 642, 651, 81 S. Ct. 368 (1961); *New York v. Microsoft Corp.*, 531 F. Supp. 2d  
17 141, 169 (D.D.C. 2008). Courts may modify judicially mandated deadlines for court-approved  
18 settlements to allow the consideration of late-filed claims. *See, e.g., In re Gypsum Antitrust Cases*,  
19 565 F.2d 1123, 1128 (9th Cir. 1977) (late filed claims permitted by the trial court if they were  
20 “timely set in motion” by the deadline); *Zients v. La Morte*, 459 F.2d 628, 630 (2d Cir. 1972) (the  
21 court’s “traditional equity powers” permits the modification of orders to allow processing of late  
22 claims); *Welch & Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig.)*, 233 F.3d  
23 188, 191 (3d Cir. 2000). Late claims were authorized in the sister case to this. *See Schmitt v.*  
24 *Kaiser Found. Health Plan of Wash.*, No. 2:17-cv-1611-RSL, 2024 U.S. Dist. LEXIS 71166, \*17  
25 (W.D. Wash. Apr. 18, 2024).

1 Accordingly, Plaintiffs, on behalf of the Class, move the Court to order the Claims  
2 Processor to accept and adjudicate claims received through March 11, 2026.

3 **E. Cy Pres Distribution**

4 The Court should direct the Claims Processor to distribution funds remaining after all  
5 items identified in Section 6.3 of the Settlement Agreement are paid, first to the Washington State  
6 Communication Access Project, up to \$300,000, and any remaining funds to the Legal Foundation  
7 of Washington to be further distributed to charitable organizations that work to ensure that persons  
8 who are hard of hearing have full access to public venues. Dkt. No. 88-1, ¶6.6.

9 **F. Final Report**

10 The Court should further order that Class Counsel provide a final report to the Court  
11 regarding claims processing and disbursement of funds by no later than 30 days after the Claims  
12 Processor has processed and paid all valid claims.

13 **IV. CONCLUSION**

14 Plaintiffs, on behalf of the Class, respectfully request that the Court:

- 15 (a) finally approve the Settlement Agreement;
- 16 (b) authorize the disbursement of the Settlement Fund to pay approved claims,  
17 consistent with the approved Settlement Agreement;
- 18 (c) order the Claims Processor to accept, adjudicate and pay all valid late-filed claims  
19 received by March 11, 2026;
- 20 (d) order the Claims Processor to pay attorney fees of \$1,000,000 and litigation costs  
21 of \$39,976.28 to Class Counsel, Sirianni Youtz Spoonemore Hamburger PLLC;
- 22 (e) order the Claims Processor to pay the case contribution awards of \$15,000 to each  
23 named Plaintiff, Jodi Sternoff and E.S. by and through her parents R.S. and J.S. in addition to any  
24 claims to which each named Plaintiff is entitled under the Settlement Agreement, ¶6.7;
- 25 (f) direct the Claims Process to make *cy pres* distributions consistent with the  
26 Settlement Agreement, ¶ 6.6; and

1 (g) order Class Counsel to submit a final report regarding the distribution of the  
2 Settlement Fund.

3 DATED: March 12, 2026.

4 *I certify that the foregoing contains 2,718 words,*  
5 *in compliance with the Local Civil Rules.*

6 SIRIANNI YOUTZ  
7 SPOONEMORE HAMBURGER PLLC

8 /s/ Eleanor Hamburger

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