

VENTURA
SUPERIOR COURT
FILED

AUG 26 2011

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____, Deputy

DEBRA HEBERT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

MARY FELLER and RANDY FREED

Plaintiffs,

vs.

**BLUE CROSS OF CALIFORNIA d/b/a
ANTHEM BLUE CROSS,**

Defendant.

Case No. 56-2010-00368587-CU-BT-VTA

Compl. Filed: March 1, 2010
Honorable Frederick H. Bysshe, Jr. Dept. 41

CLASS ACTION

**ORDER GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, FINAL
JUDGMENT AND ORDER OF DISMISSAL
WITH PREJUDICE**

THIS MATTER having been brought before the Court jointly by Plaintiffs MARY FELLER and RANDY FREED ("Plaintiffs" or "Class Representatives") and by Defendant BLUE CROSS OF CALIFORNIA, d/b/a ANTHEM BLUE CROSS ("Blue Cross" or "Anthem Blue Cross"), through their respective attorneys, under Cal. R. of Ct. 3.769 *et seq.*, for an Order granting final approval of a class action settlement (the "Motion"); and the Court having reviewed and considered the submissions of the Parties both in connection with preliminary approval of settlement and this hearing, all properly and timely filed objections and comments to the proposed class action settlement, and the Parties' responses to such objections and comments, and having held a hearing on August 26, 2011, at which time the Court heard and considered the arguments, comments and evidence submitted by the Parties and any Settlement Class members, and having found that the Parties are entitled to the relief they seek; and for good cause shown;

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ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, FINAL JUDGMENT
& ORDER OF DISMISSAL

1 The Court makes the following findings of fact and conclusions of law:

2 1. With respect to the Settlement Class,¹ the Court finally finds and concludes, for
3 settlement purposes only, that: (a) the Settlement Class Members are so numerous as to make
4 joinder of them impracticable; (b) there are questions of law and fact common to the Settlement
5 Class, and such questions predominate over any questions affecting only individual Settlement
6 Class Members; (c) the Class Representatives' claims and the defenses asserted thereto are typical
7 of the claims of Settlement Class Members and the defenses asserted thereto; (d) Class
8 Representatives and Settlement Class Counsel have fairly and adequately protected the interests
9 of Settlement Class Members throughout this action; and (e) a class action is superior to all other
10 available methods for fairly and efficiently resolving this action and provides substantial benefits
11 to both the litigants, the Settlement Class Members and the Court. The Court therefore
12 determines that this action satisfies the prerequisites for class certification for settlement purposes
13 under California Code of Civil Procedure Section 382, California Civil Code Section 1781, and
14 California Rules of Court, Chapter 6, Rules 3.769 *et seq.*, as applicable, and finally certifies the
15 Settlement Class for settlement purposes.

16 2. Notice to the Settlement Class of the terms of this settlement and of their options
17 has been provided to members of the Settlement Class in accordance with the terms of the
18 Preliminary Approval Order. Such settlement notice has been provided in an adequate and
19 sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the
20 requirements of due process. The settlement notice program approved by the Court adequately
21 apprised the members of the Settlement Class of the pendency of the litigation, of all material
22 elements of the proposed settlement, of the effect of final approval of the settlement on the
23 members of the Settlement Class, and of their opportunity to opt out of the settlement, to
24 comment on and object to the settlement, and to appear at the Fairness Hearing. Full opportunity

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26 ¹ Unless otherwise specified, all defined terms in this Order have the same meaning as the
27 meaning described in the Settlement Agreement and the Order Granting Motion for Preliminary
28 Approval of Class Action Settlement and Directing Dissemination of Class Notice entered on
June 8, 2011 ("Preliminary Approval Order"), and those terms are incorporated here by this
reference. To the extent there is any conflict between the definitions of those terms, the
definitions in the Settlement Agreement will control.

1 has been afforded to the members of the Settlement Class to participate in this Fairness Hearing.
2 Accordingly, the Court determines that all members of the Settlement Class who have not opted
3 out are bound by this Order and by the final judgment to be entered pursuant thereto.

4 3. The Settlement Agreement and Release dated May 23, 2011 (the “Settlement
5 Agreement”) was arrived at after extensive arm’s-length negotiations conducted in good faith by
6 counsel for all parties in this action, several private mediations among the parties, and is
7 supported by the majority of the members of the Settlement Class. As of the last date by which
8 requests for exclusion were to be postmarked in accordance with the terms of the Preliminary
9 Approval Order, the Settlement Class Members who have opted out of the Settlement Class and
10 listed on Exhibit “1” hereto are few when compared to the total number of members of the
11 Settlement Class. The terms of this Order and the Settlement Agreement do not apply to the
12 Persons listed on Exhibit “1”, or to any other Persons the Parties agree in writing submitted
13 timely and valid requests for exclusion and should also be listed on this Exhibit.

14 4. The settlement set forth in the Settlement Agreement is fair, reasonable and
15 adequate in light of the complexity, expense and duration of this litigation, and the risks inherent
16 and involved in establishing liability and damages, and in maintaining the class action through
17 trial and appeal. This litigation presents difficult and complex issues as to liability and the relief
18 to be afforded members of the Settlement Class, as to which there are substantial grounds for
19 difference of opinion. It is also fair, reasonable and adequate when weighing the benefits afforded
20 to the Settlement Class against the uncertainties and difficulties associated with obtaining class
21 certification for merits purposes, the expense and length of time necessary to prosecute this action
22 through trial, the uncertainties of the outcome of this action, and the fact that resolution of the
23 class claims, whenever and however determined, will likely be submitted for appellate review. In
24 addition, there have been extensive arms’ length negotiations between counsel for all Parties in
25 this action overseen by Mr. Martin Quinn of Judicial Arbitration and Mediation Services
26 (“JAMS”), and the exchange of detailed information about Anthem Blue Cross’s Open Plans and
27 Closed Block Plans. The promises and commitments of the Parties under the terms of the
28 Settlement Agreement, including the injunctive relief provisions contained therein, thus constitute

1 fair value given in exchange for the releases of the Released Claims against the Released Parties
2 in the light of such factors and the information in the Parties' possession at the time the settlement
3 was negotiated and agreed to by the Parties.

4 5. The Parties and each Settlement Class Member have submitted to the jurisdiction
5 of this Court for any suit, action, proceeding, or dispute arising out of the Settlement Agreement,
6 permitting the Court to retain continuing jurisdiction over this action under Cal. Code Civ. Proc.
7 Section 664.6 to ensure the terms of this settlement are fully effectuated. It is in the best interests
8 of the Parties and the Settlement Class Members, and consistent with principles of judicial
9 economy, that any dispute between any Settlement Class Member (including any dispute as to
10 whether any person is a Settlement Class Member) and any of the Released Parties that in any
11 way relates to the applicability or scope of the Settlement Agreement, including the injunctive
12 relief provisions contained therein, or of this Order, should be presented exclusively to this Court
13 for resolution by this Court.

14 Based upon the foregoing findings of fact and conclusions of law, which are based upon
15 and supported by the substantial evidence presented by both the parties hereto and members of
16 the Settlement Class, all of which the Court has considered and is in the record before the Court,

17 IT IS ORDERED as follows:

18 1. The Parties' Motion for final approval of all the terms set forth in the Settlement
19 Agreement is GRANTED.

20 2. Because the Court determines that this action satisfies the prerequisites for class
21 certification for settlement purposes under California Code of Civil Procedure Section 382,
22 California Civil Code Section 1781, and California Rules of Court, Chapter 6, Rules 3.769 *et seq.*,
23 as applicable, the Court reaffirms its ruling in the Preliminary Approval Order as to the propriety
24 of class certification for settlement purposes and finally certifies the Settlement Class for
25 settlement purposes.

26 3. The Settlement Agreement submitted by the parties is finally approved as fair,
27 reasonable, adequate, just, and in the best interests of the Settlement Class, particularly in light of

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1 the factors set forth above and in the submissions of the parties in connection with both
2 preliminary and final approval of this settlement.

3 4. The proposed method for providing relief to Settlement Class Members, as set
4 forth in the Settlement Agreement, is finally approved as fair, reasonable, adequate, just, and in
5 the best interests of the Settlement Class, and the Parties are hereby ordered to provide and
6 comply with the relief described in the Settlement Agreement in accordance with the terms of the
7 Settlement Agreement.

8 5. All communications with Settlement Class Members concerning their rights under
9 this settlement including, but not limited to, information about the Open Plan or Closed Block
10 Plan in which they are currently enrolled, Open Plans to which they are allowed to move, the
11 substance of the notice and notification of the right to move and a summary of the terms and
12 benefits of the available plans, shall be made substantially in the form and substance that has been
13 agreed to by the Parties consistent and in accordance with the terms of the Settlement Agreement,
14 subject if necessary to review and approval by this Court.

15 6. The payment of attorneys' fee and reimbursement of expenses to Settlement Class
16 Counsel and the payment to the Class Representatives, as set forth in the Settlement Agreement,
17 are both approved. These amounts shall be paid and distributed in accordance with the provisions
18 of the Settlement Agreement.

19 7. By operation of this Order and the Judgment entered under it, effective as of the
20 Settlement Effective Date, and in consideration of the Settlement Agreement and the benefits
21 extended to the Settlement Class, the Class Representatives, on behalf of themselves and the
22 Settlement Class Members, and each Settlement Class Member, on behalf of himself or herself
23 and his or her respective successors, assigns, past, present, and future parents, subsidiaries, joint
24 venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups,
25 directors, officers, shareholders, employees, agents, representatives, servants, partners, executors,
26 administrators, assigns, predecessors, successors, descendants, dependents, and heirs, do or by
27 operation of this Final Order and Judgment are deemed to have fully released and forever
28 discharged the Released Parties from the Released Claims in accordance and consistent with the

1 terms of the Settlement Agreement, but not as to any obligations created or owed under the terms
2 of the Settlement Agreement. In addition, by operation and entry of this Final Order and
3 Judgment, Plaintiffs and Defendants shall have, and each and every Settlement Class Member and
4 Released Party shall be deemed to have, on behalf of their respective successors, assigns, past,
5 present, and future parents, subsidiaries, joint venturers, partnerships, related companies,
6 affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees,
7 agents, representatives, servants, partners, executors, administrators, assigns, predecessors,
8 successors, descendants, dependents, and heirs, covenanted and agreed to forever refrain from
9 instituting, maintaining, or proceeding in any action against the Plaintiffs, Plaintiffs' Counsel or
10 the Released Parties, with respect to any of the Released Claims as applicable, but not as to any
11 obligations created or owed under the terms of the Settlement Agreement.

12 8. Effective as of the Settlement Effective Date, the Court orders and enters a
13 permanent injunction barring and enjoining the Settlement Class Members from bringing, filing,
14 commencing, prosecuting, continuing to prosecute, maintaining, intervening in, participating in,
15 assisting in any way, formally or informally, except as required by law, or receiving any benefits
16 from any lawsuit, arbitration, or administrative, regulatory, or other proceeding in law or equity
17 that asserts, arises from, concerns, or is related to the claims as set forth in this Final Order and
18 Judgment and as described in the Settlement Agreement, except as to any obligations created or
19 owed under the terms of the Settlement Agreement. The terms of this Release shall not apply to
20 the persons listed on Exhibit 1 hereto, who timely excluded themselves from the terms of this
21 settlement, or to any other Persons the Parties agree in writing submitted timely and valid
22 requests for exclusion and should be listed on this Exhibit.

23 9. Without affecting the finality of the judgment entered under this Final Order and
24 Judgment, this Court retains continuing jurisdiction over this settlement, including the
25 administration, consummation, and enforcement of the Settlement Agreement, the injunctive
26 provisions set forth in the Settlement Agreement and the provision of benefits to the Settlement
27 Class members, under California Code of Civil Procedure Section 664.6. Without affecting the
28 finality of the judgment entered under this Order, this Court also retains jurisdiction over the

1 Parties, the Released Parties, and each member of the Settlement Class, who are deemed to have
2 submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute
3 arising out of or relating to this Order and the terms of the Settlement Agreement.

4 10. The Court retains jurisdiction over this action to enforce the provisions of the
5 Settlement Agreement under C.C.P. 664.6. In all other respects this Action is DISMISSED with
6 prejudice.

7 11. The Court finds that there is no reason for delay and directs the Clerk to enter
8 judgment in accordance with the terms of this Order as of the date of this Order.

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10 DATED: AUG 26 2011

FRED H. BYSSHE

The Hon. Frederick H. Bysshe, Jr
Ventura County Superior Court Judge

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EXHIBIT 1

FELLER, et al. v. BLUE CROSS OF CALIFORNIA
Case No. 56-2010-00368587-CU-BT-VTA

SETTLEMENT CLASS MEMBER OPT OUT LIST

Diana Bruzek
Linda M. Cramer
Jessy Dang
Andrea Lorraine Davis
Stephanie Kennedy as Conservator for Wellington S. Kennedy
Rebeca Pallares