

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE: BLUE CROSS BLUE SHIELD :
ANTITRUST LITIGATION : **Master File No. 2:13-cv-20000-RDP**
MDL 2406 :
:
:
:
: **This document relates to**
: **Subscriber Track cases**

DECLARATION OF JENNIFER M. KEOUGH
REGARDING PROPOSED NOTICE PLAN

I, JENNIFER M. KEOUGH, declare as follows:

I. INTRODUCTION

1. I am Chief Executive Officer (“CEO”) of JND Legal Administration LLC (“JND”). I have more than 20 years of legal experience creating and supervising notice and claims administration programs and have personally overseen well over 1000 matters, and will oversee this matter personally as well. As CEO, I am regularly called upon to submit declarations in connection with JND’s notice and administration work. A comprehensive description of my experience is attached as **Exhibit A**.

2. I submit this Declaration based on my personal knowledge, as well as upon information provided to me by experienced JND employees and counsel for the Plaintiffs and Settling Defendants¹, to describe the proposed Notice Plan and address why it is consistent with other class notice plans that courts have determined satisfy the requirements of Rule 23 of the

¹ Unless otherwise noted, capitalized terms have the same meaning as in the Settlement Agreement, a copy of which is attached to the Preliminary Approval Motion as Exhibit A.

Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and any other applicable statute, law or rule, as well as the Federal Judicial Center (“FJC”) guidelines for best practicable due process notice.

3. I understand that Settlement Class Counsel and Self-Funded Sub-Class Settlement Counsel have decided to recommend that this Court appoint JND as the Claims Administrator in this case. JND engaged in an extensive, several months long, competitive bidding process to secure this recommendation.

II. EXPERIENCE RELEVANT TO THIS CASE

4. JND is a legal administration services provider with headquarters located in Seattle, Washington. We employ over 175 people in multiple offices throughout the United States. JND’s class action division provides all services necessary for the effective implementation of class action settlements, including: (1) all facets of providing legal notice to potential class members, such as outbound mailing, email notification, and the design and implementation of media programs, including through digital and social media platforms; (2) website design and deployment, including on-line claim filing capabilities; (3) call center and other contact support; (4) secure class member data management; (5) paper and electronic claims processing; (6) review of claims submission supporting documentation; (7) calculation design and programming; (8) payment disbursements through check, wire, PayPal, merchandise credits, and other means; (9) qualified settlement fund management and tax reporting; (10) banking services and reporting; and (11) all other functions related to the secure and accurate administration of class action settlements.

5. JND is an approved vendor for the United States Securities and Exchange Commission (“SEC”) as well as for the Federal Trade Commission (“FTC”) and it has worked

with a number of other government agencies including: the U.S. Equal Employment Opportunity Commission (“EEOC”), the Office of the Comptroller of the Currency (“OCC”), the Consumer Financial Protection Bureau (“CFPB”), the Federal Deposit Insurance Corporation (“FDIC”), the Federal Communications Commission (“FCC”), the Department of Justice (“DOJ”) and the Department of Labor (“DOL”). We also have Master Services Agreements with various corporations, banks, and other government agencies, which were only awarded after JND underwent rigorous reviews of our systems, privacy policies, and procedures. JND has also been certified as SOC 2 compliant² by noted accounting firm Moss Adams. Finally, JND has been recognized by various publications, including, among others, the *National Law Journal*, the *Legal Times* and the *New York Law Journal*, for excellence in class action administration.

6. The principals of JND, including me, collectively have over 75 years of experience in class action legal and administrative fields. We have overseen claims processes for some of the largest legal claims administration matters in the country’s history and regularly prepare and implement court approved notice and administration campaigns throughout the United States. For example, my team and I handled all aspects of mailed notice, website activities, call center operations, claim intake, scanning and data entry, and check distribution for the \$20 billion Gulf Coast Claims Facility. In the \$10+ billion BP Deepwater Horizon Settlement, I worked directly for Patrick Juneau, the Court-appointed claims administrator, in overseeing all inbound and outbound mail activities, all call center operations, all claim intake, scanning and data entry and all check distributions for the program. I oversaw the entire administration process in the \$3.4 billion Cobell Indian Trust Settlement (the largest U.S. government class action settlement ever). Recently, JND has been handling the settlement administration of the \$1.3 billion Equifax

² As a SOC 2 Compliant organization, JND has passed an audit under AICPA criteria for providing data security.

Data Breach Settlement, the largest class action ever in terms of the number of claims received, a voluntary remediation program in Canada on behalf of over 30 million people, the \$1.5 billion Mercedes-Benz Emissions Settlement, the \$120 million GM Ignition class action economic settlement, where we sent notice to nearly 30 million class members, and the \$215 million USC Student Health Center Settlement on behalf of women who were sexually abused by a doctor at USC, as well as hundreds of other matters. The notice campaigns JND designs are regularly approved by courts throughout the United States.

7. JND's Legal Notice Team, which operates under my direct supervision, researches, designs, develops, and implements a wide array of legal notice programs to meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and relevant state court rules. In addition to providing notice directly to potential class members through direct mail and email, our media campaigns have used a variety of media to effectively reach potential class members, including newspapers, press releases, magazines, trade journals, radio, television, social media and the internet depending on the circumstances and allegations of the case, the demographics of the class, and the habits of its members, as reported by various research and analytics tools. During my career, I have submitted several hundred affidavits to courts throughout the country attesting to our role in the creation and launch of various media programs.

III. CASE BACKGROUND

8. I have been asked by Settlement Class Counsel and Self-Funded Sub-Class Counsel to prepare a Notice Plan to reach Class Members and inform them about their rights and options in the proposed Settlement.

9. The Settlement Agreement provides for two proposed Settlement Classes, a Damages Class (which includes a Self-Funded Sub-Class) and an Injunctive Relief Class (referred to collectively as the “Class Members”).

10. The proposed Damages Class, which I am advised is currently estimated to number in the tens of millions of members, is comprised of all Individual Members (excluding dependents and beneficiaries), Insured Groups (including employees, but excluding non-employee Members), and Self-Funded Accounts (including employees, but excluding non-employee Members) that purchased or were enrolled in a Blue-Branded Commercial Health Benefit Product (unless the person’s or entity’s only Blue-Branded Commercial Health Benefit Product during the Settlement Class Period was a stand-alone vision or dental product) sold, underwritten, insured, administered, or issued by any Settling Individual Blue Plan from February 7, 2008, through October 16, 2020 (in the case of all Damages Class Members other than the Self-Funded Sub-Class, for whom the Class Period is September 1, 2015 through October 16, 2020) (“Settlement Class Period”).

11. Excluded from the Damages Class are:

- Government Accounts and individuals covered under them;
- Medicare Accounts of any kind;
- Settling Defendants themselves, and any parent or subsidiary of any Settling Defendant (and their covered or enrolled employees);
- Opt Outs; and
- the Judge presiding over this matter, and any members of his judicial staff, to the extent such staff were covered by a Commercial Health Benefit Product not purchased by a Government Account during the Settlement Class Period.

12. The Self-Funded Sub-Class consists of Self-Funded Accounts and their employees. It encompasses any account, employer, health benefit plan, ERISA plan, non-ERISA plan, or group, including all sponsors, administrators, fiduciaries, and Members thereof, that purchased, was covered by, participated in, or was enrolled in a Self-Funded Health Benefit Plan from September 1, 2015 through October 16, 2020 (“Sub-Class Settlement Class Period”). A Self-Funded Health Benefit Plan is any Commercial Health Benefit Product other than Commercial Health Insurance, including administrative services only (“ASO”) contracts or accounts, administrative services contracts or accounts (“ASC”), and jointly administered administrative services contracts or accounts (“JAA”).

13. For associational entities (e.g., trade associations, unions, etc.), this includes any entity which is covered by, enrolled in, or included in the associational entity's Blue-Branded Commercial Health Benefit Product. A Self-Funded Account that purchases a Blue-Branded Self-Funded Health Benefit Plan and Blue-Branded stop-loss coverage remains a Self-Funded Account. For clarity, a Self-Funded Account also excludes all Government Accounts.

14. The Injunctive Relief Class is comprised of all Individual Members, Insured Groups, Self-Funded Accounts, and Members that purchased or were enrolled in a Blue-Branded Commercial Health Benefit Product sold, underwritten, insured, administered, or issued by any Settling Individual Blue Plan during the applicable Settlement Class Period.

IV. NOTICE PLAN SUMMARY

15. The proposed Notice Plan, attached as **Exhibit B**, has been designed to provide the best notice practicable, consistent with the methods and tools employed in other court-approved

notice programs. The FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers a notice plan with a 70%-95% reach effective.³

Direct Notice

16. JND will send direct notice to all Damages Class Members for whom the Settling Defendants provide contact information. Direct notice will be provided through email and postcard mailings, depending on the Class Member Data produced by the Settling Defendants.

Media Campaign

17. In addition to direct notice, the Notice Plan provides for an extensive media campaign to reach all Class Members, including digital advertising, print publications, television, radio, industry media, third-party outreach, an internet search campaign, and a multichannel news release.

18. More specifically, the proposed media campaign includes: (a) a combination of digital ads placed on the leading digital network (Google Display Network) and the top social media platform (Facebook); (b) full-page color notice in two popular magazines (*People* and *Better Homes & Gardens*) with a large subscription and circulation base; (c) 30-second radio spots to be broadcast through a leading satellite radio provider, two radio networks, top syndicated programming in the top ten African American markets, and two leading Spanish radio providers in the top ten Hispanic markets; and (d) 30-second television spots broadcast on a variety of popular cable and syndicated networks, and on network morning news programming.

Supplemental Entity Effort

19. In addition, JND will implement a supplemental industry media campaign to extend notice specifically targeted to entity Class Members. The effort includes targeting key employees

³ Reach is the percentage of a specific population group exposed to a media vehicle or a combination of media vehicles containing a notice at least once over the course of a campaign. Reach factors out duplication, representing total different net persons.

and owners of these entities, by placing notice on the leading professional social media platform (LinkedIn); arranging for notice placements on top business websites and the leading human resources industry websites; and sending e-newsletters targeting business owners and the human resources industry. A direct notice effort will also be sent to a purchased list of HR/employee benefit and health/accident insurance broker job titles.

Additional Efforts

20. Extended efforts will include a third-party outreach effort, a specially designed internet search campaign, a multichannel news release that will work in tandem with the media campaign to increase awareness of the Settlement, as well as a link to the Settlement website that will be placed on BCBSA.com by Settling Defendants.

Claims Stimulation Effort

21. Additionally, JND has designed a claims stimulation effort that will utilize a targeted digital effort and a multichannel news release to remind potential Damages Class Members of the approaching claims deadline. JND staff will monitor the deliverable success rate of the Notice Plan and bolster the claims stimulation effort, if necessary.

Settlement Website

22. JND will establish and maintain a dedicated Settlement website where information about the Settlement, as well as copies of relevant case documentation, including but not limited to the Settlement Agreement, a report of Monitoring Committee Activities, the Plan of Distribution, the Long Form Notice (attached as **Exhibit C**), and the Claim Form (attached as **Exhibit D**), will be accessible to Class Members. Damages Class Members will also be encouraged to file claims online through a secure portal on the website.

Dedicated Toll-Free Number and Contact Center

23. JND will also establish and maintain a toll-free telephone number with an Interactive Voice Recording system (“IVR”), in addition to available Customer Service Representatives, that Class Members may call to obtain more information about the Settlement and request copies of the notice and claim form.

QR Code

24. JND will create a QR Code (a matrix barcode) that will allow quick and direct access to the Settlement website through a mobile device.

25. Based on my experience in developing and implementing class notice programs, I believe the proposed Notice Plan will meet, and in fact exceed, the standards for providing the best practicable notice in class action settlements.

V. NOTICE PLAN ELEMENTS

Subsections A thru I below explain in greater detail all Notice Plan efforts.

A. DIRECT INDIVIDUAL NOTICE

26. For this Settlement, at my direction, JND staff will effectuate direct individual notice to all members of the Damages Class for whom Settling Defendants provide contact information. The direct notice will include a personal identifier number (“Unique ID”)⁴ assigned to each potential claimant.

27. Settling Defendants have represented that they have email addresses for a certain percentage of the Damages Class and that where they have such email addresses, it is because those email addresses have been provided to the Settling Defendants in the ordinary course of business

⁴ The Unique ID is linked to all relevant data pertaining to claimants and is used for tracking and processing each claim.

with Damages Class Members. As such, our plan is to provide all those Damages Class Members with notice via email in the first instance.

28. Courts, including this one, have approved notice programs in which email is a primary method of delivering notice to class members.

29. For those Damages Class Members where an email address is unavailable or where the email bounces back and cannot be ultimately delivered, JND proposes sending a color Postcard Notice. Postcard notices are widely used for delivering direct notice to avoid the expense of sending a full notice and claim form to the entire class.

30. Here, based on the size of the Class, the postage savings alone in using the Postcard Notice will be in the tens of millions of dollars. The Postcard Notice will direct Damages Class Members to the website, which provides all the information a potential claimant needs and is the easiest and most efficient way to file a claim.

31. Both the Email Notice, attached as **Exhibit E**, and the Postcard Notice, attached as **Exhibit F**, identify and direct Damages Class Members to an interactive Settlement website where they can review the Settlement Agreement, and other key documents in the case, and initiate the claims process (a hard copy claim form may also be requested).

32. Both the Email Notice and the Postcard Notice include a Spanish-language tag that will direct Spanish-speaking Damages Class Members to the Settlement website which will be available in Spanish.

33. Importantly, whether a Damages Class Member is sent direct notice by email or postcard, the notice will satisfy the Federal Rules of Civil Procedure and due process.

Email Notice

34. JND uses industry-leading email solutions to achieve the most efficient email notification campaigns. Our Data Team is staffed with email experts and software solution teams to conform the email notice program to the particulars of the Settlement. JND provides individualized support during the program and manages our sender reputation with the Internet Service Providers (“ISPs”). For each of our programs, we analyze the program’s data and monitor the ongoing effectiveness of the notification campaign, adjusting the campaign as needed. These actions ensure the highest possible deliverability of the email campaign so that more potential Damages Class Members receive notice of the proposed Settlement.

35. JND has worked with Settlement Class Counsel and Self-Funded Sub-Class Settlement Counsel to craft the Email Notice here to avoid spam language to improve deliverability. This process includes running the email through spam testing software, DKIM for sender identification and authorization, and hostname evaluation. Additionally, we will check the send domain against the 25 most common IPv4 blacklists.

36. As is JND’s standard email notification process, JND will utilize a verification program to eliminate invalid email and spam traps that would otherwise negatively impact deliverability. We will then clean the list of email addresses for formatting and incomplete addresses to further identify all invalid email addresses. The email content will be formatted and structured in a way that receiving servers expect, allowing the email to pass easily to the recipient.

37. Rather than using attachments, which can send an email right to spam, the Email Notice here provides a call-to-action button (i.e., “File a Claim”), as well as direct links to the Settlement website for more detailed information. In addition, the use of all capitalization, exclamation points, colored font, case-caption boxes, excessive legalese, and common trigger

words were avoided to reduce spam. The email subject line identifies the Defendant, with whom the email recipient is very familiar, and the nature of the content. It provides a simple and short identifier. The Damages Class Member's name is included as the email opener to authenticate and personalize the email.

38. To ensure readability of the Email Notice, our team will review and format the body content into a structure that is applicable to all email platforms. Before commencing the email notice campaign, we will send a test email to multiple ISPs and open the email on multiple devices (iPhones, Android phones, desktop computers, tablets, etc.) to ensure the email opens as expected. Additionally, JND will include an "unsubscribe" link at the bottom of the Email Notice to allow Damages Class Members to opt out of any additional email notices from JND. This step is essential to maintain JND's good reputation among the ISPs and reduce complaints relating to the email campaign. JND will also work with Counsel to identify email phishing campaigns and fraudulent websites and will notify Counsel of fraud schemes as soon as discovered.

39. Emails that are returned to JND are generally characterized as either "Soft Bounces" or "Hard Bounces." Hard Bounces are when the ISP rejects the email due to a permanent reason such as the email account is no longer active. Soft Bounces are when the email is rejected for temporary reasons, such as the recipient's email address inbox is full.

40. When an email is returned due to a soft bounce, JND attempts to re-email the email notice up to three additional times in an attempt to secure deliverability. The email is considered undeliverable if it is a Hard Bounce or a Soft Bounce that is returned after a third resend. For those email notices that are deemed ultimately undeliverable, we will follow up with a postcard mailing, as discussed below, to the extent that an address is contained in the Class Member Data.

Postcard Notice

41. JND will send the color Postcard Notice to those Damages Class Members for whom the Class Member Data does not contain an email address or for whom the email notice was deemed ultimately undeliverable. In my experience, use of color will help differentiate the postcard from junk mail. Moreover, JND will use the Settling Defendants' logos on the Postcard Notice to add another indicia of reliability to the Postcard Notice. Prior to sending the Postcard Notice, JND staff will run the mailing addresses through the United States Postal Service ("USPS") National Change of Address ("NCOA") database.⁵ At my direction, JND staff will track all Postcard Notices returned undeliverable by the USPS and will promptly re-mail Postcard Notices that are returned with a forwarding address. Also, with my oversight, JND staff will take reasonable efforts to research and determine if it is possible to reach a Damages Class Member for whom the Postcard Notice is returned without a forwarding address by mailing to a more recent mailing address at which the potential Damages Class Member may be reached.

B. MEDIA CAMPAIGN⁶

42. The direct notice will be supplemented by a robust media campaign, which alone is expected to reach more than 85% of potential members of the Settlement Classes.

43. The media campaign is comprised of the following: (a) Digital Effort (Google, Facebook); (b) Print Effort (*People, Better Homes & Gardens*); (c) Radio Effort (Sirius XM, iHeart Radio, Pandora/Spotify audio streaming as well as leading syndicated programs in the top

⁵ The NCOA database is the official USPS technology product which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained on the database for 48 months.

⁶ If for any reason an aspect of the Media Campaign is unadvisable or unavailable (due to COVID-19 circumstances or otherwise), JND will use its own experience and discretion to determine if a comparable substitute is available and necessary. Any decision that materially affects the conclusions and opinions herein shall be reported to the Court by JND.

ten African American markets and Spanish radio in the top ten Hispanic markets); and (d) Television Effort (cable, syndicated, and network morning news).

44. JND utilizes the most reputable advertising media research tools to ensure that the best media is selected and that our reach calculations can withstand the most critical review and challenge. To create the Notice Plan, we utilized the following well-established and industry-leading media research tools: (a) MRI / Simmons; (b) ComScore, Inc.; (c) Google Active View; (d) Trust Metrics and (e) Nielsen. These tools are described below and form the basis of JND's reach calculations for the Notice Plan.

45. MRI / Simmons is the leading producer of media and consumer research in the United States and is a nationally accredited research firm that provides consumer demographics, product and brand usage and audience and exposure in all forms of advertising media. JND uses MRI / Simmons to analyze the demographics and media usage of potential Class Members, as well as to determine the reach of the proposed Print Effort.

46. JND uses ComScore Inc. data to analyze where potential Class Members are on the internet, and for calculating the reach of the proposed Digital Effort. ComScore Inc.'s multi-reach platform allows JND to analyze unduplicated audiences across desktop, smartphone and tablet devices and to assess the effectiveness and efficiency of our media plans by reducing waste and improving campaign performance across all devices.

47. Google Active View is accredited by the Media Rating Council and is used by JND to measure viewable impressions across the web and in apps. At the time of implementation of our Digital Effort, JND's digital media placement experts, under my supervision and direction, will take the steps necessary to ensure that all notice placements appear exactly as intended,

meeting JND's high standards of quality and positioning to achieve the highest number of possible views and impressions.

48. Importantly, Google Active View supports the Interactive Advertising Bureau and Media Rating Council's definition of viewability, demanding that a minimum of 50% of the digital ad is in view for a minimum of one second for display ads. By using Google Active View, JND will be able to accurately monitor and enhance the Digital Effort, ensuring the broadest possible reach for the Digital Effort.

49. Complementing Google Active View, JND uses Trust Metrics during the Digital Effort implementation process to ensure that the banner impressions are not served to poor quality sites and are only displayed on brand safe websites, further ensuring the greatest degree of visibility and dissemination to the Class Members. Sites that are deemed "unsafe" are blocked during implementation, using brand safety parameters such as site content and keywords.

50. Nielsen currently manages more television audience measurement panel households than any other international television audience ratings provider. Nielsen, which has been measuring radio tune-in since 1936 is the definitive source for comprehensive audio metrics and insights. JND uses Nielsen to measure the reach of our tv and radio ads for the Television Effort and the Radio Effort.

Target Analysis

51. JND analyzed the demographics and media usage of potential Class Members to determine how best to reach them. MRI data was studied among adults 18 years of age or older ("Adults 18+") who have Blue Cross Blue Shield medical insurance ("BCBS Insurance Members").

52. MRI data indicates that most BCBS Insurance Members are: 25 years of age or older (90%—however, given the class period, an even greater percentage are older today); white (83%);

homeowners (75%); from higher income households (73% have a household income of \$60,000+); educated (69% attended college or beyond); working full time (61%); and married (61%).

53. JND considered these key demographics when selecting media. For instance, *Better Homes & Gardens* extends reach to homeowners, Sirius XM radio extends reach among the higher income and educated demographic segments, and network morning news extends reach among older age groups. Other media were selected for their broad-based reach offering (*People, Google*), while some for their niche focus (e.g., Spanish radio, entity digital).

54. MRI data also indicated that BCBS Insurance Members are active internet users, with 92% using the internet and 69% visiting Facebook in a 30-day period. In terms of devices, 85% use their cellphone or smartphone to access the internet.

55. Considering this data and the large diverse Class, the Notice Plan was designed to reach Class Members through multiple channels and sources.

Digital Effort

56. The Digital Effort consists of digital ads, samples of which are attached as **Exhibit G**, which will be placed on the Google Display Network (“GDN”), the leading digital network, and Facebook, the top social media platform. The Digital Effort will target Adults 18+ with approximately 10% allocated to Spanish sites (GDN) and Spanish language accounts (Facebook), as represented by MRI data. Digital ads will be served across all types of devices – desktops, laptops, tablets and mobile, with an emphasis on mobile devices. The Digital Effort will generate over 428 million impressions.⁷

⁷ Impressions or Exposures are the total number of opportunities to be exposed to a media vehicle or combination of media vehicles containing a notice. Impressions are a gross or cumulative number that may include the same person more than once. As a result, impressions can and often do exceed the population size.

Print Effort

57. The Print Effort consists of full-page color notice placements, an example of which is attached as **Exhibit H**, in *People* and *Better Homes & Gardens* magazines. Both *People* and *Better Homes & Gardens* are highly read consumer magazines.

58. *People* is a weekly entertainment magazine with a circulation in excess of 3.4 million and a readership of over 34.9 million. *People* reaches 14% of Adults 18+ and extends notice to a broad demographic segment, including those Class Members who may not frequent the internet, particularly older Class Members.

59. *Better Homes & Gardens* is a monthly lifestyle magazine with a circulation of over 7.6 million and a readership exceeding 29.8 million. It reaches 13% of Adults 18+ and extends reach to older women who may not frequent the internet.

Radio Effort

60. To extend notice further, the Notice Plan includes a Radio Effort which consists of 30-second radio advertisements simply announcing the size of the Settlement and providing the website address and toll-free number.

61. JND will cause approximately 9,700 30-second radio spots to be broadcast through Sirius XM, satellite radio; premier broadcast networks (iHeart Radio – the Scope and Spectrum networks); as well as top syndicated programs among African Americans (e.g., Rickey Smiley, Steve Harvey) and two dominant Hispanic radio providers (“SBS” and Univision Radio) at a level proportionate to their demographic representation of likely Class Members based on MRI data. A variety of formats (e.g., country, adult contemporary, pop contemporary hit radio, class hits, urban contemporary) and programming are recommended to extend reach to diverse demographic segments.

62. Sirius XM is one of the largest subscription service radio providers, offering exposure to over 32.7 million subscribers and reaching over 65.4 million radio listeners.

63. iHeart Radio's the Scope has more than 575 station affiliates, comprised of a weekly listenership of 28 million. The Spectrum has approximately 800 station affiliates and weekly listenership of 30 million.

Television Effort

64. The final element of the media campaign consists of the Television Effort, where JND will effectuate over 950 30-second television spots to broadcast across a variety of cable and syndicated networks, and network news programming. Just like the radio ads, the short television ads will tell Class Members how to get more information about the Settlement.

65. Cable networks will include well known and highly viewed networks such as A&E, AMC, BET, CMT, CNN, Fox Sports, Golf Channel, HGTV, Hallmark, History, Lifetime, MSNBC, National Geographic, OWN, TV Land, and the Weather Channel. Syndicated programming may include shows such as Family Feud, Wheel of Fortune, Tamron Hall, Entertainment Tonight. Network news may include Good Morning America, Today Show and CBS Morning News, among others.

C. SUPPLEMENTAL ENTITY EFFORT

66. To further extend efforts to entities/companies/businesses, JND will employ a digital effort targeting individuals who will be responsible for filing claims on behalf of entity Damages Class Members. These include senior level Human Resources employees who are engaged in handling and managing employee benefits and health plan issues for Class Member entities, as well as business owners and partners of Class Member entities.

67. The entity digital effort will consist of 915,000 digital impressions on LinkedIn, the leading professional social media platform, and 1,000,000 digital impressions, to be placed on leading business websites, such as Yahoo Business; CNBC.com; FastCompany.com; Forbes.com; Bloomberg.com; Entrepreneur.com, WSJ.com, BusinessInsider.com and AllBusiness.com. The digital impressions on these sites will be very similar to the overall digital ads, albeit with images that evoke a business setting. The key to these ads is their strategic placements.

68. JND will also cause 100,000 digital impressions to be placed on the Society for Human Resource Management website (shrm.org); and approximately 100,000 digital impressions on Human Resource Executive's (hrexecutive.com) home page and 50,000 digital impressions on its benefit category page. The Society for Human Resource Management (SHRM) is the largest human resources organization with more than 275,000 members worldwide. It is dedicated to Human Resources management and the needs of Human Resources professionals. Human Resource Executive is a source for vice presidents and directors of human resources. We will also place ads in the National Association of African Americans in Human Resource (NAAAHR), which provides networking, career opportunities, and resources to over 15,000 HR members and affiliates.

69. In addition, JND will cause notices to be placed four times each in leading business and healthcare and employee benefits e-newsletters including: Franchise Times; Entrepreneur; Harvard Business Review Management Tip of the Day; SHRM; HREBenefits; Employee Benefit News Healthcare; Benefits Pro Daily and the Healthcare Dive Top Player.

70. Samples of the Class Member entity digital ads are attached as **Exhibit I**.

D. ADDITIONAL EFFORTS

71. JND will undertake additional efforts to further disseminate notice to Class Members, which will include a third-party outreach effort, a specially designed internet search

campaign, and a multichannel news release that will work in tandem with the media campaign to increase awareness of the Settlement. In addition, a link to the Settlement website will be placed on BCBSA.com by Settling Defendants.

72. JND will purchase lists of HR/employment benefit employees and health and accident insurance brokers through third-party outreach list providers. JND will utilize the information on these lists to send notice, via mail and email, as applicable, to over 150,000 contacts, requesting their assistance in providing notice to Class Members.

73. JND will also implement a digital search effort on the following search engines: Google, Yahoo, and Bing. Web browsers frequently default to a search engine page, making search engines a common source to get to a specific website (i.e., as opposed to typing the desired URL in the navigation bar). When purchased keywords related to the Settlement are searched, a paid ad with a hyperlink to the Settlement website may appear on the search engine results page. Samples of the internet search ads are attached as **Exhibit J**.

74. A multichannel news release will assist in getting “word of mouth” out about the Settlement. At the launch of the notice campaign, a multichannel news release will be distributed into newsrooms, online syndication, and PR Newswire for Journalists, an exclusive members-only community of more than 41,000 influential journalists and bloggers. This will encourage journalists to visit a microsite and review a press release, the television spot, and other information about the Settlement. A copy of the multichannel news release microsite is attached as **Exhibit K**.

E. CLAIMS STIMULATION EFFORT

75. Prior to the claim filing deadline, JND’s team will initiate a wide-ranging media effort to encourage Damages Class Members to submit claims and to remind them of the impending deadline.

76. The claims stimulation effort will include a digital campaign consisting of (1) an audience custom list, (2) retargeting and (3) look-alike targeting. Digital banner ads will also be served to potential Damages Class Members who visited the Settlement website but did not complete a claim submission (retargeting), as well as to individuals who demographically/geographically match with those Damages Class Members who have already filed online claims (look-alike targeting). JND will monitor the Settlement website traffic and utilize that information when designing the claims stimulation effort.

77. In addition to these efforts, the multichannel news release will be updated to include a claim deadline reminder message.

78. Based on the success of the initial media campaign, television and radio spots may be added and broadcast to key markets with high claims filing results. Additional print insertions may also be published.

79. The claims stimulation message will deliver a simple reminder of the approaching claims deadline. Attached as **Exhibit L** are sample reminder digital ads.

F. SETTLEMENT WEBSITE

80. An informational, interactive Settlement website, www.BCBSsettlement.com, will be developed at my direction by JND staff so potential Class Members can obtain information about their rights and options under the Settlement and submit claims. The website will have an easy-to-navigate design and will be formatted to emphasize important information and deadlines. The Settlement website will contain, among other things, information about the Settlement, a Frequently Asked Questions section, a list of Important Dates and Important Documents, the ability to download a Long Form Notice and Claim Form, the ability to submit claims electronically through a secure claims filing portal, a report of Monitoring Committee

Activities, and information about how Class Members can access the toll-free telephone number. The Settlement website will also be available in Spanish.

81. The Settlement website will be mobile-enabled and ADA compliant, and will undergo significant penetration testing to make sure that the site cannot be breached as well as load testing to make sure that the site will be able to accommodate the expected traffic from a class this large. It will also be designed to maximize search engine optimization through Google and other search engines. Keywords and natural language search terms will be included in the site's metadata to maximize search engine rankings.

G. DEDICATED TOLL-FREE NUMBER AND CONTACT CENTER

82. JND will establish and maintain a dedicated toll-free telephone number with an automated IVR, available 24 hours a day, seven days a week, that will provide Settlement-related information to Class Members, and the ability to request and receive the notices and the Settlement claim form by mail.

83. Class Members will also have the option to speak with Customer Service Representatives five days a week during business hours, who will provide Settlement-related information and can fulfill requests for notice. JND has multiple call center sites, all in the United States, and can ensure enough staffing and redundancy to handle any volume of calls we receive on this matter.

H. DEDICATED POST OFFICE BOXES

84. JND will establish two separate United States Post Office Boxes: one dedicated for Class Members to submit letters, inquiries, and claim forms; and one dedicated strictly to receive Objections and Opt-Out requests.

I. QR CODE

85. JND will create a QR Code (a matrix barcode) that will allow quick and direct access to the Settlement website through mobile devices. The QR Code is included, where practicable, in printed notice documents.

VI. REACH

86. The proposed media campaign alone is designed to reach 85% of potential Class Members. The direct notice effort, the supplemental industry media, the industry mailing effort, the internet search campaign, the distribution of the national press release, and claims stimulation efforts will extend reach further. The proposed notice effort is similar to and, indeed, more robust than that of other court approved programs and meets the high reach standard set forth by the FJC.

VII. NOTICE DATES

87. JND cannot send direct notice until we receive contact information data from all Settling Defendants. As a result, the Notice Plan will commence once JND receives adequate Class Member data from the Settling Defendants (Day 1). The notice efforts will complete on Day 90. The exclusion/objection deadline will be 60 days from the Notice Plan end date (Day 150). The final fairness hearing could be on Day 230.

88. Claims stimulation efforts will run up until two weeks prior to the claims filing deadline (Day 235). The Claim filing deadline will be on Day 250.

VIII. NOTICE DESIGN AND CONTENT

89. All notice documents were written to comply with the requirements of Fed. R. Civ. P. 23, the Due Process Clause of the United States Constitution, and any other applicable statute, law or rule. I have reviewed and provided input to Settlement Class Counsel and Self-Funded Sub-Class Settlement Counsel on the form and content for each of the notice documents, specifically the

Postcard Notice, the Email Notice, the Long Form Notice, the internet banner ads, the Publication Notice for *People* and *Better Homes & Gardens* magazine, subject to any necessary formatting changes needed for publication, the text of the radio and television ads, the content of the e-newsletter notices, and the press release. Based on my experience designing court approved class notice programs, in my opinion, each of these notice documents complies with the Fed. R. Civ. P. 23, the Due Process Clause of the United States Constitution, and any other applicable statute, law, or rule, as well as the FJC's Class Action Notice and Plain Language Guide.

90. Each of these notice documents contain summaries of the Settlement and the options that are available to Class Members. Additionally, the notice documents provide instructions on how to obtain more information about the Settlement.

91. The Long Form Notice will be posted on the Settlement website and will be available by mail if requested. It provides details regarding, among other things, the nature of the action; who is in the Settlement Classes; general descriptions of the claims asserted and references the defenses of Settling Defendants; the monetary and injunctive relief afforded by the Settlement Agreement; the right of Class Members to obtain counsel, object to the Settlement, or exclude themselves from the Settlement; and the binding effect of the Settlement on Class Members. The Long Form Notice also provides, inter alia, details on when claims and objections are due, how and when to opt-out, how and where to seek additional information, and how to submit a claim.

92. The Long Form Notice was used as the basis to create the summary forms of notice: Email Notice, Postcard Notice, and Publication Notice. These short-form notices provide, among other things, a summary of what the lawsuit is about, who is affected, what a Class Member may receive from the Settlement, the deadline by which a claim should be submitted, other options (opting out and objecting), and how and where to obtain more information.

93. To the extent that some Class Members may speak Spanish as their primary language, the print notice documents include a subheading in Spanish at the top directing Spanish speaking Class Members to visit the Settlement website which will be available in Spanish.

IX. CLAIM FORM AND PROCESSING

94. The Claim Form explains the claims process, is designed to ensure that filing a claim is as simple as possible and will be sent to any individual who requests a written form. However, the direct notice portion of the Notice Plan is designed to drive claimants to the Settlement website where they can utilize an interactive process for claims submission. Online claim forms not only save substantial money in postage but are generally favored by claimants since the wizard feature of the process will walk them through the form step by step and will be very user-friendly. The online claim form process will prevent claimants from submitting an electronic claim without clicking necessary verifications such as signature. Electronic claims also eliminate the step of manual data entry and generally make processing easier and less expensive.

95. The interactive Claim Form will be accessed through a secure portal and will request the same information from claimants that is set forth in the printed Claim Form. The interactive Claim Form will also be designed to ensure that required information is provided before a claimant can move onto the next step of the Claim Form.

96. Broadly stated, to complete the Claim Form, the claimant (whether an employer, self-insured, or an employee) will provide its name and contact information as well as identify, to the extent possible, the claimant's Blue health plan(s), group number(s), subscriber ID(s) (for individuals), and coverage dates. The claimant has the option of selecting the default allocation or seeking additional funds based on actual contribution by the claimant; where a selection is not made, the default allocation will be utilized. Some additional information is required if the

claimant seeks funds beyond the default allocation. The claimant also has the option of electing a form of payment: check, prepaid card, Venmo, or PayPal. A signature is required.

97. All claimants may submit Claim Forms electronically through the Settlement website or physically by mail to the established Settlement P.O. Box. In the event that a claimant submits a Claim Form and also submits a letter opting out of the Settlement, JND will send a letter to the claimant clarifying his/her/its intent. In the event that a claimant fails to respond to the letter within thirty (30) days, the last submission JND received will control so long as the submissions were received on or before the exclusion deadline. The Claim Forms must be submitted or postmarked by a date to be established by the Court within 250 days of the commencement of the Notice Period. JND will review, determine the validity of, and process all Claim Forms submitted by claimants. JND will identify and flag any claims that are incomplete and will seek additional information from the claimant as necessary. Examples of deficiencies that would require a deficiency letter include: (i) a claimant who contests the default allocation but does not provide sufficient documentation to substantiate their claimed percentage; (ii) a claimant who submits a mailed copy of the Claim Form and fails to sign the Claim Form; (iii) a claimant who fails to state how he/she/it wishes to receive payment; and (iv) other defects that make it impossible for the Claims Administrator to fully process and/or pay the claim. If a claimant had multiple health insurance or administrative services plans at any point during the Settlement Class Period, JND will combine the premium data and/or administrative costs from the multiple plans into a single claim for that claimant.

98. Where a claimant selects the Alternative Option for determination of their percentage of contribution to the overall premium or administrative fees paid, that claimant must supply documentation in support of the requested percentage. Where the claimant supplies documentation in support of that position, the JND team will review the documentation to

determine if it is sufficient to support a greater contribution percentage. If the documentation is sufficient, the JND team will contact any counterpart who has already filed a claim to be given the opportunity to submit their own additional evidence should they so desire. Pursuant to the Plan of Distribution, JND will provide the claimant information for the specific claimants whose contribution percentage may be impacted by the claim invoking the alternative option to the Settlement Administrator. JND will work with the Settlement Administrator to the extent necessary and will report the Settlement Administrator's conclusions to the claimants as applicable. JND's team will also work with the claimants to answer any questions they may have about the Alternative Option process.

99. Once a claim has been fully processed and all deficiencies are resolved, JND will create a secure portal where claimants can view their information. A claimant may then, within thirty (30) days, challenge our premium and/or administrative fees calculation. If a claimant wishes to challenge a claim determination, the claimant must submit an explanation for why the premium and/or administrative figures we provided are in error and provide documentation sufficient to support their claim to a higher premium and/or administrative fees total during the Class Period.

100. In the event that the claimant does not challenge the claim determination within thirty (30) days, the decision will be Final and will form the basis for the ultimate payment to the claimant from the Net Settlement Fund. Or, if we agree with claimant's revised premium and/or administrative figures, we will modify the claim accordingly.

101. If JND disagrees with the claimant's revised premium and/or administrative figures, JND will explain why and request further documentation deemed appropriate or simply make a final determination. In appropriate circumstances, JND may refer matters to the Settlement

Administrator for final resolution. The Settlement Administrator's decision on applicable premium and/or administrative value shall be final.

102. If the total final payment of a particular claim is equal to or less than \$5.00, no distribution will be made to that claimant, and the claimant will be notified by JND that there will be no distribution given the *de minimis* payment. It is typical to provide for such a *de minimis* threshold so that the costs of administration are not out of proportion to the size of the claim payment. In my experience, there are often additional costs when small amounts are distributed beyond the costs associated with the actual distribution. For example, a large percentage of class members do not cash these small checks, resulting in additional time and effort in trying to get claimants to cash the checks or to redistribute such checks to other claimants. In many cases, we have seen *de minimis* thresholds at \$5.00, \$10.00 and even higher.

103. Damages Class Members who are eligible to receive an award from the Net Settlement Fund will receive payment pursuant to the method specified on their Claim Form, *i.e.*, Venmo, PayPal, prepaid card, or check. When mailing or emailing a payment, JND will send the benefit to the address or email provided by the Damages Class Member on the Claim Form or to the Damages Class Member's preferred address or email if provided to JND.

104. If a benefit is returned as undeliverable, JND will make all reasonable efforts to deliver the benefit, including by attempting to contact the Damages Class Member in order to obtain updated contact information. Any check or prepaid card will include its expiration date, if applicable, and the Damages Class Member's name. Checks not cashed within 90 days will no longer be valid. Damages Class Members who have not yet cashed checks will be reminded to do so between 30 and 40 days after the checks have been issued. Any funds which remain (exclusive of the Notice and Administration Fund) will, subject to Court approval, be reallocated among

Damages Class Members or in accordance with the Court-approved Plan of Distribution. To the extent that any part of the Settlement Fund remains after JND has made the reallocation to Authorized Claimants required under the Settlement Agreement, Settlement Class Counsel and Self-Funded Sub-Class Counsel will jointly seek Court approval to disburse the remainder of the Settlement Fund to an entity or entities closely associated with the harm alleged in the Complaint. JND will follow the directions approved by the Court.

X. OBJECTIONS AND OPT-OUTS

105. Members of either Settlement Class may object to the Settlement. Damages Class Members may also exclude themselves (“opt-out”) entirely. The Long Form Notice explains these legal rights (and others) to Class Members. The deadline for either objecting to or opting-out from the Settlement is 150 days from the date upon which JND receives adequate data from the Settling Defendants to commence the Notice Plan.

106. Any member of either Settlement Class who wishes to object to any aspect of this Agreement must send to JND, Settlement Class Counsel, Self-Funded Sub-Class Settlement Counsel and Settling Defendants, and file with the Court, a written statement of its objection. The objection must include:

- a. The name of this Action and a description of the objections, including any evidence and applicable legal authority and any supporting evidence the objector wishes to introduce;
- b. The objector’s full name, address, email address, telephone number, and the plan name under which Blue Cross or Blue Shield was provided and dates of such coverage;⁸

⁸ At the request of Settlement Class Counsel, the objector shall also confidentially provide to Settlement Class Counsel the policy number and/or Subscriber ID and date(s) of policy.

- c. Whether the objection applies only to the objector, a specific Settlement Class or subset of a Settlement Class, or both Settlement Classes;
- d. The identity of all counsel who represent the objector, if any, including former or current counsel who may be entitled to compensation for any reason related to the objection, along with a statement of the number of times in which that counsel has objected to a class action within five years preceding the submission of the objection, the caption of the case for each prior objection, and a copy of any relevant orders addressing the objection;
- e. Any and all agreements that relate to the objection or the process of objecting – whether written or oral – between the objector, his or her counsel, and/or any other person or entity;
- f. The objector (and the objector’s attorney’s) signature on the written objection;
- g. A statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel); and
- h. A declaration under penalty of perjury that the information provided by the objector and objector’s counsel is true and correct.

107. Any Damages Class Member may also opt out of the Settlement. To do so, Damages Class Members must submit a written request to JND stating their intent to exclude themselves from the Settlement. The exclusion request must include the following:

- a. the name of the claimant, the name of your business (if your business purchased health insurance from a Blue Cross or Blue Shield entity during the Class Period for employees), address, and telephone number;

- b. a statement that the claimant wants to be excluded from the Settlement Class in *In re: Blue Cross Blue Shield Antitrust Litigation*; and
- c. the claimant's (or business representative's) personal, physical signature.

108. Electronic signatures, including DocuSign, or PDF signatures are not permitted and will not be considered personal signatures, and submissions signed solely by an individual's or business's lawyer are not valid either.

XI. CONCLUSION

109. In my opinion, the Notice Program as described herein will provide the best notice practicable and is consistent with, if not more robust than, other similar court-approved best notice practicable notice programs, Rule 23 of the Federal Rules of Civil Procedure, and the FJC's guidelines for Best Practicable Due Process notice. It meets due process and Rule 23 requirements to apprise Class Members of the pendency of the Subscriber Actions, the Settlement Agreement, and their opportunity to be heard and to opt out. The Notice Program is designed to reach as many Class Members as practicable and provide them with the opportunity to review a plain language notice with the ability to easily take the next step and learn more about the Settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 30, 2020, in Seattle, Washington.



JENNIFER M. KEOUGH