1 The Honorable Robert S. Lasnik 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 WESTERN DISTRICT OF WASHINGTON AT SEATTLE 8 ANDREA SCHMITT; ELIZABETH 9 MOHUNDRO; and O.L. by and through her NO. 2:17-cv-1611-RSL 10 parents, J.L. and K.L., each on their own behalf, and on behalf of all similarly situated 1 1 individuals, **DECLARATION OF** RICHARD E. SPOONEMORE IN 12 Plaintiffs, SUPPORT OF FINAL APPROVAL 13 v. 14 Note on Motion Calendar: KAISER FOUNDATION HEALTH PLAN OF April 18, 2024 at 11:00 a.m. 15 WASHINGTON; KAISER FOUNDATION (Fairness Hearing) HEALTH PLAN OF WASHINGTON 16 OPTIONS, INC.; KAISER FOUNDATION 17 HEALTH PLAN OF THE NORTHWEST; and KAISER FOUNDATION HEALTH PLAN, 18 INC., 19 Defendants. 20 21 I, Richard E. Spoonemore, declare under penalty of perjury and in accordance 22 with the laws of the State of Washington and the United States that: 23 1. I am a partner at the law firm of Sirianni Youtz Spoonemore Hamburger 24 PLLC and am one of the attorneys for Plaintiffs and the Class in this action. Unless 25 otherwise stated, the facts in this declaration are based upon my personal knowledge. 26

DECLARATION OF RICHARD E. SPOONEMORE - 1 [Case No. 2:17-cv-1611-RSL]

SIRIANNI YOUTZ
SPOONEMORE HAMBURGER PLLC
3101 WESTERN AVENUE, SUITE 350
SEATTLE, WASHINGTON 98121
TEL. (206) 223-0303 FAX (206) 223-0246

- 2. No objections have been filed or received to either Plaintiffs' Motion for Final Approval of Settlement Agreement or Plaintiffs' Motion for Attorney Fees, Costs, and Class Representative Case Contribution Payments from class members or state Attorneys General. Epiq, the Claims Processor, reports that it has received only five optouts. Attached as *Exhibit 1* is a true copy of the opt-outs that Epiq has forwarded to us.
- 3. Defense counsel reported that it sent out the CAFA notice on or about December 14, 2023. Attached as *Exhibit* 2 is a true and correct copy of the CAFA notice provided by defense counsel. We have received no comments or concerns in response to the CAFA notice.
- 4. Both Epiq and my law firm posted websites related to the settlement. The website maintained by my firm contained basic information about the case and specifically directed class members to the Epiq website, via a link, for details where the Motion for Attorney Fees was and other key documents were posted. Epiq reported more than 10,000 views of its website.
- 5. In support of class counsel's Motion for Attorney Fees, my law partner, Eleanor Hamburger, previously declared that we received and responded to many emails or telephone inquiries since class notices were emailed. *See* Dkt. No. 176, ¶10. Since then, we have continued to respond to many emails and phone calls from notice recipients. We still have not received any negative comments about the settlement or the motion for fees.
- 6. As of April 11, 2024, the Claims Processor has made a preliminary calculation of the magnitude of the claims, after deducting claims that are facially invalid, such as: (a) duplicates; (b) outside the Class Period; (c) for items that are clearly not hearing aids or related services; or (d) for persons who are not class members. This preliminary review was conducted for both timely and late claims received by April 10,

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

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

Total Settlement Amount:	\$3,000,000.00
Estimated Cost of Class Notice and Claims Administration	
(includes \$178,166 advanced by class counsel):	\$539,301.00
Requested Attorney fees (33 1/3%):	\$1,000,000.00
Litigation Costs (excluding notice advance):	\$195,971.63
Case Contribution Awards requested:	\$45,000.00
Subtotal:	\$1,219,727.37

Estimated Net for distribution	\$1,219,727.37	Percent of Claim Paid
<b>Total Timely Claims</b>	\$2,695,629.29	45.25%
<b>Total Timely and Late Claims</b>	\$2,725,397.23	44.75%
Unique Claimants:	913	

Average Payout to Claimant: \$1,335.95

- 8. The exact dollar amounts of the claims will change once all claims have been fully adjudicated, and the percentage of the claim paid will likely increase based on the result of further adjudications.
- 9. Our initial model suggested that fewer claims would be submitted and the dollar amount claimed would be less than the amounts actually claimed. Therefore, we had initially anticipated that claimants would receive 100%, or close to it, of their claimed amounts. As it turned out, the notice process was very effective at reaching people who

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

- 10. Class counsel strongly recommends approval of this settlement agreement. Each member of the litigation team (Rick Spoonemore, Eleanor Hamburger, and Daniel Gross) has decades of class action experience. In our collective view, this settlement represents a substantial win for class members, particularly in light of the substantial recovery for class members in a settlement that was reached prior to class certification.
- 11. As noted in the Motion for Final Approval, we are asking that late claims be approved. I have served as class counsel in many class action settlements where the court has allowed late claims, including many in the Western District of Washington, such as *J.R. v. Blue Cross Blue Shield of Illinois, et al.*, No. 2:18-cv-01191, Dkt. Nos. 76, 81; *C.S. v. Boeing*, No. C14-0574, Dkt. No. 54; *K.M. v. Regence*, No. 2:13-cv-01214, Dkt. No. 98, ¶19; *R.H. v. Premera*, No. 2:13-cv-00097, Dkt. No. 90, ¶8; *A.M. v. Moda Health Plan, Inc.*, No. 2:14-cv-01191-TSZ, Dkt. No. 52 (all health coverage class action cases in which the claims deadline was extended to include late-filed claims). The prejudice to other class members is minimal, and payment of the late claims serves the purposes of class action distributions.

1	I declare under penalty of perjury that the foregoing is true and correct to the bes	
2	of my knowledge, information, and belief.	
3	DATED A 1141 2004 (C (d IA) 11 (	
4	DATED: April 11, 2024, at Seattle, Washington.	
5	/s/ Richard E. Spoonemore	
6	Richard E. Spoonemore (WSBA #21833) SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC	
7	3101 Western Avenue, Suite 350 Seattle, WA 98121	
8	Tel. (206) 223-0303; Fax (206) 223-0303	
9	Email: rspoonemore@sylaw.com	
10	Attorneys for Plaintiffs	
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26	SIRIANNI YOUTZ	
	DECLARATION OF DICHARD F CROONEMORE F	

# **Exhibit 1**

Case Biol 7244 24611-RSL Document Portland, OR 97208-247	رسن المارية ا
To whom it may	Concern:
cl wish to	opt out of .
this settlement, and	the associated class.
otati e a	* '9 e <del>-</del> (4)
NAME: DEREK	PETERSON .
ACC MONOTONICS TO	3662
Signed,	3.7
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DiOnt	
. DEREK PETERSON	*
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Mr. Derek Peterson Seattle, WA 98199 Document 180-1 Filed 04/11/24
SEATTLE WA 980

12 MAR 2024 PM 3 L



Schmitt U. Kaiser Settlement Claims PO Box 2479 Portland, OR 97208-2479 Please remove from your Mailing lists. Thanks Schmitt v. Kaiser Schtlement Claims Processingent 180-1 Filed 04/11/24 P.O. Box 2479
Portland, OR 97208-2479

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U.S. POSTAGE

PAID

PORTLAND, OR

PERMIT NO. 2882

Kaiser Hearing Aid Settlement

Dependent Name: PAUL D DREW, UniqueID:



\*400709910001396528\*

PAUL D DREW

SPOKANE WA 99202

8 7264 Schmitt et al. v. Kaiser Foundation Health Plan of Washington et al..

Castinited States District Court for Western District of Washington at Sentile Course No. 2:47-cv=1644-BSE of 10 Did you pay for hearing aids or associated medical services while covered by Kaiser between October 30, 2014, and December 31, 2023? If so, you may have a claim in a class action lawsuit that settled. This card describes your rights in that lawsuit and how you can obtain more information, file a claim, or take other action

A court authorized this notice. This is not a solicitation from a lawyer.

#### Why Did I Get this Notice?

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

#### What Can I Do Because of This Settlement?

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

#### How do I Learn More About This?

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

### How Much Money Could I Get?

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

#### How do I Make a Claim?

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

#### When Do I Need to Do Something?

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

- AJ7632 v

# - Request for Exclusion-

· Hi,

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

My subscriber unique ID as noted on my notice is 4FF4 PIN:

Thank you,

Amanda Bessler 3/29/2024

Schmittev 2Kaiser Settlericht Clathis Processingnent 180-1 Filed 04/11/24 P.O. Box 2479 Portland, OR 97208-2479

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PERMIT NO. 2882

Kaiser Hearing Aid Settlement

Subscriber Name: KYRA M EATON, UniqueID:

3/23/24

-Please opt me

out.

Kyra Eaton

Signature:



\*400709910010076731\*

KYRA M EATON

LACEY WA 98503

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Schmitt et al. v. Kaiser Foundation Health Plan of Washington et al., Case with states under the comment of the comment o

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

> A court authorized this notice. This is not a solicitation from a lawyer. Why Did I Get this Notice?

You received this notice because you might be eligible to participate in a \$3 million settlement if you paid for hearing aids or associated medical care while covered (1) The best and fastest way is to go online at under a health insurance plan issued by Kaiser between October 30, 2014, and December 31, 2023. Not all individuals who received this notice are members of the class. You must meet the class definition to be a member of the class. The class definition can be found here: www.KPHearingAidSettlement.com.

#### What Can I Do Because of This Settlement?

If you're part of this group, you can: (1) Ask for money to participate in this case or the Settlement (opt-out), or by mail on or before April 4, 2024. (3) Remain in this case but object to the Settlement, or (4) Do nothing, which means you will (a) receive no money and (b) give up any claims you have against Kaiser related to the issues in this case.

#### How do I Learn More About This?

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

#### **How Much Money Could I Get?**

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

#### How do I Make a Claim?

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

#### . When Do I Need to Do Something?

If you want to file a claim, you must submit your (file a claim) as part of this Settlement, (2) Decide how request online at www.KPHearingAidSettlement.com

## Case 2:17-cv-01611-RSL Document 180-1 Filed 04/11/24 Page 10 of 10

From: Sara McCleary @gmail.com>

**Sent:** Thursday, April 4, 2024 8:21 AM **To:** info\_KPHearingAidSettlement

**Subject:** Sara McCleary Opt-Out re Class Action/ Schmitt v. Kaiser, et al.

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

Good morning,

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

Kind regards, Sara McCleary

# Exhibit 2

Law Offices • Established 1904 • A Professional Service Corporation



Medora A. Marisseau Attorney at Law

701 Fifth Avenue, Suite 3300 Seattle, Washington 98104 Direct: (206) 224 8045

Main: (206) 223 1313 Fax: (206) 682 7100 mmarisseau@karrtuttle.com

December 14, 2023

#### VIA U.S. CERTIFIED MAIL

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

RE: Notice of Proposed Class Action Settlement in Schmitt et al v. Kaiser

Foundation Health Plan of Washington et al

U.S. District Court for the Western District of Washington

Case No. 2:17-cv-01611-RSL

To the Attorney General for the United States of America:

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

On October 30, 2017, Plaintiff Andrea Schmitt ("Schmitt"), on her own behalf, and on behalf of all similarly situated individuals ("Plaintiff") filed this lawsuit alleging that, among other things, that Defendants violated the Affordable Care Act's anti-discrimination statute, 42 U.S.C. §18116 and Washington's health carrier anti-discrimination statute, RCW 48.43.0128 by excluding coverage of medically necessary hearing aids and associated treatment. Named Plaintiffs Elizabeth Mohundro ("Mohundro"), and O.L. by and through her parents, J.L. and K.L. (O.L), were added in subsequent amended complaints ("Plaintiffs"). Mohundro was added as a named Plaintiff in the Second Amended Complaint, filed on February 28, 2018. O.L. was added as a named Plaintiff in the Fourth Amended Complaint on December 15, 2020.

Defendants have denied and continue to categorically deny these allegations and all other assertions by the Named Plaintiffs in the Action that Defendants engaged in, or are liable for, violations of law. However, to avoid the burden, expense, inconvenience, and uncertainty of proceeding with the litigation, Defendants have concluded that it is in their best interests to resolve and settle this action.

December 14, 2023 Page 2

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

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

- 1. Plaintiffs' original October 30, 2017 Complaint is attached as **Exhibit A**. Plaintiffs' December 12, 2017 Amended Complaint, Plaintiffs' February 28, 2018 Second Amended Complaint, Plaintiffs' October 20, 2020 Third Amended Complaint and attachments, and Plaintiffs' December 15, 2020 Fourth Amended Complaint, and all materials filed therewith, can be accessed at the below link: https://www.karrtuttle.com/class/. Password: class1214
- 2. The Court has scheduled a Fairness Hearing to consider whether the parties' Proposed Settlement is fair, reasonable and adequate and should be finally approved, for April 18, 2024 at 11:00 a.m.
- 3. Plaintiff's Proposed Notice to the Class (Including Short-Form and Long-Form Notices), which include instructions for submitting a Request for Exclusion, and the proposed settlement of the class action, are attached hereto as **Exhibit B**.
- 4. A copy of the parties' proposed Class Action Settlement Agreement is attached hereto as **Exhibit C**.
- 5. Other than the Class Action Settlement Agreement referenced above, there are no contemporaneous agreements between counsel for Plaintiffs and counsel for Defendants.
  - 6. No final judgment or notice of dismissal has yet been entered in this case.
- 7. A list of names of putative Settlement Class members is not yet due to be provided until January 22, 2024 and is infeasible at this time. There are 1,033,013 total Settlement Class Members. A list of states of residence for the Class Members is attached hereto as **Exhibit D**. Subject to final approval by the Court, 100% of the Net Settlement Amount will be used to reimburse Class Members who make a claim to the Settlement Fund for their out of pocket costs incurred for hearing aids and related services, as determined by the Claims Processor as described in the parties' Class Action Settlement Agreement.
- 8. The Court's Amended Order Granting Preliminary Approval, is attached as **Exhibit E**.

December 14, 2023 Page 3

Best regards,

Medora A. Marisseau

Enclosures

cc. Client