THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

M.R., on behalf of himself and all others similarly situated,

Plaintiff

v.

NICK LYON, in his official capacity Only as Executive Director of the MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendant.
_____/

No. 2:17-cv-11184-DPH-RSW

HON. DENISE PAGE HOOD
MAG. R. STEVEN WHALEN

PLAINTIFF AND CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

Plaintiff M.R. and Class Counsel Dickinson Wright, PLLC for themselves and on behalf of the certified class, pursuant to Fed. R. Civ. P. 23(h) and § 7 of the Class Action Settlement and Release Agreement preliminarily approved by this Court, ask this Court to approve attorneys' fees for Class Counsel and an Incentive Award for Class Representative as agreed upon therein.

Defendant does not oppose the relief sought in this Motion. This Motion is supported by the attached brief in support and accompanying exhibits. Furthermore, this motion is filed on the timetable set by the Court's Order granting Plaintiff and Defendant's Joint Motion to Certify Class, Appoint Class Counsel, Approve Notice to Class Members, Grant Preliminary Approval of Proposed Class Action Settlement and Set Date for Fairness Hearing approved by the Court on May 29, 2018.

Respectfully submitted,

DICKINSON WRIGHT PLLC

By: /s/ ***Aaron V. Burrell***

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Dated: June 15, 2018

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

M.R., on behalf of himself and all others similarly situated,

Plaintiff

v.

NICK LYON, in his official capacity Only as Executive Director of the MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendant.
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No. 2:17-cv-11184-DPH-RSW

HON. DENISE PAGE HOOD
MAG. R. STEVEN WHALEN

BRIEF IN SUPPORT OF PLAINTIFF AND CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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ISSUE PRESENTED

Whether the Court should approve payment of attorneys' fees to Class Counsel and an Incentive Award to Class Representative pursuant to the preliminarily approved Settlement Agreement and Fed. R. Civ. P. 23(h) where the Class Representative, with the assistance of Class Counsel, resolved this class action by obtaining a settlement that provides coverage for direct-acting antiviral treatment to all Eligible Michigan Medicaid beneficiaries diagnosed with chronic Hepatitis C?

Plaintiff answers: yes

Defendant answers: yes

This Court should answer: yes

TABLE OF AUTHORITIES

Cases

Other Authorities

I. INTRODUCTION

Plaintiff M.R. ("Plaintiff" or "Class Representative") filed this putative class action in the United States District Court for the Eastern District of Michigan, Southern Division alleging that Defendant Nick Lyon, in his capacity as executive director of the Michigan Department of Health and Human Services ("Defendant"), violated several provisions of the Medical Assistance Program, Title XIX of the Social Security Act, 42 U.S.C. § 1396 by use of its current prior-authorization criteria for hepatitis C treatment (the "MDHHS prior-authorization criteria"). On January 17, 2018, Plaintiff's counsel, Defendant's counsel, and Defendant's corporate representatives participated in a formal mediation session with Magistrate Judge R. Steven Whalen. After several rounds of negotiations, the parties reached an agreement. Defendant has denied and continues to deny the claims alleged in this Action. Defendant maintains that it has a strong, meritorious defense to the claims alleged in the Action and was prepared to fully defend the Action. Nonetheless, given the uncertainty and risks inherent in litigation, as well as the inevitable delay of a result for class members whose lives hang in the balance, the parties have concluded that is desirable and beneficial to fully and finally settle this action upon the terms and conditions set forth in their Settlement Agreement.

A proposed settlement was preliminarily approved by this Court on May 29, 2018 (DE 31) (the "Settlement Agreement"). The Settlement Agreement is attached

hereto as **Exhibit A**. Among other things, the Settlement Agreement included provisions regarding attorneys' fees and an Incentive Award for the Class Representative. Pursuant to the Settlement Agreement, Plaintiff and his counsel Dickinson Wright, PLLC ("Class Counsel"), respectfully move for an award of attorneys' fees in the amount of one hundred ninety-nine thousand dollars ($199,000.00) (the "Fee Award") which is inclusive of all costs and expenses incurred in the above-captioned matter (the "Action"). Pursuant to the Settlement Agreement, Defendant will not oppose this request for a Fee Award that is in compliance with the amount stated therein. (*See* Ex. A, ¶ 7). Plaintiff and Class Counsel also request, pursuant to the Settlement Agreement, that this Court order an award of five thousand dollars ($5,000.00) to Class Representative for his time and effort litigating the Action and serving as Class Representative (the "Incentive Award"). *Id*.

"In a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law **or by the parties' agreement**." Fed. R. Civ P. 23(h) (emphasis added). "A claim for an award must be made by motion under Rule 54(d)(2) ...." Fed. R. Civ. P. 23(h)(1). "Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." *Id.* Rule 54(d)(2) requires those claiming attorneys' fees to timely file a motion specifying the grounds entitling the movant to the award and

stating the amount sought. *Gascho v. Glob Fitness Holdings, LLC*, No 2:11-CV-436, 2014 WL 1350509, at *32 (S.D. Oh. Apr. 4, 2014).

Inasmuch as the requested fees and Incentive Award are objectively reasonable, appropriate, and agreed upon by both parties, Plaintiffs and Class Counsel respectfully request that they be approved in all respects.

II. ARGUMENT

A. An award of $199,000.00 in attorneys' fees is fair, objectively reasonable and appropriate in light of the results obtained on behalf of the class.

1. Attorneys' fees in this case should be awarded pursuant to the settlement agreement.

Rule 23(h) of the Federal Rules of Civil Procedure provides that, "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law **or by the parties' agreement**." Fed. R. Civ. P. 23(h) (emphasis added). The Sixth Circuit has directed that it is the courts' affirmative responsibility to ensure "that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Rawlings v. Prudential-Bache Props*, 9 F.3d 513, 516 (6th Cir. 1993); *See also e.g.*, *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 788 (N.D. Ohio 2010). Indeed, the "[c]ourt has the discretion to select the appropriate method for calculating attorneys' fees in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them. *In re Auto Parts*

Antitrust Litig, *No* 2:12-CV-00203, 2017 WL 3525415, at *1 (E.D. Mich. July 10, 2017) (citing *Rawlings* 9 F.3d 513, 516 (6th Cir. 1993)). In *Office & Professional Employees International Union v International Union, et al*, this Court ruled that where an attorney-fee provision in a settlement agreement between the parties is reasonable, Rule 23(h) grants the Court authority to provide attorneys' fees consistent with that provision. *See e.g.*, *Office & Prof'l Employees Int'l Union v Int'l Union, United Auto, Aerospace & Agric Implement Workers of Am*, 311 F.R.D. 447, 459 (E.D. Mich. 2015) (citing Fed. R. Civ. P. 23(h)). Furthermore, this Court has ruled that where "the nature and extent of the legal services provided by plaintiff counsel and the costs expended were carefully considered," and "no written objections were filed regarding the amount of fees allotted by the consent decree to plaintiff counsel," the Court may approve the payment of fees and costs pursuant to a settlement agreement. *Huguley v. Gen Motors Corp*, 128 F.R.D. 81, 87 (E.D. Mich. 1989), *aff'd*, 925 F2d 1464 (6th Cir. 1991), and *aff'd*, 999 F.2d 142 (6th Cir. 1993).

The provisions of the Settlement Agreement regarding Class Counsel's fees and regarding the reimbursement of certain expenses incurred by Class Counsel are reasonable, considering the time and effort expended by Class Counsel in achieving this substantial result for the class and attest to the non-collusive nature of the negotiations. As such, the parties agree and request that

this Court grant attorney fees to Class Counsel in accordance with the Fee Award provision in the Settlement Agreement. Furthermore, this Court has already ordered that "appropriate notice regarding the proposed Settlement Agreement [which includes the attorneys' fees provision] and the Fairness Hearing is sufficient. The adequacy of the Notice has not been challenged." (Order Granting Joint Mot. to Certify Class, Appoint Class Counsel, Approve Notice to Class Members, Grant Preliminary Approval of Proposed Class Action Settlement and Set Date for Fairness Hearing, DE No. 31).

B. Application of the *Ramey* factors supports the Fee Award.

It is well established that "[w]hen awarding attorney's fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Rawlings*, 9 F.3d 513, 516 (6th Cir. 1993). "In general, there are two methods for calculating attorneys' fees: the lodestar and the percentage-of-the-fund." *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 *F. App'x* 496, 498 (6th Cir. 2011). A court must articulate the "reasons for adopting a particular methodology and the factors considered in arriving at the fee." *Moulton v. U.S. Steel Corp*, 581 F.3d 344, 352 (6th Cir. 2009) (quoting *Rawlings*, 9 F.3d at 516)). Generally, the Sixth Circuit bases its explanation on the following factors:

> (1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether

> the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.

Ramey v Cincinnati Enquirer, Inc , 508 F.2d 1188, 1196 (6th Cir. 1974); *New York State Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 242 (E.D. Mich. 2016); *Marro v. New York State Teachers' Ret. Sys.*, No. 16-1821, 2017 WL 6398014 (6th Cir. 2017); *Moulton v. U.S. Steel Corp*, 581 F.3d 344, 352 (quoting *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996)).

Here, because Defendant agrees that Class Counsel is entitled to the Fee Award as provided in the Settlement Agreement and preliminarily approved by this Court, the parties do not believe that the Court need consider the *Ramey* factors, as Rule 23(h) permits the Court to award fees "authorized by ... the parties' agreement." Fed. R. Civ. P. 23(h). Still, the Fee Award is nevertheless warranted by all six *Ramey* factors.

2. The results achieved in this litigation are substantial.

Courts consistently acknowledge that the results achieved for the benefit of the class on whose behalf the action was brought is one of the most important factors to be considered in making a fee and expense award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (the "most critical factor is the degree of success obtained"). By all measures, the value of the benefit created for the

settlement class is substantial and fully supports the requested fee. Indeed, the Settlement Agreement provides a chance at survival and recovery for thousands of Medicaid enrollees.

Plaintiff brings this case because he, along with thousands of Medicaid-eligible individuals who are infected by the life-threatening, chronic Hepatitis C Virus, were being denied a cure the FDA has labeled a "breakthrough therapy." The disease is, in fact, the most deadly infectious disease in this country, killing more Americans than the next 60 infectious diseases combined. *See* Ashley Welch, *The Most Deadly Infectious Disease in America Today*, CBS News, May 4, 2016, at 1. Indeed, the treatment Defendant has agreed to provide to the class is the consensus medical standard of care in the United States because it is the only feasible cure for the disease. Because of Class Representative and Class Counsel's efforts, Defendant has agreed to replace the MDDHS Prior Authorization Criteria and to institute the Amended Prior Authorization Criteria to provide coverage for direct-acting antiviral treatment to all Eligible Michigan Medicaid beneficiaries diagnosed with chronic Hepatitis C. This result will provide this life-saving treatment to thousands of Michigan residents. Indeed, it is estimated that 160,000 Michigan residents have chronic hepatitis C, and that thousands of residents enrolled in Medicaid will benefit from this result. As such, it can hardly be disputed that Class

Representative and Class Counsel achieved success in negotiating this settlement.

3. The value of the services on an hourly basis supports the fee requested.

To date, Class Counsel has spent 896.3 hours prosecuting this litigation, and will spend further time from this point to conclusion. A summary of Billable Time and Rates is attached hereto as **Exhibit B**. The rates in the summary are the normal billable rates for each of Class Counsel's attorneys that have worked on this matter. The total amount of attorneys' fees based on this summary is $272,860.50, which does not include work performed by legal assistants and paralegals or other costs incurred during litigation. As such, the amount Class Counsel would normally charge for the work it performed is significantly more than $272,860.50. Even so, Class Counsel only requests the modest Fee Award of $199,000.00, which is inclusive of all costs and expenses incurred in the Action, as agreed upon in the Settlement Agreement. The Fee Award is substantially less than Class Counsel would normally receive for the legal services it provided.

Generally, when determining a reasonable amount for attorney fees, in the absence of a class fund, sixth circuit courts consider the lodestar figure. *Van Horn v. Nationwide Prop & Cas. Ins. Co*., 436 F. App'x 496, 498 (6th Cir. 2011). To determine the "Lodestar" figure, a court multiplies the number of hours

reasonably expended on the litigation by a reasonable hourly rate. *Bldg. Serv. Local 47 Cleaning Contractors Pension Plan v Grandview Raceway*, 46 F.3d 1392, 1401 (6th Cir. 1995) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). It is undisputed that the attorney rates listed in the attached summary are reasonable given Class Counsel's experience and skill in class action lawsuits. Using the rates provided in the summary, the lodestar multiplier for Fee Award would be less than 1.[1] This multiplier is even less than the typical range of multipliers commonly awarded by courts in the Sixth Circuit, and further demonstrates the reasonableness and fairness of Class Counsel's fee request – particularly in an area of law where plaintiffs are as likely to lose cases as win them, as noted herein. *See e.g. Barnes v. City of Cincinnati*, 401 F.3d 729

[1] The Lodestar standard is typically used in order to arrive at a reasonable rate and the calculation is as follows: (reasonable hours) x (reasonable professional rate) = Lodestar total. The Lodestar total is then divided by the total fee requested to determine the multiplier. The multiplier is normally used to account for inflation since the litigation began, poor or extraordinary results, or other factors that persuade a court to award a different fee amount than the value of hours x rate, where the multiplier would be 1. As the cases cited herein show, typical multipliers range from 1.75 – 5.0. We can use this rate to evaluate the reasonableness of Class Counsel's requested fee. Here, because there were several different attorneys with varying skill levels, Class Counsel used the actual rates and hours of each attorney, as provided in **Exhibit B**, to arrive at its calculation. (896.3 hours x various attorney billing rates listed in **Exhibit B** = **$272,860.50**). Then, to arrive at the multiplier, Class Counsel divided the amount it now requests in attorneys' fees by the actual total billed amount. ($199,000.00 requested fees / $272,860.50 total dollars billed = **0.7293**). Using the undisputed reasonable hours and rates listed in **Exhibit B**, the multiplier is **.07293** –far less than those approved in any of the above-mentioned cases.

(6th Cir. 2005) (upholding the use of multiplier of 1.75); *Rawlings*, 9 F.3d at 517 (applying a 2.0 multiplier given the modest results achieved); *In re Beverly Hills Fire Litig.*, 639 F. Supp. 915 (E.D. Ky. 1986) (the court applied a 5.0 multiplier); *In re Sulzer*, 268 F. Supp. 2d 907, 938 (2003) (court applied a multiplier of 2.4); *In re Revco Securities Litig*, 142 F.R.D. 659 (N.D. Ohio 1992) (court applied a 2.5 multiplier); *Manners v. Am. Gen. Life Ins. Co.*, Civil Action No. 3-98-0266, 1999 WL 33581944 (M.D. Tenn. Aug 10, 1999) (court approved a 3.8 multiplier).

Furthermore, in Class Counsel's experience, administering class settlements of this nature and size requires ongoing commitment, including, but not limited to, participating in the fairness hearing, distributing class notice, and overseeing the finalization of the claims process with the claims administrator. As such, Class Counsel's Fee Award is reasonable, modest, and should be granted pursuant to the Settlement Agreement.

4. The services were undertaken on a contingent fee basis.

When Class Counsel agreed to undertake this litigation, it did so on a contingent basis. Class Counsel advanced all costs and, as the fee agreements provide, had there been no recovery, Class Counsel would not have been paid a fee or reimbursement of their expenses. Class Counsel should be compensated for this risk. *Lonardo*, 706 F. Supp. 2d at 796 (fee award should account "for

the substantial risk an attorney takes when he or she devotes substantial time and energy to a class action despite the fact that it will be uncompensated if the case does not settle and is dismissed").

Class Counsel is comprised of attorneys with active and successful class action practices. The risks they undertook were real, and the resources that Class Counsel dedicated to this action meant that such resources were not available to other cases. Class Counsel's contingency risk, together with the excellent result that has been achieved on behalf of the class, supports the requested fees.

5. The fee requested provides adequate incentive to undertake this representation for the benefit of others.

"There is a public interest in ensuring that attorneys willing to represent clients in class action litigation are adequately paid so that they and others like them will continue to take on such cases." *Connectivity Sys. Inc. v. Nat'l City Bank*, No. 2:08-CV-1119, 2011 WL 292008, at *14 (S.D. Ohio Jan. 26, 2011); see also, *In re Cardizem CD Antitrust Litig*, 218 F.R.D. 508, 534 (E.D. Mich. 2003). Furthermore, Sixth Circuit courts have noted that "[a]ttorneys who take on class action matters serve a benefit to society and the judicial process by enabling claimants to pool their claims and resources to achieve a result they could not obtain alone." *In re Telectronics*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001)). As such, "[a]dequate compensation is necessary to encourage attorneys to assume the risk of litigation in the public interest." *Connectivity Sys*

Inc, 2011 WL 292008, at *12 (citations omitted). Because society often places a premium when excellent results are achieved on behalf of those who otherwise would go unrepresented, Class Counsel's requested fee is appropriate. "Society's stake in rewarding attorneys who can produce such benefits in complex litigation such as in the case at bar counsels in favor of a generous fee . . . ." *In re Cardizem CD Antitrust Litig*, 218 F.R.D. 508, 534 (E.D. Mich. 2003).

This case concerns Medicaid recipients alleging violations of three separate provisions of the Medical Assistance Program, Title XIX of the Social Security Act, 42 U.S.C. §1396. The purpose of the program is to provide funding for medical and health-related services for persons with limited income. Adequate compensation for attorneys who protect those rights by taking on such litigation furthers the remedial purpose of these statutes. Otherwise, highly-skilled counsel would shy away from risky and expensive litigation (like this case) and Medicaid recipients and those similarly situated would have difficulty obtaining qualified counsel to ensure they receive healthcare they are legally entitled to. There can be no doubt the Settlement Agreement provides an excellent result for the settlement class, and, therefore, public policy supports approving Class Counsel's request for fees.

6. The complexity of the litigation supports the requested fees.

Certifying any class to afford statewide relief is a significant undertaking in terms of sophistication and risk. While certification was ultimately granted in this action, significant time and resources were expended by Class Counsel before that point, and there was no guarantee that certification would be approved. Furthermore, many Sixth Circuit opinions noted that class action lawsuit are "inherently complex." *In re Prandin Direct Purchaser Antitrust Litig*, No. 2:10-CV-12141-AC-DAS, 2015 WL 1396473, at *2 (E.D. Mich. Jan 20, 2015); *New York State Teachers' Ret. Sys.*, 315 F.R.D. 226, 241 (E.D. Mich. 2016)*; In re Telectronics Pacing Sys, Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001). This class action litigation in particular presented numerous factual and legal complexities, including but not limited to medical facts about the disease itself and the implications for those individuals not receiving treatment, the Metavir Fibrosis scoring system, agency recommendations such as those provided by the Centers for Medicare and Medicaid Services, certification of the class, and three separate provisions of the Medical Assistance Program, Title XIX of the Social Security Act. Further complicating this litigation was the fact that the parties needed to negotiate a policy change to make the class whole. The parties also had to spend significant time and effort drafting a Settlement Agreement that is amendable to both parties and provides the class with a policy

that preserves their rights to this necessary treatment.

7. The level of professional skill and standing of counsel involved on both sides was substantial.

Finally, the collective experience, reputation, standing, and professional skill of counsel for both parties should not be understated. Collectively, Class Counsel, Dickinson Wright, PLLC, has negotiated and recovered millions dollars in class actions throughout the country. Furthermore, Class Counsel's veteran class action attorneys have successfully represented hundreds of classes, in state and federal courts across the United States, giving it the experience and expertise to develop the best possible approach for each case.[2] Class Counsel lawyers regularly publish in leading industry publications on pertinent topics. Class Counsel also participates in all of the major class action bar organizations, giving it insights into developing trends and approaches used by other law firms in the defense of class actions. The fact that an agreement on the payment of legal fees and expenses was reached with defense counsel following lengthy

[2] Class Counsel's lead Michigan attorney, Aaron V. Burrell, is qualified to handle this matter. Mr. Burrell has experience litigating class action lawsuits. In addition to holding several leadership roles in multiple bar associations in the area, Mr. Burrell has been named an "Up and Coming Lawyer" by *Michigan Lawyers Weekly* and a "Rising Star" by *Michigan Super Lawyers*. He has also been named a fellow of both the American Bar Foundation and the Oakland County Bar Foundation. Mr. Burrell is the author of the Commercial Torts chapter of Torts: *Michigan Law and Practice* (ICLE 2016), a contributor to *Employment Discrimination Law* (BNA, 2015), and a co-author of the *Michigan Class Action Compendium* (Defense Research Institute).

negotiations should also be given weight, as the Fee Award was negotiated at arm's length with sophisticated defense counsel, who were, and are, intimately familiar with the case, the risks, the amount and value of their time and Class Counsel's time, and the nature of the results obtained by the class. *See e.g.*, *In re First Capital Holdings Corp. Fin. Prods Sec. Litig*, 1992 WL 226321, at 4 (C.D. Cal. June 10, 1992*), appeal dismissed*, 33 F.3d 29 (9th Cir. 1994).

C. Class Representative should be compensated for the time and effort he expended for the benefit of the Class as a whole.

It is common for courts to grant service payments to representative plaintiffs who have been able to effect substantial relief for a class. *Thornton v. E. Tex. Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ("[T]here is something to be said for rewarding those [plaintiffs] who protest and help to bring rights to [others]"); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. at 535 (noting that service payments "are common in class actions"). Sixth Circuit courts have often found that where an incentive award is "fair, reasonable, and properly based on the benefits to the class members generated by the litigation," such an award does not give preferential treatment to Class Representatives and should be granted. *Gascho v. Glob Fitness Holdings, LLC*, No. 2:11-CV-436, 2014 WL 1350509, at *26–27 (S.D. Ohio Apr 4, 2014), *aff'd*, 822 F3d 269 (6th Cir. 2016).

As stated above, the class members are receiving a substantial benefit by receiving access to a life-saving treatment that may save them from succumbing

to a life-threatening disease. Class Representative has assisted Class Counsel with requests for information and reviewed and provided input regarding the settlement. Furthermore, Class Representative's initiative, time, and effort were essential to the prosecution of the case and resulted in a significant recovery for the class. Therefore, Class Counsel requests that the Court approve the Incentive Award of $5,000.00 to the Class Representative in light of his efforts expended to prosecute this litigation fort the benefit of the class and because such an award is eminently reasonable and well supported by applicable case law.

III. CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that this Court issue an order (1) awarding attorneys' fees to Class Counsel in the amount of $199,000.00 as agreed upon in the preliminarily approved Settlement Agreement, and (2) awarding Class Representative a $5,000.00 Incentive award for his time and effort in litigating this matter.

Respectfully submitted,

DICKINSON WRIGHT PLLC

By: /s/ ***Aaron V. Burrell***
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Dated: June 15, 2018

CERTIFICATE OF SERVICE

This is to confirm that a copy of the foregoing was electronically filed on **June 15, 2018**. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system, and the filing may be accessed through that system.

/s/ ***Aaron V. Burrell***
Aaron V. Burrell (P73708)

DETROIT 74785-1 1462788v4

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FOR THE EASTERN DISTRICT OF MICHIGAN
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No. 2:17-cv-11184-DPH-RSW

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MAG. R. STEVEN WHALEN

INDEX OF EXHIBITS

Exhibit	Description
A.	Class Action Settlement Agreement and Release
B.	Summary of Billable Time and Rates

Exhibit A

THE UNITED STATES DISTRICT COURT
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v.

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HON. DENISE PAGE HOOD
MAG. R. STEVEN WHALEN

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the "Agreement") is entered into by M.R.[1] individually, and on behalf of the Settlement Class ("Plaintiff" or "M.R.") and Nick Lyon, in his official capacity only as Executive Director of the Michigan Department of Health and Human Services ("Defendant") (collectively referred to as the "Parties"). The Parties intend to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

RECITALS

[1] The Parties stipulated and agreed to substitute original Plaintiff J.V. with Plaintiff M.R. This Settlement Agreement reflects that change and has substituted "M.R." for "J.V." except as to the caption and references thereto, which has not changed as of the date of revision of this Settlement Agreement. Due to Plaintiff's interest in protecting his privacy, the sensitive subject matter of this case, the Court's Stipulated Order Granting Plaintiff's Motion to Proceed Under a Pseudonym (Dkt. No. 11), and the Parties' St Plaintiff's full name has been omitted.

A. On April 14, 2017, Plaintiff filed a putative class action in the United States District Court for the Eastern District of Michigan, Southern Division captioned *J.V., on behalf of herself and all others similarly situated v. Nick Lyon, in his official capacity only as executive director of the Michigan Department of Health and Human Services*, Case No.: 2:17-cv-11184-DPH-RSW (the "Action"). The complaint alleged that Defendant's current prior-authorization criteria for Hepatitis C treatment (the "MDHHS Prior Authorization Criteria") violates three separate provisions of the Medical Assistance Program, Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq*. by: (1) excluding qualified Medicaid recipients from "medically necessary" treatment as required by 42 U.S.C. § 1396a(a)(10)(A); (2) discriminating among similarly situated Medicaid recipients in violation of 42 U.S.C. § 1396a(a)(10)(B); and (3) failing to provide medically necessary treatment with "reasonable promptness" as required by 42 U.S.C. § 1396a(a)(8).

B. In or around October 2017, the Parties began to discuss the possibility of settlement and agreed to resolve the matter through mediation.

C. On January 17, 2018, Plaintiff's counsel, Defendant's counsel, and Defendant's corporate representatives participated in a formal mediation session with Magistrate Judge R. Steven Whalen. After several rounds of negotiations, the Parties reached an agreement as to the principal terms of this Agreement.

D. Defendant has denied and continues to deny the claims alleged in the Action. Defendant maintains that it has strong, meritorious defenses to the claims alleged in the Action and was prepared to fully defend the Action. Nonetheless, taking into account the uncertainty and risks inherent in litigation, Defendant has concluded that it is desirable and beneficial to

Defendant that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement.

E. Plaintiff believes that the claims asserted in the Action against Defendant have merit, and that Plaintiff would have ultimately been successful in certifying the proposed class under Fed. R. Civ. P. 23 and in prevailing on the merits at summary judgment or trial. Nonetheless, Plaintiff and Class Counsel recognize the expense and delay associated with continued prosecution of the Action against Defendant. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved pursuant to the terms and conditions set forth in this Agreement.

F. The Parties agree that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Plaintiff, and that it is in the best interests of the Parties to settle the claims raised in the Action pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff and Defendant that in consideration of the terms, conditions, and promises set forth herein, the Action and the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

1. DEFINITIONS

As used in this Agreement, the following terms have the meanings specified below:

1.1. "Action" means the above captioned lawsuit, presently pending in the United Stated District Court for the Eastern District of Michigan, Southern Division, Case No. 2:17-cv-11184-DPH-RSW, captioned *J.V., on behalf of herself and all others similarly situated v. Nick*

Lyon, in his official capacity only as executive director of the Michigan Department of Health and Human Services.

1.2. **"Agreement"** means this Class Action Settlement and Release Agreement between Plaintiff and Defendant.

1.3. **"Amended Prior Authorization Criteria and Claim Form"** means the form attached hereto as Exhibit D, as approved by the Court. The Amended Prior Authorization Criteria, which outlines Defendant's clinical criteria and other coverage requirements for Eligible Michigan Medicaid Beneficiaries to receive direct-acting antiviral treatment is substantially in the form of pages 1 and 2 of Exhibit D attached hereto. The Claim Form, which must be completed and signed or verified electronically by a physician for Class Members who wish to have Defendant process his or her request for direct-acting antiviral treatment, is substantially in the form of pages 3 and 4 of Exhibit D attached hereto.

1.4. **"Class Counsel"** means Dickinson Wright PLLC.

1.5. **"Class Representative"** means M.R. as representative of the Settlement Class.

1.6. **"Court"** means the United States District Court for the Eastern District of Michigan, Southern Division, the Honorable Denise Page Hood presiding, or any judge who shall succeed her as the Judge in this Action.

1.7. **"Defendant"** means Nick Lyon, in his official capacity only as Executive Director of the Michigan Department of Health and Human Services.

1.8. **"Effective Date"** means the fifth business day after which all of the events and conditions specified in Paragraph 8.1 have been met and have occurred.

1.9. **"Eligible Michigan Medicaid Beneficiary"** means a person who is eligible for Michigan Medicaid at the time he or she seeks coverage of Direct Acting Antiviral medications,

and who meets the criteria listed on the Amended Prior Authorization Criteria and Claim Form, consistent with Section 3 of the Agreement.

1.10. "Fee Award" means the amount of attorneys' fees and reimbursement of costs awarded by the Court to Class Counsel.

1.11. "Final Approval Hearing" means the hearing before the Court where the Parties will request the Final Judgment be entered by the Court approving the Agreement, Incentive Award, and Fee Award as fair, reasonable, and adequate.

1.12. "Final Approval" or **"Final Judgment"** means the Final Judgment and order(s) of the Court approving the Agreement, Fee Award, and Incentive Award as fair, reasonable and adequate, after the Final Approval Hearing, and dismissing this case with prejudice.

1.13. "Illegal Drug" means a controlled substance obtained without a valid prescription.

1.14. "Incentive Award" means an amount awarded by the Court to M.R. for his time and effort bringing the Action and serving as Class Representative.

1.15. "MDHHS" means the Michigan Department of Health and Human Services.

1.16. "MDHHS Prior Authorization Criteria" means Defendant's current prior-authorization criteria for Hepatitis C treatment.

1.17. "Medicaid Act" means Medical Assistance Program, Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq*.

1.18. "Notice" means the notice of this proposed Agreement and Final Approval Hearing, which is to be sent to Class Members. Two notices will be sent by Defendant to Class Members. Each notice will be sent via first class Unites States mail to the Class Member's last known address in MDHHS' Bridges system. The First Notice will be sent after this Court enters

an order preliminarily approving the settlement and is substantially in the form of Exhibit A attached hereto. The Second Notice will be sent after this Court enters a final order approving the settlement and is substantially in the form of Exhibit B attached hereto.

1.19. "**Parties**" means collectively Plaintiff and Defendant, and each of them is a "**Party**."

1.20. "**Preliminary Approval**" means the Court's certification of the Class for settlement purposes, preliminary approval of this Agreement, and approval of the form of the Notice.

1.21. "**Preliminary Approval Order**" means the order(s) preliminarily approving this Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to be distributed to the Settlement Class, which will be agreed upon by the Parties.

1.22. "**Released Claims**" means any and all claims, causes of action, allegations, liabilities, demands, and obligations that were asserted or could have been asserted in the Action, or may arise from the operative facts in the Action, by Plaintiff or any Class Member, including unknown claims, demands, rights, liabilities, and causes of action under federal law or the law of any state, whether based on statutory law, administrative rule, regulation or policy, common law, or equity, whether class or individual in nature, known or unknown, concealed or hidden, regardless of forum, including administrative tribunal, state or federal court, against the Released Parties.

1.23. "**Released Parties**" means Defendant, its insurer, as well as any and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, agents, associates, affiliates, divisions, holding companies, employers, employees, consultants, independent contractors, insurers, directors,

managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, companies, firms, trusts, and corporations.

1.24. "Settlement Class," "Settlement Class Member," and **"Class Member"** means all individuals who:

a. are or will be enrolled in Michigan's Medicaid Program at the time this Agreement is preliminarily approved by the Court;

b. have been or will be diagnosed with a chronic infection of the Hepatitis C Virus;

c. are 18 years or age or older;

d. require, or in the future will require, treatment for Hepatitis C with direct-acting antiviral medication; and

e. do not meet the Michigan Department of Health and Human Services' current treatment criteria, which restricts direct-acting antiviral treatment to individuals with a minimum metavir fibrosis score criteria of F-2 or who meet other MDHHS clinical criteria.

2. REQUIREMENT OF COURT APPROVAL AND STIPULATIONS OF THE PARTIES

2.1. This Agreement is conditioned upon Preliminary Approval and Final Approval of the Court. The Parties agree that this Agreement shall be null and void in the event that Court approval is denied. If the Court fails to grant either Preliminary Approval or Final Approval, the Parties shall be restored to their respective positions prior to the time of the execution of this

Agreement. The Parties and their counsel, however, agree to work together, in good faith, to cure any minor or procedural issues that may have caused the Court to initially deny the settlement.

2.2. The Parties stipulate and agree that the Settlement Class and/or Settlement Class Members shall consist of individuals who:

a. are or will be enrolled in Michigan's Medicaid Program at the time this Agreement is preliminarily approved by the Court;

b. have been or will be diagnosed with a chronic infection of the Hepatitis C Virus;

c. are 18 years or age or older;

d. require, or in the future will require, treatment for Hepatitis C with direct-acting antiviral medication; and

e. do not meet the Michigan Department of Health and Human Services' current treatment criteria, which restricts direct-acting antiviral treatment to individuals with a minimum metavir fibrosis score criteria of F-2 or who meet other MDHHS clinical criteria.

2.3. For purposes of settling this Action only, the Parties conditionally stipulate that the prerequisites for establishing class certification have been met with respect to the Settlement Class. If the Court fails to grant either Preliminary Approval or Final Approval, the Parties shall be restored to their respective positions prior to the time of the execution of this Agreement, and there shall be no presumption against Defendant that any class should be certified in this Action, or that the prerequisites for certification have been satisfied, by virtue of Defendant having entered into this Agreement. The Parties stipulate and agree that:

a. The Settlement Class is ascertainable and sufficiently numerous as to make it impracticable to join all Class Members as named Plaintiffs.

b. There are common questions of law and fact including, but not limited to, whether the MDHHS Prior Authorization Criteria, which denies coverage of direct acting antiviral treatment based on metavir fibrosis score, violates the Medicaid Act.

c. Plaintiff's claims are typical of the claims of the Settlement Class Members.

d. Plaintiff will fairly and adequately protect the interests of the Settlement Class.

e. Dickinson Wright PLLC should be deemed and appointed as Class Counsel and will fairly and adequately protect the interests of the Settlement Class.

f. The prosecution of separate actions by individual members of the Settlement Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

g. The questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual member in such class, and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

2.4. For purposes of effectuating this Agreement, the Parties agree to the designation of the Dickinson Wright PLLC as Class Counsel for the Settlement Class.

2.5. For purposes of effectuating this Agreement only, the Parties agree to the appointment of M.R. as the class representative.

3. TERMS OF SETTLEMENT

3.1. Defendant agrees to replace the MDDHS Prior Authorization Criteria and institute the Amended Prior Authorization Criteria to provide coverage for direct-acting antiviral treatment to all Eligible Michigan Medicaid beneficiaries diagnosed with chronic Hepatitis C. The Amended Prior Authorization Criteria is attached hereto as pages 1 and 2 of Exhibit D.

3.2. Defendant agrees to expand direct-acting antiviral treatment coverage to all Eligible Michigan Medicaid beneficiaries diagnosed with chronic Hepatitis C based on the following schedule:

a. Defendant will provide coverage for all eligible beneficiaries with a metavir fibrosis score of F-1 and above on October 1, 2018 and

b. Defendant will provide coverage for all beneficiaries with a metavir fibrosis score of F-0 an above on October 1, 2019.

3.3. The Amended Prior Authorization Criteria will include, but is not limited to, the following provisions:

a. The direct-acting antiviral medication must be prescribed by a gastroenterologist, hepatologist, liver transplant or infectious disease physician. If the prescribing provider is not one of the identified specialists noted, the prescriber must submit documentation of consultation/collaboration of the specific case with one of the aforementioned specialists which reflects discussion of the history and agreement with the plan of care with the date noted in the progress note.

b. Documentation of the patient's use of Illegal Drugs or abuse of alcohol must be noted (i.e., current abuse of IV drugs or alcohol or abuse within the past 6 months). The Michigan Department of Health and Human Services will consider this information for the sole purpose of optimizing treatment.

c. Documentation of the patient's commitment to the planned course of treatment and monitoring (including SVR 12) as well as patient education addressing ways to reduce the risks for re-infection must be submitted.

3.4. Defendant reserves the right to revise the Amended Prior Authorization Criteria and Claim Form to incorporate updated clinical recommendations or other best practices, consistent with this Agreement.

3.5. Defendant agrees to provide coverage for direct-acting antiviral medications that (i) are approved by the U.S. Food and Drug Administration for the treatment of chronic Hepatitis C; (ii) have a federal Medicaid rebate; and (iii) are listed on Defendant's Preferred Drug List as preferred at the time the beneficiary is approved for treatment.

3.6. If a direct-acting antiviral medication is no longer approved by the U.S. Food and Drug Administration for the treatment of chronic Hepatitis C or no longer on Defendant's Preferred Drug List, it will no longer be covered.

4. RELEASE

4.1. The obligations incurred pursuant to this Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

4.2. Upon the Effective Date, Plaintiff, and the Settlement Class, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties.

5. NOTICE TO THE SETTLEMENT CLASS

5.1. Within thirty (30) days of entry of the Preliminary Approval Order, Defendant shall provide, at its own expense, a First Notice describing the Final Approval Hearing, the basic

terms of the compromise embodied in this Agreement to potential Class Members. The First Notice is attached hereto as Exhibit A.

5.2. Defendant will provide Notice via: (1) U.S. Mail to all denied beneficiaries at their last known address, (2) Defendant's website at http://www.michigan.gov/mdhhs/, and (3) posters located in all of Defendant's county offices. The posters will be in substantially the form of Exhibit C, attached hereto.

5.3. The Claim Form must include the required supporting documentation, including approved specialist documentation, in order to ensure the most clinically appropriate and cost-effective treatment.

5.4. Claim Forms submitted to Defendant that do not include approved specialist documentation will be denied and a denial notice will be sent to the beneficiary.

5.5. Defendant will provide claimants with information regarding administrative hearing procedures to adjudicate individual claims that are denied. This information shall include, but is not limited to, the following:

a. Denied claimants have the right to an administrative hearing to contest the Michigan Department of Health and Human Services' denial.

b. Contact information for local legal aid organizations.

5.6. All denial notices will include information regarding the claimant's right to an administrative hearing to contest the denial.

5.7. Defendant will have ninety (90) days to process the Claim Forms. If Defendant does not process the Claim Form within ninety (90) days, Class Counsel must notify Defendant and allow Defendant a reasonable time to investigate, and take corrective action before filing a

motion for show cause with the Court. Defendant will process all Claim Forms consistent with the Amended Prior Authorization Criteria and the terms of this Agreement.

6. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

6.1. Within fourteen (14) days after the execution of this Agreement, Class Counsel shall submit this Agreement together with its exhibits to the Court and shall move the Court for entry of Preliminary Approval of the settlement set forth in this Agreement, which shall include, among other provisions, a request that the Court:

a. appoint Class Counsel and Class Representative;

b. certify the Settlement Class under Fed. R. Civ. P. 23 for settlement purposes only and without prejudice to Defendant's right to contest class certification if this Agreement is not approved;

c. preliminarily approve this Agreement for purposes of disseminating Notice to Class Members;

d. approve the form and contents of the Notice, the Claim Form, as well as the method of dissemination;

e. schedule a Final Approval Hearing to review any comments and/or objections regarding this Agreement, to consider its fairness, reasonableness and adequacy; to consider the application for a Fee Award, Incentive Award to the Class Representative; to consider whether the Court shall issue a Final Judgment approving this Agreement; and to consider dismissing the Action with prejudice.

6.2. After the First Notice is given, Class Counsel shall move the Court for entry of a Final Judgment, which shall include, among other provisions, a request that the Court:

a. approve the Agreement and the proposed settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and conditions; and declare the Agreement to be binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff;

b. find that the Notice implemented pursuant to the Agreement: (i) constitutes the best practicable notice under the circumstances, (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and their right to appear at the Final Approval Hearing, (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and (iv) meets all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

c. find that the Class Representative and Class Counsel adequately represented the Class Members for purposes of entering into and implementing the Agreement.

d. dismiss the Action with prejudice, without fees or costs to any Party except as provided in this Agreement;

e. incorporate the Release set forth above, make the Release effective as of the date of the Final Judgment, and forever discharge the Released Parties as set forth herein;

f. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of the Agreement and its

implementing documents (including all exhibits to this Agreement) that (i) shall be consistent in all material respects with the Final Judgment, and (ii) do not limit the rights of Class Members; and

g. incorporate any other provisions, consistent with the material terms of this Agreement, as the Court deems necessary and just.

6.3. Within 21 days of the Final Approval Order. Defendant shall send to class members:

a. The Second Notice, attached hereto as Exhibit B;

b. The Amended Prior Authorization Criteria and Claim Form, attached hereto as Exhibit D.

7. FEE AWARD AND INCENTIVE AWARD

7.1. Class Counsel will apply to the Court for a Fee Award of one hundred ninety-nine thousand dollars ($199,000.00), which is inclusive of all costs and expenses incurred in the Action. Defendant will not oppose this request for a Fee Award that is in compliance with this paragraph 7.1.

7.2. Defendant shall pay to Class Counsel, within thirty (30) days measured from the Effective Date or an Order from the Court approving the Fee Award, whichever is later, the Fee Award approved by the Court. Any Fee Award payment shall be made via check made payable and mailed to Class Counsel.

7.3. Class Counsel will request that the Court award Class Representative an Incentive Award of five thousand dollars ($5,000.00). Defendant will not oppose an Incentive Award that is in compliance with this paragraph 7.3 and agrees to pay the Incentive Award granted by the Court, without reducing any of the other commitments set forth herein.

7.4. Defendant shall pay to M.R. the Incentive Award, as approved by the Court, within thirty (30) days measured from the Effective Date or an order dismissing the case with prejudice, from the Court approving the Fee Award, whichever is later. Payment of this Incentive Award shall be made via check, such check to be sent care of Class Counsel.

8. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

8.1. The Effective Date of this Agreement shall not occur unless and until each of the following events occurs.

a. This Agreement has been signed by the Parties, Class Counsel and Defendant's Counsel;

b. The Court has entered an order granting Preliminary Approval of the Agreement;

c. The Court has entered an order finally approving the Agreement, following notice to Class Members, and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Judgment, or a judgment substantially consistent with this Agreement; and

d. The Final Judgment has become final, or, in the event that the Court enters an order and final judgment in a form other than that provided above ("Alternative Judgment") to which the Parties have consented, that Alternative Judgment has become final.

e. *Disputes Concerning the Effective Date of Settlement.* If Parties disagree as to whether each and every condition set forth in paragraph 8.1 has been satisfied or waived, they shall promptly confer in good faith and, if unable to resolve their differences within ten (10) business days thereafter, shall present their dispute to the Court for resolution.

8.2. If some or all of the conditions specified in paragraph 8.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be canceled and terminated subject to paragraph 8.3, unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all other Parties. Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award to Class Counsel set forth above or the Incentive Award to the Class Representative, regardless of the amounts awarded, shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

8.3. Effect of reversal on appeal:

a. Court of Appeals Reversal. If the Sixth Circuit Court of Appeals reverses the Court's order approving the Settlement, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this section.

b. Supreme Court Reversal. If the Supreme Court reverses the Court's order approving the Settlement, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the order referenced in this section.

c. Pending Appeal. If an appeal is pending of an order declining to approve the Settlement, this Agreement shall not be terminated until final resolution of dismissal of any such appeal, except by written agreement of the Parties.

8.4. If this Agreement is terminated or fails to become effective for the reasons set forth in paragraphs 8.1, 8.2 or 8.3 above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, and the Parties shall be returned to the status quo with respect to the Action as if this Agreement had never been entered into and, pursuant to paragraph 9.4 below, this Agreement shall not be used for any purpose whatsoever against the Parties.

9. MISCELLANEOUS PROVISIONS

9.1. The Parties: (i) acknowledge that it is their intent to consummate this Agreement; and (ii) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendant's Counsel agree to seek entry of the Preliminary Approval Order and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

9.2. The Parties intend this Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class against the Released Parties. Accordingly, the Parties agree not to assert in any forum that the

Action was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

9.3. The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and understand fully this Agreement and have been fully advised as to the legal effect hereof by counsel of their own election and intend to be legally bound by the same.

9.4. Whether the Effective Date occurs or this Agreement is terminated, neither this Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement, the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties;

b. is, may be deemed, or shall be used, offered or received against Defendant as, an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties;

c. is, may be deemed, or shall be used, offered or received against Plaintiff or the Settlement Class as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Action, the truth or falsity of any fact

alleged by Defendant, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

9.5. The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

9.6. Definitions apply to the singular and plural forms of each term defined.

9.7. References to a person include references to an entity, and include successors and assigns.

9.8. All of the exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by reference.

9.9. Should any provision in this Agreement be declared or determined to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected, and all remaining provisions shall remain valid and enforceable.

9.10. This Agreement and its exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersedes all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any party concerning this Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

9.11. This Agreement may not be changed, altered, modified or amended except in writing and signed by the Parties hereto and their respective counsel and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

9.12. Each counsel or other Person executing this Agreement, any of its exhibits, or any related settlement documents on behalf of any party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

9.13. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

9.14. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Michigan without reference to the conflicts of law provisions thereof.

9.15. Defendant waives any and all claims for fees, costs, indemnity, or contribution against the Class Representative, Settlement Class Members, or Class Counsel arising out of the Released Claims.

9.16. This Agreement does not supersede any legislative changes to the Medicaid program or changes to federal regulations, policies, guidelines or informal guidance. Nor does it prevent Defendant from seeking, negotiating, or obtaining, through waivers or other means, more competitive prices on direct-acting antiviral medications.

9.17. This Agreement is deemed to have been prepared by counsel for all Parties, as a result of negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one party than another.

9.18. Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel:

If to Plaintiff's Counsel
Dickinson Wright PLLC
Attn: Aaron V. Burrell
500 Woodward Avenue, Suite 4000
Detroit, MI 48226
(313) 223-3500
aburrell@dickinsonwright.com

If to Defendant's Counsel
Department of Attorney General
Health, Education, and Family Svc. Div.
Attn: Joshua S. Smith
PO Box 30758
Lansing, MI 48909
(517) 373-7700
smithj46@michigan.gov

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Class Action Settlement and Release Agreement to be executed, by their duly authorized attorneys.

Dated: 5-11-18

M.R., individually and on behalf of the Settlement Class Members,

By [redacted]

Dated: 5/23/18

Kathleen Stiffler, Deputy Director, Medical Services Administration, for NICK LYON, in his official capacity only as Executive Director of the MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

By: [redacted]

DETROIT 74785-1 1448515v2

Exhibit B

Billed and Unbilled Time & Fee Summary - [074785-00001]

Initials	Timekeeper	Rate per hour	Hours	Percent	Fee	Percent
1389	M. Reid Estes jr.	$ 524.49	21.40	2.39	$ 11,224.00	4.11
1395	Martin D. Holmes	$ 473.17	27.00	3.01	$ 12,775.50	4.68
1903	Aaron V. Burrell	$ 317.86	469.80	52.42	$ 149,332.00	54.73
2307	Randall L. Tatem	$ 260.74	338.60	37.78	$ 88,288.00	32.36
2941	John M. Traylor	$ 250.00	29.80	3.32	$ 7,450.00	2.73
3165	Robert P. Young	$ 625.00	3.80	0.42	$ 2,375.00	0.87
2983	Sharae' L. Smiley	$ 240.00	5.90	0.66	$ 1,416.00	0.52
	Grand Total Work:		896.30		$ 272,860.50	
	Grand Total Bill:	$ 2,691.26	896.30	100.00	$ 272,860.50	100.00

	From	To
Worked Date:	1/1/2015	6/6/2018