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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FOLWEILER CHIROPRACTIC, PS, a)
Washington professional services corporation,)

Plaintiff,)

v.)

AMERICAN FAMILY INSURANCE,)
COMPANY and AMERICAN FAMILY)
MUTUAL INSURANCE COMPANY,)

Defendant.)

Case No. 16-2-16112-0 SEA

**STIPULATION TO AMEND PROPOSED
FINAL ORDER APPROVING
SETTLEMENT AND JUDGMENT OF
DISMISSAL WITH PREJUDICE**

Defendant American Family Insurance Company and American Family Mutual Insurance Company (collectively “American Family”) and plaintiff Folweiler Chiropractic, PS (“Plaintiff”), through their respective attorneys of record, hereby submit an amended Final Order Approving Settlement and Judgment of Dismissal With Prejudice [Proposed] attached hereto as Exhibit A.

RECITALS

WHEREAS, the Court granted Plaintiffs Unopposed Motion to Amend Complaint, Certify a Settlement Class, Appoint Class Representative and Class Counsel, and Grant Preliminary Approval of Class Settlement on December 30, 2019;

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*Attorney for American Family Insurance Company and
American Family Mutual Insurance Company*

DATED: February 13, 2020

BRESKIN JOHNSON & TOWNSEND, PLLC

/s/ David E. Breskin
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Seattle, Washington 98104
(206) 652-8660
dbreskin@bjtlegal.com

Attorney for Folweiler Chiropractic, PS

1 **CERTIFICATION**

2 I hereby certify that on February 13, 2020 I provided a copy of the document to which this
3 certification is attached for delivery to all counsel of record as follows:

4 David E. Breskin 5 Brendan W. Donckers 6 Sara Hill 7 Breskin Johnson & Townsend, PLLC 8 1000 Second Avenue, Suite 3670 9 Seattle, WA 98104 10 dbreskin@bjtlegal.com 11 bdonckers@bjtlegal.com	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> FedEx <input type="checkbox"/> Legal messenger <input checked="" type="checkbox"/> Electronic Delivery
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EXHIBIT A

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

FOLWEILER CHIROPRACTIC, PS, a
Washington professional services corporation,

Plaintiff,

v.

AMERICAN FAMILY INSURANCE
COMPANY and AMERICAN FAMILY
MUTUAL INSURANCE COMPANY,

Defendants.

No.: 16-2-16112-0 SEA

**FINAL ORDER APPROVING
SETTLEMENT AND JUDGMENT OF
DISMISSAL WITH PREJUDICE
[PROPOSED]**

THIS MATTER comes before the Court on Plaintiff's Unopposed Motion for Entry of a Final Order and Judgment Approving the Class Action Settlement ("Final Approval Motion"). Based on the pleadings of record and the Court being fully advised of the matter enters the following findings, conclusions, order and judgment:

A. FINDINGS

1. The parties entered into a class-wide settlement as a result of good-faith, non-collusive, "arms-length" negotiations and a two-day mediation with mediator Stew Cogan.

2. On December 12, 2019, Plaintiff Folweiler filed an unopposed Motion to Amend the Complaint, to Certify a Settlement Class, Appoint Class Representatives, for Preliminary

Approval of Class-Wide Settlement and for approval of the notice to be sent to putative Class

1 members. (“Preliminary Approval Motion”). The motion provided facts and legal analysis of the
2 factors set out in *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 188-189 (2001) that
3 supported the conclusion that the settlement was “fair, reasonable and adequate” and should be
4 granted approval.

5 3. On December 30, 2019, the Court entered an Order Granting Plaintiff’s Preliminary
6 Approval Motion. Consistent with the parties’ settlement agreement and Plaintiff’s motion, the
7 order granted amendment of the Complaint to add American Family Mutual Insurance Company
8 as a defendant, certified a settlement class for settlement purposes only and appointed Folweiler
9 as the class representative and Folweiler’s counsel as class counsel. The order also preliminarily
10 approved the Proposed Settlement and the proposed distribution of the settlement amount and
11 proposed class representative and attorney fee awards (“Preliminary Approval Order”).

13 4. The final approval of the settlement was subject to notice being sent to the
14 settlement class pursuant to the Court-approved notice plan, and for objections and requests for
15 exclusion by putative class members to be made by February 10, if any.

17 5. Through the retention of a class settlement administrator, JND Legal
18 Administration (JND), the parties have now complied with the notice plan set out in the Court’s
19 Order granting preliminary approval. *See*, Declaration of Jenifer M. Keough submitted in support
20 of motion for final approval.

21 6. JND reports that there have been no requests for exclusion or objections filed
22 pursuant to the notice and notice plan. Keough Decl. at ¶’s 14 and 16.

24 7. The Parties have demonstrated full compliance with the Preliminary Approval
25 Order, and that there are substantial and sufficient grounds for entering this Final Order and
26 Judgment Approving Class Action Settlement (“Final Order and Judgment”).

1 8. Based on the facts and legal arguments discussed in the motion for preliminary
2 approval, the absence of requests for exclusion and objections, and the facts and analysis provided
3 in the motion for final approval, the Court again finds that the Settlement is fair, reasonable, and
4 adequate as to each of the Parties and the Settlement Class Members, and is consistent and in
5 compliance with all requirements of due process, Washington law, CR 23, and any other applicable
6 law. The settlement is in the best interests of, each of the Parties and the Settlement Class Members.
7

8 **B. CONCLUSIONS**

9 1. Final approval of the Settlement and certification of the following settlement Class
10 for settlement purposes only should be granted:

11 All Washington health care providers who from July 8, 2012 to December 30, 2019
12 (the “Class period”) had their PIP or Med Pay claims for reimbursement of medical
13 expenses reduced by Defendant American Family Insurance Company or American
14 Family Mutual Insurance Company (collectively “American Family”) based on an
explanation code P0041 as set out in the Explanation of Remittance form sent to
the provider.

15 2. The Court finds that any difference between the above certified class and the
16 purported putative class identified in the Amended Complaint is proper and justified in light of the
17 fact that the above certified class is identical to the class that the Court certified in its Preliminary
18 Approval Order, is identical to the class definition in the Settlement Agreement, is identical to the
19 class definition provided in the Postcard Notice and Long Form Notice that has already been sent
20 to potential members of the putative class, and broadens the scope of the class members who are
21 entitled to monetary relief under the terms of the Settlement Agreement.
22

23 3. The Court confirms its previous findings in the Preliminary Approval Order that,
24 for settlement purposes only, the Action meets all requirements of CR 23.
25
26

1 4. Class Counsel have adequately represented the Settlement Class for purposes of
2 entering into and implementing the Settlement Agreement, and the Court confirms their previous
3 appointment as Class Counsel.

4 5. Plaintiff, Folweiler Chiropractic, P.S., has adequately represented the Settlement
5 Class for purposes of entering into and implementing the Settlement Agreement, and the Court
6 confirms its previous appointment as class representative. The Court finds that Folweiler
7 Chiropractic, P.S., has adequately represented the Settlement Class and that its interests are aligned
8 with and not in conflict with those of the Settlement Class.
9

10 6. The Court re-confirms the appointment of JND Legal Administration as Settlement
11 Administrator and finds that JND has complied with its duties under the Preliminary Approval
12 Order and the Settlement Agreement.

13 7. The Parties have implemented and complied with the notice plan as provided in the
14 Preliminary Approval Order, including the form, content, and dissemination of the Class Notice.
15 The forms of Class Notice clearly conveyed, in plain, easily understood language, all relevant
16 information to potential Settlement Class Members. Moreover, as set forth information provided
17 by JND, the individual mailed Class Notice reached approximately 88.5% of the Settlement Class.
18 The Class Notice, the website notice, the procedures for locating current addresses for potential
19 Settlement Class Members, and the notice methodology implemented pursuant to the Settlement
20 Agreement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably
21 calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the
22 Action, and their right to exclude themselves from or object to the proposed Settlement and to
23 appear at the Final Approval Hearing; (iii) were reasonable and constituted due, adequate, and
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1 sufficient notice to all Persons entitled to receive notice; and (iv) met all applicable requirements
2 of CR 23, due process, Washington law, and any other applicable rules or law.

3
4 **C. ORDER AND JUDGMENT**

5 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

6 1. Plaintiff's motion for final approval of the Class Settlement is GRANTED.

7
8 2. The parties shall comply with the terms and conditions of the Class Settlement
9 Agreement, which terms and conditions are incorporated into this Final Order and Judgment.

10 3. Consistent with the Settlement, this action is DISMISSED (including all individual
11 and class claims presented thereby) with PREJUDICE as to Defendants and without fees or costs
12 except as provided in this Final Order and Judgment.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

14 4. All members of the Settlement Class are who did not request exclusion by the date
15 set in the Order Granting Preliminary Approval of the Settlement are bound by this Final Order
16 and by the Stipulation and the Settlement embodied therein, including the Releases provided for
17 in the Stipulation and this Final Order.

18
19 5. Plaintiff and all members of the Settlement Class who did not request exclusion by
20 the date set in the Order Granting Preliminary Approval of the Settlement shall be forever barred
21 and permanently enjoined from starting, continuing, or participating in, litigating or receiving any
22 benefits or other relief from any other lawsuit, arbitration, or administrative or regulatory
23 proceeding or order based on or relating to the claims, facts or circumstances in this Action and/or
24 the Released Claims. As of the Effective Date, Plaintiff and each Settlement Class Member, on
25 behalf of themselves, their present and former spouse(s), as well as present former and future
26

1 respective administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-
2 interest, and beneficiaries, shall be deemed to have, and by operation of this Final Approval Order,
3 shall have, fully, finally, and forever released, waived, relinquished and discharged, and shall be
4 forever enjoined from prosecution of, the Released Claims, against the Defendant Released
5 Parties.

6 6. “Released Claims” shall mean a general release through the date that the Court
7 enters the Preliminary Approval Order of any claims, rights, demands, actions, causes of action,
8 suits, Unknown Claims, debts, liens, contracts, liabilities, agreements, interest, costs, expenses,
9 losses, or damages (whether actual, consequential, treble, statutory and/or punitive or exemplary
10 or other), whether arising in law or equity, for or arising out of or related to (i) the allegations that
11 were or could have been asserted by Plaintiff or the Settlement Class in this Lawsuit which related
12 in any way to the subject matter of the Lawsuit, which was Defendants’ use of and the validity,
13 reliability, and lawfulness of the FAIR Health medical charge database to assess whether a
14 provider’s bill exceeded the 80th and/or 85th percentile; or (ii) Defendants’ review, handling,
15 payment, adjustment or denial, in whole or in part, of claims for PIP or MedPay benefits through
16 Defendants’ use of the 80th or 85th percentile of the FAIR Health database.

17 7. “Unknown Claims” are any claims arising out of new facts or facts found hereafter
18 to be other than or different from the facts now believed to be true, relating to any matter that was
19 or could have been brought in the Lawsuit.

20 8. Neither the Settlement Agreement nor any of its provisions, nor any of the
21 documents (including but not limited to drafts of the Settlement Agreement, the Preliminary
22 Approval Order, or the Final Approval Order), negotiations, or proceedings relating in any way to
23 the Settlement, are not and shall not be construed as, offered in evidence as, received in evidence
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1 as, and/or deemed to be evidence or a presumption, concession, or admission of any kind by any
2 of the Parties of (i) the truth of any fact alleged or the validity of any claim or defense that has
3 been, could have been, or in the future might be asserted in the Lawsuit, or any other litigation,
4 court of law or equity, proceeding, arbitration, tribunal, investigation, government action,
5 administrative proceeding, or other forum, or (ii) any liability, responsibility, fault, wrongdoing,
6 or otherwise. However, nothing contained herein shall prevent the Settlement Agreement (or any
7 of the documents relating in any way to the Settlement) from being used, offered, or received in
8 evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement or the Final
9 Approval Order.
10

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

12 9. The Court has considered the proposed distribution of the settlement amount and
13 claims made process set forth in the Settlement Agreement. The Court has granted final approval
14 of that process. AF shall make payments consistent with the claims made process set forth in the
15 Settlement Agreement to Settlement Class members who submit valid settlement claims pursuant
16 to the claims made process.
17

18 10. The Court has considered the request for a Case Contribution Fee, and hereby
19 approves and awards Folweiler Chiropractic, P.S., the amount of \$10,000. This fee is in addition
20 to, and not in lieu of, any payments due this Named Plaintiff for its individual claims, if any, made
21 under the Agreement. The Case Contribution Fee shall be paid by AF in accordance with the terms
22 of the Agreement.
23

24 11. The Court has considered Class Counsel's request for attorneys' fees and cost
25 award for the prosecution of this Action, and hereby makes an attorneys' fees and cost award in
26 the amount of \$2 million, which is 30.5 percent of the total monetary benefit to the Class obtained

1 in the Action. These fees and costs shall be paid by AF in accordance with the terms of the
2 Agreement.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

4 12. The Court possesses personal jurisdiction over all Settlement Class Members and
5 subject matter jurisdiction to approve the Settlement Agreement.

6 13. This Order is a final judgment in the Action within the meaning of and for the
7 purposes of CR 23(e), 41, and 54 and Washington Rules of Appellate Procedure 2.2 and 5.2 as to
8 all claims among Defendants on the one hand, and the Named Plaintiff and all Class Members on
9 the other. Without in any way affecting the finality of this Final Judgment, this Court shall retain
10 continuing jurisdiction over this Action for purposes of:
11

- 12 A. Enforcing this Final Order and the Agreement;
13 B. Hearing and determining any application by any Party to the Agreement for a
14 settlement bar order; and
15 C. Any other matters related or ancillary to any of the foregoing.
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17 Dated this ____ day of February, 2020.
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19 _____
20 HONORABLE JOHN RUHL
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Presented by:
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