

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES

If you are a subscriber of Kaiser Foundation Health Plan, Inc. and you, or your dependent, have been diagnosed with an autism spectrum disorder, you could receive benefits from a class action settlement.

A court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

- This settlement resolves a class action lawsuit brought by Plaintiffs on behalf of a class of Kaiser members over whether Kaiser improperly denied coverage for applied behavioral analysis (ABA) and speech therapy (ST) for those with an autism spectrum disorder (ASD). The settlement avoids costs and risks from continuing the lawsuit; it reimburses monies paid or owed for ABA and ST by you; and it releases Kaiser from liability.
- The settlement will provide up to \$9,290,000 to reimburse Kaiser members who spent or owe money for ABA and ST to treat ASD. To qualify, you must submit the attached claim form and supporting documentation. The settlement also requires Kaiser to follow certain practices in providing ABA and ST to those with an ASD in the future.
- Court-appointed lawyers for the class of Kaiser members will ask the Court for up to \$2,890,000 to be paid separately by Kaiser, as fees and expenses for investigating the facts, litigating the case, and negotiating the settlement.
- The two sides disagree on how much money, if any, could have been awarded if Plaintiffs, on behalf of the class, were to prevail at trial.
- Your legal rights are affected whether you act or don't act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to get a payment.
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Kaiser about the legal claims in this case.
OBJECT	Write to the Court about why you don't like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no payment. Give up rights.

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- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement, any appeals relating to the settlement are resolved, and after claim forms and supporting documentation are provided. Please be patient.

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BASIC INFORMATION

1. Why did I get this Notice package?

You or someone in your family are (or were) covered under a Kaiser health plan and have been diagnosed with an ASD from April 8, 2004 through June 30, 2012.

The Court sent you this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all your options, before the Court decides whether to approve the settlement. If the Court approves it and after any and all objections and appeals are resolved, an administrator appointed by the Court (the Settlement Administrator) will process the claims for reimbursement that are allowed by the settlement. You will be informed of the progress of the settlement.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available to you, who is eligible for them, and how to get them.

The Court in charge of this case is the Superior Court of California, County of Los Angeles, and the case is known as *Arce v. Kaiser Foundation Health Plan, Inc.*, Case No. BC 388689. It is part of a coordinated proceeding known as the *Kaiser ASD Cases*, Judicial Council Coordination Proceeding No. 4585.

2. What is this lawsuit about?

This lawsuit concerns whether Kaiser improperly denied coverage for ABA and ST for those with an ASD under the terms of its contracts and the California Mental Health Parity Act.

3. Why is this a class action?

In a class action lawsuit, one or more people, called the “Class Representative” (in this case, Guillermo Arce), sue on behalf of other people who allegedly have a similar claim. The people

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together are a “Class” or “Class Members.” Mr. Arce—and all the Class Members like him—are called the Plaintiffs. The company they sued (in this case, Kaiser) is called the Defendant. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Honorable Elihu M. Berle is the judge in charge of this class action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial and the people affected will get relief, including potential monetary compensation. The Class Representative and the attorneys think the settlement is best for everyone who has needed or requested ABA and ST.

WHO IS IN THE SETTLEMENT?

To see if you will get relief from the settlement, including a potential monetary payment, you first have to decide if you are a Class Member.

5. How do I know if I am part of the settlement?

The court decided that everyone who fits this description is a Class Member for purposes of seeking reimbursement under this settlement: All California residents covered as subscribers under Kaiser Foundation Health Plan Inc.’s health care plans who have been diagnosed, or whose dependents have been diagnosed, with an ASD at any time from April 8, 2004 through June 30, 2012. The class includes all such persons regardless of whether they were covered under or through an employer group governed under the Employee Retirement Income Security Act of 1974, the Federal Employees Health Benefits Program, the Medi-Cal program, Medicare, the Healthy Families program or CalPERS.

Kaiser will not disclose your name or other identifying information to the named Plaintiffs, their counsel, or any other persons, except that pursuant to court order Kaiser has disclosed your name to the court-appointed Settlement Administrator, Gilardi & Co., LLC, for the purpose of mailing an initial class notice and this Notice of the class action settlement to class members. Your name, identifying information, or medical information will not be disclosed without your prior written authorization. The Court will take steps to ensure that your name, identifying information, and medical information will not be subject to disclosure under any circumstances in any public proceeding or public filing without such authorization. Please note that if you decide to submit a claim for reimbursement pursuant to this settlement, you may be required to submit claims information and/or medical information to the claims administrator.

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6. Are there exceptions to being included?

Current law provides different requirements for different types of health plans, such as Medicare, Medi-Cal, Healthy Families Program, CalPERS and Federal Employees Health Benefits Program. While this settlement allows all Class Members to seek reimbursement for ABA or ST received prior to July 1, 2012 and resolves disputes arising from Kaiser's obligations prior to July 1, 2012 under all types of plans, the settlement only obligates Kaiser to cover ABA or ST in the future as required by law or regulation and the member's particular health plan.

7. I'm still not sure if I'm included

If you are still not sure whether you are included, you can ask for free help. You can call (877) 264-8384 and ask the Settlement Administrator for further information to help you determine whether you are a Class Member. You can also visit the website, www.gilardi.com/KaiserASDLitigation.

THE SETTLEMENT BENEFITS—WHAT YOU GET

8. What does the settlement provide?

Kaiser has agreed to pay up to \$9,290,000 to reimburse those Class Members who have paid or owe money for ABA or ST services provided during the period April 8, 2004 through June 30, 2012, who were Kaiser members at the time of the service, and who submit a valid claim form. If the total claims exceed this amount, they will be paid on a pro rata basis. If the total claims are below \$6,400,000, Kaiser will pay the difference for the purpose of research related to the causes of and treatment for ASD to the following nonprofit recipients:

- 50 % to Center for Autism Research and Treatment at U.C.L.A.
- 50 % to Autism and Neurodevelopment Program at U.C.S.F.

Kaiser has also agreed to operational provisions regarding the manner in which it reviews requests for ABA and ST for the treatment of ASD. Kaiser will not categorically deny these services when used to treat ASD and will review such requests under a "medical necessity" standard, in accordance with Health & Safety Code Sections 1374.72 and 1374.73 and the evidences of coverage (as interpreted in a manner consistent with Sections 1374.72 and 1374.73). For ST requests, Kaiser will not deny a request for treatment of the member's ASD on the ground that the member's speech or communication deficit does not result from an anatomical or physical impairment, but only if the ST is deemed medically necessary. Kaiser will also create materials for its providers and Member Services Department so that they can communicate to members the availability of ABA and ST for the treatment of an ASD.

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The settlement also provides for a release of claims of the Class members summarized as follows: Effective upon final judgment, the Class Representative and the Class, including members of the Class who are minors, acting by and through their parents or guardians (other than those who timely and validly opt out of the Class), on behalf of themselves, and their past, present and future agents, insurers, attorneys, trusts, beneficiaries, heirs, devisees, legatees, spouses, children, parents and other family members, co-insureds, additional plan members, predecessors- and successors-in-interest and assigns (all collectively known as “Releasers”), hereby release, discharge, and dismiss with prejudice Kaiser, including each of its predecessor and successor firms, affiliated companies, current and former parents and subsidiaries (and their parents and subsidiaries), and all of its respective partners, shareholders, directors, officers, employees, agents, attorneys, insurers, mutual assurance entities, and assigns (all collectively referred to as “Released Parties”) of and from any and all Released Claims.

The term “Released Claims” shall mean any and all known and unknown claims for relief, causes of action, suits, rights of action, or demands, at law or in equity, whether sounding in contract, tort, equity, restitution, or any violation of law or regulation, including, without limitation, claims for injunctive or other equitable relief, damages, debts, indemnity, contribution, or for costs, expenses and attorneys’ fees, or other claims that were or could have been asserted in the Action, which Releasers now or at any past time have, own or hold, based upon, arising from, in consequence of, or relating to in any way Kaiser’s actual or alleged denial of coverage for ABA or ST services received, or any action or alleged refusal to provide, pay, or reimburse payment for ABA or ST services incurred from April 8, 2004 through June 30, 2012. Released Claims include, by way of example but not limitation, any claims by a Settlement Class member for reimbursement, compensatory damages, emotional distress damages and punitive damages arising from alleged breach of contract, bad faith, breach of duty or statutory violation. Released Claims do not include claims by a Settlement Class member who is a minor for alleged personal injuries caused by denial or delay of ABA or ST services.

HOW YOU GET A PAYMENT—SUBMITTING A CLAIM FORM

9. How can I get a payment?

To qualify for payment, you must send in a claim form and supporting documentation. A claim form is provided with this Notice. You may also get a claim form on the internet at www.gilardi.com/KaiserASDLitigation. The form describes the types of supporting documentation that must be submitted. Read the instructions carefully, fill out the form, include all the relevant documents the form asks for, sign it, and mail it to the address set forth in the form, postmarked no later than November 26, 2013.

Kaiser has the right to object to the reasonableness of all or part of any claim for reimbursement submitted. If Kaiser objects to your claim, you will have the opportunity to respond to that

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objection, and seek streamlined arbitration if you desire. However, Class Counsel will not represent you in that matter.

10. When will the payment be made?

The Court will hold a hearing on December 11, 2013 at _____ a.m. to decide whether to approve the settlement. If the Court approves the settlement, after that there may be appeals relating to the settlement. It is always uncertain how these appeals will be resolved, and resolving them can take time, perhaps more than a year. Payment will be made once any and all appeals are resolved. Please be patient.

11. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the Class and that means you cannot sue, continue to sue, or be part of any other lawsuit against Kaiser for any ABA or ST you did or did not receive up through June 30, 2012. It also means that all of the Court's orders will apply to you and legally bind you. Staying in the Class does not prevent you from suing on your own for any ABA or ST you receive or do not receive after June 30, 2012.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to be included in this settlement but you want to keep the right to sue or continue to sue Kaiser on your own about the legal issues in this case, then you must take steps to get out of this case. This is called excluding yourself ("opting out") of the Class.

12. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail stating that you want to be excluded from *Arce v. Kaiser*. Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request, postmarked no later than September 27, 2013, to:

Kaiser Exclusions
Gilardi & Co., LLC
P.O. Box 8090
San Rafael, CA 94912-8090

If you ask to be excluded, you cannot get any settlement payment and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Kaiser for liability arising out of any ABA or ST you did or did not receive before July 1, 2012.

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13. If I do not exclude myself, can I sue Kaiser for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Kaiser for the claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is September 27, 2013. This lawsuit, however, does not resolve any disputes you may have with Kaiser over ABA or ST you did or not did not receive after June 30, 2012.

14. If I exclude myself, can I get money from this settlement?

No. If you wish to exclude yourself, do not send in a claim form to ask for money. But, you may sue, continue to sue, or be part of a different lawsuit against Kaiser. **If you send in both a request to be excluded and a claim form, your request to be excluded will be disregarded.**

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in this case?

Yes. The court appointed the following attorneys as Class Counsel: (1) Robert S. Gianelli of Gianelli & Morris; and (2) Scott C. Glovsky of the Law Offices of Scott C. Glovsky. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

16. How will the lawyers get paid?

Class Counsel will ask the Court for attorneys' fees and expenses up to \$2,890,000 and a payment of \$15,000 to the Class Representative, Guillermo Arce. The requested fees would pay Class Counsel for their fees and expenses in investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. Kaiser will separately pay the fees, expenses, and incentive that the Court awards. These amounts will not reduce the \$9,290,000 available to Class Members. Kaiser has agreed not to oppose these requested fees and expenses. Kaiser will also separately pay the costs to administer the settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

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17. How do I tell the Court I don't like the settlement?

If you are a Class Member, you can object to the settlement, by yourself or through an attorney hired at your expense, if you don't like any part of it. The Court will consider your views. To object, you must send a letter saying that you object to *Arce v. Kaiser*. The letter must include your name, address, telephone number, your signature, the reasons you object to the settlement, any documents or writings you wish the Court to consider, your intent to appear at the fairness hearing, and a statement of any prior class action settlement objections made and any fee arrangements made with an attorney regarding the objection. You must mail the objection, postmarked no later than September 27, 2013, to the Court and to the Settlement Administrator at the following addresses:

<u>Court:</u>	<u>Settlement Administrator:</u>
Clerk of the Court California Superior Court County of Los Angeles Central Civil West Courthouse 600 South Commonwealth Avenue Los Angeles, CA 90005	Kaiser Exclusions Gilardi & Co., LLC Post Office Box 8090 San Rafael, California 94912-8090

If your objection does not comply with the above requirements, your objection shall be deemed waived and you will be barred from raising your objection in this lawsuit or any other proceeding.

18. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

19. When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing at _____ a.m. on December 11, 2013 at the Los Angeles Superior Court, Central Civil West courthouse, located at 600 S. Commonwealth Avenue, Los Angeles, California 90005, in Department 323. At this hearing, the Court will consider whether

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the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Berle will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel and the Class Representative. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

20. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have. But you are welcome to come, at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the fairness hearing. You may speak either on your own behalf or through an attorney hired at your own expense. To do so, you must send a letter stating that it is your "Notice of Intention to Appear in *Arce v. Kaiser*." Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than November 26, 2013 and be sent to the Settlement Administrator at the address stated above in question 17. You cannot speak at the hearing if you have excluded yourself from the Class.

IF YOU DO NOTHING

22. What happens if I do nothing?

If you do nothing, you will still be a class member, but you will get no money from this settlement. However, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Kaiser about ABA or ST regarding claims before July 1, 2012.

GETTING MORE INFORMATION

23. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in the settlement agreement. You can get a copy of the settlement agreement by requesting a copy from the Settlement Administrator at the address stated above in question 17.

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24. How do I get more information?

You may review all of the public records of the case at Department 323 of the Los Angeles Superior Court, Central Civil West courthouse located at 600 S. Commonwealth Ave., Los Angeles, California 90005, Monday through Friday between the hours of 9:00 a.m. and 4:30 p.m.

If you still have questions about this Notice or this lawsuit, you may contact the Settlement Administrator, Gilardi & Co., LLC, by electronic mail at KaiserASDLitigation@classactmail.com or by linking from the website www.gilardi.com/KaiserASDLitigation, or by telephone (toll free) at (877) 264-8384. Please do not write or call the Court or the Clerk of the Court.

Dated: _____, 2013

Honorable Elihu M. Berle
Judge of the Superior Court

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