

STATE OF MICHIGAN
COURT OF CLAIMS

DAVID AND KORTNI HOREIN, PARENTS AND
NEXT FRIENDS TO MINOR CHILD D.H., ET AL.,

Plaintiffs,

v

MICHIGAN DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendant.

COC NO. 23-000063-MM

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**ORDER GRANTING PLAINTIFFS' MOTIONS FOR
PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT DATED JANUARY 31 2024,
CERTIFICATION OF SETTLEMENT CLASS UNDER MCR 3.501(B)(3)(B), APPOINTMENT
OF CLASS REPRESENTATIVES AND CLASS COUNSEL, APPOINTMENT OF SPECIAL
MASTER, APPOINTMENT OF CLAIMS ADMINISTRATOR AND QUALIFIED
SETTLEMENT FUND, APPROVAL OF PROPOSED CLASS NOTIFICATION PLAN,
APPROVAL OF PROPOSED CLASS NOTICES, APPROVAL OF PROPOSED PLAN OF
ALLOCATION, PRELIMINARY APPROVAL OF POOL FOR ADMINISTRATIVE
COSTS AND ATTORNEY'S FEES, AND
APPROVAL OF CASE MANAGEMENT ORDER AND TIMELINE**

On January 31, 2024, Plaintiffs David and Kortni Horein, parents and next friends to minor child D.H., and Mollie and Brent Bonter, parents and next friends to minor child A.B., on behalf

of D.H. and A.B. and a class of similarly situated Minor Children; and NaQuana Jones, Jason Smith, Jennifer Vance, Kai Mason, Annette Padula, Chauncey Payne, Jr., individually and in their capacity as putative class representatives, filed an unopposed motion to certify a settlement class, appoint themselves, along with Brandon Woodruff and Hawk Kennedy for a special sub-class, as class representatives, and appoint Pitt McGehee Palmer Bonanni & Rivers PC and Michele P. Fuller of Michigan Law Center, PLLC as class counsel. Plaintiffs also filed a contemporaneous unopposed motion seeking approval of the Settlement Agreement, appointment of William W. Jack, Jr., as special master, appointment of Analytics Consulting LLC as Claims Administrator and Huntington National Bank as Qualified Settlement Fund, approval of the proposed class notification plan, approval of the proposed class notices, approval of the plan of allocation, approval of an Administrative Costs and Attorney's Fees pool, and approval of the case management order and timeline.

On February 16, 2024, the Court conducted a hearing on Plaintiffs' unopposed motions. Both prior to and during the hearing, Defendant State of Michigan, Department of Health and Human Services, informed that Court that Defendant does not oppose Plaintiffs' motions. For the Reasons set forth below, the Court grants Plaintiffs' Motions.

I. Class Certification

First, as to class certification, Plaintiffs request that the Court certify the settlement classes, defined as:

- A. Patient Plaintiff Class or Patient Plaintiffs** means individuals who were patients at the Hawthorn Center and were present in the Hawthorn Center on December 21, 2022, between the hours of 9:00 a.m. and 11:00 a.m.
- B. Staff Plaintiff Class or Staff Plaintiffs** means Department employees and DK Security employee(s) who were present in the Hawthorn Center on December 21, 2022 between

the hours of 9:00 a.m. and 11:00 a.m., excluding Victoria Petti, Derek Leppek, Wayne Soucie, and Dr. George Mellos. The Staff Plaintiff class includes a special subclass whose Class Representatives are Brandon Woodruff and Hawk Kennedy and whose only members are Brandon Woodruff and Hawk Kennedy.

This Court's power to certify the class is conferred by MCR 3.501(B)(3)(b), which provides that "[t]he court may allow the action to be maintained as a class action." MCR 3.501 (B)(3)(b). Classes certified for settlement purposes, like classes certified for the litigation process, must meet the requirements of MCR 3.501(A)(1), which authorizes certification of a class where: " (a) The class is so numerous that joinder of all members is impracticable; (b) There are questions of law or fact common to the members of the class that predominate over questions affecting only individual class members; (c) The claims or defenses of the representative parties are typical of the claims or defenses of the class; (d) The representative parties will fairly and adequately assert and protect the interests of the class; and (e) The maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenience administration of justice." MCR 3.501(A)(1).

The Court finds that all requirements of MCR 3.501(A)(1) have been satisfied here.

a. Numerosity.

The Court finds that the numerosity requirement is satisfied because the Settlement Class is so numerous as to make joinder impracticable. 110 employees and 50 minors who were patients of the Hawthorn Center were present at the time of the "active shooter drill." General knowledge and common sense dictate that 50 minors with diverse custody and familial statuses, along with over 100 adults is substantial enough in size to satisfy the numerosity requirement, or else risk 150 individual lawsuits to the Department of Health and Human Services. Plaintiffs have therefore satisfied the numerosity requirement.

b. Commonality.

The Court finds that the commonality requirement is satisfied because all members of the Settlement Class share a common question of fact and law that predominates over any question affecting only individual members. Plaintiffs have adequately alleged that both the Patient Class members and the Staff Class Members were all subjected to violations of their rights under the Michigan Constitution and had a common injury related to those alleged violations. Therefore, commonality is satisfied.

c. Typicality.

The Court finds that the typicality requirement is satisfied because the claims of representatives are the same as those of the Settlement Class members. Plaintiffs have alleged that the State engaged in the same wrongful conduct—the unannounced “active shooter drill”—toward the Plaintiffs as it did the members of the two classes. The Plaintiffs’ claims are typical cases with essential characteristics that are reflected across the entire class.

d. Adequacy.

The Court finds that the adequacy requirement is satisfied, both as to the named Class Representatives, and as to their Counsel. Plaintiffs have proven themselves to be zealous advocates of the class and have committed themselves to fulfilling this duty for the Settlement Classes. Plaintiffs have suffered the same injury as the prospective Class Members. Plaintiffs and class members share identical interests of recovery, and therefore Plaintiffs’ interests are not antagonistic to the Settlement Class as a whole. The Court also finds that class counsels Michael L. Pitt, Robin B. Wagner, and Beth M. Rivers possess the required experience with class action litigation. The Court finds that Plaintiffs’ counsel satisfy the adequacy requirement of MCR 3.501(A)(1).

e. Superiority.

The Court finds that the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice. The impracticality of 160 individual recovery actions—50 of them involving minors who are persons with disabilities and have special legal requirements for safeguarding their rights and any assets awarded to them—demonstrates that a class action is the superior method of adjudication that would promote the convenient administration of justice for all parties and for the Court. The central question of law and fact at issue here is shared by every Settlement Class member. While the Adult claimants' recoveries may differ from each other, the proposed settlement process provides for an equitable process for each individual. A class action provides the most equitable and efficient pathway to ensure settlement funds are disbursed to eligible claimants regardless of their damage amount. For these reasons, a certified Settlement Class is the superior method of resolution.

In sum, Plaintiffs have satisfied all requirements for preliminary certification of the settlement class under MCR 3.501(A). Defendant does not oppose certification of the settlement class. The Court will therefore grant the motion for preliminary class certification.

II. Appointment of Class Representatives

Second, for the reasons set forth in the analysis of the adequacy requirement, above, the Court finds that Plaintiffs David and Kortni Horein, parents and next friends to minor child D.H., and Mollie and Brent Bonter, parents and next friends to minor child A.B., on behalf of D.H. and A.B., and NaQuana Jones, Jason Smith, Jennifer Vance, Kai Mason, Annette Padula, Chauncey Payne, Jr., along with Brandon Woodruff and Hawk Kennedy, should be appointed Class Representatives and will grant Plaintiffs' motion to appoint them as Class Representatives.

III. Appointment of Plaintiffs' Counsel as Counsel for the Class

Third, for the reasons set forth in the analysis of the adequacy requirement, above, the Court finds that Plaintiffs' counsel Michael L. Pitt, Robin B. Wagner, and Beth M. Rivers should be appointed as counsel for the Settlement Class and the Court will grant Plaintiffs' motion to appoint them as counsel for the Settlement Class.

IV. Preliminary Approval of Class Action Settlement

Fourth, the Court will grant preliminary approval of the proposed class action settlement. The Court finds that the parties reached a Settlement Agreement dated January 31, 2024. The Court finds that the Settlement Agreement was reached in good faith after a well-informed, arms-length negotiation process. The parties engaged in extensive arms-length negotiations over the period of several months, starting in May 2023. After months of negotiations, on November 16, 2023, the Parties informed the Court that they accepted the recommendation of Mediator William W. Jack, Jr. that the State of Michigan pay \$13,000,000 as a fair and reasonable resolution of this case.

The Court finds that the proposed class settlement is the product of patient, arms-length negotiation, and that it should be approved. The Court also finds, for the reasons set forth in Plaintiffs' unopposed motion and brief, that the proposed class settlement is fair, reasonable, and adequate. Specifically, the Court finds that the proposed settlement achieves meaningful compensation for injuries to the patients and the employees while avoiding the expense, complexity, and extended duration of litigation. The Court finds that the gross settlement amount of \$13,000,000 is fair, reasonable, and adequate compensation for the Class members, in light of the potential value of their claims, because such an amount provides for (1) compensation for their physical and psychological injuries, plus (2) attorneys' fees and costs, as well as (4) the costs of claims and notice administration. The Court also finds that the parties had sufficient information

to make an informed decision about settlement. The facts of the “active shooter drill” were well known and reported by the media and the Department provided Plaintiffs with FOIA responses that further clarified the facts of the litigation. Plaintiffs provided the Mediator and the Department with substantial testimony regarding their injuries, which allowed for an accurate assessment of the damages and losses.

Thus, the parties had access to the information necessary to make an informed decision about settlement. In granting preliminary approval, the Court has also considered and given weight to the experienced attorneys for both Plaintiff and Defendant, all of whom agree that the proposed class settlement is fair, reasonable, and adequate. The Court finds no reason to dispute that conclusion.

V. Approval of Class Notice

The Court finds that the proposed Class Notice, submitted with Plaintiffs' motion, fully satisfies the requirements of MCR 3.501(C)(1-7). The parties' proposed Notice satisfies MCR 3.501(C)(4) and (C)(5) as to the Manner and Content of the Notice, respectively. Defendant does not oppose the approval of Notice. As such, the proposed Notice will be approved.

VI. Approval of Class Notification Plan

Along with their Motion, Plaintiffs filed with the Court the declaration of Richard W. Simmons, the President of Analytics Consulting, LLC. In their motion, Plaintiffs request that the Court approve the Class Notification Plan set forth in Mr. Simmons's declaration. Defendant does not oppose this request. Plaintiffs proposed class notification plan, which Mr. Simmons refers to in his declaration as the "Notice Program," provides for: 1) a Class Notice via U.S. Mail for all Settlement Class Member for whom a mailing address is available; and 2) direct notice via email (the Email Notice) to all Settlement Class Members for whom the Defendant has email addresses. Additionally, the full-length notice will be mailed upon request, and will all be available for

download at the Settlement Website. The Notice Program also includes a Settlement Website and toll-free telephone line where individuals can learn more about their rights and responsibilities in the litigation. The Court finds that the Plaintiffs' proposed class notification plan should be approved because it will provide the best practicable notice to settlement class members under the circumstances, and it is fully consistent with due process and MCR 3.501.

VII. Appointment Analytics Consulting LLC as Claims Administrator and Huntington National Bank as QSF

The Court finds that Analytics Consulting LLC should be appointed as Claims Administrator. This finding is based on the merits of Mr. Simmons's declaration, which establishes that Analytics is well-suited to administer the claims at issue in this matter. The Court also finds that Huntington National Bank should be approved as the Qualified Settlement Fund. Defendant does not oppose these appointments. The Court will therefore appoint Analytics Consulting LLC as Claims Administrator and Huntington National Bank for the QSF.

VIII. Approval of Plan of Allocation

The Court finds that the Plan of Allocation is fair, reasonable, and adequate, and further finds that it satisfies all due process requirements. Defendant does not oppose the Plan of Allocation. The Court will therefore approve Plaintiffs' proposed Plan of Allocation.

IX. Appointment of William W. Jack, Jr. as Special Master

The parties have jointly proposed and the Court will approve the appointment of attorney William W. Jack, Jr. as Special Master. As Special Master, Mr. Jack shall have the authority to decide eligibility disputes and appeals of awards with finality.

X. Approval of the Administrative Costs and Attorney's Fees

Plaintiffs' counsel request approval of the Administrative Costs and Attorney's Fees Pool of \$4,333,333.33, which is 1/3 of the Gross Settlement Amount. All the costs of the settlement,

including QSF administration, Notice Administration, Claims Administration, all costs and fees of the Special Master, litigation costs of Class Counsel, all fees and costs for Patient-Class co-counsel Michele Fuller and worker's compensation counsel Steve Stilman, along with fees and costs for counsel to Mr. Kennedy, will first be paid from this Pool, with Class Counsel receiving as its fee the remainder from the pool. The Court finds that each of these requests are fair, reasonable, and consistent with applicable law, and will grant Plaintiffs' motion for approval of attorney fees, reimbursement of costs, and set-aside of administrative costs.

XI. Approval of Service Awards to Class Representatives

The Court finds that the Class Representatives should each be paid \$5,000 as a service award. The Court finds that this amount reflects the time and effort Plaintiffs expended in bringing and assisting in this litigation. The amount of the incentive awards is aligned with and proportional to the expected recovery for the class members, and therefore the Court is satisfied that the interests of the Class Representatives, including their interest in receiving a service award, is fully aligned with the interests of the other Class Members.

XII. Approval of Case Management Order and Timeline - 12

The parties have jointly proposed, and the Court hereby approves the following Case Management Order and Timeline for further proceedings with respect to Class Notification, Claims Administration, Final Approval, and Payment of Class Settlement Awards, all of which are consistent with the Plan of Allocation approved in this Order:

Table of Key Dates

Filing of Motion for Preliminary Approval	January 31, 2024
Hearing on Preliminary Approval Motion	February 16, 2024 at 11 am – Court Room, State of Michigan Building, 350 Ottawa NW, Grand Rapids 49503
Preliminary Approval Order Issued	February 16, 2024
Distribution of Notice	By February 23, 2024
Registration deadline for Individual not Automatically Eligible	March 25, 2024
Determination of Eligibility for Individuals who Register	April 8, 2024
Opt Out Deadline	April 23, 2024
Motions for Next Friends and GAL appointments for Patient Class Members	May 7, 2024
Forensic Assessments Must Be Completed by	June 12, 2024
Patient Class Members' Award Elections	June 28, 2024
Forensic Assessment Scores to Special Master	July 12, 2024
Preliminary Allocations to Staff Plaintiffs	July 26, 2024
Appeals due to Special Master	August 9, 2024
Final Allocations and Special Master Report	September 6, 2024
Motion for Final Approval Filed	Early September—13 th ideally
Hearing on Motion for Final Approval	Friday, October 4, 2024 at 11 am – Court Room, State of Michigan Building, 350 Ottawa NW, Grand Rapids 49503
Effective Date (after appeals deadline, assuming Final Approval is Ordered)	November 26, 2024
Distribution of funds other than Worker's Compensation redemptions (assuming Final Approval is Ordered)	By December 6, 2024
Worker's Compensation Redemptions complete (assuming Final Approval is Ordered)	January 17, 2025

XIII. CONCLUSION AND ORDER OF THE COURT

The Court having considered the parties' pleadings and exhibits, having heard from the parties during the motion hearing on February 16, 2024, having considered the applicable and controlling law, and the Court being otherwise advised in the premises,

IT IS HEREBY ORDERED:

1. Plaintiffs motion to preliminarily certify the settlement class and preliminarily appoint settlement class representatives is GRANTED., with the classes defined as follows:

A. Patient Plaintiff Class or Patient Plaintiffs means individuals who were patients at the Hawthorn Center and were present in the Hawthorn Center on December 21, 2022, between the hours of 9:00 a.m. and 11:00 a.m.

B. Staff Plaintiff Class or Staff Plaintiffs means Department employees and DK Security employee(s) who were present in the Hawthorn Center on December 21, 2022 between the hours of 9:00 a.m. and 11:00 a.m., excluding Victoria Petti, Derek Leppek, Wayne Soucie, and Dr. George Mellos. The Staff Plaintiff class includes a special subclass whose Class Representatives are Brandon Woodruff and Hawk Kennedy and whose only members are Brandon Woodruff and Hawk Kennedy.

2. The Court APPOINTS David and Kortni Horein, parents and next friends to minor child D.H., and Mollie and Brent Bonter, parents and next friends to minor child A.B., on behalf of D.H. and A.B., and NaQuana Jones, Jason Smith, Jennifer Vance, Kai Mason, Annette Padula, Chauncey Payne, Jr., Brandon Woodruff, and Hawk Kennedy Class Representatives for the Settlement Classes.

3. The Court APPOINTS Plaintiffs' counsel Michael L. Pitt, Robin B. Wagner, and Beth M. Rivers and Michele P. Fuller as Class Counsel for the Settlement Class.

4. The Court GRANTS PRELIMINARY APPROVAL of the Proposed Class Action Settlement, as reflected in the parties Amended Settlement Agreement.

5. The Court GRANTS APPROVAL of the Proposed Class Notices, filed with the Court as Exhibit to Plaintiffs' Motion.

6. The Court GRANTS APPROVAL of the Class Notification Plan.

7. The Court APPOINTS Analytics Consulting LLC as Claims Administrator and Huntington National Bank as QSF.

8. The Court APPROVES Plaintiffs' proposed Plans of Allocation.

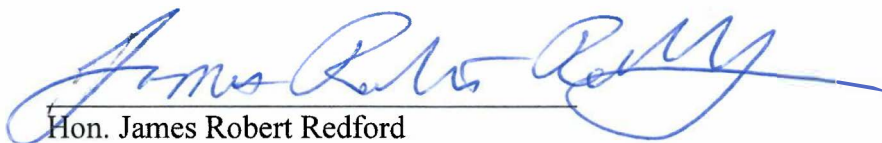
9. The Court APPOINTS attorney William W. Jack, Jr. as Special Master and FURTHER ORDERS that, as Special Master, Mr. Jack shall have the authority to decide eligibility disputes and appeals of awards with finality.

10. The Court APPROVES the Pool of \$4,333,333.33 set aside for Administrative Costs and Attorney's fees and the estimated costs and fees providing in Plaintiffs' motion.

11. APPROVES service awards of \$5,000 to each of the ten Class Representatives.

12. The Court APPROVES the Case Management Order and Timeline set forth above.

IT IS SO ORDERED.


Hon. James Robert Redford

Dated: 16 Feb 2024

