

STATE OF MICHIGAN
COURT OF CLAIMS

DAVID HOREIN, ET.AL.,

COC No. 23-000063-MM

Plaintiffs,

HON. JAMES ROBERT REDFORD

v

MICHIGAN DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

CLASS ACTION SETTLEMENT
MOTION TO CERTIFY CLASS

Defendant.

CORRECTED EXHIBIT 2 TO SUPPLEMENTAL
BRIEFING IN SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR FINAL APPROVAL

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

HON. JAMES ROBERT REDFORD

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ORDER OF FINAL APPROVAL OF THE SETTLEMENT

On September 13, 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., along with Brandon Woodruff and Hawk Kennedy, individually and in their capacity as Class Representatives, filed an unopposed motion for final approval of the settlement of the above-

captioned class action and approval of proposed allocations of funds pursuant to the Settlement Agreement and its amendments.

On October 4, 2024, the Court conducted a fairness hearing on Plaintiffs' unopposed motion. 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. THE CLASS SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

The Settlement Agreement, along with the Amendment to Appendix A and the Amendment to the Plan of Allocation for the Staff Plaintiff Class as moved by Plaintiffs on September 13, 2024, are Approved.

Further, the Court finds that the terms, conditions, and allocation of funds among the Patient Plaintiff Class, Staff Plaintiff Class, and Special Subclass, along with Administrative Pool satisfies the requirements for a fair, reasonable, and adequate settlement of a class action lawsuit. The Court gave preliminary approval on February 16, 2024, and has now conducted a final fairness hearing. The Court is satisfied that the terms and conditions of this settlement and the allocation of funds satisfies the legal requirements for settlement of a class action and MCR 3.501.

II. CLASS REGISTRATION AND AWARDS

Second, for the reasons set forth in Plaintiffs' motion, including the lack of opt-outs and the high participation rate by Staff Plaintiff Class members, the Court finds that the process of notification for the class members satisfies the legal requirements for fair, clear and timely notice of class members. The Court further approves of the appointments of Next Friends as designated in the Court's prior orders, along with the appointment of attorney Sanford Mall as Guardian ad Litem for Patient Plaintiff class members without a family member or guardian able to serve as Next Friend. These appointments satisfy the Court's concerns and the dictates of the Settlement

Agreement to ensure that the Patient Plaintiff Class members, being individuals without the legal competence due to age or cognitive ability, are adequately represented and their entitlements to an award secured on their behalf.

Recognizing the parties' agreement to collaborate on ensuring that the funds for these 19 Patient Plaintiff Class members are used for each individual's benefit and consistent with the trust, the Court finds that Class Counsel's proposed nomination of Charlene Distler to serve as Beneficiary Advocate pursuant to the Master Trust Agreement for the CPT pooled SNT for each of the 19 Patient Plaintiff Class members is a reasonable and prudent measure to ensure that these individuals benefit from the settlement funds allocated to them. The Court further authorizes the payment of \$75,000 from the Administrative Pool for the costs of Charlene Distler and her company, Probate Support Specialists, LLC as described in Plaintiffs' Supplemental Brief in Support of their Unopposed Motion for Final Approval. The Court further approves of additional payments to Guardian ad Litem Sanford Mall from the Administrative Pool to cover an estimated addition 10 hours and costs to locate two members of the Patient Plaintiff Class who were wards of the state but are no longer under the State's care and control.

The Court further finds that that process of allocating awards among the members of the Staff Plaintiff Class and the special sub-class satisfies the terms and conditions of the Settlement Agreement. In light of the reports from the Special Master to the Court and the facts and documentation provided in Plaintiffs' Motion and accompanying exhibits, the Court finds that the apportionment of the Staff Plaintiff Compensation fund equitably and fairly compensates the class members relative to their injuries suffered from the acts and omissions alleged in this lawsuit.

III. AWARD OF FEES AND COSTS TO CLASS COUNSEL AND

Plaintiffs' counsel request approval of the Administrative Costs and Attorney's Fees Pool of \$4,309,333.33, which is less than one-third of the Gross Settlement Amount. All the costs of

the settlement, including QSF administration, Notice Administration, Claims Administration, the Guardian ad Litem, all costs and fees of the Special Master, any costs needed to facilitate access to the funds for the 19 Patient Plaintiff Class members who are wards of the state, 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 Pitt McGehee Palmer Bonanni & Rivers, PC receiving as its fee the remainder from the pool. It is estimated that Class Counsel's fee will be less than 28% of the total common fund, which is within the reasonable and customary approach to compensation for class counsel. 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.

IV. AMENDMENT TO SETTLEMENT AGREEMENT REGARDING ACTUAL COSTS AND INTEREST AND DIVIDENDS EARNED

In light of the interest and dividends being earned, the need to reserve approximately 40% of the interest and dividends earned for taxes, and other considerations raised in Plaintiffs' motion, it is hereby ordered:

For all interest payments earned on the settlement fund up until December 31, 2024, 40% shall be reserved for tax payments. Of the remaining 60%, 33.33% shall be added to the Administrative Pool, 22.22% shall be added to the Patient Plaintiff Pool, and 44.44% shall be added to the Staff Plaintiff Pool.

V. WAIVER AND RELEASE AND POST-DISTRIBUTION REPORT

The Court incorporates by reference here ¶ 36 of the Settlement Agreement, wherein the Class Representatives released and discharged all claims on behalf of themselves and all class members against the State of Michigan, the Department of Health and Human Services and against the defendants named in the Wayne County Circuit Court lawsuits, Victoria Petti, Wayne Soucie, Derek Leppek, and Patti Glenn. Furthermore, pursuant to ¶ 67 of the Settlement Agreement,

individuals who meet the definition of one of the classes, do not opt-out of the class and settlement, and do not complete one of the obligations necessary to effectuate the Settlement Agreement on their behalf are nonetheless bound by the terms of the Settlement Agreement and the Final Approval Order.

Therefore, the Court holds that class members who have not opted out and who have not participated in the claims process as described in Plaintiffs' motion and the Settlement Agreement are barred from bringing future claims by operation of law.

The Court further Orders Class Counsel to file a post-distribution accounting report, providing as follows:

Within 42 days after the settlement funds have been paid to all class members and to all payees from the Administrative Pool, along with the *cy pres* beneficiary, the parties will file a Post-Distribution Accounting (and post it on the settlement website), which provides the following information:

- a. The total settlement fund, the total number of class members, the total number of class members to whom notice was sent and not returned as undeliverable, the number and percentage of worker's compensation and W9 forms submitted for members of the Staff Plaintiff class and the number and percentage of pooled SNT joinder agreements submitted on behalf of members of the Patient Plaintiff class, the number and percentage of opt-outs, the number and percentage of objections, the average, median, maximum, and minimum recovery per claimant, the method(s) of notice and the method(s) of payment to class members, the number and value of funds not accepted, the amounts distributed to the *cy pres* recipient, the administrative costs, and the attorneys' fees and costs.
- b. Counsel will summarize this information in an easy-to-read chart that allows for quick comparisons with other cases.
- c. The Court may hold a hearing following submission of the parties' Post-Distribution Accounting.

VI. CONCLUSION AND ORDER OF THE COURT

The Court having considered the parties' pleadings and exhibits, having heard from the parties during the motion and fairness hearing on October 4, 2024, having considered the applicable and controlling law, and the Court being otherwise advised in the premises,

IT IS HEREBY ORDERED:

1. The Settlement Agreement, along with the Amendment to Appendix A and the Amendment to the Plan of Allocation for the Staff Plaintiff Class as moved by Plaintiffs on September 13, 2024, are Approved.
2. Further, the Court finds that the terms, conditions, and allocation of funds among the Patient Plaintiff Class, Staff Plaintiff Class, and Special Subclass, along with Administrative Pool satisfies the requirements for a fair, reasonable, and adequate settlement of a class action lawsuit as required by MCR 3.501.
3. Charlene Distler and Probate Support Specialists, LLC shall be designated as the Beneficiary Advocate to the pooled SNT for the 19 members of the Patient Plaintiff Class who are wards of the State of Michigan, and shall liaise with MDHHS to ensure that these individual's trust funds benefit these class members.
4. After the Effective Date of this Agreement, the Patient Plaintiff Class Compensation Funds for those class members with assigned Beneficiary Advocates are to be irrevocably assigned to each of the individual class member's pooled SNT held by CPT.
5. Regarding the two individuals whom the GAL is attempting to locate, their funds shall remain in the QSF until they are located. If by December 31, 2024, either or both of these two individuals have not been located despite the GAL's diligent

efforts, then their allocations shall be deemed forfeit pursuant to ¶ 67 of the Settlement Agreement and their award shares allocated to the cy pres beneficiary.

6. The Claims Administration and allocation process, including notifications to the class members, appointments of Next Friends and Guardian ad Litem, and the allocation of Staff Plaintiff Compensation funds based on the forensic evaluation process all satisfy the Court as sufficiently fair, reasonable, and adequate to redress the injuries of the class members.
7. The distribution of the Administrative Pool as proposed in Plaintiffs’ Motion is approved as follows:

	Actual or Estimated	Appendix Reference	Amount
TOTAL Administrative Pool			\$4,309,333.33
Costs accrued by Pitt McGehee Palmer Bonanni & Rivers, PC through filing	Actual		-\$32,135.07
Special Master's Fees and Costs	Actual		-\$20,992.50
Claims & QSF Administrator	Estimated		-\$28,940.18
Forensic Psychology team	Actual		-\$71,750
Michele Fuller Fees & Costs	Actual		-\$250,000
Sanford Mall GAL fees and costs -through September 13, 2024	Actual		\$13,687
Counsel for Hawk Kennedy	Estimated		-\$96,000
Stilman Law, Worker’s Compensation Fees & Costs	Estimated		-\$282,500
Sanford Mall additional GAL fees regarding two members of Patient Plaintiff Class	Estimated		\$10,000
Charlene Distler and Probate Support Specialists, LLC	Actual		\$75,000
Total Costs and Fees before PMPBR Fees	Estimated		\$881,004.75

Interest Earned and added to Pool	Estimated	\$100,000
Pitt McGehee Palmer Bonanni & Rivers Attorney Fees	Estimated	\$3,522,328.58

8. The Settlement Agreement shall be subject to the following additional terms for allocation of interest and dividends earned:

For all interest payments earned on the settlement fund up until December 31, 2024, 40% shall be reserved for tax payments. Of the remaining 60%, 33.33% shall be added to the Administrative Pool, 22.22% shall be added to the Patient Plaintiff Pool, and 44.44% shall be added to the Staff Plaintiff Pool.

9. After all payments described above have been made from the Administrative Pool, a full statement of actual disbursements from the Administrative Pool shall be submitted to all Parties for review. If there are no objections, Class Counsel Pitt McGehee Palmer Bonanni & Rivers PC shall be paid the remainder of the funds in the Administrative Pool. If there are objections, the Parties shall file a joint statement to the Court within 30 days of the full statement of actual disbursements laying out with specificity the reasons and supporting documentation for objections and Class Counsel's response.

10. Any and all known class members who have not opted-out and who have not made a claim as part of the Class Settlement are hereby barred from bringing future claims by operation of law.

11. Within 42 days after the settlement funds have been paid to all class members and to all payees from the Administrative Pool, along with the *cy pres* beneficiary, the

parties will file a Post-Distribution Accounting (and post it on the settlement website), which provides the following information:

- a. The total settlement fund, the total number of class members, the total number of class members to whom notice was sent and not returned as undeliverable, the number and percentage of worker’s compensation and W9 forms submitted for members of the Staff Plaintiff class and the number and percentage of pooled SNT joinder agreements submitted on behalf of members of the Patient Plaintiff class, the number and percentage of opt-outs, the number and percentage of objections, the average, median, maximum, and minimum recovery per claimant, the method(s) of notice and the method(s) of payment to class members, the number and value of funds not accepted, the amounts distributed to the *cy pres* recipient, the administrative costs, and the attorneys’ fees and costs.
- b. Counsel will summarize this information in an easy-to-read chart that allows for quick comparisons with other cases.
- c. The Court may hold a hearing following submission of the parties’ Post-Distribution Accounting.

IT IS SO ORDERED.

Dated: _____

Hon. James Robert Redford

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