

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY K. BOLEY, *et al.* : CIVIL ACTION
:
v. : NO. 20-2644
:
UNIVERSAL HEALTH SERVICES, :
INC., *et al.* :

ORDER

AND NOW, this 31st day of October 2022, upon considering the arguments presented during our noticed hearing on Plaintiffs' Motion for preliminary approval of a class action settlement (ECF Doc. No. 110), Plaintiffs' Memorandum (ECF Doc. No. 110-1) with attached Settlement Agreement (ECF Doc. No. 110-3), Notice under the Class Action Fairness Act (ECF Doc. No. 110-3 at 33–41), Declaration of James E. Miller (ECF Doc. No. 110-2), addressing several questions raised during our noticed October 31, 2022 hearing on Plaintiffs' unopposed Motion where all counsel agreed to modify language and deadlines in the Notice consistent with our due process requirements and experienced counsel representing the modified language did not require a new settlement agreement, and for good cause, it is **ORDERED** the Plaintiffs' Motion (ECF Doc. No. 110) for approval of the Settlement Agreement (ECF Doc. No. 110-3) is **GRANTED** and the parties shall proceed consistent with this Order and Federal Rules of Civil Procedure 1 and 23 consistent with due process towards our **March 30, 2022** Final Approval Hearing:

We preliminarily approve the Settlement Agreement

1. We preliminarily approve the Settlement Agreement (ECF Doc. No. 110-3) after applying the factors required by our Court of Appeals for preliminary approval as being fair, reasonable, and adequate, and in the best interest of Plaintiffs and putative Settlement Class as

defined below for the defined “Released Claims” under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*¹

2. Class Counsel shall file the Notice (ECF Doc. No. 110-3) as revised during today’s hearing under a Supplemental Notice no later than **November 10, 2022** and include only the Revised Notice in the distribution to Settlement Class Members and place on the Settlement website.

3. Settlement is the most expeditious, efficient, and fair means of resolving the Released Claims. This Order shall govern to the extent terms in the Settlement Agreement differ from obligations imposed by this Order. The administration of the Settlement and the determination of all disputed questions of law and fact with respect to the validity of a claim or right of any person or entity to participate in the Settlement are under this Court’s authority.

4. The Settlement, if finally approved after our **March 30, 2023** hearing on the parties’ motions for final approval and fee award, finally resolves the Released Claims against the Released Parties under the Employee Retirement Income Security Act of 1974 asserted in the Second Amended Class Action Complaint (ECF Doc. No. 18).

5. The Settlement and the negotiations or proceedings connected with it shall not be construed as an admission or concession by Universal Health Services, Inc. Retirement Savings Plan as to the validity of claims or as to the truth of the allegations of any liability, fault, or wrongdoing of any kind.

¹ We adopt the terms and conditions in the Settlement Agreement (ECF Doc. No. 110-3) to the extent not inconsistent with this Order. Preliminary approval is not a rubber stamp of a proposed agreement. *In re Nat’l Football Players’ Concussion Injury Litig.*, 961 F.Supp.2d 708, 715 (E.D. Pa. 2014). As we addressed during our preliminary approval hearing, we must screen for “obvious” problems and deficiencies and ensure the settlement negotiations occurred at arm’s length; sufficient discovery; and the proponents are experienced in similar litigation. *Kopchak v. United Resource Sys., et al.*, No. 13-5884, 2016 WL 4138633, at *6 (E.D. Pa. Aug. 4, 2016) (citing *Harlan v. Transworld Sys., Inc.*, 302 F.R.D. 319, 324 (E.D. Pa. 2014)).

6. As we confirmed during our hearing, Plaintiffs and Class Counsel had sufficient information to evaluate the settlement value of the claims before concluding the Settlement is fair, reasonable, and adequate.

7. If the Settlement had not been achieved, Plaintiffs and the Settlement Class faced the expense, risk, and uncertainty of protracted litigation.

8. The Settlement Agreement provides, in exchange for dismissal of the Class Action and a release of claims, Defendants will pay a Gross Settlement Amount of \$12,500,000.00 into a Qualified Settlement Fund, to be allocated to Current Participants, Former Participants, Beneficiaries, and Alternate Payees of the Plan under the Plan of Allocation. (ECF Doc. No. 110-3 at 47–52).

9. The amount of attorneys' fees for Class Counsel shall not exceed 33 1/3% of the Gross Settlement Amount (a maximum amount of \$4,166,666.67), which shall be recovered from the Gross Settlement Amount. Class Counsel also will seek reimbursement for all litigation costs and expenses advanced and carried by Class Counsel for the duration of this Class Action, including the pre-litigation investigation period, not to exceed \$300,000, which also shall be recovered from the Gross Settlement Amount.

10. Case Contribution Awards to the Class Representatives will exceed \$15,000 and, like all awards and aspects of the settlement, will be subject to our scrutiny to ensure maximum recovery to the Class under the Law.

11. The Settlement Agreement terms related to attorney's fees, expenses, and Case Contribution Awards to Class Representatives do not raise obvious questions concerning fairness of the Settlement Agreement, and there are no agreements, apart from the Settlement Agreement, required to be considered under Federal Rule of Civil Procedure 23(e)(2)(C)(iv).

12. The Gross Settlement Amount is within the range of settlement values obtained in similar cases and Class Counsel explained concerns with causation and reasoning for the settlement value.

13. At all times, the Class Representatives and Class Counsel have acted independently of Defendants and in the interest of the Settlement Class.

14. We approve the common fund agreed by the Parties in the Settlement Agreement and is hereby established and shall be known as the “Qualified Settlement Fund.” The Qualified Settlement Fund shall be a “qualified settlement fund” within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. The Qualified Settlement Fund shall be funded and administered in accordance with terms of the Settlement Agreement.

We preliminarily certify the Settlement Class.

15. We preliminarily find for settlement purposes Plaintiffs conditionally satisfy prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and 23(b):

a. We find the class previously certified may be maintained for settlement purposes (“Settlement Class”). The Settlement Class shall include:

All participants and beneficiaries of the Plan, at any time during the Class Period (June 5, 2014 through October 31, 2022) including any beneficiary of a deceased person who was a participant in the Plan at any time during the Class Period, and any Alternate Payees, in the case of a person subject to a Qualified Domestic Relations Order who was a participant in the Plan at any time during the Class Period. The Settlement Class shall exclude all Defendants.

b. The Settlement Class is ascertainable from records kept with respect to the Plan and from other objective criteria, and the Settlement Class is so numerous (in excess of 48,000) joinder of all members is impracticable under Federal Rule of Civil Procedure 23(a)(1);

c. As required by Federal Rule of Civil Procedure 23(a)(2), there are one or more questions of law or fact common to the Settlement Class including whether The Plan violated fiduciary duties under Employee Retirement Income Security Act of 1974;

d. As required by Federal Rule of Civil Procedure 23(a)(3), the claims of the Class Representatives are typical of the claims of the Settlement Class the Class Representatives seek to certify;

e. As required by Federal Rule of Civil Procedure 23(a)(4), the Class Representatives will fairly and adequately protect the interests of the Settlement Class because:

i. the interests of the Class Representatives and the nature of the alleged claims are consistent with those of the Settlement Class members; and

ii. there appear to be no conflicts between or among the Class Representatives and the Settlement Class;

f. As required by Federal Rule of Civil Procedure(b)(1), the prosecution of separate actions by individual members of the Settlement Class would create a risk of:

i. inconsistent or varying adjudications as to individual Settlement Class members would establish incompatible standards of conduct for the parties opposing the claims asserted in the Class Action; or

ii. adjudications as to individual Settlement Class members, as a practical matter, would be dispositive of the interests of the other members not parties to the individual

adjudications, or substantially impair or impede the ability of such persons to protect their interests;

g. As required by Federal Rule of Civil Procedure 23(g), Class Counsel are capable of fairly and adequately representing the interests of the Settlement Class, and Class Counsel:

i. have done appropriate work investigating and litigating potential claims in the Class Action;

ii. are experienced in handling class actions; and

iii. have committed the necessary resources to represent the Settlement Class.

We appoint the Settlement Class Representatives and Class Counsel.

16. We preliminarily appoint Mary K. Boley, Kandie Sutter, and Phyllis Johnson as Class Representatives for the Settlement Class and Miller Shah LLP and Capozzi Adler, P.C. as Class Counsel for the Settlement Class.

17. Attorneys at Miller Shah LLP and Capozzi Adler, P.C. are appointed as Class Counsel upon considering (i) the work Class Counsel did in identifying or investigating potential claims in the case; (ii) Class Counsel's experience in handling class actions, other complex litigation, and claims of the type asserted here; (iii) Class Counsel's knowledge of applicable law, and how those laws apply to the claims; and, (iv) the resources Class Counsel committed to representing Plaintiffs and the class as fiduciaries. Based on these factors, the Court finds Class Counsel have and will continue to represent fairly and adequately the interests of Settlement Class.

We appoint Strategic Claims Services as the Settlement Administrator.

18. Having confirmed no conflicts with the parties or counsel and having studied its background and experience, we approve Strategic Claims Services (<https://www.strategicclaims.net/>) as Settlement Administrator to administer the Settlement:

a. The Settlement Administrator may make disbursements out of the Qualified Settlement Fund only in accordance with this Preliminary Approval Order or any additional Orders issued by the Court. The Qualified Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Qualified Settlement Fund in accordance with the Settlement Agreement; provided, however, the Qualified Settlement Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges, and excises of any kind, including income taxes, and any interest, penalties or additions to such amounts, are, in the Settlement Administrator's sole discretion, finally determined and all such amounts have been paid by the Qualified Settlement Fund. The Court and the Settlement Administrator recognize there will be tax payments, withholding and reporting requirements in connection with the administration of the Qualified Settlement Fund;

b. The Settlement Administrator, in its discretion, may request expedited review and decision by the IRS or the applicable state or local taxing authorities with regard to the correctness of the returns filed for the Qualified Settlement Fund and shall establish reserves to assure the availability of sufficient funds to meet the obligations of the Qualified Settlement Fund itself and the Settlement Administrator as fiduciaries of the Qualified Settlement Fund. Reserves may be established for taxes on the Qualified Settlement Fund income or on distributions. The Settlement Administrator shall have all the necessary powers, and take all necessary ministerial steps, to effectuate the terms of the Settlement Agreement, including the

payment of all distributions. Such powers include investing, allocating and distributing the Settlement Fund, and in general supervising the administration of the Settlement Agreement in accordance with its terms and this Order. The Settlement Administrator shall keep detailed and accurate accounts of all investments, receipts, disbursements and other transactions of the Qualified Settlement Fund. All accounts, books, and records relating to the Qualified Settlement Fund shall be open for reasonable inspection by such persons or entities as the Court orders;

c. Included in the Settlement Administrator's records shall be complete information regarding actions taken with respect to the award of any payments to any person, the nature and status of any payment from the Qualified Settlement Fund, and other information which the Settlement Administrator considers relevant to showing the Qualified Settlement Fund is being administered, and awards are being made, in accordance with the purposes of the Settlement Agreement, this Preliminary Approval Order, and any future orders the Court may find it necessary to issue.

Class Members may object after sufficient notice.

19. We approve of the Notice of Pendency of Class Action and Proposed Settlement ("Notice") as revised during today's hearing (and filed as revised no later than November 10, 2022) and require strict compliance:

a. On or before **November 20, 2022**, Defendants shall provide the Class List of contact information for all Settlement Class members to Strategic Claims Services;

b. Strategic Claims Services will email or mail the Notice consistent with the Settlement Agreement and arrange the settlement website within fourteen days of receipt but no later than **December 5, 2022**;

c. Strategic Claims Services shall conduct an advanced address research (via skip-trace databases) to identify current mailing address information for each Settlement Class member for whom it receives Notice is undeliverable. Strategic Claims Services must update the Settlement Class member address information using data from the National Change of Address database;

d. Strategic Claims Services must again mail the Notice to any Settlement Class member whose address shown in the National Change of Address database differs from the undeliverable address within ten days of notice of undeliverable mail²; and,

e. On or before **December 11, 2022**, Class Counsel and Strategic Claims Services shall file an affidavit confirming compliance with the Notice obligations detailed in this paragraph including disclosing the number of persons who did not receive Notice after a skip-trace mailing.

20. The reasonable expenses incurred by Strategic Claims Services in identifying the members of the Settlement Class shall be a cost of the settlement deducted before calculating the recovery to each Settlement Class Member.

21. Defendants provided the required Notice to state or federal officers required by the Class Action Fairness Act of 2005 (“CAFA”) on October 26, 2022 and paid all costs and expenses associated with CAFA notices.

22. The content of the Notice and the process described in this Order and in the Settlement Agreement is the best notice practicable under the circumstances and satisfy the

² We appreciate this obligation may be beyond the parties’ understanding but we expect Strategic Claims Services will perform a timely advanced address research before the first mailing and thus minimize additional expense.

requirements of Federal Rule of Civil Procedure 23(c) and Due Process as modified to allow objectors to file a signed notice with name and nature of objection.

Class Members are bound.

23. All Members of the Settlement Class shall be bound by all determinations and judgments concerning the Settlement, including, but not limited to, the release, whether favorable or unfavorable to the Settlement Class.

Class Members can object to the Settlement Agreement and fee awards.

24. Class Counsel shall move for final approval of the Settlement Agreement including addressing attached unresolved objections, dismissal, application by Class Counsel for attorney's fees and reimbursement of litigation expenses with supporting billing records, and Class Representative Award no later than **February 15, 2023**. Copies of such materials shall be available for inspection at the office of the Clerk of this Court and made available on the Settlement website.

25. The Parties shall comply with the terms of the Settlement Agreement and this Order until such time as we can make a final determination as to the propriety of the Settlement at the Final Approval Hearing.

26. The Independent Fiduciary Report detailed in the Settlement Agreement from Fiduciary Counselors Inc. shall be produced to Defendant and Class Counsel and placed on the Settlement website no later than **February 28, 2023**.

27. Any member of the Settlement Class or authorized recipient of a CAFA Notice may **object** as described in the revised Notice no later than **March 9, 2023** to the fairness, reasonableness, or adequacy of the Settlement, to any term of the

Settlement Agreement, to the proposed award of attorney's fees and litigation costs, to the payment of costs of administering the Settlement out of the Qualified Settlement Fund, or to the request for a Case Contribution Award for the Class Representatives.

28. Any Class Settlement Member making a written objection, may, but is not required to, appear at the Fairness Hearing, either in person or through their own attorney. If they appear through their own attorney, they are responsible for hiring and paying for the attorney.

29. A party may respond to an objection by a Class Member no later than **March 23, 2023**.

30. A member of the Settlement Class who does not timely file a written objection complying with the terms of this Order and revised Notice shall be deemed to have waived, and shall be foreclosed from raising, an objection to the Settlement Agreement and an untimely objection shall be barred.

We will hold a Final Approval Hearing on March 30, 2023.

31. We will hold a Final Approval Hearing on **March 30, 2023 at 9:30 AM**, United States Courthouse, 601 Market Street, Courtroom 6B, Philadelphia, Pennsylvania 19106 to determine whether: (a) the Class should be finally certified as a class action under Federal Rule of Civil Procedure 23(a) and (b); the terms and conditions provided in the Settlement Agreement are fair, reasonable, and adequate and should be finally approved based, in part, on resolving objections; the Released Claims should be dismissed with prejudice; the Settlement Class members' representation by the Class Representatives and Class Counsel satisfy Federal Rule of Civil Procedure 23; Class Counsel's application for an award of attorney's fees not exceeding shall not exceed 33 1/3% of the Gross Settlement Amount (a maximum amount of

\$4,166,666.67), expenses not to exceed \$300,000, and \$5,000 Case Contribution Awards to each of the Class Representatives, should be approved; and, other issues necessary for approval. **Attendance at the Final Approval Hearing is not necessary. Settlement Class Members do not need to appear at the Final Approval Hearing or take any action if they do not oppose any aspect of the Settlement.**

32. At or after the Final Approval Hearing, we will issue an Order on Class Counsel's motion for an award of attorney's fees, reimbursement of reasonable expenses, and Case Contribution Awards to the Class Representatives.

33. If we grant final approval and grant Class Counsel's Motion for attorney's fees, costs and expenses, or approve Case Contribution Awards, Strategic Claims Services shall disburse the payments of awarded attorney's fees and costs to Class Counsel (but not Case Contribution Awards to be distributed with payments to the Class Members) no earlier than seven days after providing calculations of all sums due to the Plan Record.

34. We reserve the right to adjourn the date of the **March 30, 2023** Final Approval Hearing without further notice to Settlement Class Members and retain jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

35. We may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

36. We may enter a judgment approving the Settlement regardless of whether we award attorney's fees and/or expenses or a Case Contribution Awards.

37. If the Settlement is not approved at the Final Approval Hearing or consummated for any reason, this Order shall be rendered null and void, and be of no further force and effect. We will then promptly meet with counsel to set final obligations to prepare for trial.

We stay the parties' obligations until further Order.

38. Unless ordered otherwise, all proceedings in this case including obligations under our July 5, 2022 Order (ECF Doc. No. 93) are stayed, except as may be necessary to implement the Settlement, comply with the terms of the Settlement Agreement, or other agreement of the Parties approved by us.

39. Pending final determination of whether the proposed Settlement should be approved, neither Plaintiffs nor a Settlement Class member, directly or indirectly, representatively, or in any other capacity, shall commence or prosecute any of Released Claims against the Defendants in an action or proceeding in a court or tribunal.



KEARNEY, J.