

FILED
08-12-2024
CIRCUIT COURT
DANE COUNTY, WI
2023CV001572

DATE SIGNED: August 12, 2024

Electronically signed by Stephen E Ehlke
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

DANIELLE PAUL,
ROBERT GUENTHER

Plaintiff

Case No. 23CV1572

v.

ROGERS BEHAVIORAL HEALTH
SYSTEM, INC.,

Defendant

FINAL APPROVAL ORDER

This matter is before the Court on Plaintiffs Danielle Paul and Robert Guenther’s unopposed Motion for Final Approval of Class Action Settlement (the “Motion”) and Petition for Fees & Expenses (“Fee Petition”). The Motion proposes resolving the claims at issue on a classwide basis, against Defendant Rogers Behavioral Health System, Inc. (“Rogers” or “Defendant” and, along with Plaintiffs, the “Parties”).

Having carefully considered the Motion, Fee Petition, Settlement, and all the files, records, and proceedings herein, the Court determines that the Settlement is fair, reasonable, and adequate under Wis. Stat. § 803.08; that the class shall remain certified for purposes of judgment on the Settlement; that the proposed plan of notice to the Settlement Class was the best notice practicable under the circumstances and consistent with the requirements of due process and Wis. Stat. §

803.08(4); and that the requests in plaintiffs' Fee Petition are fair and reasonable under Wisconsin law.

NOW, THEREFORE, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

The Court finds that the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class. The Court further finds that the Settlement substantially fulfills the purposes and objectives of the class action and provides beneficial relief to the Settlement Class, especially considering the risks and delay of continued litigation. The Court also finds that the Settlement Agreement (a) is the result of arm's-length negotiations involving experienced counsel; (b) was sufficient to warrant notice of the Settlement and the Final Approval Hearing to the Settlement Class; (c) meets all applicable requirements of law, including Wis. Stat. § 803.08; and (d) is not a finding or admission of liability by Rogers.

The Settlement Class Shall Remain Certified

Under Wis. Stat. § 803.08(3), the Court maintains following Settlement Class for purposes of this final approval order:

All Persons who, are, or have been, patients of Defendant and who visited Defendant's website(s) at least once between May 23, 2017, and May 2, 2024.

Excluded from the Settlement Class are (1) any judge presiding over this Action and members of their families; (2) Rogers and its affiliates, parents, subsidiaries, officers, and directors; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded persons.

All persons who are members of the Settlement Class who have not submitted a timely request for exclusion are referred to collectively as "Settlement Class Members" or individually as a "Settlement Class Member."

The Court finds that the prerequisites under Wis. Stat. § 803.08 have been met, including (1) that the Settlement Class is so numerous that joinder of all members is impracticable; (2) that there are questions of law and fact common to members of the Settlement Class that predominate over questions affecting only individual members; (3) that Plaintiffs' claims are typical of the

claims of the Settlement Class; that Plaintiffs and their counsel will fairly and adequately protect the interests of the Settlement Class; and (4) that a settlement class action is a superior method of fairly and efficiently adjudicating this Action.

Under Wis. Stat. section 803.08(3), Plaintiffs Danielle Paul and Robert Guenther shall remain Class Representatives and the following shall remain as Class Counsel:

Gary M. Klinger
Milberg Coleman Bryson Phillips Grossman
227 W. Monroe Street, Suite 2100
Chicago, Illinois 60606
Tel: 866.252.0878

Foster C. Johnson
Ahmad, Zavitsanos, & Mensing, PLLC
1221 McKinney Street, Suite 2500
Houston, Texas 77010
Tel: 713.655.1101

Notice and Administration

The Court has carefully considered the forms and methods of notice to the Settlement Class set forth in the Settlement (“Notice Plan”) before approving the Settlement. The Court finds that the Notice reasonably apprised members of the Settlement Class of the pendency of this action, the terms of the Settlement, and the right to object to the Settlement and to exclude themselves from the Settlement Class. The Court finds that the Notice Plan constituted the best notice practicable under the circumstances and fully satisfied the requirements of Wis. Stat. section 803.08(4), the requirements of due process, and the requirements of any other applicable law, such that the terms of the Settlement, the releases provided for therein, and this Court’s final judgment will be binding on all Settlement Class Members. The Court further finds that the Notice constituted valid, due, and sufficient notice to all persons entitled thereto, and met the requirements of Due Process. Accordingly, the Court finds that no notice other than that specifically identified in the Settlement is necessary in this Action.

Submission of Claims & Exclusions

Class Members who wish to receive benefits under the Settlement must complete and submit a timely and valid Claim Form to the Settlement Administrator in accordance with the

instructions contained therein. To be timely, Claim Forms must be postmarked or received by the Settlement Administrator by September 2, 2024 (seventy-five (75) days after the Notice Date). Class Members who do not submit a claim and those who do not submit a timely and valid claim will not receive a payment under the Settlement, but they will be bound by the Settlement.

The Settlement Administrator shall review all claims to determine their validity and shall employ reasonable procedures to screen claims for abuse and fraud, and to deny claims where there is evidence of abuse or fraud. The Settlement Administrator may reject any claim that is not submitted by a Class Member; that does not comply in any material respect with the instructions on the Claim Form; or that is submitted after the Claims Deadline.

Each and every member of the Settlement Class who does not timely and validly submit a claim shall be forever barred from participating in any distributions of the Settlement Fund, and shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement, unless such person requests exclusion from the Settlement in a timely and proper manner, as hereinafter provided.

All members of the Settlement Class who did not timely and validly request exclusion shall be bound by all terms of the Settlement Agreement and by the Final Approval Order and Judgment even if they have previously initiated or subsequently initiate individual litigation or any other proceedings against Rogers. The members identified below shall be excluded from this Settlement and shall have preserved all claims related to this action against Defendant are:

Jasmine Korus
698 E. 2nd St.
Fond Du Lac, WI 54935

Leah Williams
117 Martha St.
Beaver Dam, WI 53916

Presley Jenkins
81 E. Shore Dr.
Random Lake, WI 53075

No Class Member Appearances or Objections

No Class Member objected to the Settlement's terms before the objection deadline. As a result, any all Class Members shall be deemed to have waived and forfeited any and all rights he, she, or they may have to object, appear, present witness testimony, and/or submit evidence; shall be precluded from seeking review of the Settlement by appeal or other means; and shall be bound

by all terms of the Settlement and by all proceedings, orders, and judgments in the Action.

The Fee Petition & Service Award Requests Are Approved

Under Wisconsin law and federal precedent evaluating fee petitions and service award requests, plaintiffs' fee and award requests are "reasonable" under all factors considered. *Harwood v. Wheaton Franciscan Servs., Inc.*, 2019 WI App 53, ¶21, 388 Wis. 2d 546, 558, 933 N.W.2d 654, 660 ("Wisconsin courts and practitioners can look to the well-developed body of federal case law interpreting [Federal Rule of Civil Procedure] 23 for guidance") (citing Judicial Council Committee Notes, 2017, § 803.08). Considering the "percentage of the fund" method, counsel's risk in taking on this litigation, the results achieved, and this case's stakes, counsel has earned their 35% fee request under Wisconsin law. *Behrens v. Landmark Credit Union*, No. 17-CV-101-JDP, 2018 WL 3130629, at *16 (W.D. Wis. June 26, 2018) ("And generally, a 33 to 40 percent contingency fee is considered consistent with the market rate and reasonable."); *In re Forefront Data Breach Litig.*, No. 21-cv887, 2023 WL 6215366, at *8 (E.D. Wis. Mar. 22, 2023) (same); *Neeck v. Badger Bros. Moving, LLC*, No. 19-cv-834, 2021 WL 1945829, at *3 (W.D. Wis. May 14, 2021) (same). As a result, plaintiffs' 35% fee request is approved.

Further, plaintiffs have earned service awards for their service to the class. *Cook v. Niedart*, 142 F.3d 1004, 1016 (7th Cir. 1998) (citations omitted) (affirming \$25,000 incentive award to plaintiff); see also 4 William B. Rubenstein et al., *Newberg on Class Actions* § 11:38 (4th ed.2008) ("Incentive awards are fairly typical in class action cases."); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 U.C.L.A. L.Rev. 1303 (2006). As a result, the Court approves \$3,500 service awards for each plaintiff.

Final Approval

The Court, after hearing and reviewing all pleadings and papers in this matter, orders the following, finally approving the parties' Settlement:

- A. The parties' Settlement meets the applicable prerequisites for settlement class action treatment under Wis. Stat. § 803.08;
- B. The settlement is approved as fair, reasonable, and adequate;

- C. Judgment as provided under the Settlement Agreement is entered;
- D. Plaintiffs' Fee Petition for an award of attorneys' fees and expenses of Class Counsel is approved as fair, adequate, and reasonable;
- E. The service awards to the Class Representatives are approved; and
- F. All benefits and payments contemplated under Settlement shall be distributed and paid as provided under the terms of the Settlement Agreement; and
- G. The Court retains jurisdiction to consider all further matters arising out of or connected with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.