

**FILED**

**MAR 29 2024**

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

**JOAN M. GILMER**  
CIRCUIT CLERK, ST. LOUIS COUNTY

T.D., et al.,	)	
	)	
Plaintiffs,	)	Case No. 20SL-CC05974
	)	
v.	)	Division No. 6
	)	
MERCY HOSPITALS EAST COMMUNITIES,	)	
d/b/a Mercy Hospital St. Louis et al.,	)	
	)	
Defendants.	)	

**ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This case comes before the Court for hearing on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("the Motion"), which is subject to approval by the Court.

WHEREAS, after full consideration of the Parties' Settlement Agreement and Plaintiffs' Motion, along with its supporting documents, and good cause appearing therefor pursuant to Rule 52.08,

IT IS HEREBY ORDERED THAT:

1. Capitalized terms used in this Preliminary Approval Order that are not otherwise defined herein shall have the same meaning assigned to them as in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter of this action, Plaintiffs, the Class Members, and the Mercy Defendants.
3. The Court orders that, in order to effectuate the proposed settlement and for settlement purposes only, this action shall be maintained as a class action under Rule 52.08, subject to final approval of the Settlement, on behalf of the following Settlement Class:

All individuals who, as determined by Mercy in 2020, were patients of Mercy (or were the patient's parents if the patient was a minor at the time of the Incident) and had their protected health information and/or

personally identifiable information improperly accessed by a certain Mercy employee. Excluded from the Settlement Class are: (a) any individuals who submit a Valid Exclusion Statement; and (b) all individuals who, as of the date of the Settlement Agreement, have reached settlements with Mercy or have commenced other litigation against Mercy concerning the actions of the Mercy employee who caused the Incident.

4. For settlement purposes only, T.D. and Monica Gama, on behalf of herself, as next friend to A.L., are appointed as Class Representatives.

5. The following persons are appointed as Class Counsel: Todd C. Werts of Lear Werts LLP, Maureen M. Brady of McShane & Brady LLC and Christopher E. Roberts of Butsch Roberts & Associates, LLC.

6. The Court recognizes that, pursuant to the Settlement Agreement, Mercy retains all rights to object to the propriety of class certification in the Civil Action in all other contexts and for all other purposes if the Settlement is not finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and litigation resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

7. The Court preliminarily approves the settlement of this Civil Action as set forth in the Settlement Agreement as being fair, just, reasonable and adequate to the Class Members, subject to further consideration at the Final Approval Hearing described below. The Court further finds the likelihood of final approval of the Settlement Agreement is sufficient to warrant notice to the Class Members as specified in the Settlement Agreement. There is good cause to find that the Settlement Agreement was negotiated at arms-length between the Parties, who were represented by experienced counsel.

8. For settlement purposes only, the Court finds that the Settlement Class as defined herein meets the requirements of Rule 52.08 as follows:

- a. The Class Members are sufficiently ascertainable and will be specifically identified on the Class List;
- b. All Class Members have standing as the Petition alleges a sufficient concrete harm;
- c. Though not adopted by the Missouri Supreme Court, Fed. R. Civ. P. 23(e)(2) sets forth certain additional factors a court should consider when evaluating a class action settlement. *Cf. State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 735 n.5 (Mo. banc 2004) (interpretations of Fed. R. Civ. P. 23 may be considered in interpreting Rule 52.08). The relief proposed to be provided to the Settlement Class preliminarily appears adequate taking into account the factors stated in Rule 23(e)(2)(c), in that:
  - (1) it appears that continued litigation would entail significant costs, risks, and delay as compared to the proposed Settlement as the Settlement was reached relatively early in the litigation process and before the expenditure of much more significant costs in time and money by both Parties;
  - (2) the Settlement provides meaningful payments to Class Members who submit a Valid Claim Form;
  - (3) the terms of the proposed Fee Award do not appear unreasonable; and
  - (4) there are no “side-deals” as part of this Settlement.

- d. The Settlement Class numbers more than 11,100 people, which is sufficiently numerous that joining all parties into a single action would be impractical;
- e. The Class Members assert common claims challenging Mercy's acts and omissions concerning the Incident through the same legal theories under Missouri law;
- f. The Class Members' claims are typical of one another in that they seek the same sorts of relief for the same alleged wrongs;
- g. The Class Representatives have adequately represented the Settlement Class in that they have taken the steps necessary to achieve this Settlement, including, but not limited to, by hiring competent counsel who have no conflicts of interest with the class and by vigorously litigating this case to its proposed conclusion;
- h. The common questions related to Mercy's acts and omissions concerning the Incident predominate over any individual questions that might arise; and
- i. Class certification is superior to individual adjudication of the claims asserted here due to the similarities between the Class Members' claims and that managing those claims together would be significantly more efficient than litigating them separately.

9. The Court approves, in form and content, the Notice Form, substantially in the form as Exhibits B and C to the Settlement Agreement, and finds that the Notice Form accurately reflects the nature of the claims and the proposed Settlement, states the exclusion and objection procedure in clear language, and is reasonably and practicably calculated to inform Class Members of the

pendency of the Civil Action and their rights, among other things, to opt out of the Settlement, to object to the Settlement, and to attend the Final Approval Hearing. The Notice Form, therefore, meets the requirements of Rule 52.08 and the requirements of due process. The Court further finds that the procedure for dissemination of the Notice Package in the manner described in the Settlement Agreement has a reasonable chance of reaching a substantial percentage of the Class Members and constitutes the best notice practicable under the circumstances. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Civil Action. The Parties, by agreement, may revise the Notice Form and Claim Form by agreement in ways that are not material or are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. The Court appoints Atticus Administration to serve as the Claims Administrator and to perform duties in accordance with the Settlement Agreement.

11. The mailing and distribution of the Notice Form and Notice Package as set forth in the Settlement Agreement shall proceed. The Claims Administrator is authorized to mail the Notice Form and Notice Package, after they are updated with the appropriate dates and deadlines consistent with the Settlement Agreement, to the applicable Class Members as provided in the Settlement Agreement.

12. The Class Members 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 Agreement, whether favorable or unfavorable, unless such persons validly exclude themselves from the Settlement Class in a timely and proper manner, as hereinafter provided. Class Members who do not timely and validly exclude themselves from the Settlement shall be bound by the terms of the Settlement Agreement.

13. As explained on the long-form Class Notice attached to the Settlement Agreement as Exhibit B, Class Members shall be entitled to exclude themselves by written statement expressly requesting exclusion from the Settlement on or before the applicable Objection/Exclusion Deadline. To be valid, the Exclusion Statement must contain the Class Members' name, address, and intention to be excluded. To be valid, the Exclusion Statement must be personally signed by the person requesting exclusion. Any such Exclusion Statement must be submitted to the Claims Administrator in the manner, form, and by the deadline as explained on the Class Notice. No Class Member, or any person acting on behalf of, in concert with, or in participation with that Class Member, may request exclusion from the Settlement Class of any other person within the Settlement Class.

14. Any Class Member who submits a valid Exclusion Statement shall not: (i) be bound by any orders or the Judgment ; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

15. Any Class Member who has not submitted a valid Exclusion Statement from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorney's fees, costs, and expenses that Class Counsel intends to seek and the payment of the Incentive Awards to the Class Representatives, may do so, either personally or through an attorney, by filing a written objection, together with any supporting documentation, as set forth in the Settlement Agreement, with the Clerk of the Court, and serving it upon Class Counsel, Mercy's Counsel, and the Claims Administrator no later than the Objection/Exclusion Deadline. Addresses for Class Counsel, Mercy's Counsel, and the Clerk of Court are as follows:

CLERK OF THE COURT	CLASS COUNSEL	MERCY'S COUNSEL
St. Louis County Circuit Clerk 105 S. Central Avenue Clayton, MO 63105	Todd C. Werts Lear Werts LLP 103 Ripley Street Columbia, MO 65201	Jeffrey R. Fink Thompson Coburn LLP One US Bank Plaza St. Louis, MO 63101

A copy of any objection must also be mailed or submitted through the Settlement Website to the Claims Administrator at the following address: 1295 Northland Dr Suite 160, Mendota Heights, MN 55120.

16. Any Class Member who has not submitted a Valid Claim Form or Valid Exclusion Statement and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also include or attach: (i) the Class Member's full name, address, and telephone number; (ii) the case name and number of this Civil Action; (iii) a statement of such Class Member's specific objections; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections the Class Member has filed, or has had filed on the Class Member's behalf, in any other class action cases in the last four years; and (vi) the Class Member's signature. The Class Member must also provide the name, address, and telephone number of any counsel representing the Class Member.

17. Objections not filed and served in accordance with this Preliminary Approval Order shall not be received or considered by the Court. Any Class Member who fails to timely file and serve a written objection in accordance with this Preliminary Approval Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorney's fees, costs, and

expenses, to the payment of any Incentive Awards, and to the Judgment and the right to appeal same. Only Class Members may object to the Settlement. An objector may withdraw his/her objection(s) at any time. The Parties may file with the Court written responses to any filed objections at or prior to the Final Approval Hearing.

18. No Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Preliminary Approval Order and in the Settlement Agreement are fully satisfied. Any Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, or who does not appear at the Final Approval Hearing, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Judgment.

19. Any Class Member who has submitted a Valid Claim Form or Valid Exclusion Statement may not submit objections to the Settlement. Class Members cannot both object to and exclude themselves from the Settlement. Any Class Member who attempts to both object to and exclude himself/herself from the Settlement will be deemed to have excluded himself/herself and will forfeit the right to object to the Settlement or any of its terms.

20. The Court hereby adopts the settlement approval process as set forth in the Settlement Agreement.

21. Class Counsel may file any motion seeking an award of attorney's fees, costs, and expenses not to exceed one-third of the Gross Settlement Fund (*i.e.*, up to \$600,000), as well as Incentive Awards of \$5,000 per Class Representative (the "Fee and Expense Application"), by no later than 14 days before the Final Approval Hearing.





22. All papers in support of final approval of the proposed Settlement shall be filed no later than 14 days before the Final Approval Hearing.

23. In the event that the Effective Date as defined in the Settlement Agreement does not occur, the Settlement, the Settlement Agreement, and this Preliminary Approval Order shall be deemed null and void and shall have no effect whatsoever. In such case, nothing in the Settlement Agreement or this Preliminary Approval Order shall be relied upon, cited as, constitute evidence of, or constitute an admission of liability or that class action certification is or may be appropriate in this action or any other matter.

24. Pending the Court's final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, Plaintiffs and all Class Members and anyone acting on behalf of any Class Member are barred and enjoined from: (a) further litigation in this Civil Action; (b) instituting, filing, or taking any action directly or indirectly, to commence, prosecute, pursue or participate on an individual or a class or collective action basis any action, claim or proceeding against Mercy or the Mercy Released Parties in any forum in which any of the claims subject to the Settlement are asserted, or which in any way would prevent any such claims from being extinguished; and/or (c) seeking, whether on a conditional basis or not, certification of a class or collective action that involves any such claims.

25. The Final Approval Hearing is hereby scheduled to be held before the Court on June 19, 2024, at 9:00 a.m. (or at such other time or location as the Court may without further notice direct). The purpose of the Final Approval Hearing will be as follows:

- a. To determine whether the proposed Settlement of this Action, as set forth in the Motion, should be approved as fair, reasonable, and adequate to the

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Settlement Class, and whether a Judgment approving the Settlement should be entered;

- b. To consider Class Counsel's Fee and Expense Application;
- c. To consider any Incentive Awards for the service of the Class Representatives; and
- d. To rule upon such other matters as the Court may deem appropriate.

26. The Final Approval Hearing may be postponed, adjourned, transferred, or continued by order of the Court without further notice to the Settlement Class. Notice of the postponement, adjournment, transfer, or continuance of the hearing shall be posted on the Settlement Website when available. At or following the Final Approval Hearing, the Court may enter a Judgment that approves the Settlement Agreement and, in accordance with the Settlement Agreement, adjudicates the rights of all Class Members.

27. All discovery and other proceedings in the Civil Action as between Plaintiffs and Mercy are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Preliminary Approval Order.

28. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

IT IS SO ORDERED:

Date

3/29/24

  
Hon. John N. Borbonus  
Circuit Judge, Division 6