

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LISA FEATHER, STANLEY)
BEIERMANN, and HOLLY PYATT, on behalf)
of herself, individually, and on behalf of all others)
similarly situated, and on behalf of the)
SSM PENSION PLANS,)

Plaintiffs,)

v.)

No. 4:16-cv-01669-HEA

SSM HEALTH, a Missouri Non-profit Corporation,)
THE PENSION COMMITTEE FOR THE)
RETIREMENT PLAN FOR SSM EMPLOYEES,)
JOHN and JANE DOES 1-20, MEMBERS OF)
THE PENSION COMMITTEE FOR THE)
RETIREMENT PLAN FOR SSM EMPLOYEES,)
each an individual, and JOHN and JANE DOES 21-))
40, each an individual,)

Defendants.)

AMENDED FINAL JUDGMENT

This litigation involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq. (“ERISA”), set forth in Plaintiffs’ First Amended Complaint dated September 6, 2017, with respect to the Plans.¹

¹ This Judgment incorporates by reference the definitions in the Class Action Settlement Agreement (“Settlement Agreement”), and all terms used herein shall have the same meanings as set forth in the Settlement Agreement unless set forth differently herein. The terms of the Settlement are fully incorporated in this Judgment as if set forth fully here. As set forth in the Settlement Agreement, the following Plans are included in the Settlement: (a) The Retirement Plan for Employees of SSM Health Care; (b) The Retirement Plan for Employees of St. Mary’s Hospital, Centralia, Illinois; and (c) the Retirement Plan for Employees of Certain Illinois Entities Related to SSM Health Care.

This matter came before the Court for a hearing pursuant to Federal Rule of Civil Procedure 23(e) on the application of the Parties for approval of the Settlement set forth in the Class Action Settlement Agreement (“Settlement Agreement”), executed on January 16, 2019.

This Court held a Fairness Hearing on June 6, 2019, at 11:00 a.m. CDT, to determine whether to give final approval to the proposed settlement. Following the Fairness Hearing, this Court entered an Order (Dkt. # 131) and Final Judgment (Dkt. #133) approving the Settlement Agreement. The Parties have now moved pursuant to Federal Rule of Civil Procedure 60 to amend the Final Judgment. The Court grants the Parties’ motion, and paragraphs 11, 13, and 25 of the instant Judgment reflect the amendments to the Final Judgment (Dkt. #133). This amended Final Judgment does not affect the Final Judgment’s “finality or suspend its operation.” *FED. R. CIV. P. 60(c)(2)*.

The Court finds that due and adequate notice having been given to the Settlement Class as required in the Preliminary Approval Order (ECF No. 120), and the Court having considered the Settlement Agreement, all papers filed and proceedings held herein, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court has jurisdiction over the subject matter of this Action and all Parties to the Action, including all members of the Settlement Class.

2. On January 17, 2019, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(1) or alternatively (b)(2), the Court previously preliminarily certified the following Settlement Class:

All vested or non-vested present and past participants of the Plans (and their beneficiaries) as of September 6, 2017.

3. This Order was revised and amended on January 18, 2019, but the class definition did not change. (ECF No. 121).

4. The Court finds that the Settlement Class meets all requirements of Federal Rules of Civil Procedure 23(a) for certification of the class claims alleged in the Complaint, including (a) numerosity; (b) commonality; (c) typicality; and (d) adequacy of the class representatives and Class Counsel.

5. Additionally, the prerequisites of Rule 23(b)(1) have been satisfied, since the prosecution of separate actions by individual members of the Settlement Class would create a risk of (i) inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants; and (ii) adjudications with respect to individual Settlement Class members, which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

6. Alternatively, the prerequisites of Rule 23(b)(2) have been satisfied, since Defendants have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole.

7. Pursuant to Federal Rule of Civil Procedure 23(a) the Court finds that Lisa Feather, Stanley Beiermann, and Holly Pyatt are members of the Settlement Class, their claims are typical of those of the Settlement Class and they fairly and adequately protected the interests of the Settlement Class in this Action. Accordingly, the Court hereby appoints Lisa Feather, Stanley Beiermann, and Holly Pyatt as Class Representatives.

8. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1), the Court finds that Class Counsel have fairly and adequately represented the Settlement Class for purposes of entering into and implementing the Settlement, and thus, hereby appoints Keller Rohrbach L.L.P. and Kessler Topaz Meltzer & Check, LLP as Settlement Class Counsel Committee Co-Chairs, Cohen Milstein Sellers & Toll, PLLC and IZARD Kindall & Raabe, L.L.P. as Settlement Class Counsel Committee Members, and Armstrong Law Firm, LLC as Liaison Counsel for the Settlement Class.

9. The appointment of Class Counsel and the appointment of the Named Plaintiffs as Settlement Class representatives are fully and finally confirmed.

10. The Court directed that Class Notice be given pursuant to the notice program proposed by the Parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-appointed Notice Program: (1) On February 19, 2019, the Settlement Administrator, Rust Consulting, mailed 65,850 copies of the Notice of Proposed Class Action Settlement Agreement to members of the Settlement Class, and Counsel for Class Plaintiffs caused the Class Notice to be posted to the website: www.kellersettlements.com; (2) As of May 3, 2019, Rust Consulting had mailed an additional 10,974 copies of the Class Notice to members of the Settlement Class for whom more current addresses were obtained.

11. After the period of objecting had closed and after the final fairness hearing, Defendant SSM Health discovered that it had omitted 928 Settlement Class members from the list of individuals who received the Class Notice. Despite this omission, the Parties represent that more than 96% of the Settlement Class members received a mailed Class Notice.

12. The Class Notice advised members of the Settlement Class of: the terms of the Settlement, the Fairness Hearing, and the right to appear at such Fairness Hearing; the inability

to opt out of the Settlement Class; the right to object to the Settlement, including the right to object to the application for an award of attorneys' fees and reimbursement of expenses, or incentive awards to the Class Representatives; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Settlement Class, including the scope of the Released Claims described in Section 3 of the Settlement Agreement.

13. The Class Notice met all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, the United States Constitution, and any other applicable law. The Court further finds that Notice in the form approved by the Court complied fully with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"), and that it constituted the best practicable notice under the circumstances. Although 928 individuals were inadvertently omitted from the mailing of the Class Notice, the Class Notice mailing reached more than 96% of the Settlement Class members, and notice was reasonable under the facts and circumstances of this case. Furthermore, these Settlement Class members still had reasonable notice of the Settlement, given that the Class Notice was publicly available at <https://www.kellersettlements.com/wp-content/uploads/2019/02/SSM-Class-Notice.pdf>. The Court also finds that Defendants complied with their CAFA responsibilities. The Court further finds that the form of notice was concise, clear, and in plain, easily understood language, and was reasonably calculated under the circumstances to apprise Class Members of the pendency of the Action, the claims, issues and defenses of the Settlement Class, the definition of the Settlement Class certified, the right to object to the proposed Settlement, the right to appear at the Fairness Hearing, through counsel if desired, and the binding effect of a judgment on members of the Settlement Class, including the scope of the Released Claims described in Section 3 of the Settlement Agreement.

14. The Court finds after a hearing and based upon all submissions of the Parties and interested persons that the Parties' proposed Settlement is fair, reasonable, and adequate. The Court also finds that the proposed Settlement is consistent with and in compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, and the United States Constitution, and other applicable law. In so finding, the Court has considered and found that:

a) The Settlement provides that: (i) SSM Health Care Corporation ("SSM") will contribute a minimum of \$15 million per year to the Plans during the calendar years of 2019, 2020, 2021, and 2022, for a total of \$60 million (although SSM may satisfy this obligation in full by making payments totaling \$50 million prior to the end of Plan Year 2020); (ii) during a period of ten (10) years after the effective date of the Settlement, SSM shall guarantee that the Plans have sufficient funds to pay the Accrued Retirement Benefits that are due and that participants' Accrued Retirement Benefits will not be cutback due to amendment or termination of the Plans; (iii) Defendants will pay \$115 to eligible Settlement Class Members as described in the Settlement Agreement who took voluntary lump-sum distributions of a traditional annuity benefit from the Plans from April 1, 2012 through the date the Settlement Agreement becomes final ("Lump Sum Class Members"). In exchange, Plaintiffs and the Settlement Class will provide a release of claims as set forth below.

b) The terms and provisions of the Settlement were entered into by experienced counsel and only after extensive, arm's-length negotiations with the assistance of a mediator. The Settlement is not the result of collusion.

c) the benefits of the proposed Settlement are real and substantial;

d) Plaintiffs' case has already been dismissed by this Court and is presently on appeal, and thus Plaintiffs face substantial barriers to prevailing through further litigation;

e) the issues involved in the case are both complex and novel, and

f) in the absence of Settlement, further litigation would be prolonged and costly.

15. Based on the record before the Court and the findings set out in this Order, the Court approves and adopts the Settlement.

16. All members of the Settlement Class are bound by this Judgment and by the terms of the Settlement, including the scope of the Released Claims described in Section 3 of the Settlement Agreement.

17. None of the Settlement Agreement, this Judgment, nor the fact of the Settlement itself constitutes any admission by any of the Parties of any liability, wrongdoing or violations of the law, damages or lack thereof, or of the validity or invalidity of any claim or defense asserted in the Action. If the Settlement Agreement is not upheld on appeal, or is otherwise terminated for any reason, the Settlement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission by any party of any fact, matter, or position of law; all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

18. The Court hereby dismisses with prejudice the Action and all Released Claims identified in Section 3 of the Settlement Agreement against each and all Releasees and without costs to any of the Parties as against the others. The Court hereby orders that on the Effective Date of this Settlement Agreement the Class Representatives, Lisa Feather, Stanley Beiermann,

and Holly Pyatt, as well as the members of the Settlement Class release any and all claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, expenses, and costs arising out of the allegations of the Complaint by any member of the Settlement Class, including without limitation any and all claims that the Plans are subject to ERISA; any and all claims that Releasees have violated reporting and disclosure requirements under State or Federal law; any and all claims that Releasees have violated minimum funding requirements under State or Federal law; any and all claims that ERISA's requirements relating to lump-sum calculations apply to past or future lump-sum distributions from the Plans; any and all claims arising from the payments made from the Plans to the Settlement Class members; any and all claims that Releasees have failed to establish the Plans pursuant to written instruments in violation of State or Federal law; any and all claims that Releasees have failed to establish a trust in compliance with State or Federal law; any and all claims that Releasees have violated fiduciary duties in violation of State or Federal law; any and all claims that the church plan exemption as applied to the Plans violates the Establishment Clause; and any all claims that Releasees' actions in administering or funding the Plans or calculating benefits thereunder constitutes a breach of contract, breach of fiduciary duty, or any other violation of State or Federal law.

19. The Released Claims do not include the release of any of the following: (i) Any rights or duties arising out of the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement; (ii) Individual claims for benefits brought pursuant to the applicable Plan's documents that do not arise out of the allegations of the Complaint, provided that in such an individual claim for benefits no Settlement Class member shall challenge any of the Plans' status as a Church Plan exempt from ERISA or claim that ERISA's requirements relating to lump-sum calculations apply to past or future lump-sum distributions

from the Plans; (iii) Claims related to any other plan that is merged, adopted or consolidated into the Plan after the Effective Date of Settlement; (iv) Any claim arising under ERISA with respect to a Plan after: the Internal Revenue Service issues a written ruling that a Plan does not qualify as a Church Plan; the Plans' sponsor elects for a Plan to be governed by ERISA; a court of law issues a definitive and final ruling that a Plan is not a Church Plan; the Roman Catholic Church no longer claims an association with a Plan's sponsor; or an amendment to ERISA is enacted and becomes effective as a law of the United States eliminating the Church Plan exemption.

20. In connection with the Released Claims, as of the Effective Date of the Settlement Agreement, each member of the Settlement Class is deemed to have waived any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code and relinquishes, to the fullest extent permitted by law and equity, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor and any and all provisions, rights and benefits of any similar statute, law or principle or common law of the United States, any state thereof, or any other jurisdiction.”

21. The Court further orders that Defendants absolutely and unconditionally release and forever discharge the Named Plaintiffs, the Settlement Class and Class Counsel from any and all claims relating to the institution or prosecution of the Action.

22. The Court retains jurisdiction over the implementation, administration, and enforcement of this Judgment and the Settlement, and all matters ancillary thereto.

23. Class Counsel is hereby awarded attorneys' fees pursuant to Federal Rule of Civil Procedure 23(h), in the amount of \$449,982.59 which the Court finds to be fair and reasonable,

and \$41,017.41 in reimbursement of Class Counsel's reasonable expenses incurred in prosecuting the Action. All fees and expenses paid to Class Counsel shall be paid pursuant to the timing requirements described in the Settlement Agreement.

24. Class Counsel has moved for incentive awards for Class Representatives Lisa Feather, Stanley Beiermann, and Holly Pyatt. The Court hereby grants in the amount of \$3,000.00 each as incentive awards to the Class Representatives.

25. The parties have moved for an additional 30 days from the date of this Order for SSM Health to complete the distribution of the required payment of One Hundred Fifteen Dollars (\$115.00) to each of the Lump-Sum Class Members. The Court hereby grants this extension.

26. The Court finds that no reason exists for delay in ordering final judgment, and the Clerk is hereby directed to enter this Judgment forthwith.

Dated this 17th day of July, 2019.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE