

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LISA FEATHER, STANLEY)	
BEIERMANN, and HOLLY PYATT, on)	
behalf of themselves, and all others)	No. 4:16-cv-01669-HEA
similarly situated, and on behalf of the SSM)	
PENSION PLANS,)	
)	
Plaintiffs,)	
)	
v.)	
)	
SSM HEALTH, A Missouri Non-profit)	
Corporation, SSM HEALTH CARE)	
PENSION COMMITTEE, JOHN and)	
JANE DOES 1-20, MEMBERS OF THE)	
SSM HEALTH CARE PENSION)	
COMMITTEE, each an individual, and)	
JOHN AND JANE DOES 21-40, each an)	
individual,)	
)	
Defendants.)	

**PLAINTIFFS’ MEMORANDUM OF LAW ADDRESSING OBJECTIONS TO THE
SETTLEMENT AND IN FURTHER SUPPORT OF FINAL APPROVAL OF THE
SETTLEMENT**

Plaintiffs Lisa Feather, Stanley Beiermann, and Holly Pyatt (“Plaintiffs”), through their respective counsel, respectfully submit this Memorandum of Law Addressing Objections to the Settlement and in Further Support of Final Approval of the Settlement.¹

I. OBJECTIONS TO THE SETTLEMENT

The Amended Order Preliminarily Approving Settlement, Notice Procedures, and Scheduling of a Fairness Hearing (“Preliminary Approval Order”) (ECF 121) provided, *inter alia*, that:

¹ Capitalized terms not otherwise defined herein shall have the same meaning as ascribed to them in the Class Action Settlement Agreement (“Settlement Agreement” or “Agreement.”) (ECF 123-2).

Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the application for payment of attorneys' fees and reimbursement of expenses, or to the application for Incentive Awards for the Settlement Class Representatives, may timely file an Objection in writing so that it is received no later than May 23, 2019 (fourteen (14) days prior to the Fairness Hearing). Any objection must be signed and must include (a) the case name and number (*Feather v. SSM Health et al*, No. 4:16-cv-01669-HEA); (b) the full name, current address, and telephone number of the Class Member making the objection, and (c) a description of the objection, including whatever factual and legal support the objecting Class Member believes to be appropriate.

ECF 121 at ¶ 8.² As of the filing of the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Certification of Settlement Class ("Final Approval Memorandum" or "Final App. Mem."), ECF 123-1, Class Counsel had received and responded to 187 e-mails and phone inquiries from Settlement Class members ("Class Members"). See Joint Final Approval Declaration at ¶ 51, ECF 123-4. Since the filing of the Final Approval Memorandum, Class Counsel has received eleven more email and phone inquiries for a total of 198 inquiries, as follows: 144 phone inquiries and 54 email inquiries. See ¶ 6 of Joint Declaration of Class Counsel in Support of Plaintiffs' Memorandum of Law Addressing Objections to the Settlement and in Further Support of Final Approval of the Settlement ("Joint

² The Preliminary Approval Order also provided that "b) [b]y no later than thirty (30) days after entry of this Preliminary Approval Order, Plaintiffs will cause the Settlement Agreement and the Class Notice to be published on a website to be listed on the Class Notice" and "c) [a]t least seven (7) days prior to the Fairness Hearing, Class Counsel shall file with the Court proof of timely compliance with the requirements of Paragraph 7(b) above..." ECF 121 at ¶ 7. Class Counsel satisfied ¶ 7(b) of the Preliminary Approval Order in attesting on May 6, 2019 that "[b]y February 19, 2019, Class Counsel at Keller Rohrback posted the Settlement Agreement, the Class Notice, the Preliminary Approval Motion, the Preliminary Approval Order, and other case documents on the website identified in the Class Notice: www.kellersettlements.com." See Joint Declaration of Class Counsel in Support of Final Approval ("Joint Final Approval Declaration"), at ¶ 48, ECF 123-4.

Supplemental Declaration”) filed concurrently herewith. Class Counsel also received one facsimile. *Id.*

Most of the inquiring Class Members sought a better understanding of what this case was about and how the Settlement impacted them and their pensions. *See* ¶ 7, Joint Supplemental Declaration. Overall, the Class Members who Class Counsel spoke with support the Settlement. *Id.* In addition to those Class Members that have inquired about the Settlement, there are three objectors, only one of whom (Laura Gidley Feltz) had spoken with Class Counsel prior to filing an objection. The three objectors are addressed in turn, below.

Mario Sigue (ECF 126):

Class Counsel has not spoken to Mr. Sigue because he did not provide a telephone number where he can be reached. After contacting counsel for Defendants, Class Counsel was able to determine that Mr. Sigue is a Settlement Class Member and has a vested benefit in the Plan. Joint Supplemental Declaration, ¶ 8. He has not chosen to receive a lump sum. *Id.*

Mr. Sigue’s objection appears to concern the manner of funding the Settlement. First, he says he “felt victimized how SSM handled and managed the Employee Pension Plans” and objects to the “Settlement distribution as presented on page 6, Item#7. (See Exhibit-2).” This is a reference to the Class Notice, which explains how the Settlement will be distributed. In pertinent part, the Class Notice states:

Because the Plans are defined benefit pension plans and not defined contribution plans with individual accounts, like a 403(b) plan or 401(k) plan, ***the payments by SSM will be contributed to the Plans, rather than to individual Plan participants and beneficiaries. Your pension benefit will not increase as a result of the Settlement.*** You will remain entitled to the Accrued Retirement Benefit that you have accrued pursuant to each of the Plans’ terms. Additionally, the Lump-Sum Class Members – Plan Participants who have received their entire Plan benefit in a lump-sum distribution – will receive an additional \$115.00 payment to be made from the Plans.

Id. at page 6, ¶ 7 (Emphasis in original). Second, Mr. Sigue states “I object [to] the proposed funneling of SSM’s settlement payment to the Plans.” Third, he states, “I believed that the funds belong to the plan participants and beneficiaries, SSM’s Settlement Money should be awarded/distributed **directly** to the participants and beneficiaries.” Objection at 1 (emphasis in the original).

Mr. Sigue appears to be requesting that the cash contribution be paid directly to him and other Plan participants, without the money going through the Plans. This would be an error for several reasons. First, the gravamen of the Complaint is that the Plans are underfunded, and paying money directly to Class Members does nothing to address that problem. Moreover, nothing in the Complaint suggested that the Plans are not properly calculating retirement benefits for Plan Participants. Accordingly, Mr. Sigue’s proposal would direct Defendants to pay participants money in addition to their promised retirement benefits, without addressing the underfunding of the Plans. In contrast, as explained in the Final Approval Memorandum, paying the bulk of the Settlement – between \$50 and \$60 million – to the Plans directly will improve the solvency of the trust fund on which all current Plan participants’ retirement payments depend. Final App. Mem. at 16.

In light of the above, the method of Settlement distribution clearly satisfies Rule 23(e)(2)(C)(ii) which focuses on whether funds collected through the Settlement are distributed effectively. *See* Final App. Mem. at 16. Mr. Sigue’s objection should be disregarded.

Laura Gidley Feltz (ECF 127):

Ms. Gidley Feltz is a Settlement Class Member. Joint Supplemental Declaration, ¶ 8. Her primary concern appears to be that she believes she will not benefit from the Settlement because “[i]n 2028, when the guarantee ends, [she] will be 63 years old. So, if SSM is only

obligated until 2028, [she] could be left with nothing since [she] will turn 65 years of age after the guarantee ends.” Objection at 1. Ms. Gidley Feltz also states, “I made plans based on getting a pension from SSM. Clearly my pension is in jeopardy. Since I am only 11 years from retirement, there is not much I can do to rectify this situation. Therefore, I am asking the court to modify this agreement and allow lawsuits to be filed, if needed, after 2028.” Objection at 1. She continues, stating “[i]t does not seem fair to me that SSM can pay a minimal amount of money into the pension plan, guarantee it for only 10 years, and then be released from all obligations without fear of legal actions.” *Id.*

Class Counsel spoke to Ms. Gidley Feltz, who intends to appear at the Fairness Hearing and address the Court. Joint Supplemental Declaration, ¶ 9. When speaking with Class Counsel, Ms. Gidley Feltz reiterated the points made in her Objection and stated that she plans to assert those points at the Fairness Hearing. *Id.*

Ms. Gidley Feltz is correct that her normal retirement date is March 1, 2030, when she will be 65 years of age. Joint Supplemental Declaration, ¶ 8. Class Counsel acknowledge that not all the benefits provided by the Settlement will be as helpful to Class Members who, like Ms. Gidley Feltz, are still many years from retirement age. However, while the ten (10) year benefits guarantee will end prior to Ms. Gidley Feltz retiring (assuming, of course, that she continues working until age 65), the fact that SSM is required to contribute at least \$50 million into the Plans benefits all current Plan participants, including Ms. Gidley Feltz. It is for this reason that it is fair and reasonable for Plan participants, including Ms. Gidley Feltz, to release claims in the Complaint in exchange for SSM’s obligations under the Settlement. In particular, SSM’s agreement to contribute between \$50-60 million to the Plans over the course of the next four years, represents substantial additional funding. And the benefits guarantee is similar to a 10-

year insurance policy on the funding for the Plans that would cost millions of dollars each year if the Plans attempted to purchase such a policy. *See* Final App. Mem. at 13. Ms. Gidley Feltz's objection should not prevent Final Approval of the Settlement.

Russell O'Bannon (ECF 128):

Mr. O'Bannon's written objection states: "[t]his letter was constructed to serve as a request as well as, [sic] an objective [sic] to payment of the SSM retirement funds." Objection at 1. He states, "I would like to confirm that the retirement plan for employees of St. Mary's Hospital, Centralia, Illinois, during the years of 1973 to 1979 are included in this settlement." *Id.* Further, he states, "[i]f said individuals are included, I would like the class counsel and SSM to confirm and verify that employees, who were vested under, [sic] such plan have those years of service included in their settlement calculation." *Id.*

Class Counsel was not able to speak to Mr. O'Bannon.³ However, Mr. O'Bannon's objection should not impede Final Approval here. First, "the Retirement Plan for Employees of St. Mary's Hospital, Centralia, Illinois" is one of the Plans included in the Settlement. *See* Settlement Agreement, ¶ 1.15 (defining "Plans"). Second, Class Counsel's understanding from communication with counsel for Defendants, Joint Supplemental Declaration, ¶ 8, is that Mr. O'Bannon is not entitled to any benefits from the Centralia Plan for the following reasons:

³ Mr. O'Bannon called and left a message with Class Counsel on May 29th stating that he "wanted to attend the Fairness Hearing, and I wanted to get a confirmation [of receipt of his letter]." *See* Joint Supplemental Declaration at ¶ 10. He left a phone number and stated "please call at any time." *Id.* Class Counsel called Mr. O'Bannon at 10:30 a.m. EDT on May 30th and left a voice message for Mr. O'Bannon identifying themselves and asking Mr. O'Bannon to call back to discuss his objection. *Id.* Class Counsel did not hear back from Mr. O'Bannon prior to finalizing and filing the instant memorandum. *Id.* In order to provide Mr. O'Bannon with a response to the questions posed in his objection, Kessler Topaz will mail a copy of the instant memorandum to the return address provided in his objection filed with the Court. *Id.* at ¶ 11. Additionally, this memorandum, as well as any related decision of the Court, will be posted to the Settlement website. *Id.*

Mr. O'Bannon is a participant in the Retirement Plan for Employees of SSM Health Care. He retired in 2017 and is receiving a single life annuity based on his service with SSM Health. *Id.* During the time Mr. O'Bannon worked for St. Mary's-Centralia (which SSM Health acquired in 2007), the hospital was not a member of the SSM Health controlled group and it did not sponsor a defined benefit plan. *Id.* Because the Centralia Plan was not established until years after Mr. O'Bannon terminated, he never earned a benefit under the Centralia Plan. *Id.* The Retirement Plan for Employees of SSM Health Care recognizes his vesting service with St. Mary's-Centralia but does not credit this service for the purposes of calculating his pension benefit because of the aforementioned reasons. *Id.* Mr. O'Bannon's objection to the settlement should, therefore, be disregarded.

II. THE SMALL NUMBER OF OBJECTIONS FROM CLASS MEMBERS SUPPORT THE SETTLEMENT'S APPROVAL

The notice program in this case was robust, with Class Notice being mailed to over 65,000 Class Members and posted to the Settlement website by Class Counsel. *See* ¶ 3, Joint Supplemental Declaration. Only 1,685 Class Notices remain undeliverable. *Id.* at ¶ 4 (Citing Supplemental Declaration of Abigail Schwartz for Rust Consulting, Inc., attached to the Joint Supplemental Declaration as Exhibit A). Despite the significant number of Class Members who received the Class Notice, only three objections to the Settlement were filed. Although amended Rule 23(e)(2) does not address the response of Class Members to the Settlement, courts have generally considered their reaction when deciding approval.

When, as here, such a small number of the settlement class objects to the settlement, it strongly signals that the settlement should be approved. *See, e.g., Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) (small number of objections relative to a large class "speaks well of class reaction to the Settlement" and provides support for approval); *see also In re BankAmerica Corp.*

Sec. Litig., 210 FRD 694, 703 (E.D. Mo. 2002) (“Because a settlement may be approved even when a large number of class members object, the small number of objections is not an impediment to the Court’s approval of the proposed settlement in this case.”) (citations omitted). In a similar situation, another judge in this district noted, “[n]otwithstanding the large size of the Settlement Class and the extensive public notice, there are only two Objectors. The Objectors do not contend that the Settlement Agreement is the product of fraud or collusion.” *Rawa v. Monsanto Company*, 2018 WL 2389040, at * 7 (E.D. Mo. May 25, 2018). Accordingly, the court found the circumstances “weigh[ed] in favor of approval” of the settlement. *Id.* The same result is required in this Action.

III. CONCLUSION

For the reasons set forth above and those in Plaintiffs’ Final Approval Memorandum, Plaintiffs respectfully move this Court to grant their Motion for Final Approval of Settlement and Certification of Settlement Class.

Dated: May 30, 2019

Respectfully submitted,

**KESSLER TOPAZ MELTZER &
CHECK, L.L.P.**

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 30th day of May, 2019, a copy of the foregoing was filed with the Court and served upon all counsel of record using the Court's CM/ECF system.

/s/ Mark K. Gyandoh
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