

FILED
06-02-2023
Anna Maria Hodges
Clerk of Circuit Court
2023CV001935

DATE SIGNED: June 2, 2023

Electronically signed by Honorable Pedro A. Colon
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

KEEFE JOHN and JILLIAN CATHERINE
KLUG, *individually and on behalf of all*
others similarly situated,

Plaintiffs,

Case No.: 23-CV-1935

v.

FROEDTERT HEALTH, INC.,

Defendant.

**ORDER GRANTING UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT AGREEMENT**

This matter came before the Court on Plaintiff Keefe John's and Jillian Catherine Klug's ("Plaintiffs" or "Class Representatives") Unopposed Motion for Preliminary Approval of Class Settlement Agreement ("Motion"). Plaintiffs, individually and on behalf of the proposed Settlement Class, and Defendant Froedtert Health, Inc. ("Froedtert," and together with Plaintiff, the "Parties") have entered into a Settlement Agreement (the "Settlement Agreement") that settles the above-captioned litigation.

This matter concerns a putative class action, *John, et al. v. Froedtert Health, Inc.*, Milwaukee County Circuit Court Case No. 2023CV001935, which arises out of out of Froedtert's alleged use of certain tracking technologies including the Meta (a/k/a Facebook) Pixel on its MyChart portal between February 1, 2017 to January 22, 2020, and on its public websites between

February 1, 2017 to May 23, 2022 (the “Website Usage Disclosure”) during which Plaintiffs allege their web usage data, containing personal health information, was shared to Facebook allegedly resulting in the invasion of Plaintiffs’ and Settlement Class Members’ privacy.

The Parties, through their counsel, have entered into a Settlement Agreement following good faith, arm’s-length negotiations and a mediation overseen by Hon. Stuart E. Palmer (Ret.). The Parties have agreed to settle the Lawsuit, further to the terms of the Settlement Agreement, and subject to the approval and determination of this Court as to the fairness, reasonableness and adequacy of the Settlement which, if approved, will result in dismissal of the Lawsuit with prejudice.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, the affidavits of Gary M. Klinger, Esq., and David S. Almeida, Esq., (and the exhibits thereto) submitted in support, as well as prior proceedings herein, and for good cause shown, it is hereby ordered that Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as set forth herein.¹

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to Wisc. Stat. Ann. Sec. 803.08 the Court conditionally certifies the Settlement Class in this matter defined as follows:

All persons who logged into a MyChart patient portal account at least once between February 1, 2017 and May 23, 2022.

Excluded from the Settlement Class are:

Froedtert and its affiliates, parents, subsidiaries, officers and

¹ Unless otherwise indicated, capitalized terms used in this Preliminary Approval Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) have the same meaning as in the Settlement Agreement.

directors, as well as the judge(s) presiding over this matter and the clerks of said judge(s). The exclusion does not apply, and should not be read to apply, to those employees of Froedtert and its Related Entities who received notification regarding the Website Usage Disclosure.

The Court conditionally finds, for settlement purposes only, that: (1) the Settlement Class is so numerous that joinder of all members is impracticable, (2) there are questions of law or facts common to the Settlement Class, (3) the claims or defenses of the Class Representative are typical of the claims or defenses of the Settlement Class, (4) the Class Representative and Settlement Class Counsel will fairly and adequately assert and protect the interests of the Settlement Class under the criteria set forth in Wisc. Stat. Ann. Sec. 803.08 and (5) a class action provides a fair and efficient method of adjudication of the controversy.

2. **Class Representatives and Settlement Class Counsel.**

Keefe John and Jillian Catherine Klug are hereby designated and appointed as Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members and therefore typical of the Class and that they will be adequate Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel: Gary M. Klinger and David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC and David S. Almeida of Almeida Law Group LLC.

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, adequate and in the best interests of the Settlement Classes to warrant providing Notice of the Settlement to the Settlement Class and accordingly the proposed Settlement is preliminarily approved.

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this Court.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on Friday, September 29, 2023 at 10:00 o'clock [a.m.] in the Circuit Court for the County of Milwaukee, Wisconsin, Courtroom 412 to determine, among other things, whether: (a) this matter should be finally certified as a class action pursuant to Wisc. Stat. Ann. Sec. 803.08; (b) the Settlement Agreement between the Parties should be finally approved; (c) the Settlement and Settlement Agreement should be finally approved as fair, reasonable, adequate and in the best interests of the Settlement Class; (d) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (e) Settlement Class Members (except those who have timely and valid requests for exclusion from the Settlement) should be bound by the releases set forth in the Settlement Agreement; (f) Plaintiff's Motion for Attorneys' Fees, Costs, Expenses, and Service Awards should be granted; (g) Gary M. Klinger and David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC and David S. Almeida of the Almeida Law Group, LLC should be finally appointed as Settlement Class Counsel and (h) Keefe John and Jillian Catherine Klug should be finally appointed as Class Representatives.

Plaintiffs' Motion for Final Approval of the Class Action Settlement shall be filed with the Court at least **fourteen (14) Days prior to the date of the Final Approval Hearing**, and Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Award to Class Representative shall be filed with the Court at least **fourteen (14) Days prior to the deadline for Settlement Class Members to opt-out of or object to the Settlement.**

6. **Administration.** The Court appoints Kroll Settlement Administration, LLC as the Settlement Administrator, with responsibility for the Notice Program and Claims Administration and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. The Notice and Claims Administration Costs, including, but not limited to, the Settlement Administrator's fees, as well as the costs associated with the provision of notice to the Settlement Class Members and administration of the Settlement, shall be paid from the Settlement Fund.

7. **Notice to the Class.** The proposed Notice Program set forth in the Settlement Agreement, including the Long Notice and the Short Form Notice, which are attached to the Settlement Agreement as **Exhibits B and C,** respectively constitute reasonable notice of the commencement of the action, provide a fair recital of the subject matter and proposed terms or the Settlement, provide Settlement Class Members with details regarding how to request exclusion from or to object to the Settlement Agreement, and are hereby approved. Non-material modifications to these exhibits may be made without further order of the Court. The Settlement Administrator and Froedtert are directed to carry out the Notice Program in conformance with the Settlement Agreement.

Within **forty-five (45) Days of the entry of this Preliminary Approval Order** (the "Notice Date"), the Settlement Administrator shall send the Short Notice to all Settlement Class Members whose addresses are known to Froedtert by first-class U.S. mail.

8. **Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Settlement Class as described in this Preliminary Approval Order and the Settlement Agreement (including the exhibits thereto) constitutes reasonable notice of the commencement of the action to the Settlement Class. Specifically, the

Notices (both Short Form and Long Form in **Exhibits B and C**) themselves are clear and straightforward. They define the Settlement Class; clearly describe the options available to class members and the deadlines for taking action; describe the essential terms of the Settlement, including a description of the subject matter and the proposed terms of the Settlement, including a summary of the monetary or other benefits the class would receive; disclose the requested Service Award for the Class Representative, as well as the amount that Settlement Class Counsel intends to seek in fees, costs, and expenses; describe procedures for making claims, objections, and requesting exclusion; provide information that will enable Settlement Class Members to calculate their individual recovery; describe the date, time, and place of the Final Fairness Hearing; and prominently display the address and phone number of Settlement Class Counsel and the Settlement Administrator for Settlement Class Members to make further inquiry about the Settlement. Finally, direct mailing, combined with publishing on the Settlement Website, is designed to be the best reasonable notice of the commencement of the action to reach the Settlement Class Members under the circumstances. The Court concludes that the Notice Program meets all applicable requirements of law and constitutes Due Process under the U.S. and Wisconsin Constitutions.

9. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must personally sign, and timely submit, complete, and mail a request for exclusion (“Opt-Out Request”) to the Settlement Administrator at the address in the Notice. To be effective, an Opt-Out Request must clearly manifest the Settlement Class Member’s intent to be excluded from the Settlement Class and be postmarked *no later than the final date of the Opt-Out Period, which is the sixty (60)-Day period beginning upon the Notice Date.*

All Settlement Class Members who submit timely, valid Opt-Out Requests, shall receive no benefits or compensation under the Settlement Agreement, shall gain no rights from the

Settlement Agreement, shall not be bound by the Settlement Agreement, and shall have no right to object to the Settlement or proposed Settlement Agreement or to participate at the Final Approval Hearing. An Opt-Out Request or other request for exclusion that does not fully comply with the requirements for requesting exclusion from the Settlement Class or that is not timely submitted or postmarked, or that is sent to an address other than that set forth in the Notice, will be invalid, and the person submitting such request will be treated as a Settlement Class Member and will be bound by the Settlement Agreement, including the Release contained therein, and any judgment entered thereon.

Within fourteen (14) Days after the last Day of the Opt-Out Period, the Settlement Administrator shall furnish to Settlement Class Counsel and to Froedtert Counsel a complete list of all timely and valid Opt-Out Requests (the "Opt-Out List").

10. **Objections.** A Settlement Class Member who complies with the requirements of this Paragraph may object to the Settlement and to Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Award for the Class Representative.

No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is: (a) filed with the Clerk of Court *by the Objection Deadline, which is no later than sixty (60) Days after the Notice Date*, as set forth in the Settlement Agreement and as specified in the Notice; and (b) mailed to Settlement Class Counsel and Froedtert's Counsel at the addresses listed in the Notice, and postmarked by no later than the Objection Deadline.

Each Objection must (i) set forth the Settlement Class Member's full name, current address, telephone number, and email address; (ii) contain the Settlement Class Member's original signature; (iii) contain proof that the Settlement Class Member is a member of the Settlement Class

(e.g., copy of settlement notice, copy of original notice of the Website Usage Disclosure); (iv) state that the Settlement Class Member objects to the Settlement, in whole or in part; (v) set forth a statement of the legal and factual basis for the Objection; (vi) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (vii) identify all counsel representing the Settlement Class Member, if any; (viii) contain the signature of the Settlement Class Member's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation; and (ix) contain a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years.

Any Settlement Class Member who fails to comply in full with the requirements for objecting in the Settlement Agreement, the Notice, and any Court orders will forever waive and forfeit any and all rights he or she may have to raise any objection to the Settlement Agreement, will not be permitted to object to the approval of the Settlement at the Final Approval Hearing, will be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means, and will be bound by the Settlement Agreement and by all proceedings, orders, and judgments in the Lawsuit.

11. **Claims Process and Settlement Administration.** Class Representative and Froedtert have created a process for assessing and determining the validity of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the plan for remuneration described in the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so

in accordance with the requirements and procedures specified in the Notice and the Claim Form. If the Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement, but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form, shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment.

12. **Termination of Settlement.** This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Preliminary Approval Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

13. **Use of Order.** This Preliminary Approval Order shall be of no force or effect if a Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Froedtert of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Preliminary Approval Order be construed or used as an admission, concession, or declaration by or against the Class Representative or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this Lawsuit or in any other lawsuit.

14. **Stay of Proceedings.** Except as necessary to effectuate this Preliminary Approval Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until such further order of this Court. Further, any actions brought by Settlement Class Members concerning the Released Claims are hereby enjoined and stayed pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until such further order of this Court.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website maintained by the Settlement Administrator.

16. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Preliminary Approval Order include, but are not limited to:

EVENT	DATE
Notice Date	45 Days after Preliminary Approval – July 7, 2023
Deadline for Plaintiff to File Motion for Attorneys’ Fees, Costs, Expenses, and Service Award	14 Days Prior to Opt-Out and Objection Deadlines – August 22, 2023
Deadline for Settlement Class Members to Opt-Out of or Object to Settlement Agreement	60 Days after Notice Date – September 5, 2023
Deadline for Class Members to Submit Claim Forms (Electronically or Postmarked by Mail)	90 Days after Notice Date – October 5, 2023
Deadline for Plaintiffs to File Motion for Final Approval of Settlement	14 Days Prior to Final Approval Hearing – September 15, 2023

Final Approval Hearing	Not less than 120 days after Preliminary Approval <u>Friday, September 29, 2023 @10:00 a.m.</u>
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