

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

MARY L. BRACE, individually and on)	
behalf of herself and all others similarly)	
situated,)	
Plaintiff,)	
v.)	
)	No. 16-cv-2412-SHL-tmp
METHODIST LE BONHEUR)	
HEALTHCARE, THE BENEFITS)	
COMMITTEE and JOHN DOES 1-20,)	
Defendants.)	

**ORDER GRANTING PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This action involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. (“ERISA”), with respect to the Methodist Healthcare Pension Plan, which Defendants maintain is an ERISA-exempt Church Plan¹ as of the date the Settlement becomes final.

Presented to the Court for preliminary approval is a settlement of the litigation as to all Defendants. The terms of the Settlement are set forth in the Class Action Settlement Agreement (the “Settlement Agreement”), executed by counsel on March 29, 2017, on behalf of the Parties. (ECF No. 59-1.) Plaintiff has filed a Motion for Preliminary Approval of the Settlement, pursuant to which the Court has considered the Settlement to determine, among other things, whether to approve preliminarily the Settlement, preliminarily certify a Settlement Class, authorize the dissemination of Class Notice to members of the Settlement Class, and set a date

¹ Capitalized terms not otherwise defined in this order shall have the same meaning as ascribed to them in the Settlement Agreement.

and time for the Fairness Hearing. Upon reviewing the Settlement Agreement, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. Class Findings. The Court preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met as to the “Settlement Class” defined below, in that:

a) The Court preliminarily finds that the Settlement Class is ascertainable from records kept with respect to the Plan and from other objective criteria, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable. Rule 23(a)(1) is satisfied.

b) The Court preliminarily finds that there are one or more questions of fact and/or law common to the Settlement Class. Rule 23(a)(2) is satisfied.

c) The Court preliminarily finds that the Named Plaintiff’s claims are typical of the claims of the Settlement Class. Rule 23(a)(3) is satisfied.

d) The Court preliminarily finds that the Named Plaintiff will fairly and adequately protect the interests of the Settlement Class in that: (i) the Named Plaintiff’s interests and the nature of claims alleged are consistent with those of the members of the Settlement Class; (ii) there appear to be no conflicts between or among the Named Plaintiff and the Settlement Class; and (iii) the Named Plaintiff and the members of the Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated ERISA class actions. Rule 23(a)(4) is satisfied.

e) The Court preliminarily finds that the prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying

adjudications as to individual class members that would establish incompatible standards of conduct for Defendants; or (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests. Rule 23(b)(1) is satisfied.

f) Alternatively, the Court preliminarily finds that Defendants have acted or refused to act on grounds generally applicable to the Settlement Class, and such conduct may be subject to appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole. Rule 23(b)(2) is satisfied.

g) The Court preliminarily finds that Izard, Kindall & Raabe, LLP and Kessler Topaz Meltzer & Check, LLP (collectively, "Class Counsel") are capable of fairly and adequately representing the interests of the Settlement Class. Class Counsel have adequately identified and investigated potential claims in the action. Class Counsel are experienced in handling class actions, other complex litigation, and claims of the type asserted in the Action. Class Counsel are knowledgeable about the applicable law, and have committed the necessary resources to represent the Settlement Class. The Court preliminarily finds that the Bramlett Law Offices are experienced and capable of acting as Liaison Counsel for the Class. Rule 23(g) is satisfied.

2. Class Certification. Based on the findings set forth above, the Court preliminarily certifies the following class under Federal Rules of Civil Procedure 23(b)(1) and/or (2) and 23(e) in this litigation (the "Settlement Class"):

All vested or non-vested present and past participants of the Methodist Healthcare Pension Plan (or their beneficiaries) as of the Effective Date of the Settlement.

The Court preliminarily appoints Mary L. Brace, the Named Plaintiff, as the representative for the Settlement Class, Izard, Kindall & Raabe, LLP and Kessler Topaz Meltzer & Check, LLP as Class Counsel, and the Bramlett Law Offices as Liaison Counsel, for the Settlement Class.

3. Preliminary Findings Regarding Proposed Settlement. The Court preliminarily finds that: (a) the proposed Settlement resulted from informed, extensive arm's-length negotiations, including participating in mediation; (b) Class Counsel has concluded that the proposed Settlement is fair, reasonable and adequate; and (c) the proposed Settlement is sufficiently fair, reasonable and adequate to warrant sending notice of the Settlement to the Settlement Class.

4. Fairness Hearing. A hearing is scheduled for August 16, 2017, at 2:00 p.m. (the "Fairness Hearing") to determine, among other things:

- a) Whether the Settlement should be approved as fair, reasonable and adequate;
- b) Whether the Complaint should be dismissed with prejudice pursuant to the terms of the Settlement Agreement;
- c) Whether the Class Notice provided for by the Settlement Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (iii) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law; and

d) Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement.

5. Class Notice. A proposed form of Class Notice is attached to the Settlement Agreement as Exhibit A. With respect to such form of Class Notice, the Court finds that such form fairly and adequately: (a) describes the terms and effect of the Settlement Agreement; (b) notifies the Settlement Class that Class Counsel's attorneys' fees and expenses, and Named Plaintiff's Case Contribution Award, will be determined in the sole discretion of the Court and paid according to Section 8 of the Settlement Agreement; (c) gives notice to the Settlement Class of the time and place of the Fairness Hearing; and (d) describes how the recipients of the Class Notice may object to any of the relief requested. The Court directs that Class Counsel shall:

a) By no later than seventy-five (75) days before the Fairness Hearing, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be sent to each Person within the Settlement Class who can be identified by the Plan's current recordkeeper. Such notice shall be in a form that the Parties have deemed to be cost effective and sent to the last known address for members of the Settlement Class. Defendants will pay the cost for sending notice to the Settlement Class as part of the settlement administration.

b) By no later than seventy-five (75) days before the Fairness Hearing, cause the Settlement Agreement and the Class Notice to be published on the website identified in the Class Notice.

c) At or before the Fairness Hearing, Class Counsel shall file with the Court a proof of timely compliance with the foregoing Class Notice mailing and publication requirements.

d) By no later than thirty (30) days before the Fairness Hearing, Class Counsel shall file a motion for final approval of the Settlement. Class Counsel shall file any Motion for Attorneys' Fees, Costs and Expenses, together with any request for a Case Contribution Award to Plaintiff, within thirty (30) days of the Court's Final Approval Order.

6. Objections to Settlement. Any member of the Settlement Class who wishes to object to the fairness, reasonableness or adequacy of the Settlement or to any term of the Settlement Agreement may timely file an Objection in writing no later than fourteen (14) days before the Fairness Hearing. All written objections and supporting papers must: (a) clearly identify the case name and number "*Brace v. Methodist Le Bonheur Healthcare*, Case No. 16-cv-02412;" (b) be filed with the Court and postmarked and mailed to Class Counsel and Defendants' Counsel at the addresses below on or before fourteen days before the Fairness Hearing; (c) set forth the objector's full name, current address and telephone number; (d) set forth a statement of the position the objector wishes to assert, including the factual and legal grounds for the position; (e) set forth the names and a summary of testimony of any witnesses that the objector might want to call in connection with the Objection; (f) provide copies of all documents that the objector wishes to submit in support of his/her position; (g) provide the name(s), address(es) and phone number(s) of any attorney(s) representing the objector; (h) state the name, court, and docket number of any class action litigation in which the objector and/or his/her attorney(s) has previously appeared as an objector or provided legal assistance with respect to an objection; and (i) include the objector's signature.

The addresses for filing objections with the Court and service on counsel are as follows:

To the Court:

Clerk of the Court
United States District Court
Western District of Tennessee
Western Divisional Office
167 N. Main Street, Room 242
Memphis, TN 38103

Re: *Brace v. Methodist Le Bonheur Healthcare*, Case No. 16-cv-02412

To Class Counsel:

Robert A. Izard
Mark P. Kindall
IZARD, KINDALL & RAABE, LLP
29 South Main Street, Suite 305
West Hartford, Connecticut 06107
Fax: (860) 493-6290

Edward W. Ciolko
Mark K. Gyandoh
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Fax: (610) 667-7056

To Defendants' Counsel:

Brian T. Ortelere
Mara E. Slakas
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Fax: (215) 963-5001

If an objector hires an attorney to represent him or her for the purposes of making such objection pursuant to this paragraph, the attorney must both effect service of a notice of appearance on counsel listed above and file it with the Court by no later than fourteen (14) days before the Fairness Hearing. Any member of the Settlement Class or other Person who does not timely file and serve a written objection complying with the terms of this paragraph shall be

deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

7. Appearance at Fairness Hearing. Any objector who files and serves a timely, written objection in accordance with paragraph 6 above, may also appear at the Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must affect service of a notice of intention to appear setting forth, among other things, the name, address and telephone number of the objector (and, if applicable, the name, address and telephone number of the objector's attorney) on Class Counsel and on the Defendants' counsel (at the addresses set out above). The objector must also file the notice of intention to appear with the Court by no later than fourteen (14) days before the Fairness Hearing. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

8. Service of Papers. Defendants' Counsel and Class Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

9. Termination of Settlement. This 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 immediately before this Court entered this Order, if the Settlement is terminated in accordance with the Settlement Agreement. In such event, Section 9 of the Settlement Agreement shall govern the rights of the parties.

10. Use of Order. If this Order becomes of no force or effect, it shall not be construed or used as an admission, concession or declaration by or against the Defendants, the Named Plaintiff or the Settlement Class.

11. Continuance of Hearing. The Court may continue the Fairness Hearing without further written notice.

IT IS SO ORDERED, this 4th day of May, 2017.

s/ Sheryl H. Lipman
SHERYL H. LIPMAN
UNITED STATES DISTRICT JUDGE