

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**JAMIE HARPER and JESSICA  
OWENS, on their own behalf and on  
behalf of all similarly situated  
individuals,**

**Plaintiffs,**

**v.**

**JEFF ANDERSEN, in his official  
capacity as the Secretary of the Kansas  
Department of Health and Environment,  
and JON HAMDORF, in his  
official capacity as the Director of the  
Kansas Division of Health Care Finance,**

**Defendants.**

**Case No. 18-4008-DDC-GEB**

**ORDER PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

This case commenced February 15, 2018. Now pending before the court is a motion to approve preliminarily a Settlement Agreement (“Agreement”) between plaintiffs Jamie Harper and Jessica Owens and defendants Jeff Andersen, in his official capacity as the Secretary of the Kansas Department of Health and Environment, and Jon Hamdorf, in his official capacity as the Director of the Kansas Division of Health Care Finance.

The court has reviewed the Joint Motion for Preliminary Approval of Class Action Settlement, Approval of Notice Plan, the Suggestions in Support, and all of the exhibits attached thereto. Having done so, the court grants the Motion (Doc. 28), and the court orders as follows:

1. The terms of the Agreement, and the Settlement as provided therein, are approved preliminarily as fair, reasonable, and adequate to the Settlement Class as defined in the Agreement, and subject to further consideration at the Final Approval Hearing.

2. The definitions set forth in the Agreement are incorporated by reference into this Order.

3. The parties have executed the Agreement in order to settle and resolve this Action on a classwide basis, subject to approval of the court.

4. Accordingly, for the purpose of a settlement in accordance with the Agreement, and upon review of the parties' Joint Motion for Preliminary Approval of Class Action Settlement, this court hereby certifies the following class of persons as Settlement Class:

All individuals who:

- (i) were, are, or will be enrolled in the Kansas Medicaid Program ("KanCare") on or after October 31, 2016;
- (ii) require, or are expected to require treatment for Hepatitis C with Mavyret® or other similar direct acting antiviral ("DAA") under the current guidelines adopted by the American Association for the Study of Liver Diseases and the Infectious Diseases Society of America; and
- (iii) did not meet the coverage criteria for Prior Authorization of HCV DAA Drug treatment adopted by Defendants as specified in the Harvoni® exemplar Exhibit A, except those Medicaid enrollees denied coverage or Prior Authorization based on a history of illicit intravenous ("IV") substance use within the three-month period preceding their Prior

Authorization request for Mavyret®, Harvoni®, or other similar direct acting antiviral treatment for Hepatitis C.

5. Under the Agreement, and for purposes of the Settlement only, the court finds preliminarily that:

a. The Settlement Class is so numerous that joinder of all members is impracticable;

b. There are questions of law or fact common to the Settlement Class that predominate over questions affecting only individual members of the Settlement Class;

c. The claims of the Named Plaintiffs are typical of those members of the Settlement Class;

d. The Named Plaintiffs and Plaintiffs' Counsel will fairly and adequately represent and protect the interests of the members of the Settlement Class; and

e. Certification of the Settlement Class is an appropriate method for the fair and efficient adjudication of the controversies between the Class Members and defendants.

6. For the purposes of this preliminary approval, and for all matters relating to the Settlement and the Action, until further order of the court, the court appoints the Named Plaintiffs as Representatives of the Settlement Class and J. Stan Sexton of Shook Hardy & Bacon LLP and Lauren Bonds of the American Civil Liberties Union of Kansas as Class Counsel.

7. By this Order, the court hereby exercises subject matter and personal jurisdiction over the Settlement Class for purposes of evaluating the final certification of the Settlement Class and the fairness and adequacy of the Settlement.

8. The Notice Plan, as set forth in the parties' Agreement, is hereby approved.

9. The Notice Plan in a form substantially the same as that set forth in the Settlement Agreement shall be implemented in the manner set forth in the Agreement.

10. The Notice Plan methodologies (a) protect the interests of the Named Plaintiffs, the Settlement Class, and defendants, (b) are the best notices practicable under the circumstances, and (c) are reasonably calculated to apprise the Settlement Class of the proposed Settlement, the Agreement, and their right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the court finds that the notice methodologies are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meet all applicable requirements of law, including, but not limited to, Fed. R. Civ. P. 23 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

11. A hearing (“the Final Approval Hearing”) will be held at 9:00 a.m. on April 18, 2019, in U. S. Courthouse for the District of Kansas, Courtroom 403, 444 S.E. Quincy, Topeka, Kansas 66683. At the Final Approval Hearing, the court will consider: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) the entry of any final order or judgment in the Action with respect to the Settlement Class; (c) the application for Representative Plaintiff Awards for the services rendered by the Named Plaintiffs; (d) the application for attorneys’ fees; and (e) other related matters.

12. To be considered at the Final Approval Hearing, any Settlement Class Member desiring to file an objection or other comment on the Settlement shall be required to file all such objections and comments and all supporting pleadings on or before February 28, 2019 via certified or first class mail to the court and Counsel for the Class and for the defendants. The objection must bear the signature of the Settlement Class Member (even if represented by counsel), the Settlement Class Member’s current address and telephone number, and state the

exact nature of the objection including any legal support the Settlement Class Member wishes to introduce in support of the objection, and whether or not the Settlement Class Member intends to appear at the Final Approval Hearing. If the Settlement Class Member is represented by counsel, the objection shall also be signed by the attorney who represents the Settlement Class Member and state whether the attorney representing the objector will appear at the Final Approval Hearing.

13. Unless otherwise ordered by the court, no objection to or other comment concerning the Settlement shall be heard unless timely filed in accordance with the respective guidelines specified above.

14. Any Settlement Class Member who does not make his or her objection in a manner provided in this Order shall be deemed to have waived any such objection and shall forever be barred from making any objection to the Settlement, including without limitation, the propriety of class certification, the adequacy of notice, or the fairness, adequacy, or reasonableness of the Settlement.

15. Any attorney hired by any Settlement Class Member for the purpose of appearing and/or making an objection shall file his or her entry of appearance at the Settlement Class Member's expense no later than five days after the objection has been filed, with service on Class Counsel and defendants' Counsel under the Federal Rules of Civil Procedure.

16. Any Settlement Class Member may appear at the Final Approval Hearing in person, or by counsel if an appearance is filed and served as provided above, and such person will be heard to the extent allowed by the court. No Settlement Class Member shall be permitted to be heard unless they comply with the provisions stated above.

17. All other events contemplated under the Agreement to occur after entry of this Order and before the Final Approval Hearing shall be governed by the Agreement, to the extent not inconsistent herewith. Class Counsel and defendants' Counsel shall take further actions as required by the Agreement.

18. The parties shall be authorized to make non-material changes to the Notice Plan, so long as Class Counsel and defendants' Counsel agree and one of the parties files a notice informing the court of the change before the Final Approval Hearing. Neither the insertion of dates nor the correction of typographical or grammatical errors shall be deemed a change to the Notice Plan.

19. All claims against and motions involving defendants are hereby stayed and suspended until further order of this court, other than such as may be necessary to carry out the terms and conditions of the Agreement or the responsibilities related or incidental to it.

20. If Final Approval of the Settlement does not occur, or if the Settlement does not become effective on or before the date as provided in the Agreement, or if the Settlement is rescinded or terminated for any reason, the Settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the parties before the Settlement was executed and made, and this Order and all Orders issued pursuant to the Settlement shall be vacated, rescinded, canceled, and annulled and deemed "void" and/or "no longer equitable" for purposes of Federal Rule of Civil Procedure 60.

21. Neither this Order, the Agreement, nor any of their terms or provisions, nor any of the negotiations between the parties or their counsel (nor any action taken to carry out this Order), is, may be construed as, or may be used as an admission or concession by or against any of the parties or the Released Persons of (i) the validity of any claim or liability, any alleged violation or failure to comply with an law, any alleged breach of contract, any legal or factual argument,

contention or assertion; (ii) the truth or relevance of any fact alleged by plaintiffs; (iii) the existence of any class alleged by plaintiffs; (iv) the propriety of class certification if the Action were to be litigated rather than settled; (v) the validity of any claim or any defense that has been or could have been asserted in the Action or in any other litigation; (vi) that the consideration to be given to the Class Members hereunder represents the amount which could be or would have been recovered by any such persons after trial; or (vii) the propriety of class certification in any other proceeding or action. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any way be construed as, or deemed evidence of, an admission or concession as to the denials, defenses, or factual or legal positions of defendants, and shall not be offered or received in evidence in the Action or any action or proceeding against any party in any court, administrative agency, or other tribunal for any purpose whatsoever, except as is necessary (a) to enforce the terms of this Order and Agreement, or (b) to show, if appropriate, the recoveries obtained by the Named Plaintiffs and Class Members hereunder, including, but without limitation, the attorneys' fees award and costs; provided, however, that this Order and the Agreement may be filed by defendants in any action filed against or by defendants, or any other Released Person, to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim. Defendants expressly reserve all rights and defenses to any claims and do not waive any such rights or defenses in the event that the Agreement is not approved for any reason.

**IT IS THEREFORE ORDERED BY THE COURT THAT** the parties' Joint Motion for Preliminary Approval of Class Action Settlement, Approval of Notice Plan (Doc. 28) is granted.

**IT IS SO ORDERED.**

**Dated this 21st day of December, 2018, at Kansas City, Kansas.**

**s/ Daniel D. Crabtree**  
**Daniel D. Crabtree**  
**United States District Judge**