

**IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY
PENNSYLVANIA**

SHANE STARK, a minor, by and through
his parent and natural guardian DONNA
HOPE, individually and on behalf of all
other similarly situated individuals,

Plaintiffs,

vs.

BUTLER AREA SCHOOL DISTRICT and
GLENN TERWILLIGER,

Defendants.

CIVIL DIVISION

No. 18-10759

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**ORDER OF PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND
PROVIDING FOR NOTICE AND HEARING**

This matter is before the Court on the Plaintiffs' Consent Motion for Preliminary Approval of Class Action Settlement;

WHEREAS, the Parties have submitted a Motion pursuant to Pa.R.Civ.P. 1714 for an order preliminarily approving the settlement to this action in accordance with the terms of the class action Settlement Agreement.

The Court, having reviewed the Settlement Agreement entered into by the parties, hereby Orders that:

1. The Court hereby conditionally certifies a settlement class, pursuant to Pa.R.Civ.P. 1702, 1708 and 1709 as follows:

All minor individuals, as reflected in the Defendants' records, who, between August 15, 2016 and January 20, 2017: 1. Were registered students of Summit Elementary School; 2. To whom (via their parents or natural guardians) Dr. Dale Lumley, on behalf of the Butler Area School District, sent a letter dated January 20, 2017, warning of elevated copper and lead levels in the school's drinking water; 3. Who were subsequently offered medical testing by the Butler Area School District; and 4. Who accepted the offer and obtained medical testing in the form of a finger stick blood test(s).

2. Upon preliminary review, the Agreement of Settlement entered into between the parties appears to be fair, reasonable and adequate to the class. Accordingly, the proposed settlement is preliminarily approved, pending a final fairness hearing after notice to the class as provided herein.

3. The Court finds that the prerequisites to a class action under Pa.R.Civ.P. 1702, 1708 and 1709 have been satisfied for settlement purposes only in that:

- a) there are approximately 210 class members;
- b) the claims of the class representatives are typical of those of the other members of the class;
- c) there are questions of fact and law that are common to all members of the class; and;
- d) the class representatives will fairly and adequately protect the interests of the class and have retained counsel experienced in complex class action litigation who have and will adequately represent the class; and
- e) the action is maintainable as a class action under Pa.R.Civ.P. 1708(a) for settlement purposes.

4. Pursuant to Pa.R.Civ.P. 1709, Plaintiffs Shane Stark, a minor, by and through his parent and natural guardian Donna Hope, individually and on behalf of all other similarly situated individuals, are certified as class representatives. This Court certifies Brendan Lupetin as counsel for the settlement class, and he shall serve as the attorney to whom any request for exclusions from the Settlement Class or objections to the settlement or the request for attorneys' fees and costs shall be mailed by class members or opt-outs.

5. The Court will hold a fairness hearing pursuant to Pa.R.Civ.P.1714(a) on OCTOBER 6, 2013 in Courtroom 3 at 12:00 ~~10:00~~ p.m. for the following purposes:

- a) To determine whether the defined class should be certified for settlement purposes pursuant to Pa.R.Civ.P. 1702, 1708 and 1709;

- b) To determine whether the proposed settlement is fair, reasonable and adequate and should be granted final approval by the Court;
- c) To determine whether a final judgment should be entered dismissing the claims of the Class Members with prejudice, as required by the Agreement;
- d) To consider the application of Plaintiffs' counsel for an award of attorneys' fees and expenses, and for service awards to the class representatives; and
- e) To rule upon other such matters as the Court may deem appropriate.

6. The Court hereby approves, as to form and content, the notices of settlement of class action and finds that the mailing and distribution of the notice substantially in the manner and form set forth in Paragraph 8 to 10 of this Order meets the requirements of Pa.R.Civ.P. 1714 as well as all due process requirements, is the best notice practical under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

7. Analytics Consulting, LLC, 18675 Lake Drive E, Eden Prairie, MN 55347 is appointed as Settlement Administrator and is authorized and directed to mail the approved class notice and administer the notice procedure as more fully set forth below.

8. The costs of printing and mailing the Class Notice and otherwise administering the settlement shall be paid by Plaintiffs in accordance § 5(h) of the Settlement Agreement.

9. Within thirty (30) days of the date of this Order, the Settlement Administrator shall:

- a) have updated the Class List for the Settlement Classes using the best practices of updating class member addresses, including by use of the national change of address database;
- b) cause a copy of the proper class notice to be sent by first class mail to the individuals on each of the Class List for

the Settlement Class as of the date of the filing of this Order;

- c) establish an Internet website containing information about the Settlement; and
- d) establish a Telephone Assistance program, all as provided in the Settlement Agreement.

10. The Defendants are authorized to provide the names and identifying information of Settlement Class Members, including Social Security Numbers for purposes of confirming and/or updating the Class List. In this connection, this Order is authorization to provide such information pursuant to the Health Insurance Portability and Accountability Act (HIPPA) pursuant to 45 C.F.R. Sec. 164.512(e)(1)(I-(ii) which authorizes the disclosure of HIPPA protected information pursuant to a court order.

11. At least twenty (20) days prior to the final fairness hearing, the Settlement Administrator shall serve on Plaintiffs' counsel proof, by affidavit of, that it has performed the functions described in Paragraphs 8-10.

12. As provided in the Class Notice, each Class Member shall have the right to exclude himself or herself from the settlement class by mailing a request for exclusion to the Settlement Administrator and/or Counsel for the Class postmarked not later than thirty (30) days after mailing of the Class Notice. Requests for exclusion must set forth the Class Member's original signature, current postal address and telephone number, the last four digits of the Settlement Class Member's Social Security number, and a specific statement that the proposed Settlement Class Member wants to be excluded from the Settlement Class. At least seven (7) days prior to the final approval hearing, Class Counsel shall file with the Court a list of all persons who have timely requested exclusion from the Settlement Class along with copies of the Requests For Exclusion.

13. As provided in the Class Notice, each Class Member who does not timely opt out of the class shall have the right to object to the settlement or to the request by Plaintiffs' counsel for an award of attorneys' fees and expenses by filing written objections with the Court postmarked not later than thirty (30) days after the date on which the Class Notices were mailed. Each Class Member that objects must file his or her objections with the Court under the caption of this case and must also serve his or her objections on Counsel for the Class as provided in the Notice. Any settlement class member who does not make his or her objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as incorporated in the Settlement Agreement, to the final judgment and order approving class settlement, unless otherwise ordered by Court. Any such objections shall be:

- a) Delivered by hand, sent by first class mail, overnight or other delivery service, written objections and copies of any papers and briefs within thirty days of the date on which the Class Notice was mailed to: Brendan B. Lupetin, Esquire, Lupetin & Unatin, LLC The Gulf Tower, 707 Grant Street, Suite 3200, Pittsburgh, PA 15219 .
- b) Filed under the caption of this case as *Stark v. BASD*, No. 18-10759 with the Butler County Prothonotary (Civil), First Floor, Government Center 124 W. Diamond Street Butler, PA 16001 within thirty (30) days of the mailing of the Class Notice.

14. As provided in the Class Notice, each Class Member who does not timely opt out of the class shall have the right to be heard at the final fairness hearing upon written request to be heard that must be filed with the Court under the caption of this case as *Stark v. BASD*, No. 18-10759 with the Butler County Prothonotary (Civil), First Floor, Government Center 124 W. Diamond Street Butler, PA 16001 and postmarked not later than 21 days before the scheduled final settlement hearing. Each Class Member that wishes to appear at the final fairness hearing

must file his or her written request with the Court and must also serve his or her request on Counsel for the Class as provided in the Notice. Any settlement class member who does not make his or her written request to be heard in the manner provided herein shall be deemed to have waived his or her right to speak at the final fairness hearing. To the extent an objection relates to Plaintiffs' Counsel's attorneys' fees and costs, any such objection may be made and/or supplemented up to seven (7) days after the filing of a motion for such fees and costs.

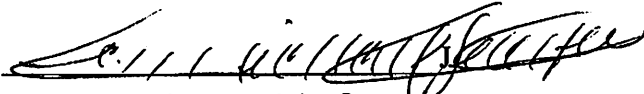
15. All briefs, memoranda, petitions and affidavits to be filed in support of final approval of the settlement and for an award of attorneys' fees and expenses by counsel for the class shall be filed not later than ten (10) days before the fairness hearing.

16. The Court reserves the right to adjourn the date of the final fairness hearing without further notice to the members in the settlement classes, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the settlement, with such modifications as may be agreed to by the settling parties, if appropriate, without further notice to the settlement class.

17. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Settlement Agreement.

It is So Ordered.

BY THE COURT:


July 24, 2023

