STATE OF MICHIGAN

COURT OF CLAIMS

GRANT BAUSERMAN and TEDDY BROE, individually and on behalf of a class of similarly-situated persons,

Plaintiff,

v

STATE OF MICHIGAN UNEMPLOYMENT INSURANCE AGENCY,

Defendant.

Case No. 2015-202-MM

HON. DOUGLAS B. SHAPIRO

ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION TO CERTIFY SETTLEMENT CLASS AND APPOINT SETTLEMENT CLASS COUNSEL

On December 16, 2022, Plaintiffs Grant Bauserman and Teddy Broe, individually and in their capacity as putative class representatives, filed an unopposed motion to certify settlement class and appoint settlement class counsel. On January 9, 2023, the Court conducted a hearing on Plaintiffs' motion. Both prior to and during the hearing, Defendant State of Michigan Unemployment Insurance Agency, through its counsel, informed the Court that Defendant does not oppose Plaintiffs' motion to certify settlement class and appoint settlement class counsel. For the reasons set forth below, the Court grants Plaintiffs' motion.

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I. Class Certification

First, as to class certification, Plaintiffs request that the Court certify the settlement class, defined as:

> Those individuals who received an initial Determination or Re-Determination of Intentional Misrepresentation issued by the Agency between October 1, 2013, and August 31, 2015, issued initially through the Agency's auto-adjudication process, and suffered a first Collection on or after March 9, 2015, and who do not opt-out of the Settlement.

This Court's power to certify the class is conferred by MCR 3.501(B)(3)(b), which provides that "[t]he court may allow the action to be maintained as a class action." MCR 3.501(B)(3)(b). Classes certified for settlement purposes, like classes certified for the litigation process, must meet the requirements of MCR 3.501(A)(1), which authorizes certification of a class where: " (a) The class is so numerous that joinder of all members is impracticable; (b) There are questions of law or fact common to the members of the class that predominate over questions affecting only individual class members; (c) The claims or defenses of the representative parties are typical of the claims or defenses of the class; (d) The representative parties will fairly and adequately assert and protect the interests of the class; and (e) The maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenience administration of justice." MCR 3.501(A)(1). The Court finds that all requirements of MCR 3.501(A)(1) have been satisfied here.

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Numerosity. The Court finds that the numerosity requirement is satisfied because the Settlement Class is so numerous as to make joinder impracticable. More than 8,000 class members received initial Determinations or Re-Determinations of Intentional Misrepresentation automatically issued by MiDAS between October 1, 2013, and August 31, 2015, who suffered a collection action without due process- in the time frame established in the class definition. This class of more than 8,000 people is so substantial in size as to satisfy the numerosity requirement, or else risk thousands of individual actions against the agency.

Commonality. The Court finds that the commonality requirement is satisfied because all members of the Settlement Class share a common question of fact and law that predominates over any question affecting only individual members. Settlement Class members were all subjected to a government taking without due process when they were auto-adjudicated for Intentional Misrepresentation or Fraud by the UIA. All class members were thus forced to pay, or had their tax refunds intercepted, without the opportunity to present exculpatory evidence or otherwise be heard. Every Settlement Class member's claim arises out of this lack of due process.

Typicality. The Court finds that the typicality requirement is satisfied because all class members, including Bauserman and Broe, were deprived of property without specific notice or an opportunity to be heard or present evidence, and all were auto-adjudicated guilty of fraud. Thus, the claims of representatives Bauserman

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and Broe possess the same essential characteristics as those of the Settlement Class members at large.

Adequacy. The Court finds that the adequacy requirement is satisfied, both as to the named Class Representatives Bauserman and Broe, and as to their Counsel. Based on the trial and appellate record, the Court finds that throughout the course of litigation over the past seven years, Plaintiffs Bauserman and Broe have proven themselves to be zealous advocates of the Class and have committed themselves to fulfilling their duty for the Settlement Class. As set forth above, the Court finds that Bauserman and Broe have suffered the same injury as the prospective Class Members. Plaintiffs and class members share identical interests of recovery, and therefore Plaintiffs' interests are aligned with, and not antagonistic to, the Settlement Class as a whole,

The Court also finds that class counsels Michael L. Pitt, Jennifer L. Lord, Kevin M. Carlson, and Beth M. Rivers possess the required experience with class action litigation, having litigated this case alone for seven years to a successful resolution. The Court finds that Plaintiffs' counsel satisfy the adequacy requirement of MCR 3.501(A)(1).

Superiority. The Court finds that the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenience administration of justice. The impracticality of some 8,000 plus

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individual recovery actions demonstrates that a class action is the superior method of adjudication that would promote the convenient administration of justice for all parties and for the Court. The central question of law and fact at issue here is shared by every Settlement Class member. While some claimants' recoveries may be in the thousands and others in the hundreds, it is unlikely that any individual class member has damages high enough to pursue separate action against the Agency. A class action provides the most equitable and efficient pathway to ensure settlement funds are disbursed to eligible claimants regardless of their damage amount. For these reasons, a certified Settlement Class is the superior method of resolution.

In sum, Plaintiffs have satisfied all requirements for certification of the settlement class under MCR 3.501(A). Defendant does not oppose certification of the settlement class. The Court will therefore grant the motion for class certification.

II. Appointment of Bauserman and Broe as Class Representatives

For the reasons set forth in the analysis of the adequacy requirement, above, the Court finds that Plaintiffs Grant Bauserman and Teddy Broe should be appointed Class Representatives and will grant Plaintiffs' motion to appoint Bauserman and Broe Class Representatives.

III. Appointment of Plaintiffs' Counsel as Counsel for the Class

For the reasons set forth in the analysis of the adequacy requirement, above, the Court finds that Plaintiffs' counsel Michael L. Pitt, Jennifer L. Lord, Kevin M.

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Carlson, and Beth M. Rivers should be appointed as counsel for the Settlement Class and the Court will grant Plaintiffs' motion to appoint them as counsel for the Settlement Class.

IV. Preliminary Approval of Class Action Settlement

The Court will grant preliminary approval of the proposed class action settlement. The Court finds that the parties reached an Amended Settlement Agreement dated November 14, 2022. The Court finds that the Amended Settlement Agreement was reached in good faith after a well-informed, arms-length negotiation process. The parties engaged in extensive arms-length negotiations over the period of several months, starting in July 2021. After fourteen months of negotiations, on September 27, 2022, Mediator Norris recommended to the Parties that payment by the State of Michigan of $20 million represented a fair and reasonable resolution of this case and encouraged the Parties to accept her recommendation. The Parties accepted the Mediator's recommendation, and a term sheet was executed on September 27, 2022. The Court finds that the proposed class settlement is the product of patient, arms-length negotiation, and that it should be approved.

The Court also finds, for the reasons set forth in Plaintiffs' unopposed motion and brief, that the proposed class settlement is fair, reasonable, and adequate. Specifically, the Court finds that the proposed settlement achieves a substantial recovery for the Plaintiff class members while avoiding the expense, complexity,

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and extended duration of further litigation The proposed settlement achieves a substantial recovery for the Plaintiff class members while avoiding the expense, complexity, and extended duration of further litigation. The Court finds that the gross settlement amount of $20,000,000 is fair, reasonable, and adequate compensation for the Class members, in light of the potential value of their claims, because such an amount provides for (1) full compensation of the class members' economic damages, plus (2) additional compensation for non-economic damages, plus (3) attorneys' fees and costs, as well as (4) the costs of claims and notice administration.

The Court also finds that the parties had sufficient information to make an informed decision about settlement. Specifically, in July of 2021, while the litigation was pending before the Michigan Supreme Court, the Parties engaged the services of Megan P. Norris, an experienced and well-respected mediator. The Agency provided the Mediator with substantial information from its databases including the potential class members with timely claims, the amount of their loses, the manner in which the Agency collected payments from the identified class members, and the amount of Agency refund, if any. Thus, the parties had access to the information necessary to make an informed decision about settlement.

In granting preliminary approval, the Court has also considered and given weight to the experienced attorneys for both Plaintiff and Defendant, all of whom

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agree that the proposed class settlement is fair, reasonable, and adequate. The Court finds no reason to dispute that conclusion.

V. Approval of Class Notice

The Court finds that the proposed Class Notice, submitted with Plaintiffs' motion, fully satisfies the requirements of MCR 3.501(C)(1-7). The parties' proposed Notice satisfies MCR 3.501(C)(4) and (C)(5) as to the Manner and Content of the Notice, respectively. Defendant does not oppose the approval of Notice. As such, the proposed Notice will be approved.

VI. Approval of Class Notification Plan

Along with their Motion, Plaintiffs filed with the Court the declaration of Richard W. Simmons, the President of Analytics Consulting, LLC. In their motion, Plaintiffs request that the Court approve the Class Notification Plan set forth in Mr. Simmons's declaration. Defendant does not oppose this request.

Plaintiffs proposed class notification plan, which Mr. Simmons refers to in his declaration as the "Notice Program," provides for: 1) a Class Notice via U.S. Mail for all Settlement Class Member for whom a mailing address is available; and 2) direct notice via email (the Email Notice) to all Settlement Class Members for whom the Defendant has an email address. Additionally, the full notice will be mailed upon request, and will also be available for download at the Settlement Website. The Notice Program also includes a Settlement Website and toll-free telephone line

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where individuals can learn more about their rights and responsibilities in the litigation.

The Court finds that the Plaintiffs' proposed class notification plan should be approved because it will provide the best reasonable and practicable notice to settlement class members under the circumstances and it is fully consistent with due process and MCR 3.501.

VII. Appointment Analytics Consulting LLC as Claims Administrator

The Court finds that Analytics Consulting LLC should be appointed as Claims Administrator. This finding is based on the merits of Mr. Simmons's declaration, which establishes that Analytics is well-suited to administer the claims at issue in this matter. Defendant does not oppose this appointment. The Court will therefore appoint Analytics Consulting LLC as Claims Administrator.

VIII. Approval of Plan of Allocation

The Court finds that the Plan of Allocation is fair, reasonable, and adequate, and further finds that it satisfies all due process requirements. Defendant does not oppose the Plan of Allocation. The Court will therefore approve Plaintiffs' proposed Plan of Allocation.

IX. Appointment of Megan Norris as Special Master

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The parties have jointly proposed and the Court will approve the appointment of attorney Megan Norris as Special Master. As Special Master, Ms. Norris shall have the authority to decide eligibility disputes and appeals of awards with finality.

X. Approval of Attorney Fees, Reimbursement of Costs, and Approval to Set Aside Administrative Costs.

Plaintiffs' counsel request approval of attorney fees of $6,487,111.88 and reimbursement of costs in the amount of $38,664.36. Plaintiffs have also requested that the Court authorize Plaintiffs' Counsel to set aside $500,000.00 of the total settlement to fund the administration of the settlement, including all costs and fees incurred in: QSF administration, Notice Administration, Claims Administration, and all costs and fees of the Special Master. Prior to Final Approval of the Settlement, Class Counsel Michael Pitt or Beth Rivers are authorized to request disbursements from the QSF Administrator for all reasonable and necessary costs and expenses incurred as part of the Notice and Claims Administration Process. Upon written request by Michael Pitt or Beth Rivers, the QSF administrator is authorized to direct Huntington Bank to make disbursements from the Bauserman QSF as directed by Michael Pitt or Beth Rivers. All disbursements are to be accounted for and presented to the Court for review and approval as part of the filings supporting Final Approval of the Settlement. The Court finds that each of these requests are fair, reasonable, and consistent with applicable law, and will grant Plaintiffs' motion for approval of attorney fees, reimbursement of costs, and set-aside of administrative costs.

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XI. Approval of Service Awards to Class Representatives

The Court finds that as Class Representatives, Plaintiffs Bauserman and Broe should receive service awards in the amount of $ $15,000.00 each. The Court finds that this amount reflects the time and effort Plaintiffs expended in bringing and assisting in this litigation. The amount of the incentive awards is aligned and proportional to the expected recovery for the class members, and therefore the Court is satisfied that the interests of the Class Representatives, including their interest in receiving a service award, is fully aligned with the interests of the other Class Members.

XII. Approval of Case Management Order and Timeline

The parties have jointly proposed, the Court hereby approves the following Case Management Order and Timeline for further proceedings with respect to Class Notification, Claims Administration, Final Approval, and Payment of Class Settlement Awards, all of which are consistent with the Plan of Allocation approved in this Order:

Preliminary Approval Order	1/19/23
Mailing of Notice	2/1/23
Registration Due (60 days)	4/5/23
Eligibility Notice by Claims Administrator (CA)	4/7/23
Claims form and Opt-out objections due	4/14/23

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Eligibility Claims Dispute to CA (21 days per POA)	5/5/23
Response by CA (7 days per POA)	5/12/23
Appeal of Eligibility to Special Master due	5/19/23
Special Master decision	5/26/23
Hardship Impact Pool Claims due	4/14/23
Notice of Deficiencies from Counsel	4/21/23
Documentation of HIP claim Due	5/22/23
Decision on HIP claim	5/30/23
Final Approval Motion	6/21/23
Final Approval Hearing	7/12/23
Final Approval Order	7/19/23
Effective Date of Order	8/18/23
Payments Issued	9/8/23

CONCLUSION AND ORDER OF THE COURT

The Court having considered the parties' pleadings and exhibits, having heard from the parties during the motion hearing on January 9, 2023, having considered the applicable and controlling law, and the Court being otherwise advised in the premises, IT IS HEREBY ORDERED:

1. Plaintiff's motion to certify settlement class and appoint class counsel is GRANTED.

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2. The Court CERTIFIES the Settlement Class defined as:

> Those individuals who received an initial Determination or Re-Determination of Intentional Misrepresentation issued by the Agency between October 1, 2013, and August 31, 2015, issued initially through the Agency's auto-adjudication process, and suffered a first Collection on or after March 9, 2015, and who do not opt-out of the Settlement.

3. The Court APPOINTS Plaintiffs Grant Bauserman and Teddy Broe as Class Representatives for the Settlement Class.

4. The Court APPOINTS Plaintiffs' counsel Michael L. Pitt, Jennifer L. Lord, Kevin M. Carlson, and Beth M. Rivers as Class Counsel for the Settlement Class.

5. The Court GRANTS PRELIMINARY APPROVAL of the Proposed Class Action Settlement, as reflected in the parties Amended Settlement Agreement.

6. The Court GRANTS APPROVAL of the Proposed Class Notice, filed with the Court as Exhibit 4 to Plaintiffs' Motion.

7. The Court APPOINTS Analytics Consulting LLC as Claims Administrator.

8. The Court APPROVES Plaintiffs' proposed Plan of Allocation.

9. The Court APPOINTS attorney Megan Norris as Special Master and FURTHER ORDERS that, as Special Master, Ms. Norris shall have the authority to decide eligibility disputes and appeals of awards with finality.

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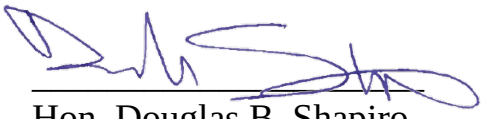
10. The Court APPROVES Plaintiffs' request for attorney fees of $6,480,000 and reimbursement of costs of $38,664.36, to be paid out of the gross settlement fund.

11. The Court AUTHORIZES Plaintiffs to set-aside $500,000 from the settlement fund to fund the administration of the settlement, including all costs and fees incurred in: QSF administration, Notice Administration, Claims Administration, and the costs and fees of the Special Master.

12. The Court APPROVES service awards to Class Representatives Bauserman and Broe of $ $15,000.00 each.

13. The Court APPROVES the Case Management Order and Timeline set forth above.

SO ORDERED.



Hon. Douglas B. Shapiro

Date: January 19, 2023

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COURT OF CLAIMS

Bundle Cover Sheet

Lower Court:	L Ct No.:	COC No.:
		15-000202-MM

Case Title:
GRANT BAUSERMAN ET AL V STATE OF MICHIGAN UNEMPLOYMENT INSURANCE

Priority:	Filing Option:
NONE	File & Serve

Filer Information

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Filing Summary

Filing Type	Filing Name	Fee
Proposed Order/Judgment	Final Bauserman Omnibus Order	$0.00
	Total:	**$0.00**

Alternate Payment Reason: None

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The document(s) listed above were electronically filed with the Michigan Court of Claims.

STATE OF MICHIGAN
MI Court of Claims

Proof of Service

Case Title:	**Case Number:**
GRANT BAUSERMAN ET AL V STATE OF MICHIGAN UNEMPLOYMENT INSURANCE AGENCY	15-000202-MM

1. Title(s) of the document(s) served:

Filing Type	Document Title
Proposed Order/Judgment	Final Bauserman Omnibus Order

2. On 1-11-2023, I served the document(s) described above on:

Recipient	Address	Type
Michael Pitt Pitt McGehee Palmer & Rivers PC P-24429	MPITT@PITTLAWPC.COM	e-Serve
Regina Bell Pitt McGehee Palmer & Rivers PC	rbell@pittlawpc.com	e-Serve
Pitt McGehee Palmer & Rivers PC	kcarlson@pittlawpc.com	e-Serve
Beth Rivers Pitt McGehee Palmer & Rivers PC P33614	Brivers@pittlawpc.com	e-Serve
Jason Hawkins Michigan Department of Attorney General 71232	hawkinsj@michigan.gov	e-Serve
Jennifer Lord Pitt McGehee Palmer & Rivers PC P46912	jlord@pittlawpc.com	e-Serve
Debbie Taylor Michigan Department of Attorney General 59382	taylord8@michigan.gov	e-Serve

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

1-11-2023
Date

/s/ Jennifer Lord
Signature

Pitt McGehee Palmer & Rivers PC

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