IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Case No. DA 23-0215

PATRICIA TAFELSKI, et al., on behalf of themselves and all others similarly situated,
Plaintiffs-Appellees,

v.

MARK JOHN, TAMMI FISHER,
Objectors-Appellants,

v.

LOGAN HEALTH MEDICAL CENTER,
Defendant-Appellee.

RESPONSE BRIEF OF DEFENDANT-APPELLEE LOGAN HEALTH MEDICAL CENTER

On Appeal from a Final Judgment of the Montana Eighth Judicial District Court,
Cascade County
District Court Cause No. ADV-22-0108
The Honorable John W. Parker, Presiding

APPEARANCES:

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INTRODUCTION

As set forth in the executed Settlement Agreement, and in response to Objectors' Opening Brief, Appellee Logan Health takes no position on the issue of attorney's fees, costs, and service awards or the Plaintiffs' requested allocation thereof. However, to the extent that the Objectors suggest that the parties colluded in reaching a settlement in this matter or that limited discovery was proper under those circumstances, Logan Health respectfully disagrees. The record in this matter supports no such conclusion.

STATEMENT OF ISSUES

Pursuant to Mont. R. App. P. 12(2) Logan Health presents a sole issue for the Court in response to the Objectors' Opening Brief as follows:

1. Whether the District Court abused its discretion by denying Objectors' motion for discovery where Objectors' allegations of collusion were not supported by a shred of evidence?

STATEMENT OF THE CASE

At no point in time did Logan Health collude with Plaintiffs' counsel or otherwise engage in prohibited or unseemly conduct in reaching a resolution of this class action. Throughout its defense of this matter, Logan Health conducted itself ethically and has advocated vigorously during settlement negotiations, which were arduous and contentious. Objectors' inflammatory allegations of collusion are bereft

of the slightest factual substantiation, and neither the procedural history of the matter nor the record lend them credence.

STATEMENT OF THE RELEVANT FACTS

A brief overview of the procedural history of the matter demonstrates that this matter proceeded in ordinary fashion and without any illicit conduct. By way of background, the dockets for the multiple cases filed against Logan Health reflect that the Tafelski Complaint was filed in Cascade County (Case No. ADV-22-0108) against Logan Health on March 2, 2022, and the Smeltz Complaint was filed in federal court (Case No. 4:22-cv-00028-BMM-JTJ) approximately one week thereafter, on March 9, 2022. Smeltz's state court action was filed in Cascade County (Cause No. ADV-22-0124) on March 11, 2022. The two actions filed in Flathead County, by Plaintiffs Fletcher (Cause DV-15-2022-271-NE) and Bereta (Case No. DV-15-2022-303-NE), were not filed until March 14, and March 16, 2022, respectively. Counsel in the Smeltz matter moved for appointment as interim class counsel by motion dated March 29, 2022, and was appointed interim class counsel two days later on March 31, 2022. (Dkts. 9, 13). Logan Health took no position on this motion. Two months later, when counsel in the Tafelski and Smeltz matters moved to intervene and stay the Flathead County cases, Logan Health took no position, noting only that it did not oppose a stay since it preferred to prevent duplicative litigation. When counsel in the Tafelski and Smeltz matters sought to

consolidate their cases (Dkt. 18), counsel for Logan Health stipulated to the addition of Tafelski's counsel and co-lead interim class counsel.

Logan Health and Appellees agreed to mediate the matter on its merits with the assistance of a neutral, class action mediator, Judge Louis Meisinger (Ret.). (Dkt. 23). The mediation occurred on July 19, 2022, and lasted a full day. At the end of the day-long mediation, Logan Health and Plaintiffs were still unable to reach agreement on a settlement, which prompted Judge Meisinger to propose a double-blind mediator's proposal of $4.3 million for the common fund, which Logan Health and the Plaintiffs accepted. As a result of these negotiations, the parties were able to reach an agreement on the substantive terms of the settlement by the conclusion of the mediation. However, Logan Health continued to negotiate and finalize the details of the settlement several weeks after the mediation concluded before executing the Settlement Agreement on October 7, 2022. On December 6, 2022, the District Court reviewed and preliminarily approved the settlement. (Dkt. 24).

Objectors filed an objection on February 28, 2023. (Dkt. 30). Objectors argued that the attorneys' fees sought by class counsel sought were not warranted and filed a motion to take discovery. (Dkts. 31, 32). Specifically, the discovery Objectors sought to serve on Logan Health requested the following documents: (1) communications between Logan Health and the mediator; (2) communications between defense counsel and counsel for Plaintiff Tafelski; and (3) all documents

relating to Logan Health's insurance policy. (Dkt. 32). Logan Health opposed the Objectors Motion for Leave to Propound Discovery. (Dkt. 35).

The District Court conducted a final fairness hearing on March 9, 2023. (Dkt. 44). During the hearing, Objectors were given the opportunity to present their evidence and argument in support of their opposition to class counsel's fees and their motion to take discovery. Also during the hearing, counsel for Logan Health and class counsel each represented to Objectors' counsel and to the District Court that Logan Health's insurance policy was a cannibalizing/wasting insurance policy. Hrg. Trans. 41:12-44:8. Objectors' counsel rejected the representations. The District Court denied the Objectors' requested relief and approved the settlement on March 16, 2023. (Dkt. 44). Among the District Court's considerations were the risks, costs, and delay of continued litigation. As the District Court noted:

> Now I want to further note that if the facts had been different and there had been additional discovery that could have created a major risk of unreasonable delay for the Class Members and potentially exposed Objectors to some legal risk, which I think, is worth noting for the record.

Hrg. Trans. 81:18-23.

Dissatisfied with the District Court's sound reasoning and decision, Objectors lodged the instant appeal, reiterating the collusion theory advanced in the lower court, yet again, without any evidence to support it.

STANDARD OF REVIEW

A District Court's discovery rulings are reviewed for abuse of discretion. *Heggem v. Capital Indem. Corp.*, 2007 MT 74, ¶ 17, 336 Mont. 429, 434, 154 P.3d 1189, 1192 (citation omitted). Where an objector's justification for seeking discovery is based on suspicion of collusion between a defendant and class counsel, the objector is required to adduce evidence of collusion from other sources. *Pallister v. Blue Cross and Blue Shield of Montana, Inc.*, 2012 MT 198, ¶155, 366 Mont. 175, 193, 285 P.3d 562, 573 (4-3 decision) (Morris, J., dissenting) (citing *Mars Steel Corp. v. Continental Illinois Nat'l Bank and Trust Co. of Chicago*. 834 F.2d 677, 684 (7th Cir. 1987)). Courts have repeatedly made clear that objectors should ***only*** be allowed to engage in discovery relating to settlement negotiations "where the party seeking it lays a foundation by adducing from other sources evidence indicating that the settlement may be collusive." *Id.* (citing *Lobatz v. U.S. West Cellular of Cal., Inc.*, 222 F.3d 1142, 1148 (9th Cir. 2000)).

SUMMARY OF ARGUMENT

The District Court did not abuse its discretion in denying Objectors' discovery motion because they were unable to produce even a scintilla of evidence of collusion from other sources. Other courts considering such unfounded allegations have similarly held that discovery is not warranted.

ARGUMENT

I. The District Court Did Not Abuse its Discretion in Granting the Motion for Attorney's Fees

A. There is no evidence of collusion warranting discovery.

The declared public policy of Montana encourages settlement to avoid unnecessary litigation. *Augustine v. Simonson*, 283 Mont. 259, 266 (Mont. 1997), 940 P.2d 116, 120 (citation omitted). Courts recognize this public policy due to a settlement's ability to eliminate cost, prevent stress that accompanies litigation, and to preserve judicial resources. See *Miller v. State Farm Mut. Auto Ins. Co.*, 2007 MT 85, ¶ 14, 337 Mont. 67, 155 P.3d 1278. As a general principal, "the courts respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered." Herbert Newberg, *Newberg on Class Actions* § 11.51 at 158-59 (4th ed. 2002). Further, "a settlement should stand or fall on the adequacy of its terms." *Newby v. Enron Corp.*, 394 F.3d 296, 307 (5th Cir. 2004). Given these policy considerations, it is no surprise that Courts rarely grant objectors the right to undertake discovery. *Pallister*, 2012 MT ¶ 53, 366 Mont. 192, 285 P.3d 572 (dissenting opinion) (citing *Lobatz v. U.S. West Cellular of California, Inc.*, 22 F.3d 1142, 1148 (9th Cir. 2000)).

Courts have routinely denied objectors discovery where the objectors fail to introduce evidence of collusion. See *Gallucci v. Gonzales*, 603 Fed. Appx. 553, 535 (9th Cir. 2015) (affirming district court's settlement approval where there was no

evidence in the record suggesting a bidding war or reverse auction occurred); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (affirming district court settlement approval where there was no evidence of fraud, overreaching, or collusion); *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming approval of settlement where objector presented "no real evidence of collusion").

This case is devoid of any suspicious circumstances indicating collusion that would warrant reversing the District Court's denial of Objectors' discovery motion. For example, in *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 288 (7th Cir. 2002), the defendants negotiated a settlement during a private lunch with no outside party present under which the defendants would pay up to $4.25 million to three lawyers who did not have active cases against the class defendant at the time of the settlement. No such circumstances exist here.

This matter is factually distinguishable from the *Bluetooth* case cited by Objectors for several reasons. See *In re Bluetooth Headset Prods. Liab. Litig*, 654 F.3d 935 (9th Cir. 2011). In *Bluetooth*, the appeals court vacated a settlement agreement that provided the class with $100,000 in *cy pres* awards and zero dollars for economic injury, while setting aside up to $800,000 for class counsel and $12,000 for the class representatives. See *id.* at 938. The settlement agreement also

had a reverter clause. *Id.* at 947. The *Bluetooth* court analyzed 3 "subtle signs" indicative of collusion in vacating the settlement:

> 1) whether counsel received a disproportionate distribution of the settlement or the class received no monetary distribution but class counsel was amply rewarded;
> 2) whether the parties negotiated a "clear sailing" arrangement providing for the payment of attorney's fees separate and apart from class funds, which carries the potential of enabling a defendant to pay class counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of the class; and
> 3) whether the parties arranged for fees not awarded to revert to defendants rather be added to the class fund.

See *id.* at 947. Because the settlement agreement at issue in that case contained all of the suspect "subtle signs," the Seventh Circuit vacated the settlement approval and attorney's fee orders. See *id.* at 950.

The settlement in this case is markedly different than the vacated one in *Bluetooth*. First, the settlement in this case awards class members three-bureau credit monitoring or an alternative cash payment, reimbursement of expenses related to the Security Incident, and reimbursement for time spent mitigating issues related to the Security Incident. Second, the settlement is non-reversionary. Third, although Logan Health agreed not to contest attorney's fees, to the extent this could be construed as a *Bluetooth* clear sailing provision, its significance is greatly reduced

by its other qualities. Notably, the *Bluetooth* court admitted that "clear sailing provisions are not prohibited." *Id.* at 949.

Further, this matter is factually distinguishable from the *Pallister* case cited by Objectors, which was decided by a narrow majority in 2012,[1] and which has never been cited by another Montana court as a basis for permitting objectors to obtain discovery. In *Pallister*, the district court approved a settlement before class counsel was even appointed. In contrast, here, class counsel was appointed in March 2022 and the mediation did not occur until several months later in July 2022. Final terms of the settlement agreement between Logan Health and Plaintiffs were not agreed upon until October 2022.

Notably, in the *Pallister* matter, on remand and after taking discovery, the objectors again appealed the district court's approval of settlement partially on grounds of alleged collusion and lost. See *In re Blue Cross & Blue Shield of Montana, Inc.*, 2016 MT 121, ¶ 1, 383 Mont. 404, 406, 372 P.3d 457, 459. In affirming the district court's approval of settlement, the Supreme Court found that the objectors failed to provide any evidence of collusion between the class plaintiffs' counsel and the defendants. *Id.* ¶ 34. Specifically, the Supreme Court held that

[1] Three justices concurred with the majority opinion, and three justices joined in the dissent. Chief Justice McGrath was among those justices who joined in the vigorous *Pallister* dissent.

mere supposition based on class counsel's fees under the terms of the settlement were insufficient to demonstrate collusion. *Id.*

CONCLUSION

Neither the record nor the law supports Objectors' baseless and false allegations of collusion. As such, this Court should affirm the District Court's denial of Objectors' motion for discovery pursuant to Mont R. App. P. 19(1)(a).

DATED this 18th day of September, 2023.

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Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for the footnotes and quoted and indented material; and the word count calculated by Microsoft Word is exactly 2116 words, excluding the caption page, Table of Contents, Table of Authorities, Certificate of Compliance, and Certificate of Service.

DATED this 18th day of September, 2023.

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