

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

Case No.: 1:22-cv-06497

EMILY GLASPIE, on behalf of herself
and all others similarly situated,

Plaintiff,

Honorable Virginia M. Kendall

v.

NATIONAL ASSOCIATION OF BOARDS
OF PHARMACY,

Defendant.

_____ /

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
CONDITIONALLY CERTIFYING A CLASS, AND GRANTING OTHER RELIEF**

The Plaintiff in this putative class action has filed an unopposed amended motion seeking from the Court an order preliminarily certifying a class for settlement purposes, appointing Plaintiff as the Class Representative, appointing counsel for the Class, directing the issuance of notice to the Class, and scheduling a fairness hearing. Having considered the papers in support of the request for an order preliminarily certifying the Class for settlement purposes and being otherwise fully advised, the Court makes the following findings and issues the following relief:

PRELIMINARY APPROVAL

1. The Settlement Agreement and Stipulation (the “Settlement Agreement”) [D.E. ___] is **PRELIMINARILY APPROVED** in its entirety. The definitions in the Settlement Agreement are incorporated as though fully set forth in this Order, and the terms and phrases shall have the same meaning as ascribed to them in the Settlement Agreement. The Court finds that:

- (a) the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class,
- (b) the proposed settlement resulted from extensive arms’ length negotiations between experienced

class action attorneys, (c) the proposed Settlement Agreement is sufficient to warrant notice of the settlement to the Class, and a fairness hearing on the settlement; (d) the Settlement Agreement substantially fulfills the purposes and objectives of the putative class action, and provides substantial relief to the Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal; and (e) the Settlement Agreement meets all applicable requirements of law, including requirements of the United States Constitution, Federal Rule of Civil Procedure 23, the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, and the U.S. District Court for the Northern District of Illinois Local Rules.

CLASS CERTIFICATION

2. This Court has personal jurisdiction over all proposed Class Members (as defined below) and has subject-matter jurisdiction over this action, including jurisdiction to preliminarily approve the proposed Settlement Agreement and conditionally certify a class for settlement purposes (the “Class”).

3. For settlement purposes only, I certify the Class as defined in the Settlement Agreement:

2021 Subclass: All Candidates in the United States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands who took the NAPLEX test administered by the National Association of Boards of Pharmacy during the period of August 31, 2021, through and including September 8, 2021, to whom Defendant sent the September 17, 2021 Notice informing the Candidate that the Candidate’s NAPLEX score was incorrectly reported as “failed” when they had actually passed.

2022 Subclass: All Candidates in the United States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands who took the NAPLEX test administered by the National Association of Boards of Pharmacy during the period of July 30, 2022, through and including October 26, 2022, to whom Defendant sent the November 8, 2022 Notice informing the Candidate that the Candidate’s NAPLEX score was incorrectly reported.

The Court finds that, for the sole purpose of settlement, and without an adjudication of the merits, the Class is sufficiently well-defined and cohesive, and the proposed Settlement Agreement, on the record thus far produced, is adequate to warrant sending notice of the action and the proposed settlement to the Class. The National Association of Boards of Pharmacy (the “NABP”) represents that none of the Class members’ (the “Class Members”) claims are currently in litigation with the NABP. If any of the claims are discovered to be in such litigation, he, she, or they will automatically be opted out of this Settlement Agreement.

CLASS FINDINGS

4. In connection with class certification for settlement purposes only, I make the following findings pursuant to Federal Rule of Civil Procedure 23: (a) the Class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims or defenses of the named Plaintiff are typical of those of the claims or defenses of the Class; (d) the named Plaintiff and Class Counsel will fairly and adequately protect the interests of the proposed Class; (e) common questions of law and fact predominate over questions affecting only individual Class Members; and (f) the class action is superior to other available methods for fairly and efficiently adjudicating and resolving this action.

5. The Court also notes that because this action is being settled, rather than litigated, the Court need not consider the manageability issues that might otherwise be presented by litigation of a nationwide class action involving these issues. *Amchem Prods. v. Windsor*, 521 U.S. 591, 619 (1997).

6. In making the findings set forth in Paragraphs 4 and 5 above, I find that the Class warrants certification for settlement purposes on a nationwide basis, and that named Plaintiff, Dr. Emily Glaspie, shall be designated as the Class Representative.

7. For purposes of settlement only, I appoint Jordan A. Shaw, Zachary D. Ludens, and Lauren N. Palen from Zebersky Payne Shaw Lewenz, LLP and David A. Rolf from Sorling, Northrup, Hanna, Cullen & Cochran, Ltd. as Class Counsel for the Class. I find that these attorneys are competent and capable of exercising the responsibilities of Class Counsel.

FAIRNESS HEARING

8. The Fairness Hearing shall be held on February 14, 2023 at 9:15 a.m., in Courtroom 2053 in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, before United States District Judge Virginia M. Kendall, to determine: (1) whether the Notice plan, as defined in the Amended Motion for Preliminary Approval of Settlement Agreement, which includes the publication of the settlement website, the Long-Form Notice attached to the Amended Motion as Exhibit 2, the Mail Notice attached to the Amended Motion as Exhibit 3, and the Email Notice attached to the Amended Motion as Exhibit 4, which collectively with the plan for mailing and email constitute the “Notice,” to all Class Members in the manner provided herein is the best method of notice practicable under the circumstances, constitutes due and sufficient notice to all persons or entities entitled thereto, and satisfies the requirements of due process; (2) whether the Settlement Agreement should be approved, finding that its terms are fair, reasonable, and adequate to the Class, directing the consummation of the Settlement Agreement in accordance with the terms and conditions of the Order of the Court, and approving the timely and complete elections to opt out; (3) whether the action should be finally certified as a class action for settlement purposes; (4) whether each Class Member (except those who have submitted timely and complete elections to opt out) shall be bound by the Settlement Agreement, releasing and discharging the Released Parties from all Released Claims, permanently barring the Class Representatives and the Class Members from asserting any of the Released

Claims against the Released Parties in any court or forum whatsoever, dismissing all claims in this Action against the NABP on the merits and with prejudice, and entering Final Judgment thereon with a finding that there is no just reason to delay enforcement or appeal; (5) whether Plaintiff's application for an incentive fee award should be approved; and (6) whether the application of Class Counsel for an award of attorneys' fees and costs should be approved. Any motion seeking an incentive award for the class representative or a motion seeking attorneys' fees and costs shall be filed by Plaintiff and Class Counsel no later than 65 days prior to the Fairness Hearing. Any other submissions by the Parties in support of the Settlement Agreement shall be filed no later than 30 days prior to the Fairness Hearing. The Parties shall file with the Court a list of all Class Members who timely and properly elect to opt out at least seven days in advance of the Fairness Hearing.

9. The Court may adjourn, postpone, or continue the Fairness Hearing without further notice to members of the Class, except that notice of any postponement or continuance of the Fairness Hearing shall be provided to any member of the Class who timely objects to final approval of the Settlement Agreement, the incentive award, and/or any attorneys' fees award, and who has notified the Court of his/her intent to appear and be heard by the Court at the Fairness Hearing.

NOTICE AND ADMINISTRATION

10. Having considered, among other factors, (a) the cost of giving notice, (b) the resources of the Parties, (c) the stake of each Class Member, and (d) the likelihood that Class Members might desire to exclude themselves from the Class or appear individually, the Court finds that notice given in the form and manner provided in the Settlement Agreement is the best practicable notice and is reasonably calculated, under the circumstances, to apprise the Class Members: (1) of the pendency of this action; (2) of their right to exclude themselves from the proposed Settlement Agreement; (3) that any judgment, whether favorable or not, will include all

Class Members who do not request exclusion; and (4) that any Class Member who does not request exclusion may object to the Settlement Agreement and, if he, she, or they desires, enter an appearance either personally or through counsel.

11. Within 30 days of this Order, the Claims Administrator selected by the Parties pursuant to the Settlement Agreement shall, at Defendant's expense, cause notice to be provided to Class Members in accordance with the notice program outlined in the Settlement Agreement and using the Agreed Notices attached to the Plaintiff's Unopposed Amended Motion for Preliminary Approval. Defendant shall, at its expense, cause the Claims Administrator to maintain a website, which shall provide Class Members with current information regarding the Settlement Agreement and the Long Form Notice, and the Claims Administrator also shall make a copy of the Long Form Notice available to any Class Member who requests a copy in writing or by calling toll free the Claim Administrator. This website shall also provide Class Members with access to a copy of any motion seeking an incentive award for the class representative and a motion seeking attorneys' fees and costs that may be filed with the Court by Plaintiff or her counsel. The website shall also provide a portal for electronic submission of Settlement Claim forms.

12. The Court authorizes the Parties to select and the Defendant to retain a claims administrator to implement certain terms of the Settlement Agreement and authorizes such administrator to establish a settlement website and carry out such other responsibilities as are provided for in the Settlement Agreement. In addition, the Court authorizes the Parties or the Claims Administrator to make such changes to the form of the proposed notices as are necessary to correct any non-substantive or non-material errors or omissions in the proposed notice documents that may come to light prior to actual dissemination of notice to the Class.

COMMUNICATIONS WITH CLASS MEMBERS

13. The Parties shall establish, at Defendant’s expense, a telephone bank with a tollfree telephone number and email address for responding to inquiries from Class Members about the proposed settlement and issues related to the action, subject to monitoring by Class Counsel.

Exclusion from the Class.

14. Any Class Member who does not wish to participate in this Settlement must submit in writing an Opt-Out Exclusion Request by mailing such papers to:

Jordan A. Shaw, Esq.
Zachary D. Ludens, Esq.
Zebersky Payne Shaw Lewenz LLP
110 S.E. 6th Street, Suite 2900
Fort Lauderdale, FL 33301

David A. Rolf, Esq.
Sorling, Northrup, Hanna, Cullen & Cochran,
Ltd.
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, IL 62705

Denise A. Lazar, Esq.
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, IL 60606

The Opt-Out Exclusion Request shall be postmarked no later than 30 days from the date of mailing of the Mail Notice and shall include: (a) a prominent identifying reference to this Action as follows “*Emily Glaspie v. National Association of Boards of Pharmacy*, (Case No. 22-cv-6497) (ND. Ill.)”; (b) the full legal name and any aliases of the Class Member; and (c) the signature of the Class Member. Class Members may not opt out of specific aspects of the settled claims while still participating for other aspects of the Settlement Agreement. ***Class Members may not both opt out of the Settlement Agreement and object to the Settlement Agreement.*** If a Class Member opts out of the Settlement Agreement, he, she, or they is ineligible to object to the terms of the Settlement Agreement. All persons falling within the definition of the Class who do not timely request to be excluded from the Class shall be bound by the terms of the Settlement Agreement, the Judgment Order entered thereon, and all Orders entered by the Court in connection with the

resolution set forth in the Settlement Agreement. All persons who submit valid and timely notice of their intent to be excluded from the Class shall neither receive any benefits nor be bound by the terms of the Settlement Agreement. Any Class Members that file a timely and complete election to opt out of the Settlement Agreement by the deadline set forth herein may proceed with their own action.

OBJECTIONS AND APPEARANCES

15. Any Class Member who has not filed a timely written request for exclusion from the Settlement Agreement and who complies with the requirements of this Order may object to any aspect of the proposed Settlement Agreement and/or Plaintiff's incentive award or the award to Class Counsel of attorneys' fees and expenses, either on his, her, or their own or through an attorney hired at his, her, or their expense. Any Class Member who objects to the approval of the Settlement Agreement may appear at the Fairness Hearing and show cause why all terms of the proposed Settlement Agreement should not be approved as fair, reasonable, and adequate and why judgment should not be entered thereon.

16. Any such objections or any petition to intervene in this action by a Class Member must be in writing and must include: (1) a caption or title that identifies it as "Objection to Class Settlement in *Emily Glaspie v. National Association of Boards of Pharmacy*, (Case No. 22-cv-6497) (ND. Ill.)"; (2) the full name, signature, home address and telephone number, and other information sufficient to identify Class Member; (3) a notice of intention to appear, either in person or through an attorney, with the name, address, and telephone number of the attorney, if any, who will appear; (4) certification that the individual is a Class Member; (5) a statement of each objection(s) asserted; (6) a detailed description of the basis and facts underlying and supporting each objection; (7) a detailed description of the legal authorities, if any, underlying and supporting

each objection; (8) copies of documents, exhibits, or affidavits, if any, that the individual may offer during the hearing; (9) a list of all witnesses, if any, that the Class Member may call to testify at the hearing, along with a summary of each witness's anticipated testimony; (10) the signature, full name, firm name, and business address of all attorneys who have a financial interest in the objection; (11) the date and location of the incorrectly scored NAPLEX exam of the Class Member; (12) the date on which the individual received notice of the incorrectly scored NAPLEX exam; and (13) disclosure of any other class action settlements to which the individual or any of his, her, or their agents or representatives, successors, or predecessors have objected, including disclosing the number of times that the individual has objected to a class action settlement within the preceding five years, the caption of each case, the counsel representing the individual in each prior objection, and a copy of any orders related to any prior objections.

17. The deadline for Class Members to object to the Settlement Agreement shall be 30 days from the date of the Notice. Class Members may object either on his, her, or their own or through an attorney hired at his, her, or their own expense. If a Class Member hires an attorney to represent him, her, or they at the Fairness Hearing, he, she, or they must do so at his, her, or their own expense.

18. Any Class Members who files and serves a timely written objection pursuant to the terms of this Order and complies with the notice requirements of this Order may also appear at the Fairness Hearing, either in person or through counsel retained at the Class Member's expense.

19. Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to Class Counsel and Defendant's Counsel, and file that notice with the Court, no later than 30 days before the Fairness Hearing, or as the Court otherwise may direct. Any Class Member who retains an attorney to prepare the Class

Member's written objection and/or who intends to appear at the Fairness Hearing through counsel must, in addition to the requirements stated above, do the following in the written objection: (1) set forth the attorney's experience with class actions, including the capacity in which the attorney participated in each class action (*e.g.*, plaintiffs', defendants' or objectors' counsel), and the outcome of each case; (2) if the attorney has previously represented objectors in a class action, then the attorney must detail the disposition or effect that any objection had on each class action case and how much the attorney was paid for the representation of each objector in each class action case; and, (3) even if the Class Member employs an attorney to prepare the written objection, the Class Member must sign the written objection personally as an attestation that the Class Member discussed the objection with his, her, or their attorney and has fully reviewed the written objection.

20. Any objection that the Class Member wishes for the Court to consider shall be provided to each of the following:

Clerk of Court
U.S. District Court for the Northern District of Illinois
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, IL 60604

Jordan A. Shaw, Esq.
Zachary D. Ludens, Esq.
Zebersky Payne Shaw Lewenz LLP
110 S.E. 6th Street, Suite 2900
Fort Lauderdale, FL 33301

Denise A. Lazar, Esq.
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, IL 60606

David A. Rolf, Esq.
Sorling, Northrup, Hanna, Cullen & Cochran,
Ltd.
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, IL 62705

21. Any Class Member who does not timely file and serve a written objection pursuant to the terms of this Order shall be deemed to have waived, and shall be foreclosed from raising, any objection to the settlement, and any objection that is not timely made shall be barred.

SUBMISSION OF CLAIM FOR BENEFITS

22. This is a claims-made settlement. Only those Class Members who submit a timely and complete proof of claim to NABP shall be entitled to payment. Class Members who qualify for and wish to submit a claim for any benefit under the Settlement Agreement as to which a claim is required shall do so in accordance with the requirements and procedures of the Settlement Agreement. All Class Members who qualify for any benefit under the Settlement Agreement as to which a claim is required but fail to submit a claim in accordance with the requirements and procedures of the Settlement Agreement shall be forever barred from receiving any such benefit but will in all other respects be subject to and bound by the provisions of the Settlement Agreement and the releases contained therein.

SERVICE OF PAPERS

23. Class Counsel and counsel for Defendant shall serve on each other and on all other Parties who have filed notices of appearance, at or before the Fairness Hearing, any further documents in support of the proposed settlement, including responses to any papers filed by Class Members. Class Counsel and counsel for Defendant shall promptly furnish to each other any and all objections or written requests for exclusion that may come into their possession and shall file such objections and a list reflecting such requests for exclusion with the Court on or before the date of the Fairness Hearing.

TERMINATION OF SETTLEMENT

24. This Settlement may be terminated by either Settling Party by providing written notice to counsel for the opposing Party and the Court within fourteen (14) days after any of the following occurrences: (a) This Court declines to approve or the Court of Appeals reverses the approval of the Settlement Agreement; (b) This Court modifies, amends, incorporates into, or deletes or strikes from, the Preliminary Approval Order, Judgment, or the Settlement Agreement, any provision which a Settling Party in good faith regards as material; or (c) Any court makes any order precluding Plaintiff or Defendant from proceeding in whole or in part with the Settlement Agreement. In order to invoke this right to nullification under this paragraph, the Party must file and serve a formal document entitled Notice of Nullification of Settlement Agreement.

25. Also, if prior to the Settlement Hearing, persons who otherwise would be Class Members have filed with the Court valid and timely requests for exclusion (“Requests for Exclusion”) from the Settlement Agreement in accordance with the provisions of the Notice, and such persons in the aggregate exceed six percent of the total number of Class Members receiving notice, Defendant shall have, in its sole and absolute discretion, the option to terminate the Settlement in accordance with the procedures set forth in the Settlement Agreement.

26. In such events, the proposed Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement nor the Court’s orders, including this Order, shall be used or referred to for any purpose whatsoever.

CAFA COMPLIANCE

27. Defendant shall comply with the obligation to give notice under CAFA, 28 U.S.C. § 1715, in connection with the proposed settlement, and shall notify Class Counsel and the Court of its compliance. The selected Class Administrator will also assist Defendant with the provision

the required notice of the settlement pursuant to 28 U.S.C. § 1715(b) to the appropriate state or federal officials within ten days of this Order.

USE OF ORDER

28. Class Members shall be bound by all determinations and judgments in this action concerning the action and/or Settlement Agreement.

29. In the event that the Settlement Agreement is not finally approved by the Court in complete accordance with its terms, or for any reason the Parties fail to obtain final judgment and order of dismissal with prejudice as contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its terms for any reason, the following shall apply:

a. All orders and findings entered in connection with the Settlement Agreement shall become null and void and have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;

b. The certification of the proposed Class pursuant to this Order shall be vacated automatically, this action shall proceed as though the Class had never been certified pursuant to the Settlement Agreement and such findings had never been made, and the action shall return to the procedural status quo before entry of this Order;

c. Nothing contained in this Order is, or may be construed as, any admission or concession by or against the Released Parties, Plaintiff, or the Class on any point of fact or law, including, but not limited to, factual or legal matters relating to any effort to certify this case as a class action;

d. Nothing in this Order or action pertaining to the Settlement Agreement shall be used as evidence in any further proceeding in this case, including, but not limited to, motions or proceedings seeking treatment of this case as a class action;

e. Nothing in this Order or pertaining to the Settlement Agreement, may be deemed, or shall be used, offered or received against the Released Parties, as an admission, concession or evidence of the validity of any Released Claims; and

f. All of the Court's prior Orders having nothing to do with class certification shall, subject to this Order, remain in force and effect.

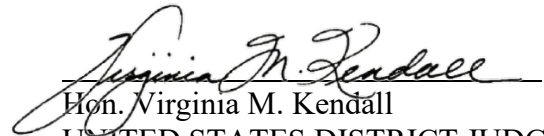
STAY OF LITIGATION PROCEEDINGS

30. All further proceedings in the action are ordered stayed until the entry of the final judgment and order of dismissal with prejudice, or termination of the Settlement Agreement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement.

31. Class Members are enjoined, in any capacity, from commencing, prosecuting, participating in, qualifying or acting as a putative class member, or continuing the prosecution of, any suit asserting any of the rights, claims, liabilities, causes of action, costs and attorneys' fees, demands, damages, and remedies, known or unknown, liquidated or unliquidated, legal, statutory, declaratory, or equitable, that Releasing Parties ever had, now have, or may have in the future, that result from, arise out of, are based upon, or relate to in any way the conduct, omissions, duties, or matters alleged or that could have been alleged in the Class Action Complaint and that are released in the Settlement Agreement against the Defendant, pending the final determination of whether this Settlement Agreement should be approved by the Court.

IT IS SO ORDERED.

DONE and **ORDERED** in Chambers at Chicago, Illinois, this 11th day of October, 2023.


Hon. Virginia M. Kendall
UNITED STATES DISTRICT JUDGE