

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Richard W. DeOtte, et al.,

Plaintiffs,

v.

Case No. 4:18-cv-825-O

Alex M. Azar II, et al.,

Defendants.

PLAINTIFFS' UNOPPOSED MOTION TO AMEND CLASS-CERTIFICATION ORDER OF MARCH 30, 2019

The Court's order of March 30, 2019 (ECF No. 33) granted the plaintiffs' motion for class certification. The plaintiffs respectfully ask the Court to consider a minor amendment to its class-certification order.

The plaintiffs respectfully believe that Rule 23(c)(1)(B) requires the Court to appoint class counsel in its certification order. *See Fed. R. Civ. P. 23(c)(1)(B)* ("An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)."). The plaintiffs also respectfully ask the Court to include language that explicitly defines the two certified classes as well as the "class claims, issues, or defenses," as required by Rule 23(c)(1)(B), to avoid any possible collateral attack on the classwide judgment that will issue. *See, e.g., Lewis v. City of Chicago, Illinois*, 702 F.3d 958, 962 (7th Cir. 2012) (holding that class-certification orders must include all material required by Rule 23(c)(1)(B)).

We have attached a proposed order that includes the language that we believe should be included in the class-certification order under Rule 23(c)(1)(B). We respectfully ask the Court to issue an order that includes this or similar language, either by amending its order of March 30, 2019, or by issuing a supplemental order. We

have conferred with counsel for the defendants and they are unopposed to this motion to amend the class-certification order, but their non-opposition should not be construed as a waiver of their previously stated objections to class certification.

Respectfully submitted.

CHARLES W. FILLMORE
H. DUSTIN FILLMORE
The Fillmore Law Firm, L.L.P.
1200 Summit Avenue, Suite 860
Fort Worth, Texas 76102
(817) 332-2351 (phone)
(817) 870-1859 (fax)
chad@fillmorefirm.com
dusty@fillmorefirm.com

Dated: April 9, 2019

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Texas Bar No. 24075463
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

*Counsel for Plaintiffs and
the Certified Classes*

CERTIFICATE OF CONFERENCE

I certify that on April 8–9, 2019, I conferred with Daniel Riess, counsel for the defendants, and he informed me that the defendants are unopposed to this motion.

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
*Counsel for Plaintiffs and
the Certified Classes*

CERTIFICATE OF SERVICE

I certify that on April 9, 2019, I served this document through CM/ECF upon:

DANIEL RIESS
U.S. Department of Justice
Civil Division, Room 6122
20 Massachusetts Avenue NW
Washington, D.C. 20530
(202) 353-3098
daniel.riess@usdoj.gov

Counsel for Defendants

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
*Counsel for Plaintiffs and
the Certified Classes*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Richard W. DeOtte, et al.,

Plaintiffs,

v.

Case No. 4:18-cv-825-O

Alex M. Azar II, et al.,

Defendants.

**[PROPOSED] ORDER GRANTING
MOTION FOR CLASS CERTIFICATION**

The plaintiffs' motion for class certification is granted.

The Court certifies the following two classes under Rule 23(b)(2) of the federal rules of civil procedure:

I. THE BRAIDWOOD CLASS

The Court certifies the following class under FRCP 23(b)(2):

Every current and future employer in the United States that objects, based on its sincerely held religious beliefs, to establishing, maintaining, providing, offering, or arranging for: (i) coverage or payments for some or all contraceptive services; or (ii) a plan, issuer, or third-party administrator that provides or arranges for such coverage or payments.

Braidwood Management Inc. is appointed class representative. Jonathan F. Mitchell, Charles W. Fillmore, and H. Dustin Fillmore are appointed class counsel under FRCP 23(g). The class claim is whether the Contraceptive Mandate, codified at 42 U.S.C. § 300gg-13(a)(4), 45 C.F.R. § 147.130(a)(1)(iv), 29 C.F.R. § 2590.715-2713(a)(1)(iv), and 26 C.F.R. § 54.9815-2713(a)(1)(iv), violates the Religious Freedom Restoration Act as applied to employers who hold sincere religious objections to some or all contraceptive services.

II. THE DEOTTE CLASS

The Court certifies the following class under FRCP 23(b)(2):

All current and future individuals in the United States who: (1) object to coverage or payments for some or all contraceptive services based on sincerely held religious beliefs; and (2) would be willing to purchase or obtain health insurance that excludes coverage or payments for some or all contraceptive services from a health insurance issuer, or from a plan sponsor of a group plan, who is willing to offer a separate benefit package option, or a separate policy, certificate, or contract of insurance that excludes coverage or payments for some or all contraceptive services.

Richard W. DeOtte is appointed class representative. Jonathan F. Mitchell, Charles W. Fillmore, and H. Dustin Fillmore are appointed class counsel under FRCP 23(g). The class claim is whether the Contraceptive Mandate, codified at 42 U.S.C. § 300gg-13(a)(4), 45 C.F.R. § 147.130(a)(1)(iv), 29 C.F.R. § 2590.715-2713(a)(1)(iv), and 26 C.F.R. § 54.9815-2713(a)(1)(iv), violates the Religious Freedom Restoration Act by preventing individuals who hold sincere religious objections to some or all contraceptive services from purchasing health insurance that excludes coverage of those objectionable contraceptive services.

Dated: _____, 2019

REED O'CONNOR
UNITED STATES DISTRICT JUDGE