

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

**JAMES F. SMITH and JOHN E. SMITH, as
Co-Executors and on behalf of the Estate of
Donald E. Smith,**

Plaintiffs,

v.

**Civil Action No. 14-C-829
Honorable Jason Wharton**

**CAMDEN-CLARK MEMORIAL HOSPITAL
CORPORATION,**

Defendant.

CIOX HEALTH, LLC’S AGREED-TO MOTION TO INTERVENE

Pursuant to Rule 24(a)(2) of the *West Virginia Rules of Civil Procedure*, CIOX Health, LLC (“CIOX”), with the agreement of Plaintiffs, James F. Smith and John E. Smith, as co-executors and on behalf of the Estate of Donald E. Smith (the “Smith Plaintiffs”), respectfully requests the Court to grant it leave to intervene as a defendant in this action.

CIOX seeks to intervene as a defendant in this action for the purposes of petitioning the Court for approval of a proposed class settlement involving a portion of a settlement class to be represented by the named Plaintiffs in this action (the “Smith Plaintiffs”)—only those whose medical records requests were processed by CIOX as a vendor to Camden-Clark—and the settlement class to be represented by the named Plaintiffs in *Russell G. Binder v. The Charles Town General Hospital d/b/a Jefferson Medical Center, et al.*, Civil Action No. 15-C-530, pending in the Circuit Court of Berkeley County, West Virginia (the “Binder Action”), (the “Binder Plaintiffs”). The claims in both actions involve requests for patient medical records from the Defendant in this action, Camden-Clark, and from the Defendants in the Binder Action, The Charles Town General Hospital d/b/a Jefferson Medical Center, City Hospital, Inc. d/b/a Berkeley Medical Center, West Virginia University Hospitals, Inc., and West Virginia University Hospitals

– East, Inc. (the “Binder Defendants” and collectively with Camden-Clark, the “WVU Medicine Entities”). At times, CIOX served as a third-party vendor to the WVU Medicine Entities and fulfilled patient requests for medical records for those entities.

Currently pending before the Court are the parties’ *Joint Motion to Consolidate* and *Motion to Lift Stay and Grant Joint Motion to Consolidate*, which further outline the nature of the proposed class settlement and the necessity of consolidating the Binder Action with this action to effectuate the class settlement. *See generally* Joint Motion to Consolidate (June 26, 2024); Motion to Lift Stay and Grant Joint Motion to Consolidate (Feb. 12, 2025). CIOX’s counsel represents the two original defendants in the Binder Action, The Charles Town General Hospital and City Hospital, Inc., and signed both motions in that capacity. Because the proposed class settlement is between CIOX and patients of the WVU Medicine Entities, *i.e.*, the portion of the proposed settlement class for this action that dealt with CIOX and the entire proposed settlement class for the Binder Action, the intervention of CIOX as a defendant in this action is necessary to effectuate the proposed class settlement.

STANDARD FOR INTERVENTION

The four conditions for mandatory intervention pursuant to Rule 24(a)(2) of the West Virginia Rules of Civil Procedure are as follows:

(1) the application must be timely; (2) the applicant must claim an interest relating to the property or transaction which is the subject of the action; (3) disposition of the action may, as a practical matter, impair the applicant’s ability to protect that interest; and (4) the applicant must show that the interest will not be adequately represented by existing parties.

State ex rel. Ball v. Cummings, 208 W. Va. 393, 398, 540 S.E.2d 917, 922 (1999). Intervention “shall [be] permit[ted]” if the proposed intervenor meets these criteria. W. Va. R. Civ. P. 24(a)(2).

When analyzing the four factors, a “liberal view toward allowing intervention should be followed.” *Ball*, 208 W. Va. at 403.

CIOX should be permitted to intervene as a matter of right under Rule 24(a)(2). CIOX is a signatory to the WVU Medicine Settlement with the Plaintiffs in this action and the Binder Plaintiffs. CIOX entered the WVU Medicine Settlement for the purpose of indemnifying the Defendant in this action, Camden-Clark, and the Binder Defendants, against all or a portion of the claims asserted against them in these matters. CIOX has timely moved for intervention incidental to the petitions to consolidate the Smith Action and the Binder Action in anticipation of participating in the Motion for Preliminary Approval of Class Settlement. Neither Camden-Clark nor the Binder Defendants are signatories to the WVU Medicine Settlement, though they will be released as a result of the settlement). Accordingly, CIOX is a necessary party to the consolidated action and its interests would be impaired or impeded without intervention.

WHEREFORE, CIOX Health, LLC respectfully requests this Court grant its request to intervene as a defendant for purposes of enabling the parties to proceed with seeking Court approval and administration of the proposed settlement. A proposed order granting this motion is being provided for the Court's convenience and consideration.

Respectfully submitted,

CIOX HEALTH, LLC
By Counsel

/s/Devon J. Stewart

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Agreed to by:

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2025, a true and correct copy of the foregoing “CIOX HEALTH, LLC’S AGREED-TO MOTION TO INTERVENE” was served on all counsel of record in this action via electronic submission using the WV E-Filing System.

/s/Devon J. Stewart

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Devon J. Stewart (WVSB# 11712)

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