

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

BY: McQueen, George
THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 22-CVS-3672

LELAND STANFORD DAVIS, *on behalf
of himself and all others similarly situated,*

Plaintiff,

v.

MRO CORPORATION,

Defendant.

**ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ATTORNEYS'
FEES, EXPENSES, AND SERVICE
AWARD.**

THIS MATTER comes before the Court on the unopposed motion of Plaintiff Leland Stanford Davis (“Plaintiff”), individually and on behalf of all others similarly situated, for final approval of class action settlement, approval of Class Counsel’s attorneys’ fee request and reimbursement of expenses, and request for approval of a service award pursuant to the Settlement Agreement (the “Settlement Agreement”) entered into with Defendant MRO Corporation (“Defendant” or “MRO”) in the above-captioned matter (the “Settlement”).

On September 26, 2024, the Court held a hearing and was satisfied as to the fairness, reasonableness, and adequacy of the Settlement, and the fairness and reasonableness of the fees, expenses, and service awards provided therein. Therefore, having considered the supporting materials submitted to the Court (including the Affidavit and supporting memorandum), discussions with counsel during the hearing, and other appropriate matters of record, the Court concludes that good cause exists to grant Final Approval of the Settlement.

THEREFORE, the Court GRANTS the Final Approval, APPROVES the Settlement, APPROVES the attorneys’ fee award, APPROVES the reimbursement of expenses, and APPROVES the Service Award Request to the named Plaintiff Leland Stanford Davis. The grounds supporting these rulings follow.

I. INTRODUCTION.

1. Plaintiff originally initiated this action by filing his Class Action Complaint (the “Complaint”), individually and on behalf of the Settlement Class, against Defendant in the General Court of Justice, Superior Court Division, in Durham County on September 27, 2022, against Defendant MRO.
2. Plaintiff alleged, *inter alia*, that Defendant unlawfully charged fees for medical records that exceed the statutorily-limited amounts set by the North Carolina Medical Record Fee Act, N.C.G.S. § 90-411 (the “Excess Fees”), and alleged related claims under the North Carolina Debt Collection Act (“NCDCA”), N.C.G.S. § 75-50, *et seq.*; and the Unfair and Deceptive Trade Practices Act (“UDTPA”), N.C.G.S. § 75-1.1, *et seq.*
3. Plaintiff sought monetary relief on behalf of the Settlement Class for violations of the Medical Record Fee Act, the NCDCA, and the UDTPA, and for other relief as appropriate.
4. The Parties conducted a thorough examination of the facts and law relating to the asserted and potential claims and defenses, including written discovery and multiple depositions.
5. Through mediation, the Parties engaged in settlement discussions that ultimately culminated in an agreement on all material terms. In May 2024, the Parties finalized the Settlement Agreement.
6. On May 29, 2024, the Court held a hearing attended by Class Counsel. Thereafter, on June 13, the Court entered an Order preliminarily approving the Settlement Agreement, the proposed Notice Plan, and the Settlement Class.
7. Pursuant to the Plan approved by the Court, Notice was disseminated to the Settlement Class. Any exclusions or objections were to be submitted by September 11, 2024, and the Fairness Hearing was scheduled for September 26.

II. SETTLEMENT TERMS.

8. In broad strokes, the Settlement provides significant benefits to the Settlement Class Members in that they are entitled to receive the full amount of their unlawful deductions without having to file a claim.
9. The Settlement Agreement provides a benefit to the Settlement Class in the form of a \$2,500,000.00 Settlement Fund.
10. The parties have allocated the Settlement Fund to a Settlement Class as defined below:

All North Carolina residents who, during the Relevant Time Period (October 1, 2019 through March 31, 2023), (a) requested medical records from a North Carolina medical provider; (b) were sent an Invoice; and (c) paid amounts, or had amounts paid on their behalf to MRO in excess of those allowed under the North Carolina Medical Record Fee Act, N.C.G.S. § 90-411.
11. Defendant's records demonstrate those individuals who paid amounts, or had amounts paid on their behalf, to MRO in excess of those allowed under the Medical Record Fee Act ("Excess Fees"). Therefore, Settlement Class members shall receive compensation directly without submission of a claim form.
12. The Settlement Class will receive reimbursement of \$164,835.19 in Excess Fees, in addition to approximately \$190-\$200 per violation paid to each Settlement Class member.
13. As defined in the Settlement Agreement and used herein:
 - a. ***Released Persons*** means Defendant MRO, and its past, present, and future related entities, parents, subsidiaries, affiliates, suppliers, distributors, contractors, agents, and assigns; and their respective past, present and future officers, directors, affiliates, employees, shareholders, contractors, predecessors, agents, assigns, heirs, executors, estate administrators, counsel, servants, insurers, and personal representatives.

- b. *Released Claims*** means any and all claims, demands, actions, allegations, suits, causes of action, theories of liability, damages whenever incurred, and the liabilities of any nature whatsoever, in any capacity, arising out of or relating in any way to Excess Fees during the Relevant Time Period (October 1, 2019, through March 31, 2023).
- c. *Class Releasors*** means each Settlement Class member, as well as each Settlement Class member's predecessors, successors, heirs, executors, trustees, legal representatives, administrators, agents, and assigns.

III. APPROVAL OF CLASS NOTICE.

- 14.** The Settlement Class has been notified of the Settlement pursuant to the Notice Plan approved by the Court. After reviewing the Post-Notice Affidavit of Class Counsel, Edward H. Maginnis, the Court hereby finds that the Notice was accomplished in accordance with the Court's directive.
- 15.** The Court further finds that the Notice Plan constituted the best practicable notice to the Settlement Class under the circumstances and fully satisfies the requirements of North Carolina Rule of Civil Procedure 23, due process, and applicable law.
- 16.** It is further determined that all members of the Settlement Class are bound by the Order and Final Judgment herein.

IV. APPROVAL OF THE SETTLEMENT.

- 17.** The Court finds that the parties' Settlement is fair, reasonable, and adequate in accordance with North Carolina Rule of Civil Procedure 23; was reached at arm's length without collusion or fraud; and satisfies all the requirements for final approval.
- 18.** The Court has considered the complexity, expense, and likely duration of the litigation if the Settlement is not approved; the odds of Plaintiff succeeding at trial, balanced with the

risks of continued litigation; the range of possible recoveries if the case is tried; the opinions of Class Counsel and the Class Representative; and the degree of endorsement and/or opposition to the Settlement by members of the Settlement Class.

19. The Court recognizes that no Settlement Class members have objected to the Settlement; and only one person has requested exclusion from the Settlement.
20. The Court appoints Edward H. Maginnis and Karl S. Gwaltney of Maginnis Howard as Class Counsel. The Court appoints Leland S. Davis as Class Representative.
21. Accordingly, the Settlement is finally approved, and the Parties are directed to consummate the Settlement in accordance with its terms.

V. CERTIFICATION OF THE SETTLEMENT CLASS.

22. The Court hereby certifies the Settlement Class.

23. The Settlement Class is defined as:

All North Carolina residents who, during the Relevant Time Period (October 1, 2019, through March 31, 2023), (a) requested medical records from a North Carolina medical provider; (b) were sent an Invoice; and (c) paid amounts, or had amounts paid on their behalf to MRO in excess of those allowed under the North Carolina Medical Record Fee Act, N.C.G.S. § 90-411.

24. Excluded from the Settlement Classes are (1) persons who are employees, directors, officers, and agents of Defendant; (2) persons who timely and properly exclude themselves from the Settlement Class as provided in this Agreement; and (3) the Court, the Court's immediate family, and Court staff.
25. Based on the record before the Court, the Court hereby finds that Plaintiff Leland Stanford Davis is an adequate representative of the Settlement Class.
26. In so holding, the Court finds that the prerequisites for certification of a class for settlement purposes only contained in Rule 23 have been satisfied:

- a. The Settlement Class, which contains more than 6,000 members and 6,858 statutory violations, is so numerous that joinder of all members is impracticable;
 - b. There are questions of law and fact common to the Settlement Class;
 - c. The claims of Plaintiff, as Class Representative, are typical of the claims of the absent Settlement Class members;
 - d. Plaintiff, as Class Representative, and Class Counsel have and will adequately and fairly protect the interests of the Settlement Class with regard to all claims of the Settlement Class; and
 - e. Common questions of law and fact predominate over questions affecting individual members, rendering the Settlement Class sufficiently cohesive to warrant settlement.
27. In making the foregoing findings, the Court has exercised its discretion in certifying the Settlement Class.

VI. ATTORNEYS' FEES AND EXPENSES.

28. The Settlement Agreement provides that Defendant will not contest Class Counsel's application to the Court for attorneys' fees, nor for costs and expenses reasonably incurred.
29. The requested attorneys' fees total one-third of the Settlement Fund (\$833,333.33). This amount was negotiated only after all substantive terms of the Settlement were agreed upon. The enforceability of the Settlement was not contingent upon this amount being awarded.
30. The requested costs and expenses of \$15,515.91 were incurred in connection with the prosecution of this litigation. This amount is also reasonable.
31. While a court may not modify a contractual attorneys' fees arrangement reached in a settlement of a Rule 23 class action, it nevertheless must review the fees sought for reasonableness and must approve any fees paid by way of settlement. *Ehrenhaus v. Baker*,

717 S.E.2d 9, 33 (N.C.Ct.App. 2011) (“While any ‘compromise’ in a class action must be reviewed by a court, a court cannot modify a purely contractual settlement” (citing *Cabarrus Cty. v. Systel Bus. Equip. Co.*, 614 S.E.2d 596, 597 (N.C.Ct.App. 2005); and *Cherry, Bekaert & Holland v. Worsham*, 344 S.E.2d 97, 100 (N.C.Ct.App. 1986)).

32. Here, the Parties agreed that Class Counsel could apply to the Court for an award of attorneys’ fees totaling one-third of the Settlement Fund. That amount is \$833,333.33.
33. The determination of the amount of attorneys’ fees to be awarded is in the sound discretion of the Court. *See Williams v. New Hope Found., Inc.*, 665 S.E.2d 586, 588 (N.C.Ct.App. 2008) (collecting cases). Accordingly, the issue before the Court is whether Class Counsel’s request for \$833,333.33 in attorneys’ fees is reasonable.
34. The Settlement provides monetary relief in the form of a common fund for the Settlement Class, totaling \$2,500,000.00. North Carolina has long-approved granting an award of attorneys’ fees upon the creation of a common allocation of money, like the common fund in this case. *See Horner v. Chamber of Com. of City of Burlington, Inc.*, 72 S.E.2d 21, 22 (N.C. 1952) (“[T]he rule is well-established that [the court] may in its discretion, and without statutory authorization, [award] attorney fees to a litigant who...maintained a successful suit for the preservation, protection, or increase of a common fund [or] created at his own expense...a fund which others may share with him” (cleaned up)).
35. The rule’s foundation rests upon the principle that “where one litigant has borne the burden and expense of the litigation that has inured to the benefit of others as well as to himself, those who have shared in its benefits should contribute to the expense,” particularly for the attorneys who have successfully prosecuted the case. *Id.*

36. Plaintiff and Class Counsel propose determining attorneys' fees using the "percentage-of-the-fund" method; specifically, the requested attorneys' fees total \$833,333.33, which amounts to one-third of the Settlement Fund. The Parties expressly agreed upon this percentage and amount of attorneys' fees in the Settlement Agreement.
37. In common fund cases, the percentage-of-the-fund method provides a strong motivation for attorneys to obtain the maximum possible recovery in the shortest time possible under the circumstances, and it is intended to foster "reasonable expectations [for] plaintiffs' attorneys as to their expected recovery[;]" to promote "early settlement, which avoids protracted litigation[;]" and to "reward the efficient achievement of results for the class, rather than encourage the run up of needless hours of attorney time before settlement." *In re Senergy, Inc.*, 1999 NCBC 7 at ¶ 23-24 (N.C.Super.Ct. Jul. 14, 1999).
38. The percentage-of-the-fund method is preferred for common fund settlements in federal courts, including the Fourth Circuit and all three districts of North Carolina. *See, e.g., Philips v. Triad Guaranty Inc.*, 2016 WL 2636289 at *2 (M.D.N.C. May 9, 2016).
39. The Court notes that this action was settled after filing of the complaint, extensive discovery, and substantial litigation. The Affidavit of Class Counsel indicates the work performed in seeking to resolve this litigation.
40. Class Counsel worked comprehensively and extensively on the case and anticipate working more to effectuate the Settlement and assist Settlement Class members in receiving the settlement benefits.
41. Class Counsel has also established that they obtained a highly favorable result for the Settlement Class by providing significant monetary benefits without requiring Settlement Class members to file a claim.

42. Class Counsel provided sufficient information to establish their experience, skill, and ability to successfully conduct complex litigation. The skill and labor required to litigate this action also weighs in Class Counsel's favor.
43. Since the attorneys' fee request is unopposed by Defendant, and Class Counsel have provided sufficient information and evidence to establish the reasonableness of their fee request, the Court finds, in its discretion, that one-third of the Settlement Fund—a total of \$833,333.33—is a reasonable attorney fee.
44. Plaintiffs' counsel requested reimbursement of \$15,515.91 in costs and expenses is also reasonable under the circumstances and the Court in its discretion awards the full amount of these expenses.
45. In addition, the Court finds that \$66,776.21 in administration costs be paid from the Settlement Fund to Verita f/k/a KCC Class Action Services, LLC ("KCC") for its role in administering the Notice Plan.
46. Accordingly, the Court finds Class Counsel should be awarded \$833,333.33 in attorneys' fees and reimbursement of expenses of \$15,515.91 to Maginnis Howard and \$66,776.21 to KCC. This amount will be paid in accordance with the Settlement Agreement.

VII. SERVICE AWARD.

47. The Settlement Agreement provides that Defendant, subject to Court approval, will pay \$7,500.00 to Plaintiff Leland Stanford Davis as the named Class Representative.
48. The Court finds that payment of a service award is appropriate in this case in light of the Class Representative's work on behalf of the Settlement Class and that no Settlement Class member has objected to the service award.

49. The Court hereby approves the service award totaling \$7,500.00, which shall be paid consistently with the Settlement Agreement.

VIII. CYPRES.

50. In accordance with the Settlement Agreement, the *cy pres* recipients are Legal Aid of North Carolina, UNC Law School's Economic Justice Clinic, and the Blanchard Law Clinic at Campbell University's School of Law. Any amounts not distributed to Settlement Class members, spent as administrative expenses, or awarded as attorneys' fees, costs, or as a service award, shall be distributed equally among the three *cy pres* recipients.
51. Should any Settlement Class members fail to cash their checks within six (6) months of issuance, as provided in the Settlement Agreement, such that the Settlement Fund has a positive balance, all remaining amounts in the Settlement Fund shall be distributed to the *cy pres* recipients equally.
52. Additionally, all amounts remaining after all costs and fees of the Claims Administrator are paid after the Claims Administrator has completed all tasks shall be distributed to the *cy pres* recipients equally.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

1. Pursuant to Rule 23 of North Carolina Rules of Civil Procedure, the Court hereby finally approves in all respects the Settlement set forth in the Settlement Agreement, and finds that the Settlement, the Settlement Agreement, and the plan of distribution of the Settlement Fund are in all respects fair, reasonable, and adequate, and are in the best interest of the Settlement Class.

2. Class Counsel is hereby awarded attorneys' fees in the amount of \$833,333.33—one-third of the Settlement Fund—from Defendant, which the Court finds to be fair and reasonable, to be paid from the Settlement Fund as set forth in the Settlement Agreement.
3. Class Counsel are also awarded a reimbursement of their expenses of \$15,515.91 from the Settlement Fund.
4. Verita f/k/a KCC Class Action Services, LLC shall be compensated \$66,776.21 in administration costs be paid from the Settlement Fund for its role in administering the Notice Plan.
5. The Court also finds to be fair and reasonable service award of \$7,500.00 to Plaintiff, to be paid from the Settlement Fund.
6. Since no member of the Class has objected and only one has requested an exclusion from the Settlement, the Effective Date of the Settlement Agreement is the date of the signing of this Order, and the Class Releasers shall release and forever discharge the Released Persons from the Released Claims.
7. By reason of the Settlement, and there being no just reason for delay, the Court hereby enters Final Judgment in this matter and all claims alleged by Plaintiff are dismissed with prejudice.
8. Without affecting the finality of this judgment, the Court retains continuing and exclusive jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Order and Judgment, to protect and effectuate this Final Order and Judgment, and for any other necessary purpose.

9. Pursuant to the terms of the Settlement Agreement, this action is dismissed with prejudice as against the Class Representative, all members of the Settlement Class, and Defendant and Released Persons.
10. The Parties shall bear their own costs except as provided by the Settlement Agreement and as ordered herein.
11. It is further adjudged that the Class Representative, on behalf of himself and members of the Settlement Class, shall be deemed conclusively to have compromised, settled, discharged, dismissed, and released any and all rights, claims, or causes of action against Released Persons as provided for in the Settlement Agreement.

IT IS SO ORDERED this _____ day of _____, 2024.

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Michael J. O'Foghludha
Superior Court Judge Presiding