

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Twanda Marshinda Brown, <i>et al.</i> , Plaintiffs, v. Lexington County, South Carolina, <i>et al.</i> , Defendants.	Civil Action No. 3:17-cv-01426-SAL
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JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

The parties have agreed to settle Plaintiffs' claims against Lexington County on behalf of an already-certified Rule 23(b)(2) Class. The Settlement, negotiated over three days of in-person mediation with an experienced mediator and former South Carolina Chief Justice, was the result of arm's-length talks. Through the Settlement, Lexington County has agreed to allocate additional funding to the public defender's office that serves indigent defendants in the County's magistrate courts. This additional funding is expected to ensure that the public defense system will properly and adequately represent all indigent defendants who are entitled to counsel under the Sixth Amendment.

On February 14, 2023, the Court entered an order granting preliminary approval of the Settlement and directing publication notice. Notice is now complete, and the parties are unaware of any class member objections. Should the Court receive any objections before the final approval hearing, the parties will address them at the hearing. Following proper consideration of such objections, the parties respectfully ask the Court to grant final approval of the Settlement.

II. STATEMENT OF FACTS

A. Relevant factual and procedural background.

Having ruled on cross-motions for summary judgment, this Court is familiar with the underlying facts of the case, and the parties refer the Court to its ruling on those motions for a full recitation of those facts. *See* ECF No. 309, at 2-42. To summarize, Plaintiffs filed this action challenging Lexington County's practices on June 1, 2017. *See* ECF No. 1. Plaintiffs' claims against Lexington County were brought pursuant to the Sixth Amendment (Claims Two and Five). *See id.* ¶¶ 374-89, 407-415. On March 5, 2021, the Court certified a class under Rule 23(b)(2) and appointed Plaintiffs Goodwin and Wright as class representatives. ECF No. 227.

On August 22, 2022, the Court ruled on the parties' cross-motions for summary judgment. ECF No. 309. That ruling allowed Plaintiffs to proceed with their claims against Lexington County for declaratory and injunctive relief (Claim Two) and nominal damages (Claim Five). *Id.* at 94. Following the Court's ruling, the parties engaged in settlement discussions to resolve these claims. The parties attended an in-person mediation with mediator and former South Carolina Chief Justice Costa M. Pleicones on September 15 and 16, 2022. *See* ECF No. 338 at 1. During those negotiations, the parties agreed to the material terms of a settlement regarding additional funding and staffing for indigent defense and memorialized those terms in a Settlement Terms Sheet. However, the parties were unable to begin negotiating payment of attorneys' fees and costs to Class Counsel, so they returned to another in-person mediation on November 30, 2022. The parties did not resolve the attorneys' fees issue at that mediation but agreed to put the issue before the Court.¹ *See id.* at 2. On December 13, 2022, the

¹ Plaintiffs' counsel has filed a motion for attorneys' fees and costs. ECF No. 350. Plaintiffs' support for the Settlement is not conditioned on the Court's decision regarding the fees and costs motion.

Lexington County Council approved the Settlement terms, and the parties executed the Settlement Agreement on December 15, 2022. *Id.*

The parties then moved jointly for preliminary approval of the Settlement. *See* ECF No. 348. On February 14, 2023, the Court entered an order granting the parties' joint motion for preliminary approval and ordering publication notice of the Settlement. ECF No. 360. The Court has set a final fairness hearing for March 2, 2023. *Id.*

B. The Settlement.

1. The Settlement Class

As the Court noted in its order granting preliminary approval of the Settlement, the Court already certified a Class in this case, and the Settlement is on behalf of that certified Class, defined as "All indigent people who currently owe, or in the future will owe, fines, fees, court costs, assessments, or restitution in cases handled by Lexington County magistrate courts." *See* ECF No. 360 ¶ 2; ECF No. 348-2 § II.A.1 (Settlement Agreement); *see also* ECF No. 227, at 2 (defining Proposed Class); *id.* at 22 (certifying Proposed Class).

2. The Settlement Relief

Lexington County has agreed to provide prospective relief to the Class that requires the County, among other things, to fund several new public defender positions for the Lexington County magistrate courts as well as administrative support for those positions and to provide pay increases. Settlement Agreement § II.B.1. Specifically, the funding will: (a) raise the starting salary amount for the three existing "Attorney I" positions, which is expected to attract more candidates; (b) fund two new "Attorney I" positions at the increased salary rates; (c) fund one new "Attorney III" position; (d) fund one new "Paralegal" position; (e) fund one new "Administrative Assistant II" position; (f) fund one new "Investigator" position; and (g) fund one new "Social Worker" position. *Id.* All these positions are to be dedicated exclusively to indigent

defense services in the Lexington County magistrate courts. *Id.* Lexington County has agreed to make budget appropriations every year to ensure no diminishment in the baseline funding for these positions. *Id.* §§ III.B.2-B.4.

Further, in connection with funding these positions, Lexington County will ensure that the public defender's office has sufficient space and equipment to accommodate the additional staff. *Id.* § III.B.5. And Lexington County will work in good faith to provide space in the magistrate court for public defenders to meet privately with their clients and to coordinate court schedules to maximize the availability of public defenders to magistrate court defendants. *Id.* §§ II.B.6-B.7.

This injunctive relief directly addresses Plaintiffs' allegation that Lexington County's magistrate courts did not provide sufficient representation to indigent defendants to comply with the Sixth Amendment right to counsel.

3. Attorneys' Fees and Costs

As part of the Settlement, the parties agree that Plaintiffs shall file a request for attorneys' fees and costs and that the Court shall resolve such request. *Id.* § II.C. Lexington County has agreed that it will not dispute Plaintiffs' eligibility to receive fees and costs under 42 U.S.C. § 1988 but may object to the amount of fees and costs requested. *Id.* Plaintiffs filed their motion for fees and costs on January 24, 2023. ECF No. 350. That motion will be fully briefed concurrent with the filing of this motion for final approval and is set to be heard at the same hearing as this final approval motion.

4. Release

If the Court grants final approval of the Settlement, Plaintiffs Goodwin and Wright and all members of the Class will release Claim Two as against Defendant Lexington County, and

the named Plaintiffs will release Claim Five.² *Id.* § III. Plaintiffs and members of the Class will retain their claims against other Defendants named in the Second Amended Complaint.³ *Id.* § VI.A.

C. Notice.

Pursuant to the Court’s order granting preliminary approval and directing publication notice, the parties arranged for the approved notice form to be published in *The State* on three different days within a one-week period, including on a Sunday. Notice appeared in *The State* on February 16, February 19 (which was a Sunday), and February 21. Declaration of David Allen Chaney Jr. (“Chaney Decl.”) ¶ 7 & Exs. A & B.⁴ The notices directed anyone who wished to object to the Settlement to send objections to the Court with a postmark no later than February 24, 2023.⁵ The parties are unaware of any objections having been received by the Court at the time of filing this motion. Chaney Decl. ¶ 10. Regardless of postmark date or date of receipt, the parties will respond to any objections that are received before the final approval hearing at the hearing. *Id.*

² Claim Five was brought only on behalf of the named Plaintiffs.

³ The claims against the other defendants are currently on appeal to the Fourth Circuit Court of Appeals. *See* ECF No. 326.

⁴ The Court’s order directed that the parties begin notice no later than February 13, 2023. *See* ECF No. 360 ¶ 6. The Court signed the preliminary approval order on February 10, but the order was not filed or transmitted to the parties until February 14, 2023, making publication notice on February 13 impossible. *See generally id.; see also* Chaney Decl. ¶¶ 3-6. As soon as the parties received the order, they moved quickly to place the publication notice in *The State*. *Id.* ¶ 5. The earliest publication date the parties could obtain was February 16, 2023. *Id.* ¶ 6.

⁵ Plaintiffs’ counsel inadvertently overlooked the discrepancy between the postmark date in the proposed notice form (February 24, 2023) and the postmark date ordered by the Court (February 27, 2023). *Id.* ¶ 8. After the first publication, counsel recognized the mistake and attempted to correct it for the second and third publications. *Id.* ¶ 8. However, the change did not get incorporated into the second and third publications. *Id.* ¶ 9.

III. AUTHORITY AND ARGUMENT

A. The parties request the Court grant final approval of the Settlement.

“A court must approve a class action settlement because the rights of absent class members are being compromised.” William B. Rubenstein, *4 Newberg and Rubenstein on Class Actions* §13.10 (6th ed. 2022) (citation omitted). The claims of a certified class can be settled with the Court’s approval “only after a hearing and only on finding that [the settlement] is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). “The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations.” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991).

Courts typically employ a three-step process for approving class action settlements: (1) preliminary approval; (2) notice and an opportunity to object to the settlement; and (3) final approval. Rubenstein, *4 Newberg and Rubenstein on Class Actions* §13.39. Steps one and two have now been completed. This motion asks the Court to take the third step and grant final approval of the Settlement.

After its 2018 amendment, Rule 23(e)(2) provides that if a proposed settlement “would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether”:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

- (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). These considerations in the amended rule are almost identical to the factors previously in use by the Fourth Circuit, and courts in this circuit utilize both the test articulated in *Jiffy Lube* and Rule 23(e)(2) interchangeably. *See In re Lumber Liquidators China-Manufactured Flooring Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, 952 F.3d 471, 484 n.8 (4th Cir. 2020) (“[B]ecause our factors for assessing class-action settlements almost completely overlap with the new Rule 23(e)(2) factors, the outcome of these appeals would be the same under both our factors and the Rule’s factors.”); *Herrera v. Charlotte Sch. of Law, LLC*, 818 F. App’x 165, 176 n.4 (4th Cir. 2020).

1. Class counsel and class plaintiffs have adequately represented the class.

The Court has now twice determined that Plaintiff and their counsel have been adequate representatives of the Class. *See* ECF No. 227, at 19-20 (finding adequacy at class certification); ECF No. 360, ¶ 4(a) (finding at preliminary approval that “Plaintiffs and their counsel have vigorously and adequately represented the Class”). That continues to be true.

2. The settlement is fair.

When evaluating the fairness of a settlement, the Court must evaluate the settlement against the following criteria: “(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel.” *In re Jiffy Lube*, 927 F.2d at 159. The fairness inquiry ensures that “the settlement was reached as a result of good-faith bargaining at arm’s length, without collusion.” *Id.* Courts have found that, where a settlement is the result of genuine

arms-length negotiations, there is a presumption that it is fair. *See, e.g., City P'ship Co. v. Atlantic Acquisition Ltd. P'Ship*, 100 F.3d 1041, 1043 (1st Cir. 1996).

At preliminary approval, the Court applied these factors and found that the Settlement is fair. *See* ECF No. 360, ¶ 4(b) (noting “arm’s-length negotiations before experienced mediator and former Chief Justice of South Carolina Costa M. Pleicones”); ¶ 4(e) (noting that the parties were “well-informed” at settlement because “discovery was complete” and “the parties’ and their counsel’s support for the Settlement weighs in favor of approval”). Throughout the litigation and the settlement process, both sides were represented by experienced counsel who vigorously prosecuted the case and were prepared to go to trial. Thus, the Settlement is procedurally fair.

3. The settlement terms are adequate and reasonable.

In assessing the adequacy of the Settlement, the Court should look to the following factors: “(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.” *In re Jiffy Lube*, 927 F.2d at 159.

These factors confirm that the Settlement is adequate and should be approved. The Court already discussed factors one through four at preliminary approval. See ECF No. 360 ¶ 4(d) (“Both parties faced risks by continuing to litigate, including the risk of an adverse ruling, the ongoing expense of litigation, and the likelihood of appeal by the losing party following trial court resolution of the case.”).

Factor five also weighs in favor of approval. The parties are unaware of any objections having been lodged to the Settlement as of the date of this filing. Should any such objections be received by the Court before the final approval hearing, the parties will address them at that time.

4. The settlement treats class members equitably.

As the Court found at preliminary approval, all members of the Class are treated equally by the Settlement. ECF No. 60, ¶ 4(f). “There is no monetary recovery for Class members, nor any request for service awards by the named Plaintiffs. Thus, all members of the Class will receive the same prospective relief as part of the Settlement.” *Id.*

B. The notice program was adequate.

As the Court found in granting preliminary approval, publication notice was the best notice practicable under the circumstances. *See* ECF No. 360, ¶ 5 (“The Court finds that, under the circumstances, publication notice is the preferred form of notice for reaching the largest number of members of the Class and providing them with an opportunity to object to the Settlement or otherwise voice their opinion about it.”). This was accomplished through three separate postings in a paper of wide circulation in the area. *See id.* (providing instructions regarding notice plan); Chaney Decl. ¶ 7 & Exs. A & B (notice published in The State on February 16, 2023, February 19, 2023, and February 21, 2023). While there was a slight mistake in the notice as to the objection deadline, the parties agree that any objections, regardless of their postmark date, will be considered and addressed at the final approval hearing. *Id.* ¶¶ 8-10.

CONCLUSION

For the foregoing reasons, the parties jointly and respectfully ask the Court to grant final approval of the Settlement.

DATED this 24th day of February, 2023.

Respectfully submitted by,

/s/ Allen Chaney

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