

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BONITA BAUM, individually
and on behalf of a class of all others
similary situated,

Plaintiff,

v.

MAYO CLINIC AMBULANCE
(F/K/A GOLD CROSS AMBULANCE
SERVICE) AND GOLD CROSS
AMBULANCE, INC.,

Defendants.

FINAL APPROVAL ORDER
AND JUDGMENT

Case No. 20-cv-409-wmc

Plaintiff Baum brought this case against Mayo Clinic Ambulance and Gold Cross Ambulance, Inc., accusing the defendants of overcharging for medical record requests under the rates established in Wis. Stat. §146.83. On February 3, 2022, the court granted preliminary approval for the settlement agreement and approved notice of settlement to class members. (Dkt. #38.) At that time, the biggest concern expressed by the court with respect to the proposed class counsel fee award relative to the recovery by the class.

On May 26, 2022, the court held a final approval hearing at which the plaintiff class was represented by Robert Welcenbach and defendants were represented by Matthew Splitek. With one modification addressed below, the court will now grant final approval to the proposed class action settlement, award a \$1,500 incentive fee to the named plaintiff and class representative Bonita Baum and approve an award of \$20,000 in fees and costs subject to class counsel putting \$2,000 of that amount in escrow pending a final accounting of any *cy pres* amount.

FACTS

The class administrator sent notices to a class of 378 people by the United States Postal Service. (Johnson Decl. (dkt. #50) 1-2.) Of those, 93.9% were deemed delivered, and *no* objections or opt-outs were received. (Parties' Mem. (dkt. #48) 1-2.) Under the terms of the final settlement, each class member is eligible for a \$31.25 award, meaning that out of the total settlement fund set aside for the class of \$10,375, all but \$1,500 paid to the class representative (\$8,875) will go to the other class members. (*Id.* at 2.) The cost of class administration and attorney fees are to be paid separately by defendants from the settlement fund. (*Id.*) The settlement administrator believes that the cost of administration will be \$5,824.75 total and class counsel continues to seek an award of \$20,000, which is represented to be less than a lodestar of over \$24,000 using counsels' standard, non-contingent rates. (Johnson Decl. (dkt. #50) 2.) Finally, the University of Wisconsin Consumer Law Clinic will receive any *cy pres* funds that may result because of a failure by any class member to cash the check issued to them personally within 120 days. (Parties' Mem. (dkt. #48) 6-7.)

OPINION

I. Payment for Class Members

During the final settlement hearing, plaintiff's counsel represented that claimants will receive \$31.25, with the rest of the fund amount going to the *cy pres* award, including any amounts still held by defendants for checks not cashed by October 1, 2022. (Parties' Mem. (dkt. #48) 2.) The court is willing to approve of the overall settlement for reasons

addressed in the court's preliminary approval of settlement under Fed. R. Civ. P. 23(a) and 23(b)(3). (Dkt. #38.)

II. Incentive and Administrative Fees

Similarly, for reasons already addressed in open court, the court finds the incentive fee award set aside for the named plaintiff and class representative, Bonita Baum, reasonable and the basis for the administrative fee amply supported. (Dkt. #50.)

III. Attorney Fees and Costs

Finally, while class counsel is to receive double the amount set aside in the fund for plaintiffs and more than double the amount going to class members after deducting the \$1,500 incentive fee for the class representative, a separate fee petition and supporting declarations by class counsel sets out the basis for that request. (Pl.'s Mot. (dkt. #44) 3.) Specifically, plaintiff's counsel spent a total of 72.93 hours on this case thus far, with Attorneys Lein and Welcenbach charging \$300 per hour and Attorney Borison charging a "reduced rate" of \$450 per hour. (Id. at 2-5.) Those rates and hours exceed the fee award requested by \$4,000 using a lodestar approach. (Id. at 3.) Even so, in the preliminary approval opinion, this court noted that,

Here, class counsel does not provide their method for seeking this amount of fees and given class counsel is seeking almost more than twice the total amount that defendants have agreed to pay to class members in settlement, the amount of fees requested is of significant concern to the court. Nevertheless, because the monetary award each class member will receive likely exceeds any actual, arguable overcharge that each member paid, this amount may be reasonable. See *In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 712 (7th Cir. 2015)

(explaining that in an “exceptional settlement,” an award significantly more than the amount the class receives may be appropriate); *Shoemaker v. Bass & Moglowsky*, S.C., 19-cv-316-wmc, 2020 WL 1671561 at *2 (W.D. Wisc. April 3, 2020) (same).

(Opinion (dkt. #38) 11.)

While the attorney fees here are greater than the class recovery, the actual amount each claimant would likely stand to gain on their own is extremely small, and by virtue of class counsel’s effort here, now exceeds each member’s actual loss by two and a half times. Moreover, the plaintiff’s statutory right to reasonable fees and costs make clear that firms should be incentivized to bring cases where there is a statutory breach, but little reason for any one individual plaintiff to sue. Nevertheless, as explained during the hearing, in order to tie counsel’s fee recovery more closely to the class members’ recovery, and bring it closer to no more than double the class’s actual recovery, the court will direct class counsel to keep in escrow \$2,000 of their \$20,000 fee award and to match any *cy pres* award dollar for dollar up to that escrowed sum, with counsel being free to apply any leftover amount towards its own fee award.

ORDER

IT IS HEREBY ORDERED that:

1. Pursuant to Rule 23 (a) and (b)(3) and for the purposes of settlement only, the Settlement Class is CERTIFIED as follows:

Any patient or person authorized in writing by a patient to obtain the patient’s health care records who requested the patient’s health care records from Mayo Clinic Ambulance (f/k/a Gold Cross Ambulance Service) or Gold Cross Ambulance, Inc. and were charged a request, basic, retrieval, certification or other fee by Mayo Clinic Ambulance (f/k/a Gold Cross Ambulance Service) or Gold

Cross Ambulance, Inc., directly or indirectly, in violation of Wis. Stat. §146.83(3f)(b)(4) - (5) during the 6 year period preceding the commencement of this action. The Class specifically excludes the following persons or entities: (i) Defendants, any predecessor, subsidiary, sister and/or merged companies, and all of the present or past directors, officers, employees, principals, shareholders and/or agents of the Defendants; (ii) any and all Federal, State, County and/or Local Governments, including, but not limited to their departments, agencies, divisions, bureaus, boards, sections, groups, councils and/or any other subdivision, and any claim that such governmental entities may have, directly or indirectly; (iii) any currently-sitting Wisconsin state court Judge or Justice, or any federal court Judge currently or previously sitting in Wisconsin, and the current spouse and all other persons within the third degree of consanguinity to such judge/justice; (iv) any law firm of record in these proceedings, including any attorney of record in these proceedings; (v) any person who would otherwise belong to the class but who Defendants can identify as being charged a fee, either directly or indirectly through a person authorized in writing, but said fee was not collected or paid to Defendants by anyone; and (vi) anyone who has recovered the fee at issue as a member of any class in *Moya v. Healthport Technologies, LLC*. 13CV2642 (Milwaukee Co. Cir. Ct) (the “Moya Action”) or *Rave V. Ciox Health LLC*., 2:18-cv-00305-LA (ED WI.).

2. For purposes of settlement, the named plaintiff is DESIGNATED the “Class Representative.”

3. For purposes of settlement, the court APPOINTS the attorneys at Lien Law Offices, LLP, Welcenbach Law Offices, S.C., and Borison Firm, LLC. as “Class Counsel.”

4. If the parties’ settlement terminates for any reason, the certification of the Settlement Class shall be automatically vacated, null and void, and the above-styled action shall revert to its status immediately prior to the execution of the Settlement Agreement.

5. The court APPROVES this proposed final settlement as fair, reasonable, and adequate and in the best interest of the settlement class members, particularly understanding that the defendants dispute the validity of the claims asserted and their

dispute underscores the uncertainty of the outcome.

6. The court DISMISSES WITH PREJUDICE the above-styled action, the “Released Claims,” and the “Released Parties” as set forth in the parties’ settlement agreement.

7. All members of the Settlement Class, except those who timely excluded themselves from the Class, are bound by this Final Approval Order.

8. The court also APPROVES payment of attorneys’ fees and costs to class counsel in the amount of \$20,000.00 to be paid by defendants separate from the Settlement Amount, subject to class counsel setting aside in escrow \$2,000 for payment dollar for dollar equal to the total *cy pres* amount determined and paid by defendants, if any, from uncashed checks by class members up to that escrowed amount.

9. Upon the entry of this Final Judgment, plaintiff and each and all of the settlement class members are hereby permanently barred and enjoined from the assertion, institution, maintenance, prosecution, or enforcement against defendants in any state or federal court or arbitral forum, or in the court of any foreign jurisdiction, of any and all released claims, as well as any other claims arising out of, relating to or in connection with, the defense, settlement, or resolution of this lawsuit or the released claims.

10. The court retains jurisdiction to consider all further matters arising out of or connected with the settlement, including the implementation and enforcement of the Settlement Agreement.

Dated this 1st day of June, 2022.

BY THE COURT:
/s/
WILLIAM M. CONLEY
District Court Judge