



West Virginia E-Filing Notice

CC-20-2017-C-765

Judge: Carrie Webster

To: Alexander McLaughlin
amclaughlin@cldlaw.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
RICHARD JEFFRIES, INDIVIDUALLY & OBO ALL v. WEST VIRGINIA AMERICAN WATER
COMPANY
CC-20-2017-C-765

The following motion was FILED on 7/2/2025 2:43:24 PM

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Cathy S. Gatson
CLERK OF THE CIRCUIT COURT
Kanawha County
P.O. Box 2351
CHARLESTON, WV 25301

(304) 357-0440

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**RICHARD JEFFRIES, and COLOURS
BEAUTY SALON, LLC, individually and
on behalf of all others similarly situated,**

Plaintiffs,

v.

**Civil Action No. 17-C-765
Judge Carrie L. Webster**

**WEST VIRGINIA-AMERICAN WATER
COMPANY**

Defendant.

**PLAINTIFFS' AND CLASS COUNSEL'S MOTION FOR ATTORNEY FEES,
LITIGATION EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARDS**

Pursuant to Rules 23(g) and 54(d)(2) of the West Virginia Rules of Civil Procedure, Plaintiffs, by counsel, respectfully submit the instant motion for attorney fees and litigation expenses for Class Counsel and for incentive awards for Class Representatives Richard Jeffries and Colours Beauty Salon. Through the instant motion, Class Counsel seeks to recover \$485,708.80 in litigation expenses and requests a fee of \$7,200,000, which is 40% of the total amount of \$18,000,000 that is available to the Class under the terms of the Settlement Agreement ("Settlement"). This fee and expense total represents the significant and voluminous work of multiple law firms with a number of lawyers and support staff working over the course of eight years on behalf of the Plaintiffs including two extraordinary writ applications to the West Virginia Supreme Court of Appeals, as well as extensive discovery and trial preparation prior to reaching the instant settlement. Plaintiffs also seek incentive awards for Class Representatives Richard Jeffries and Colours Beauty Salon in the amount of \$35,000 each. Pursuant to the agreement of the parties this Honorable Court will be the final arbiter of the appropriate attorney

fee and expense totals for the work completed on behalf of the class, which resulted in a substantial benefit for thousands of West Virginians.

Introduction

Somewhat unusually, at least in the experience of Class Counsel, this class action case was settled—after more than seven years of protracted litigation—even though the Parties were not able to reach an agreement on the amount or percentage to be awarded to Class Counsel for attorney fees and on the amount to be awarded to Class Representatives as incentive awards for their participation and involvement on behalf of the Class. Rather than risk the considerable benefits that the agreed-upon terms of the Settlement would provide for the members of the Class and proceed to trial, Class Counsel and the Defendant agreed to submit the dispute over attorney fees to this Court and let this Court decide.

However, the Parties, mindful of the United States Supreme Court’s admonition that a “request for attorney’s fees should not result in a second major litigation,” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983), agreed that the dispute should be limited to the selection of the appropriate percentage of the “total amount made available by the settlement”—i.e., the total of \$18,000,000 that is available to pay Class member claims, attorney fees, litigation expenses, incentive awards, and administrative expenses if a large percentage of eligible claimants submit claims.¹ The Parties also agreed to accept what this Court decides and “not to appeal the awards”

¹ See Settlement Agreement ¶ 13.1 (“The Parties agree that the Attorney’s Fee award should be based on a percentage of the total amount made available by the settlement as set forth in Sections 5.1.1 and 5.11.2 above.”); *id.*, ¶¶ 5.1.1 & 5.11.2 (referring to the \$18,000,000 total cap on all payments and reimbursements for claims, fees, incentive awards, and litigation and administrative expenses).

for attorney fees, litigation expenses, and incentive payments to Class Representatives.² In other words, when the Parties negotiated the terms of the instant Settlement, they trusted this Court to recognize the eight years of litigation and risk in awarding the attorney fees, knowing that the Court's decision cannot be appealed by either party.

Therefore, the task for this Court in approving the requested attorney fee award is straight-forward—to determine whether 40% is the appropriate percentage to fairly compensate Class Counsel in light of the result, taking into account the risks of non-payment and the complexity, amount, and quality of the legal work performed. *See L&D Investments, Inc. v. Antero Res. Corp.*, 887 S.E.2d 208, 222 (W. Va. 2023) (holding that, in class action and other common fund situations, attorney fees should “fairly compensate the attorney who has achieved a substantial benefit for individuals whose interests are aligned with those of the attorney’s clients, taking into consideration the risks assumed in instituting the litigation and the amount and quality of the legal services performed”). The answer is simple. Circuit judges in West Virginia and in Kanawha County specifically routinely award attorney fees in the range of 38-40% of the total amounts made available by settlements in class action cases—even in cases that involve fewer risks of non-payment, and resolve in months or only one or two years rather than seven or eight years, and even in cases that involve only a fraction of the complexity, experience, skill, and effort involved in litigating the instant case.³

Legal Standard

A. Method of Calculating Reasonable Attorney Fees

² *See id.*, ¶ 13.1 (“Once the issue is submitted, the parties agree to accept the award of Attorney’s Fees and Litigation Expenses, and Class Representative Incentive Awards, as approved by the Circuit Court and not to appeal the awards.”).

³ *See* Exhibit A (six recent final orders from at least three different Kanawha County Circuit Judges awarding attorney fees in the range of 38-40% in class action cases).

The power of courts to award attorney fees out of a so-called “common fund,” such as a class action settlement, is well-established. *See* syl. pt. 1, *L&D Investments, Inc. v. Antero Res. Corp.*, 887 S.E.2d 208 (W. Va. 2023) (“Where a fund is brought into a court of equity through the services of an attorney, who looks to that alone for his compensation ... he is regarded as the equitable owner of the fund, to the extent of the reasonable value of his services; and the court administering the fund will intervene for his protection, and award him a reasonable compensation, to be paid out of it.”) (quoting syl. pt. 8, *Weigand v. All. Supply Co.*, 44 W. Va. 133, 28 S.E. 803 (1897)). Our Supreme Court has said relatively little, however, about the methods that circuit courts should use in awarding attorney fees.

There are two main methods that courts use, referred to as the “percentage-of-the-fund” approach and the “lodestar” approach, respectively. Under the percentage-of-the-fund approach, courts award attorney fees based on a percentage of the total settlement amount, usually based on a percentage of the total funds made available for class members to claim (plus any amounts made available for attorney fees and other expenses), regardless of the number of claimants who actually file claims or the final, total distribution of funds under the settlement.⁴ Under the lodestar approach, attorneys and support staff submit their hours and customary hourly rates in support of their request for attorney fees, and then the court bases its award on the value of the attorney time—usually, at least in the class action context, allowing for a multiplier to reflect the risk of non-payment in contingent fee litigation. *See, e.g., Kay Co. v. Equitable Prod. Co.*, 749 F.

⁴ *See, e.g., Hess v. Sprint Communs. Co. L.P.*, 2012 U.S. Dist. LEXIS 168963, *7-8, 2012 WL 5921149 (N.D.W. Va. 2012) (“Under the percentage-of-the-fund method, it is appropriate to base the percentage on the gross cash benefits available for class members to claim, plus the additional benefits conferred on the class by [the] separate payment of attorney’s fees and expenses, and the expenses of administration.”) (citing *Boeing v. Gemert*, 444 U.S. 472, 479 (1980)).

Supp.2d 455, 470 (S.D.W. Va. 2010) (“Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys’ fee.”).

The West Virginia Supreme Court has recognized that the national trend in class action and other common fund cases favors the percentage-of-the-fund approach over the lodestar approach. *See L&D Investments, Inc.*, 887 S.E.2d at 222 (quoting *Strawn v. Farmers Ins. Co. of Oregon*, 297 P.3d 439, 446 (Or. 2013)) (“[F]ederal and state courts alike have increasingly returned to the percent-of-fund approach, either endorsing it as the only approach to use, or agreeing that a court should have flexibility to choose between it and a lodestar approach, depending on which method will result in the fairest determination in the circumstances of a particular case.”). In a passage quoted by our Supreme Court, the California Supreme Court explained the advantages of the percentage-of-the-fund approach in adopting that method for class action cases:

We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation convince us the percentage method is a valuable tool that should not be denied our trial courts.

L&D Investments, Inc., 887 S.E.2d at 222 (quoting *Laffitte v. Robert Half Int’l. Inc.*, 376 P.3d 672, 686 (Cal. 2016)).

B. Factors for Determining Whether a Fee is Reasonable

The West Virginia Supreme Court has identified the following four factors for determining whether a fee request is reasonable under either method in class action and other

common fund cases: (1) the benefit achieved for the beneficiaries of the common fund (i.e., Class members); (2) the risks assumed in instituting the litigation; (3) the amount of legal services performed; and (4) the quality of the legal services performed.⁵ This “determination is highly fact-specific,” and therefore ordinarily left to the discretion of the circuit judge.⁶

Federal courts in West Virginia have adopted a similar, but not identical, list of seven factors to use when applying the percentage-of-the-fund method, which are: “(1) the results obtained for the class, (2) the quality, skill, and efficiency of the attorneys involved, (3) the complexity and duration of the case, (4) the risk of nonpayment, (5) awards in similar cases, (6) objections, and (7) public policy.” *Kay Co.*, 749 F. Supp.2d at 464. The additional factors used by federal courts that are not specifically mentioned by the West Virginia Supreme Court include: “the skill[] and efficiency of the attorneys,” “the complexity and duration of the case,” “awards in similar cases,” “objections,” and “public policy.” *Id.*

Argument

A. Attorney Fees of 40% of the Amount Made Available Under the Settlement Are Reasonable

Consistent with the national trend, and the West Virginia Supreme Court’s recognition of that national trend,⁷ the Parties in the instant case agreed that Class Counsel’s award of attorney

⁵ See *L&D Investments, Inc.*, 887 S.E.2d at 222 (“Although varied, all of the methodologies utilized by courts in common fund cases share a common goal: to fairly compensate the attorney who has [1] achieved a substantial benefit for individuals whose interests are aligned with those of the attorney’s clients, taking into consideration [2] the risks assumed in instituting the litigation and [3] the amount and [4] quality of the legal services performed.”).

⁶ In this instance, the Parties specifically agreed “not to appeal” the award of attorney fees. See Settlement Agreement, ¶ 13.1 (“Once the issue is submitted, the parties agree to accept the award of Attorney’s Fees and Litigation Expenses, and Class Representative Incentive Awards, as approved by the Circuit Court and not to appeal the awards.”).

⁷ See *L&D Investments, Inc.*, 887 S.E.2d at 222 (quoting *Laffitte v. Robert Half Int’l. Inc.*, 376 P.3d 672, 686 (Cal. 2016), and *Strawn v. Farmers Ins. Co. of Oregon*, 297 P.3d 439, 446 (Or.

fees should be based on a percentage of the total fund—\$18,000,000—made available for payment of all eligible claims, attorney fees and expenses, administrative expenses, and incentive awards.⁸ This Court should approve the Parties’ agreement on this point and base the award of attorney fees on a percentage of the total fund of \$18,000,000 made available under the terms of the Settlement.

Plaintiffs request attorney fees of 40% of the total fund, equal to \$7,200,000. Plaintiffs’ requested fee percentage and total fee are clearly reasonable and appropriate under the four factors identified by the West Virginia Supreme Court. *See L&D Investments*, 887 S.E.2d at 222. Plaintiffs’ requested fee percentage and total fee are even more clearly reasonable and appropriate after consideration of the additional five factors used by federal courts in this state to determine an appropriate percentage of the fund to award in class action cases. *See Kay Co.*, 749 F. Supp.2d at 464. All the factors are analyzed in turn below, beginning with the four factors specifically identified in *L&D Investments*, and then continuing with the five additional factors from *Kay Co.*

1. The Benefit Achieved for the Class

The first factor identified by the West Virginia Supreme Court is whether Class Counsel “achieved a substantial benefit for individuals whose interests are aligned with those of the attorney’s clients.” *L&D Investments, Inc.*, 887 S.E.2d at 222. The benefits achieved for the

2013), for the proposition that the majority and clear trend across the country is to use percentage-of-the-fund method for determining attorney fees in class action cases).

⁸ *See* Settlement Agreement ¶ 13.1 (“The Parties agree that the Attorney’s Fee award should be based on a percentage of the total amount made available by the settlement as set forth in Sections 5.1.1 and 5.11.2 above.”); *id.*, ¶¶ 5.1.1 & 5.11.2 (referring to the \$18,000,000 total cap on all payments and reimbursements for claims, fees, incentive awards, and litigation and administrative expenses).

Class by the Settlement in the instant case are clearly substantial, and this factor plainly supports Class Counsel's fee request.

Approximately 30,000 residential households and customers who were in the western portion of West Virginia American Water's Kanawha Valley distribution system in June 2015 can receive a cash payment of \$175 simply by going to a website, filling out a few fields (many of which are prepopulated if they still live at the same address where they lived in 2015), verifying that they lost water or water pressure, and clicking "submit." Residential customers who can prove that their losses were greater can submit receipts and qualify for payments of up to \$500. Approximately 2,000 business customers who were in the western portion of West Virginia American Water's Kanawha Valley distribution system in June 2015 can receive a cash payment of \$525 using a similarly streamlined claims-filing process. Businesses that can prove that their losses were greater can submit records or receipts and qualify for payments of up to \$1,525. These are plainly substantial benefits, accompanied by a streamlined process for claiming and receiving that benefit.

2. The Risks Assumed in Instituting the Litigation

The second factor identified by the Supreme Court is "consideration [of] the risks assumed in instituting the litigation." *L&D Investments, Inc.*, 887 S.E.2d at 222. While the risk of nonpayment is present in virtually every contingent fee case such as this, the risk in this case was especially high for Class Counsel in the instant case for three reasons. First and foremost, Plaintiffs needed to be able to prevail on the initial question of class certification for Class Counsel (at the time, serving only as putative Class Counsel) to have even a chance of recovering their investment in advanced expenses and attorney and staff time. The class certification issue in a "mass accident" case such as this—where, as in the instant case, the

impact and damages from the mass accident vary and are difficult to quantify from individual to individual within the proposed Class, unlike, say, many statutory, consumer, or finance-based class actions—is a significant risk.

The significant risk that class certification might ultimately be denied in this case can be seen not only in the extensive briefing and hearings before this Court on Plaintiffs’ two separate motions for class certification, but also in West Virginia American’s filing of *two* separate petitions for extraordinary writ to the Supreme Court in an attempt to overturn this Court’s class certification decisions—first on August 31, 2020, and then again on August 26, 2022. Moreover, the Supreme Court issued a “rule to show cause” *both times*—effectively agreeing with West Virginia American that the issue was serious enough to consider, even on an “extraordinary” writ.⁹

Even beyond the risk that class certification might be denied (by this Court or even by the Supreme Court, acting on an extraordinary writ), this case involved risks much greater than most contingent fee cases. After surviving class certification, the next hurdle Plaintiffs faced was the prospect of a limited, common-issues trial on the question of West Virginia American’s fault. West Virginia American did not concede fault. Far from it. In fact, the company disclosed reports from three separate engineers and one additional expert on public utility regulation, all of whom

⁹ The Supreme Court first issued a rule to show cause on December 3, 2020, in response to Defendant’s August 31, 2020, petition for a writ of prohibition. Class counsel mooted that attack on this Court’s first ruling on class certification by moving to remand the case to the Circuit Court on January 21, 2021—before oral argument but after Plaintiff’s response brief had been submitted—for further consideration in light of another important mass-accident class action decision, *State ex rel. Surnaik Holdings of WV, LLC v. Bedell*, 852 S.E.2d 748 (W. Va. 2020) (“Surnaik I”), that the Supreme Court had issued on November 20, 2020. The second petition for writ of prohibition was fully briefed, argued, and finally resolved by the Supreme Court’s June 6, 2023, decision in *State ex rel. W. Virginia-American Water Co. v. Webster*, 888 S.E.2d 448 (W. Va. 2023).

opined that West Virginia American’s actions were reasonable and consistent with industry standards and good practices. Plaintiffs were not guaranteed of prevailing at the fault trial, especially given the complexities of the issue and the risks inherent in a jury trial.

Beyond those two risks—the risk of non-payment due to losing the class certification decision and the risk of non-payment due to losing the trial on the issue of fault—this case involved a third kind of risk, one that is unique to mass accident class action cases where damages must be determined on an individual basis unless the case settles. This third kind of risk might be more accurately described as the risk of “never-payment” than the risk of non-payment. It is the risk of being forced to prosecute and weather a seemingly endless series of individual or small-group mini-trials on damages, with payment—and therefore even the recovery of Class Counsel’s sunk costs associated with advanced expenses and invested attorney time—delayed many more years by the challenge of organizing, scheduling, arranging, and simply carrying out so many trials, with such a (relatively) small amount at stake in each one.

In short, the risks undertaken by Class Counsel in instituting this litigation and seeing it through for seven to eight years were simply extraordinary. These risks alone fully justify the requested 40% fee, even without consideration of the other factors.

3. The Amount of Legal Services Performed

The third factor identified by the Supreme Court is “consideration [of] ... the amount ... of the legal services performed.” *L&D Investments, Inc.*, 887 S.E.2d at 222. Class Counsel intensely litigated this case over most of the more than seven years the case was pending—involving everything from discovery, review of thousands of documents (and tens of thousands of pages of documents), and depositions, to motion practice, expert discovery, negotiation and

mediation, and even trial preparation that extended to the eve of jury selection in December 2024. Consider the following facts related to the intensity of the litigation:

- The Parties conducted 34 depositions, 30 of which were noticed and primarily conducted by Class Counsel.¹⁰
- Class Counsel prepared and filed at least 42 distinct legal memoranda—between briefs, motions, responses, replies, and proposed orders—over the seven to eight years that the case has been pending, including two response briefs and two separate motions before the West Virginia Supreme Court, in addition to 38 distinct filings in this Court.¹¹
- Many of the motions before this Court were resolved only after lengthy hearings, from lengthy hearings over the Defendant’s original motion to dismiss briefing in 2018 to hearings on dispositive motions and other pretrial hearings throughout the fall of 2024.
- The interim period—between motions to dismiss and dispositive motions practice—included discovery, document review, and depositions, with particularly intense periods in 2019, the first two months of 2020, the second half of 2023, and throughout 2024.
- The period between February 2020 and the second half of 2023 was consumed by the following: class certification briefing and hearings in 2020; West Virginia American’s first petition for writ of prohibition to the West Virginia Supreme Court and Plaintiffs’ response brief in late 2020; Plaintiffs’ motion to remand in January 2021, which the

¹⁰ See Exhibit B (list of depositions taken in this case by date and name of witness deposed).

¹¹ See Exhibit C (list of Plaintiff’s legal filings in this case by date and description).

Supreme Court granted; another round of class certification briefing and hearings in 2021; another petition from West Virginia American to the Supreme Court and another response brief in 2022; and, finally, oral argument before the Supreme Court in 2023, before the Supreme Court issued its ruling upholding class certification on June 6, 2023, and the Parties resumed discovery, document review, and depositions in the second half of 2023.

- The period from dispositive motion briefing to settlement—from the fall of 2024 to around January 20, 2025, when the initial “memorandum of understanding” that led to the eventual Settlement Agreement was signed—included 2.5 days of fully-attended, in-person mediation (October 29–30 and December 6) and many hours of preparation for mediation, negotiations with and without the mediator, and ongoing pretrial motion practice.
- In addition to the above, the fall of 2024 was also a period of intensive trial preparation for Class Counsel, very little of which shows up on the Court’s docket, but all of which was completely necessary given the schedule. As the Court no doubt recalls, at one point the jury selection for the class-wide trial on fault was scheduled to start on December 3, 2024, before being postponed for unavoidable but completely unexpected reasons on December 2, 2024, so Class Counsel had to get fully prepared for a class-wide, common-issues trial.
- On January 8, 2025, Class Counsel took the evidentiary deposition of a long-time planning engineer for West Virginia American’s parent company, and continued preparing for trial until the case resolved almost two weeks later.

Simply put, there are very few cases that involve a similar amount and duration of intense litigation as the instant case. Class Counsel’s request for a 40% fee should be approved based on this factor alone, as well.

4. The Quality of the Legal Services Performed

The fourth and final factor expressly identified by the Supreme Court is “consideration [of the] ... quality of the legal services performed.” *L&D Investments, Inc.*, 887 S.E.2d at 222. Class Counsel believes that the record in the instant case attests to the quality of Class Counsel’s legal work. While the “quality” of Class Counsel’s legal work hopefully speaks for itself, Class Counsel does address some of the related factors of skill, efficiency, and complexity of the legal work in discussing the additional factors identified by the United States District Court for the Southern District of West Virginia in the *Kay Co.*, 749 F. Supp. 2d at 464, case, below.

5. The Skill and Efficiency of the attorneys

One of the additional factors cited by federal courts in West Virginia is the “skill” and “efficiency” of the attorneys, in addition to their “quality.” *See Kay Co.*, 749 F. Supp. 2d at 464 (identifying “the quality, skill, and efficiency of the attorneys involved” as one of the factors to consider in determining an appropriate attorney fee using the percentage-of-the-fund method). The Court is undoubtedly aware that most of the same attorneys who worked on the instant case as Class Counsel—particularly Van Bunch of Bonnett Fairbourn Friedman & Balint PC (“BFFB”), and Alex McLaughlin and Dante diTrapano of Calwell Luce diTrapano PLLC (“CLD”)¹²—had extensive prior experience litigating another large class action case, known as

¹² While the main text focuses on the experience and skill of the BFFB and CLD lawyers gained from litigating the *Good* case and the appellate proceedings on class certification leading to the *Surnaik* opinions, all three firms have broad and extensive experience and skill in litigation, class action and mass action cases, and trials. The experiences and qualifications of BFFB and CLD have been highlighted in prior filings, such as the motions for class certification, the other

Crystal Good v. West Virginia American Water Company, against the same Defendant, West Virginia American Water. The *Good* case involved a service outage resulting from a chemical spill in January 2014, which impacted the same Kanawha Valley system and many of the same customers, including all of the Class members in the instant case. The final approval order from the settlement in that case is attached.¹³

Plaintiffs will discuss the percentage awarded by Judge Copenhaver for attorney fees in the *Good* case, below, in Argument Part A.8 (“Awards in Similar Cases”), but want to emphasize that Class Counsel gained incredibly valuable skills and experiences—skills and experiences that transferred directly and precisely to the instant case—by litigating the *Good* case as lead class counsel. These skills and experience range from becoming familiar with standards governing water storage and redundancy in the water utility industry to becoming knowledgeable about the

attorney and firm named as Settlement Class Counsel, Jesse Forbes of Forbes Law Offices, PLLC, also has extensive experience. Mr. Forbes has extensive relevant experience and skill including representing the City of Charleston, W.Va., the largest municipality in the State, in multiple cases related to the recent opioid litigation resulting in a multi-million dollar resolution for the City (*City of Charleston, West Virginia v. Rite Aid of Maryland, Inc. et al.*, S.D.W. Va. Case No. 2:18-cv-00251 (2018)); representing the City of Charleston, W.Va. and other political subdivisions in the same 2014 Kanawha Valley chemical spill litigation that was litigated in the *Good* case (*City of Charleston, West Virginia, et al. v. W. Virginia-American Water Company, et al.* S.D.W. Va., Case No. 2:16-cv-01531, *Good, et al. v. American Water Works Company, Inc., et al.* Case No. 2:14-cv-01374) obtaining a multi-million dollar award in a contested class claim and successfully negotiating language utilized in the final settlement protocols for all governmental claimants; and representing more than seventy former minor children who alleged serious physical, sexual and other abuses at a West Virginia boarding school in *L.B. et al. v. Miracle Meadows School, Inc. et al. Kanawha County (W.Va.) Civil Action No. 17-C-146*, and *H.S., et al. v. Miracle Meadows School, Inc., et al. Kanawha County (W.Va.) Civil Action No. 21-C-894* in multi-year litigation with numerous defendants in consolidated actions resulting in a recovery of over \$100 million dollars for the plaintiffs. Mr. Forbes maintains an AV Preeminent rating from Martindale-Hubbell and has been selected for inclusion in West Virginia’s Super Lawyers list for many consecutive years, among other professional recognition.

¹³ See Exhibit D, “Order Granting Final Approval of the Good Class Settlement and Entering Judgment,” *Crystal Good v. West Virginia American Water Company, et al.*, Civil Action No. 2:14-cv-1374 (S.D.W. Va. June 8, 2018).

layout and hydraulics of the Kanawha Valley Distribution System itself, as well as the structure of West Virginia American and its parent and service companies, their planning departments, capital allocation practices, engineers, and engineering practices. The *Good* case also provided valuable skills and experiences with respect to the regulation of water utilities and rate-making practices of the West Virginia Public Service Commission (“PSC”), as well as West Virginia American’s and its parent company’s approaches to rate-making and history of dealings with the PSC, and how those approaches impact its asset and capital planning. It is no exaggeration to say that, based on the experiences gained as lead class counsel in the *Good* case, no other lawyers possessed the same degree of skill and experience in litigating the relevant and key issues as Class Counsel.

Class Counsel also have an exceptional amount of skill and experience in litigating the class certification issues surrounding single-event, mass accident class actions such as the instant case, as well as the *Good* case. In fact, during the three years—roughly from March 2020 to June 2023—that proceedings in the instant case were dominated by class certification motion practice, hearings, petitions, briefing, and oral argument before this Court and the West Virginia Supreme Court, the same Class Counsel—Van Bunch of BFFB, and Alex McLaughlin and Dante diTrapano of CLD—were actively litigating very similar class certification issues before the West Virginia Supreme Court in another single-event, mass accident class action case. *See State ex rel. Surnaik Holdings of WV, LLC v. Bedell*, 852 S.E.2d 748 (W. Va. 2020) (“Surnaik I”); *State ex rel. Surnaik Holdings of WV, LLC v. Bedell*, 875 S.E.2d 179 (W. Va. 2022) (“Surnaik II”). Class Counsel’s skill, experience, and appellate advocacy in those three years, from 2020 to 2023, led to three West Virginia Supreme Court decisions—*Surnaik I*, *Surnaik II*, and the Supreme Court’s decision in the instant case, *State ex rel. W. Virginia-American Water Co. v.*

Webster, 888 S.E.2d 448 (2023)—that established clear guidelines and pathways for many victims of single-event mass accidents to obtain class certification and, ultimately, some measure of relief and compensation. Class counsel’s appellate work in the *Surnaik* cases, at least, helped to clarify the law for this Court on class certification in this case.

The skill and experience of Class Counsel enabled Class Counsel to work the instant case far more efficiently. Lawyers without experience in litigating mass accident class action cases would have had to spend time educating themselves about the complex class certification issues in those cases. Lawyers without the experience of litigating the *Good* case as lead class counsel would have had to spend far more of their own time—as well as discovery and deposition time—educating themselves about and investigating issues such as the standards governing water storage and redundancy in the water utility industry, the layout and hydraulics of the Kanawha Valley Distribution System, and the structure of West Virginia American and its parent and service companies—their planning departments, capital allocation practices, engineers, and engineering practices. This factor weighs heavily in favor of Class Counsel’s request for a 40% fee, as well.

6. The Complexity and Duration of the Case

The analyses of the other factors, above, show how complex and technical the class certification issue was. The engineering and regulatory issues were also highly complex and technical, and gave rise to complicated legal issues surrounding, for example, the admissibility of motive evidence, the costs of capital, and proffered testimony on complicated finance and regulatory matters. In addition, as this Court is aware from the extensive briefing on these subjects, the case involved very complex legal and evidentiary issues, especially complicated

issues surrounding the application of the doctrine of judicial estoppel and West Virginia Evidence Rule 407, which concerns the admissibility of so-called subsequent remedial measures.

The duration of the case speaks for itself. The event at issue occurred in June 2015. The initial complaint was filed on June 2, 2017. The memorandum of understanding—the initial settlement document—was not signed until January 20, 2025, roughly seven and a half years after the filing of the initial complaint. The instant motion for attorney fees is being filed on July 2, 2025, eight years and one month after the initial filing of the complaint. The complexity and duration of the case clearly weigh heavily in favor of Class Counsel’s request for a 40% fee.

7. Awards in Similar Cases

Class Counsel’s requested fee of 40% is fully justified and in line with awards in similar cases, particularly in class action cases in state court and in Kanawha County. Attached as “Exhibit A” is a collection of final orders from six recent Kanawha County class action cases awarding attorney fees in the range of 38-40% in class action cases. None of these cases involved the duration, risk, work, skill, experience, or complexity as the instant case.

West Virginia American may point to the 22% attorney fee awarded by Judge Copenhagen to combined Class Counsel in his “Order Granting Final Approval of the Good Class Settlement and Entering Judgment” in *Crystal Good v. West Virginia American Water Company*, et al., Civil Action No. 2:14-cv-1374 (S.D.W.V. June 8, 2018),¹⁴ but reliance on that case—or at least on the lower fee percentage awarded in that case—is misplaced for several important reasons. The first reason that reliance on the *Good* case would be misplaced is that it was a case

¹⁴ A copy of Judge Copenhagen’s order is attached as Exhibit D. The discussion of the award if attorney fees is on pages 7–10.

pending in a different forum—federal court instead of West Virginia—and subject to different standards and rules.

The second, and arguably more important, reason that reliance on the percentage awarded in the *Good* case would be misplaced is because Judge Copenhaver actually reduced the *percentage* of the attorney fees because of the size of the total amount available in that case, and focused instead on the *absolute* amount of the attorney fees—which he had initially target for \$30,000,000, based on 25% of an expected settlement of \$120,000,000, but then ended up at the *higher* amount of over \$33,000,000, based on a (reduced) percentage of 22% of a higher total amount of \$150,500,000.¹⁵ Therefore, the total, absolute award of attorney fees in the *Good* case was over *four times higher* than the total fee requested in the instant case of \$7,200,000—despite the fact that the *Good* case involved *less* complicated class certification issues,¹⁶ far lower risk of nonpayment,¹⁷ and was actively disputed and litigated for less than three years rather than for over seven and a half years.¹⁸ Moreover, the (same) lawyers who served as lead class counsel in

¹⁵ See Exhibit D at 9–10.

¹⁶ Because a formal “Do Not Use” order was issued to all customers in the Kanawha Valley distribution system following the chemical spill at issue in *Good*—and not being able to use the water was the major harm common to all class members—the *Good* class action did not have to withstand arguments about the disparate and unknown “impact” on different putative class members and customers in order to obtain certification, which is the argument that dominated the certification briefing and arguments in the instant case.

¹⁷ A good proxy for the “risk of nonpayment” for a given class action is the number of independent plaintiffs’ lawyers and law firms who file separate class action cases following a mass accident or other event. While a large number of putative class action cases, representing probably dozens of West Virginia law firms, were filed within one week of the chemical spill at issue in the *Good* case in January 2014, Class counsel filed the first and *only* putative class action case seeking to represent the instant class on June 2, 2017, almost two years after the main break at issue, which occurred on June 23, 2015.

¹⁸ The complaints that ended up being consolidated with the *Good* case were mostly filed in January 2014. While the date of the final order in Exhibit D is June 8, 2018, four and a half years later, the *Good* case was in settlement posture—a protracted process heavily overseen, if not micromanaged, by Judge Copenhaver himself—by the end of 2016. The *Good* case was actively disputed and litigated, in other words, for no more than three years, and, like all class

the *Good* case were plainly less skilled, less experienced, and necessarily less efficient at litigating such cases back then than now, when serving as Class Counsel in the instant case—because we had not had the prior experience of litigating a very similar case against the same water company for a service interruption involving the same distribution system.

In other words, the fee award in the *Good* case, viewed on its own terms—with a focus on the absolute amount of attorney fees rather than the percentage of the fund—stands for the proposition that a fee of *over four times as much* as the fee requested in the instant case is reasonable and appropriate even when the legal work is less risky, less complicated, takes less than half as long to complete, and is performed by less experienced lawyers than the work in the instant case. This factor, awards in similar cases, also weighs heavily in favor of Class Counsel’s request for a 40% fee.

8. Objections

So far no objections have been submitted from Class members, even though class members—through the mailed tri-fold notice and the website FAQs—have been apprised of the terms of the Settlement and that “Attorneys for the Settlement Class intend to ask for up to 40% of the agreed settlement amount as fees.” The deadline for objections has not passed yet, so we will see if any objections to the Settlement or the requested fee come in before the deadline, but, as of now, this factor clearly weighs in favor of Class Counsel’s request for a 40% fee.

9. Public Policy

Public policy supports Class Counsel’s requested attorney fees. Courts have noted that awards of attorney fees “promote the important public policy that attorneys should continue to

certification cases, that included a lengthy period for briefing and deciding the class certification issues.

take on ‘class actions that vindicate rights that might otherwise go unprotected.’” *Kay Co.*, 749 F. Supp.2d at 468 (internal citations omitted). Public policy weighs strongly in favor of the requested fee of 40%.

B. An Award of Litigation Expenses and Costs in the Requested Amount Is Warranted.

Class Counsel also ask that the Court approve the request for reimbursement of \$485,708.80 in litigation expenses incurred in connection with the prosecution of this litigation. The Settlement Agreement anticipates that Class Counsel will seek reimbursement of up to \$550,000.00 in litigation expenses. *See* Settlement Agreement, ¶ 13.2.

In determining whether the requested expenses are compensable, courts typically consider whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases, and were reasonably necessary to the prosecution or resolution of the action. “Costs that are ‘reasonable in nature and amount, may be reimbursed from the common fund.’” *Kay Co.*, 749 F. Supp.2d at 472. Here, each law firm that participated in the litigation has submitted separate Declarations attesting to the accuracy and reasonableness of its expenses. *See* Declaration of Class Counsel, attached as Exhibit E. These expenses were reasonably necessary to prosecute this matter, including payments to expert witnesses, and should therefore be reimbursed.

C. The Proposed Incentive Awards to Be Paid to Class Representatives Should Be Approved

In the exercise of its discretion, the Court may award special compensation to class representatives as compensation for the services provided and the risks incurred during the course of the class action litigation. Incentive awards are routinely approved in class actions “to encourage socially beneficial litigation by compensating named plaintiffs for their personal time spent advancing the litigation on behalf of the Class and for any personal risk they

undertook.” *Kay Co.*, 749 F. Supp.2d at 472 (internal citations omitted).

Here, Richard Jeffries and Colours Beauty Salon, through its owner, Carol Burdette, put in significant personal time, including attending depositions and hearings, and committed to representing the Class. The proposed incentive payments of \$35,000 for each are fair and reasonable under the circumstances.

CONCLUSION

For the foregoing reasons, Plaintiffs’ requests for attorney fees of 40% of the amount made available in the Settlement and for litigation expenses and incentive awards for Class Representatives should be approved.

Dated: July 2, 2025

**RICHARD JEFFRIES, and COLOURS
BEAUTY SALON, LLC, individually and
on behalf of all others similarly situated,
Plaintiffs**

By Counsel,

/s/ Alex McLaughlin
L. Dante diTrapano, Esquire (WVSB 6778)
David H. Carriger, Esquire (WVSB 7140)
Alex McLaughlin, Esquire (WVSB 9696)
CALWELL LUCE DITRAPANO, PLLC
Law and Arts Center West
500 Randolph Street
Charleston, West Virginia 25302
Telephone: (304) 343-4323
Facsimile: (304) 344-3684
dditrapano@cldlaw.com
dcarriger@cldlaw.com
amclaughlin@cldlaw.com

Van Bunch, Esquire (WVSB 10608)
BONNETT FAIRBOURN FRIEDMAN & BALINT PC
7301 North 16th Street, Suite 102

Phoenix, AZ 85020
Telephone: 602-274-1100
vbunch@bffb.com

W. Jesse Forbes, Esquire (WVSB 9965)
FORBES LAW OFFICES, PLLC
1118 Kanawha Boulevard, East
Charleston, WV 25301
Telephone: 304-343-4050
wjforbes@forbeslawwv.com

Kevin W. Thompson, Esquire
David R. Barney, Jr., Esquire
THOMPSON BARNEY
2030 Kanawha Boulevard, East
Charleston, WV 25311
Telephone: 304-343-4401
kwthompsonwv@thompsonbarneylaw.com

Counsel for Plaintiffs

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**RICHARD JEFFRIES, and COLOURS
BEAUTY SALON, LLC, individually and
on behalf of all others similarly situated,**

Plaintiffs,

v.

**Civil Action No. 17-C-765
Judge Carrie L. Webster**

**WEST VIRGINIA-AMERICAN WATER
COMPANY**

Defendant.

CERTIFICATE OF SERVICE

I, Alex McLaughlin, counsel for the Plaintiffs, Richard Jeffries and Colours Beauty Salon, LLC individually and on behalf of all other similarly situated, do hereby certify that on the 2nd day of July 2025, the foregoing *Plaintiffs' and Class Counsel's Motion for Attorney Fees, Litigation Expenses, and Class Representative Incentive Awards* was served on all counsel of record via the West Virginia e-filing system as follows:

Thomas J. Hurney, Jr, Esquire
Alexandra Kitts, Esquire
JACKSON KELLY PLLC
P.O. Box 553
Charleston, WV 25332
thurney@jacksonkelly.com
akitts@jacksonkelly.com

Kent Mayo, Esquire
BAKER BOTTS LLP
700 K Street NW
Washington, DC 20001
kent.mayo@bakerbotts.com

Counsel for West Virginia-American Water Company

/s/ Alex McLaughlin
Alex McLaughlin, Esquire (WVSB No. 9696)



West Virginia E-Filing Notice

CC-24-2018-C-192

Judge: David Janes

To: Troy N. Giatras
troy@thewvlawfirm.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA

JAROD NEWBRAUGH v. FAIRMONT FEDERAL CREDIT UNION
CC-24-2018-C-192

The following order - case - final was FILED on 7/9/2019 10:24:05 AM

Notice Date: 7/9/2019 10:24:05 AM

Rhonda Starn
CLERK OF THE CIRCUIT
Marion
219 Adam Street, Room 211
FAIRMONT, WV 26554

(304) 367-5360
rhonda.starn@courtsww.gov

Case No. CC-24-2018-C-192

This class action arises out of Fairmont Federal Credit Union’s filing of collection lawsuits in Magistrate Court. (Hereinafter, Fairmont Federal Credit Union will be referred to as “Defendant” or “FFCU.”) On March 21, 2019, the case was certified as a class consisting of those individuals sued by FFCU in the designated timeframe. The collection lawsuits at issue were filed across the State of West Virginia, but primarily in Marion County.

On May 15, 2019, this Court granted preliminary approval to the proposed settlement and agreement of the parties. The settlement for which the parties now seek final approval was reached only after the parties conducted extensive investigation, researched the claims, and conducted discovery of the conduct at issue in the class complaint. For instance, FFCU provided the class representative and class counsel with debt lawsuits comprised in the proposed class, written policies of FFCU, and various other relevant documentary evidence. Subsequent to the Court's entry of the Preliminary Approval Order, class notice and the administration of the consumer claims process ensued. Now, July 8, 2019, the Court considers the final approval of the settlement previously reached.

II. Definitions and Summary of Settlement Terms

1. The definitions and terms set forth in the Preliminary Approval Order are hereby adopted and incorporated into this Order.

2. This Court has jurisdiction over the subject matter of these proceedings and over all Parties and the members of the Class, defined below and no party to this litigation disputes such jurisdiction.

3. The Court awards final approval to the settlement, which provides for a monetary payment of \$465,000.00, debt relief of approximately \$200,000.00 and other non-monetary relief such as tradeline deletion, judgment lien release, judgment release, and, cessation of garnishments, all of which the parties recognize have a substantive value to the Class Members, and finds that: (a) the settlement resulted from extensive arm's-length negotiations and was concluded only after Class Counsel had duly investigated the issues raised by class members' claims; (b) the settlement of this

action makes available valuable consideration commensurate with the alleged harm to settlement class members; and (c) the settlement evidenced by the Parties' Settlement Agreement is sufficiently fair, reasonable, and adequate.

4. The Court finds the settlement is fair with total relief valued at more than Eight Hundred Seventy Thousand Dollars (\$870,000.00), and finds that: (a) the settlement resulted from extensive arm's-length negotiations and was concluded only after Class Counsel had duly investigated the issues raised by settlement class members' claims; (b) the settlement of this action makes available valuable consideration commensurate with the alleged harm to settlement class members; and (c) the settlement evidenced by the parties' settlement agreement is sufficiently reasonable and adequate to warrant a final finding of fairness.

5. The Court approves the settlement, as set forth on the Settlement Agreement, as well as the already administered notice that included (A) the Notice of Proposed Class Action Settlement and Fairness Hearing and (B) the Claim Form.

III. Summary of Settlement Terms

The Parties jointly propose the following settlement terms for final approval:

6. FFCU will pay the cash sum of Four Hundred Seventy-Five Thousand Dollars (\$475,000.00) in accordance with the Settlement Agreement, said amount to be inclusive of attorney fees and costs, the class representative's service award, a consumer claim fund, and class action claims administration costs.

7. FFCU shall cease any collections from any member of the Class of any debt accrued during the Class Period subject to the debt lawsuits included in the class definition.

8. FFCU agrees not to report negative trade lines on any Class member's credit report with any agencies and/or credit bureaus for debts accrued during the Class Period because the debts are disputed.

9. Upon receipt by the Claim Administrator of the funds, the Claim Administrator shall distribute: (a) reasonable attorney's fees and costs for the prosecution of this matter to Class Counsel, which award shall be \$348,000.00 for attorney's fees and \$21,000.00 for expenses; (b) claim administration costs; and, (c) Newbraugh's service award.

10. The Parties' Settlement Agreement includes a mutual release, as set forth fully therein and also includes a dismissal of the Certified Action, with prejudice.

11. The Parties agree that any remaining monies unclaimed in the consumer claim fund shall be awarded *cy pres*, consistent with the West Virginia Supreme Court of Appeals rules providing that 50% of unclaimed funds shall be distributed to Legal Aid of West Virginia, Inc., and with remaining amounts to be distributed as follows: thirty percent (30%) to the Disability Action Center through United Way and twenty percent (20%) to The Center for Consumer Law and Education at West Virginia University College of Law.

12. Jarod Newbraugh, the class representative, shall receive a service award of up to Two Thousand Five Hundred Dollars (\$2,500.00) which the Court and the claims administrator deem to be fair and adequate for his service in representing the consumer class.

13. FFCU shall remove all judgment liens, vacate all judgments, and cease all garnishments related to the debts at issue in the Class members' lawsuits. FFCU shall

cease collections of the debts at issue in the Class Plaintiff's lawsuits. FFCU shall delete all of the Class members' impacted trade lines with all agencies and/or credit bureaus to which it previously reported.

14. FFCU shall not file tax reporting by standard 1099 with respect to debt-cancellation and/or other individual reporting on Class members as such debts are disputed.

15. All other terms and conditions not included in this *Summary of Settlement Terms* are herein incorporated by reference from the Parties' Settlement Agreement.

IV. The Parties Settlement Satisfies the Requirements for Final Approval

16. In this case, the Parties reached a final settlement after conducting significant and thorough investigation, legal research, and discovery. The discovery process and exchange of information included numerous debt lawsuits, bills of sale, FFCU's written policies, account statements, and various other relevant documentary evidence. It should also be noted that the Parties' conducted a lengthy and formal mediation to facilitate the investigation and prosecution of the claims encompassed in the proposed settlement ultimately reached over additional weeks of negotiation.

17. The investigation, research, and discovery conducted in this litigation satisfies the requirements outlined in West Virginia Rule of Civil Procedure 23(a)(4). Therefore, the settlement reached by the parties satisfies the necessary requirements for final approval because it is the result of significant investigation, class counsel appropriately and aggressively represented the consumer class, and also because the settlement is the result of arm's-length negotiation.

18. The settlement reached by the Parties indicates that it is the product of

arm's-length negotiations. Not only are all of the West Virginia class members eligible for significant monetary claims in a consumer relief fund, many consumers will also receive significant debt dispute resolution and the guarantee of no negative trade-lines on their credit reports for debts accrued during the Class Period. The final settlement is not a coupon settlement or one of nominal relief. To the contrary, it is a settlement directly addressing and remediating the harm caused to consumers as alleged by Defendant. Thus, the settlement award for the consumer class, inclusive of both monetary and equitable relief, is the result of arm's-length negotiation and satisfies the factors required to meet final fairness and merits approval.

V. Class Definition

19. The Court formerly certified a class pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the West Virginia Rules of Civil Procedure. The Class was defined as follows:

- i. All consumers/individuals who, between May 4, 2012 to the present, were identified by FFCU as being sued in a debt collection action in the State of West Virginia by FFCU.

20. Excluded from the Settlement Class are (i) all employees of FFCU who were involved in the negotiation or preparation of the settlement of this Action, (ii) members of the judiciary of West Virginia who were involved in the adjudication of this matter, (iii) Class Counsel and their employees.

21. The Court FINDS that the Class satisfies certification requirements of W. Va. R. Civ. P. 23(a), W. Va. R. Civ. P. 23(b)(1)(B), and W. Va. R. Civ. P. 23(c)(4)(b).

22. The Court previously appointed and approved Jarod Newbraugh as the Class Representative and finds that he appropriately and effectively represented the

interests of the defined class during the litigation in this case.

23. The Presiding Judge previously appointed and approved Troy N. Giatras and Matthew Stonestreet as counsel for the Class (“Class Counsel”). Appointed class counsel thoughtfully represented the consumer class throughout this matter and zealously litigated the case. With this in mind, it is clear that Settlement Class Counsel satisfied the first part of the adequacy requirement found in Rule 23(a).

24. The Court previously certified a Class and determines further that the requirements of the West Virginia Rules of Civil Procedure and any other applicable rules or law have been met with respect to the final Settlement in this matter.

VI. Summary of Claims Administration

25. ILYM Group, Inc. served as claims administrator (“Claims Administrator”) in this matter. ILYM Group issued several rounds of notice of this class action settlement by mail to certain members of the class, provided frequent updates to all counsel, promptly issued form notices, and followed the Court approved claims administration process in this matter. The Claims Administrator provided adequate notice to certain members of the Settlement Class of potential claims and also to advise those individuals in the Class of various procedural rights. ILYM Group, Inc. properly implemented the notice plan and the claims process set forth in the Settlement Agreement and this Court’s prior Preliminary Approval Order. Approximately seven percent (7%) of the noticed class members participated in completing claim forms. Also, important, regardless of claim form completion, approximately one hundred percent (100%) of all of the impacted consumers shall receive negative trade-line agreements, debt cancellation, and injunctive relief of compliant debt judgments. See

“Claim Administrator Report” attached hereto as **Exhibit A**.

25. Based on the proposed settlement of the parties, each claim made in the administration process shall be distributed in the amount of seven hundred dollars (\$700.00) per West Virginia consumer.

26. The Parties effectuated notice plan, consisting of a claim form, and mailing notices to impacted individuals regarding the final fairness hearing, constitutes the best notice practicable in this case and satisfies the requirements of due process and complies with the requirements of W. Va. R. Civ. P. 23. The Court finds that the form and mail notice procedure are reasonably calculated, under all the circumstances, to apprise the Class Members of the pendency of this litigation. The notice also affords any Class member an opportunity to present any objections to the settlement.

VII. Determination of Final Fairness

27. The Court finds the parties’ settlement, as set forth in this document, the Preliminary Approval Order of the Court, and the Settlement Agreement, is fair, reasonable, and adequate. The Settlement is therefore awarded final approval by the Court.

28. The Court notes that no person who has received notice of the settlement has filed an objection to the proposed Settlement with the Clerk of the Court as directed in this Court’s Preliminary Approval Order. The Court also notes that no such person filed a notice of an intention to appear or provided a written statement that indicates any bases for objection and no such person appeared in person to object at the final fairness hearing held on July 8, 2019. Pursuant to this Court’s Preliminary Approval Order, any Class Member issued notice as described herein and not objecting shall be

deemed to have waived all objections and shall be foreclosed from making any objections to class certification, any attorney fee and cost award, and the settlement set forth in the Agreement and adopted by the Court.

VIII. Conclusion

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, DECREED, and ADJUDGED**, that the joint motion for final approval of class action settlement is **GRANTED**.

The Clerk is directed to send certified copies of this Order to all counsel of record.

Prepared and presented by:

/s/ Matthew Stonestreet
Troy N. Giatras, Esq. (WVSB #5602)
Matthew Stonestreet, Esq. (WVSB #11398)
THE GIATRAS LAW FIRM, PLLC
118 Capitol Street, Suite 400
Charleston, WV 25301
(304) 343-2900

Counsel for West Virginia Consumer Class

/s/ Colby S. Bryson (w/ permission)
Edward A. Smallwood, Esq. (WVSB #7657)
Colby S. Bryson, Esq. (WVSB #12152)
LITCHFIELD CAVO, LLP
Two Gateway Center, 10th Floor
603 Stanwix Street
Pittsburgh, PA 15222

*Counsel for Fairmont Federal
Credit Union*

/s/ David R. Janes
Circuit Court Judge
16th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.

Plaintiff Counsel: The Giatras Law Firm, PLLC
Contact: Troy N. Giatras, Esq. & Matthew Stonestreet, Esq.

Defense Counsel: Litchfield Cavo, LLP
Contact: Edward A. Smallwood, Esq. & Colby S. Bryson, Esq.

Summary[Total Class Size](#)

77

[Initial Mailing](#)

May 24, 2019

[Class Period](#)

5/4/2012 - Present

[Response Deadline](#)

July 1, 2019

[Final Hearing](#)

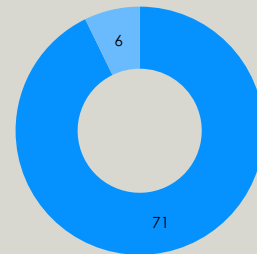
July 8, 2019

Class

ITEM	AMOUNT
Total Class Members	77
Total Valid Claims:	6
% Valid Claims	7.79%

Percentage of Class to Submit a Claim

7.79%

**Mailing**

ITEM	AMOUNT
Notices Returned:	21
Forwarded Notices:	0
Notices Traced:	21
Notices Returned 2 nd Time:	0
Undeliverable Notices:	9
Requested Notices:	0
Notices Re-mailed:	12

Responses

ITEM	AMOUNT
Responses Received:	6
Opt-Outs:	0
Objections:	0
Disputes:	0
Invalid:	0
Deficient Claims:	0
Valid Claims:	6

ILYM | GROUP, Inc.
SETTLEMENT ADMINISTRATION EXPERTS

NOTICE: All calculations in this report are provided as a reference and will vary each week. Claims and Settlement Fund details are based on preliminary data provided to our office at the beginning of the claims administration. If you have questions regarding any data in this report, please contact the Case Manager.

In the Circuit Court of Kanawha County, West Virginia

J. K. C.,,
Plaintiff,

v.

Case No. CC-20-2024-C-322
Judge Jennifer F. Bailey

DISCOUNT EMPORIUM, INC., D/B/A
DRUG EMPORIUM,
Defendant

FINAL FAIRNESS HEARING ORDER

On April 9, 2025, came the Plaintiff, J.K.C., individually and on behalf of all others similarly situated ("Plaintiff"), by counsel, The Giatras Law Firm, PLLC and the Defendant, Discount Emporium, Inc., d/b/a Drug Emporium (hereinafter "defendant" or "Drug Emporium") by counsel, Jonathan L. Anderson and Jackson Kelly PLLC for a hearing. This matter is before the Court upon the parties' joint request for Final Approval of Class Action Settlement. Upon review of the available documentary evidence, the parties proposed settlement terms, and all applicable statutes and rules, the Court ORDERS and ADJUDGES that the parties' request for final class action settlement approval is GRANTED as follows:

I. Case Background

This class action arises out of allegations regarding the breach of sensitive information of two-thousand five hundred (2,500) individuals. The breach of sensitive information occurred in October of 2023 and was a result of a hacking/IT incident of the defendant's network server. The instant action began in March of 2024 and now comes before the Court for final approval.

Ultimately, on January 28, 2025, this Court held a hearing and granted preliminary approval to the proposed settlement and agreement reached by the parties subsequent to significant litigation. The settlement for which the parties now seek final approval was reached only after the parties conducted an investigation, researched the claims, and conducted thorough discovery of the conduct at issue in the class complaint. Subsequent to the Court's entry of the Preliminary Approval Order, class notice and the administration of the consumer claims process ensued. Now, the Court considers the final approval of the settlement previously reached.

II. Definitions and Summary of Settlement Terms

1. The definitions and terms set forth in the Preliminary Approval Order are hereby adopted and incorporated into this Order.

2. This Court has jurisdiction over the subject matter of these proceedings and over all Parties and the members of the Class, defined below and no party to this litigation disputes such jurisdiction.

3. The Court finds the settlement is fair with total relief valued at no less than \$1,300,000.00 and finds that: (a) the settlement resulted from extensive arm's-length negotiations and was concluded only after Class Counsel had duly investigated the issues raised by settlement class members' claims; (b) the settlement of this action makes available valuable consideration commensurate with the alleged harm to settlement class members; and (c) the settlement evidenced by the parties' settlement agreement is sufficiently reasonable and adequate to warrant a final finding of fairness.

4. The Court awards final approval to the settlement, and notes that relief such as comprehensive reviews of data security policies and procedures, and maintaining multi-factor authentication, are recognized by the parties to have a

substantive value to the Class Members.

5. The Court approves the settlement, as set forth in the Settlement Agreement, as well as the already administered Notice that included the Notice of Proposed Class Action Settlement and Fairness Hearing and the Claim Form.

III. Summary of Settlement Terms

The Parties jointly propose the following settlement terms for final approval:

6. The defendant agrees to conduct regular simulated phishing campaigns;
7. The defendant agrees it shall maintain multi-factor authentication for all external facing applications;
8. The defendant agrees to regularly retain a third-party vendor to provide managed detection and response services on a 24/7/365 basis;
9. The defendant agrees to periodically conduct a comprehensive review of data security policies and procedures;
10. The defendant agrees to implement an automated patch management tool to install patches on server level machines;
11. Upon receipt by the Claim Administrator of the funds, the Claim Administrator shall commence distribution in compliance with the notice provided to the consumer class.
12. The Parties' Settlement Agreement includes a mutual release, as set forth fully therein and also includes a dismissal of the Certified Action and its claims, with prejudice.
13. The Parties agree that any remaining monies unclaimed in the consumer claim fund shall be awarded *cy pres* in accordance with the WVRCP, with remaining amounts to be determined by the Court at a later date.

14. J.K.C. shall receive a service award of Ten Thousand Dollars (\$10,000.00) total, which the Court and the claims administrator deem to be fair and adequate for his service in representing the consumer class.

15. The Court previously approved attorney's fees for Class Counsel up to 38% of the settlement value. The Court reaffirms its previous finding of preliminary approval and finds the amount of 38% to be fair and reasonable.

16. The Court previously found that hourly rates of \$795 and \$695 are reasonable based upon skill, experience, and efforts required to litigate this matter by Troy N. Giatras and Matthew Stonestreet. Although the Court finds that these rates are reasonable, the parties agree that attorney fees will be awarded under the common fund benefit doctrine, and therefore approves the same.

17. The Court previously approved reasonable attorney expenses and claims administration costs. The Court hereby approves the combined costs of attorney costs and claims administration costs in the amount of Fifty Six Thousand Dollars (\$56,000.00).

IV. The Parties Settlement Satisfies the Requirements for Final Approval

18. In this case, the Parties reached a final settlement after conducting an investigation, legal research, and discovery. It should also be noted that the Parties' conducted litigation and formal mediation to facilitate the investigation and prosecution of the claims encompassed in the proposed settlement.

19. The investigation, research, and discovery conducted in this litigation satisfies the requirements outlined in West Virginia Rule of Civil Procedure 23(a). Therefore, the settlement reached by the parties satisfies the necessary requirements for final approval because it is the result of significant investigation, class counsel

appropriately and aggressively represented the consumer class, and also because the settlement is the product of adverse litigation surrounding dispositive motions, pretrial matters, and even injunctive relief.

20. The settlement reached by the Parties indicates that it is the product of arm's-length negotiations. Not only are all of the West Virginia class members eligible for monetary claims in a consumer relief fund, but the class members will also benefit from the nonmonetary relief. It is a settlement directly addressing and remediating the harm caused to consumers as alleged by defendant. Thus, the settlement award for the consumer class, inclusive of both monetary and equitable relief, is the result of arm's-length negotiation and satisfies the factors required to meet final fairness and therefore merits approval.

V. Class Definition

21. The Court formerly certified a class pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the West Virginia Rules of Civil Procedure. The Class was defined as follows:

All West Virginians whose personal information was included in the data breach identified by the Defendant in its December 2, 2023 correspondence to J.K.C.

22. Excluded from the Settlement Class are (i) all employees of the defendant who were involved in the negotiation or preparation of the settlement of this Action, (ii) members of the judiciary of West Virginia who were involved in the adjudication of this matter, (iii) Class Counsel and their employees.

23. The Court FINDS that the Class satisfies certification requirements of W. Va. R. Civ. P. 23(a), W. Va. R. Civ. P. 23(b)(1)(B), and W. Va. R. Civ. P. 23(e).

24. The Court previously appointed and approved J.K.C. as the Class

Representative and finds that he appropriately and effectively represented the interests of the defined class during the litigation in this case.

25. The Presiding Judge previously appointed and approved Troy N. Giatras and Matthew Stonestreet as counsel for the Class ("Class Counsel"). Throughout this case, The Giatras Law Firm, PLLC, and appointed class counsel represented the impacted individuals with vigor, specialized litigation knowledge, and applied the Firm's unique data breach law experience to achieve a positive result for the Settlement Class. Class Counsel has handled numerous class action cases in the past, including data breach and consumer protection cases. Class Counsel has vast knowledge and expertise in class action litigation, particularly in the area of data breach. Thus, Settlement Class Counsel satisfied the first part of the adequacy test found in Rule 23(a).

26. The Court finds that Plaintiff's Expert, William Muldoon is skilled and knowledgeable in data breach matters, and that his knowledge on best practices to maintain and secure IT systems was helpful. Mr. Muldoon ultimately opined that it is a reasonable fact inference to offer the expert conclusion that a malicious third-party actor engaging in sensitive data cyber-attacks will exfiltrate data once the account's administrative controls are overtaken. Mr. Muldoon was an asset to the Plaintiff's prosecution.

27. The Presiding Judge further notes that lead Defense Counsel, Jonathan Anderson zealously and vigorously litigated this matter for his client, Drug Emporium. Mr. Anderson and the firm of Jackson Kelly PLLC represented their client with extreme diligence and competence.

28. The Court previously certified a Class and determines further that the requirements of the West Virginia Rules of Civil Procedure and any other applicable rules

or law have been met with respect to the final Settlement in this matter.

VI. Summary of Claims Administration

29. ILYM Group, Inc. served as claims administrator (“Claims Administrator”) in this matter. ILYM Group issued several rounds of notice of this class action settlement by mail to certain members of the class, provided frequent updates to all counsel, promptly issued form notices, and followed the Court approved claims administration process in this matter. The Claims Administrator provided adequate notice to certain members of the Settlement Class of potential claims and also to advise those individuals in the Class of various procedural rights. ILYM Group, Inc. properly implemented the notice plan and the claims process set forth in the Settlement Agreement and this Court’s prior Preliminary Approval Order. One hundred percent (100%) of all of the impacted consumers shall receive benefits from the non-monetary relief. Approximately thirteen percent (13%) of the noticed class members participated in completing claim forms. See Claim Administrator Status Report attached hereto as **Exhibit A**.

30. The Parties effectuated notice plan, consisting of a claim form, and mailing notices to impacted individuals regarding the final fairness hearing, constitutes the best notice practicable in this case and satisfies the requirements of due process and complies with the requirements of W. Va. R. Civ. P. 23. The Court finds that the form and mail notice procedure are reasonably calculated, under all the circumstances, to apprise the Class Members of the pendency of this litigation. The notice also affords any Class member an opportunity to present any objections to the settlement.

VII. Determination of Final Fairness

31. The Court finds the parties’ settlement, as set forth in this document, the Preliminary Approval Order of the Court, and the Settlement Agreement, is fair,

reasonable, and adequate. The Settlement is therefore awarded final approval by the Court.

32. The Court notes that no person who has received notice of the settlement has filed an objection to the proposed Settlement with the Clerk of the Court as directed in this Court's Preliminary Approval Order. The Court also notes that no such person filed a notice of an intention to appear or provided a written statement that indicates any bases for objection and no such person appeared in person to object at the final fairness hearing held on April 9, 2025. Pursuant to this Court's Preliminary Approval Order, any Class Member issued notice as described herein and not objecting shall be deemed to have waived all objections and shall be foreclosed from making any objections to class certification, any attorney fee and cost award, and the settlement set forth in the Agreement and adopted by the Court.

VIII. Conclusion

33. It is further Ordered that Discount Emporium, Inc. d/b/a Drug Emporium shall fund the settlement by forwarding funds to the claims administrator within ten (10) days of entry of this Order. Thereafter, the claims administrator shall distribute the funds as set forth in this Order.

Ninety (90) days after distribution, the claims administrator and counsel for Plaintiff shall notify the Court of any remaining funds. Thereafter, the Court will proceed as required.

34. The Court retains jurisdiction for consideration of all further issues arising out of or in connection with this case.

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, DECREED, and ADJUDGED**, that the joint motion for final

approval of class action settlement is **GRANTED**.

The Clerk is directed to send certified copies of this Order to all counsel of record.

/s/ Jennifer F. Bailey

Circuit Court Judge

8th Judicial Circuit

Prepared, Agreed to, and Presented By:

/s/ Troy N. Giatras

Troy N. Giatras, Esquire (WVSB #5602)

The Giatras Law Firm, PLLC

118 Capitol Street, Suite 400

Charleston, West Virginia 25301

(304) 343-2900 / (304) 343-2942 *facsimile*

troy@thewvlawfirm.com

/s/ Matthew Stonestreet

Matthew W. Stonestreet, Esquire (WVSB #11398)

The Giatras Law Firm, PLLC

118 Capitol Street, Suite 400

Charleston, West Virginia 25301

(304) 343-2900 / (304) 343-2942 *facsimile*

matt@thewvlawfirm.com

Copy provided to:

Jonathan L. Anderson, Esquire (WVSB #9628)

Jackson Kelly PLLC

500 Lee Street East

Charleston, WV 25301

Kristine Sims, Esquire (WVSB #7726)

Constangy Brooks, Smith & Prophete LLP

One West 4th Street, Suite 850

Winston-Salem, North Carolina 27101

(336) 721-1001/(336) 749-9112 *Facsimile*

ksims@constangy.com

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtsww.gov/e-file/ for more details.

J.K.C v. Discount Emporium, Inc. d/b/a Drug E

Status Report

Plaintiffs' Counsel:	THE GIATRAS LAW FIRM, PLLC
Contact:	Troy N. Giatras, Esq. & Matthew W. Stonestreet, Esq.
Defense Counsel:	CONSTANGY BROOKS, SMITH & PROPHETE LLP & JACKSON KELLY PLLC
Contact:	Kristine Sims, Esq. & Jonathan L. Anderson, Esq.

Summary

Total Class Size

2,544

Claims Deadline

March 31, 2025

Opt-Out & Objection Deadline

April 2, 2025

Final Approval Hearing

April 9, 2025

Class

ITEM	AMOUNT
Total Class Size:	2,544
Total Claims Received:	338
Total Opt-Outs Received:	8
Total Objections Received:	0

ILYM GROUP, Inc.
SETTLEMENT ADMINISTRATION EXPERTS

NOTICE: All calculations in this report are provided as a reference and will vary each week. Claims and Settlement Fund details are based on preliminary data provided to our office at the beginning of the claims administration. If you have questions regarding any data in this report, please contact the Case Manager.



West Virginia E-Filing Notice

CC-20-2024-C-322

Judge: Jennifer F. Bailey

To: Matthew W. Stonestreet
matt@thewvlawfirm.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
J.K.C., INDIVIDUALLY & ON BEHALF OF ALL v. DISCOUNT EMPORIUM, INC., D/B/A
DRUG EMPO
CC-20-2024-C-322

The following order - case was FILED on 4/9/2025 6:41:29 PM

Notice Date: 4/9/2025 6:41:29 PM

Cathy S. Gatson
CLERK OF THE CIRCUIT COURT
Kanawha County
P.O. Box 2351
CHARLESTON, WV 25301

(304) 357-0440

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CAVALRY SPV I, LLC, as assignee
of CAPITAL ONE BANK, N.A.,

Plaintiff/Counterclaim Defendant,

v.

CIVIL ACTION NO.: 16-C-904
Judge Carrie Webster

JEFF HUGHES, individually and
on behalf of all others similarly situated,

Defendant/Counterclaim Plaintiff(s).

FINAL FAIRNESS HEARING APPROVAL ORDER

On January 18, 2018, came the Counterclaim Plaintiff, Jeffrey Hughes, individually and on behalf of all others similarly situated ("Counterclaim Plaintiff"), by counsel Troy N. Giatras, Matthew Stonestreet, and The Giatras Law Firm, PLLC, and the Counterclaim Defendant, Cavalry SPV I, LLC as an assignee of Capital One Bank (USA), N.A. ("Cavalry"), by counsel Nicholas Mooney II, Tai C. Shadrick, and Spilman Thomas and Battle, PLLC, for hearing. This matter is before the Court upon the parties' joint request for Final Approval of Class Action Settlement. Upon review of the available documentary evidence, the parties proposed settlement terms, and all applicable statutes and rules, the Court ORDERS and ADJUDGES that the parties' request for final class action settlement approval is GRANTED as follows:

I. Background

This class action (the "Certified Action") arises out of allegations that Cavalry violated the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-1-101 *et seq.* (hereafter "WVCCPA") when its attorneys filed collection lawsuits on its behalf in

West Virginia Magistrate and Circuit Courts. At issue in this matter are allegations that this conduct violated the consumer rights and minimum due process rights of consumers in debt lawsuits.

On October 10, 2017, this Court granted preliminary approval to the proposed settlement of the parties. The settlement for which the parties now seek final approval was reached only after the parties conducted extensive investigation, researched the claims, and conducted discovery of the conduct at issue in the class complaint. For instance, Cavalry provided the class representative and class counsel with hundreds of debt lawsuits comprised in the proposed class, written policies of Cavalry, and various other relevant documentary evidence. Subsequent to the Court's entry of the Preliminary Approval Order, class notice and the administration of the consumer claims process ensued. Now, January 18, 2018, the Court considers the final approval of the settlement previously reached.

II. Definitions and Summary of Settlement Terms

1. The definitions and terms set forth in the Class Action Settlement Agreement and Release, and the Addendum to Settlement Agreement ("Settlement Agreement"), attached hereto as **Exhibit A**, are hereby adopted and incorporated into this Order.

2. This Court has jurisdiction over the subject matter of these proceedings and over all Parties and the members of the Putative Class, defined below and no party to this litigation disputes such jurisdiction.

3. The Court awards final approval to the settlement¹ and finds that: (a) the settlement resulted from extensive arm's-length negotiations and was concluded only after

¹ The settlement provides for a cash payment of \$1,470,000, debt relief of approximately \$1,440,000 and other non-monetary relief such as tradeline deletion, judgment lien release, judgment release, cessation of garnishments, and

Class Counsel had duly investigated the issues raised by class members' claims; (b) the settlement of this action makes available valuable consideration commensurate with the alleged harm to settlement class members; and (c) the settlement evidenced by the Parties' Settlement Agreement is sufficiently fair, reasonable, and adequate.

4. The Court approves the settlement, as set forth on the Settlement Agreement, as well as the already administered notice that included (A) the Notice of Proposed Class Action Settlement and Fairness Hearing and (B) the Claim Form.

III. Summary of Settlement Terms

The Parties jointly propose the following settlement terms for final approval:

5. Cavalry, by its insurer and/or in combination with its own funds, will pay the cash sum of One Million Four Hundred Seventy Thousand Dollars (\$1,470,000) in accordance with the Settlement Agreement and Addendum, said amount to be inclusive of attorney fees and costs, the class representative's service award, a consumer claim fund, and class action claims administration costs. With the exception of those funds to be distributed pursuant to paragraph 8 hereof, the Claim Administrator shall hold these funds in escrow and not distribute same to Class Members until all Class Members have received class notice and been provided with the opportunity to respond to class notice, whether by opt-in, opt-out, or objection.

6. Cavalry shall cease any collections from any member of the Class of any debt accrued during the Class Period.

the agreement not to issue 1099 forms for the amount of the debt forgiveness, all of which the parties recognize have a substantive value to the Class Members.

7. Cavalry agrees not to report negative trade lines on any Class member's credit report with any agencies and/or credit bureaus for debts accrued during the Class Period because the debts are disputed.

8. Upon receipt by the Claim Administrator of the One Million Four Hundred Seventy Thousand Dollars (\$1,470,000) as set forth in paragraph 5 hereof, the Claim Administrator shall distribute: (a) reasonable attorney's fees and costs for the prosecution of this matter to Class Counsel, which award shall be \$1,210,000 for attorney's fees and \$38,000 for expenses; (b) claim administration costs, and (c) Hughes' service award.

9. The Parties' Settlement Agreement includes a mutual release, as set forth fully therein and also includes a dismissal of the Certified Action, with prejudice.

10. The Parties agree that any remaining monies unclaimed in the consumer claim fund shall be awarded *cy pres*, consistent with the West Virginia Supreme Court of Appeals rules, with 50% to benefit West Virginia Legal Aid and 40% to WVU College of Law Advocacy Center. The remaining 10% shall be split equally among the West Virginia Chapter of the American Red Cross, Charleston Catholic, and the Pearl S. Buck Birthplace Foundation for financial literacy education and enlightenment.

11. Jeff Hughes, the class representative, shall receive a service award of \$3,500 which the Court and the claims administrator deem to be fair and adequate for his service in representing the consumer class.

12. Cavalry shall remove all judgment liens, vacate all judgments, and cease all garnishments related to the debts at issue in the Class members' lawsuits. Cavalry shall cease collections of the debts at issue in the Class Plaintiff's lawsuits. Cavalry shall delete all

of the Class members' impacted trade lines with all agencies and/or credit bureaus to which it previously reported.

13. Cavalry shall not file tax reporting by standard 1099 with respect to debt-cancellation and/or other individual reporting on Class members based on the representation that such debts are disputed.

14. The Claims Administrator, named below, shall complete the claims administration process as approved by the Court.

15. All other terms and conditions not included in this *Summary of Settlement Terms* are herein incorporated by reference from the Parties' Settlement Agreement and the Addendum to that Settlement Agreement.

IV. The Parties Settlement Satisfies the Requirements for Final Approval

16. In this case, the Parties reached a final settlement after conducting significant and thorough investigation, legal research, and discovery. The discovery process and exchange of information included hundreds of debt lawsuits, bills of sale, Cavalry's written policies, account statements, and various other relevant documentary evidence. It should also be noted that the Parties' conducted two lengthy formal mediations to facilitate the investigation and prosecution of the claims encompassed in the proposed settlement ultimately reached over additional weeks of negotiation.

17. The investigation, research, and discovery conducted in this litigation satisfies the requirements outlined in West Virginia Rule of Civil Procedure 23(a)(4). Therefore, the settlement reached by the parties satisfies the necessary requirements for final approval because it is the result of significant investigation, class counsel appropriately and

aggressively represented the consumer class, and also because the settlement is the result of arm's-length negotiation.

18. The settlement reached by the Parties indicates that it is the product of arm's-length negotiations. Not only are all of the West Virginia class members eligible for significant monetary claims in a consumer relief fund, many consumers will also receive significant debt dispute resolution and the guarantee of no negative trade-lines on their credit reports for debts accrued during the Class Period. The final settlement is not a coupon settlement or one of nominal relief. To the contrary, it is a settlement directly addressing and remediating the harm caused to consumers as alleged by Counterclaim Plaintiff. Thus, the settlement award for the consumer class, inclusive of both monetary and equitable relief, is the result of arm's-length negotiation and satisfies the factors required to meet final fairness and merits approval.

V. Class Definition

19. The Court formerly certified a class pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the West Virginia Rules of Civil Procedure. The Class was defined as follows:

- i. All West Virginia consumers sued in a collection action in the Magistrate or Circuit Courts of West Virginia by Cavalry SPV I, LLC as an assignee of Capital One Bank (USA), N.A. from May 4, 2012 through June 13, 2016.

20. Excluded from the Settlement Class are (i) all employees of Cavalry who were involved in the negotiation or preparation of the settlement of this Action, (ii) members of the judiciary of West Virginia who were involved in the adjudication of this matter, (iii) Class Counsel and their employees.

21. The Court FINDS that the Class satisfies certification requirements of W. Va. R. Civ. P. 23(a), W. Va. R. Civ. P. 23(b)(1)(B), and W. Va. R. Civ. P. 23(c)(4)(b).

22. The Court previously appointed and approved Jeffrey Hughes as the Class Representative and finds that he appropriately and effectively represented the interests of the defined class during the litigation in this case.

23. The Presiding Judge previously appointed and approved Troy N. Giatras and Matthew Stonestreet as counsel for the Class ("Class Counsel"). Throughout this case, the Giatras Law Firm and appointed class counsel represented the impacted consumers with vigor, specialized litigation knowledge, and applied the Firm's unique consumer law experience to achieve a positive result for the Settlement Class. Thus, Settlement Class Counsel satisfied the first part of the adequacy requirement found in Rule 23(a).

24. The Court previously certified a Class and determines further that the requirements of the West Virginia Rules of Civil Procedure and any other applicable rules or law have been met with respect to the final Settlement in this matter.

VI. Summary of Claims Administration

25. ILYM Group, Inc. served as claims administrator ("Claims Administrator") in this matter. ILYM Group issued several rounds of notice of this class action settlement by mail to certain members of the class, provided frequent updates to all counsel, promptly issued form notices, and followed the Court approved claims administration process in this matter. The Claims Administrator provided adequate notice to certain members of the Settlement Class of potential claims and also to advise those individuals in the Class of various procedural rights. ILYM Group, Inc. properly implemented the notice plan and the claims process set forth in the Settlement Agreement and this Court's prior Preliminary

Approval Order. Approximately twenty-two percent (22%) of the noticed class members participated in completing claim forms. Also important, regardless of claim form completion, approximately ninety-eight percent (98%) of all of the impacted consumers shall receive negative trade-line agreements, debt cancellation, and injunctive relief of compliant debt judgments.

26. The Court, accepting the agreement of the parties, after a full review of the file and the claims administrator's report, with the intent of fairness, deems that it is reasonable and necessary to supplement the claims notice procedure by directing the claims administrator to issue notice to additional members of the class. Any claim made by these class members shall be taken from the Settlement Fund described in paragraph five (5) of this Order and these class members shall have fifty (50) days to respond to class notice, whether by opt-in, opt-out, or objection, to the issued notice.

27. The parties will return on March 28, 2018 ^{10:00 a.m.} to provide a final report to the Court regarding the claims made and checks redeemed by the class members who already have received notice and to conduct a fairness hearing on the additional members. Any remaining funds not set aside for another enumerated purpose shall be awarded by *cy pres* after that final report is submitted and that hearing is held.

28. The Parties effectuated notice plan, consisting of a claim form, and mailing notices to impacted individuals regarding the final fairness hearing, constitutes the best notice practicable in this case and satisfies the requirements of due process and complies with the requirements of W. Va. R. Civ. P. 23. The Court finds that the form and mail notice procedure are reasonably calculated, under all the circumstances, to apprise the Class Members of the pendency of this litigation. The notice also affords any Class member an

opportunity to present any objections to the settlement. The Court notes that with the additional funds provided by Cavalry and additional notice to consumers that the Notice Plan complies in all respects with W. Va. R. Civ. P. 23 and all the requirements of due process.

VII. Determination of Final Fairness

29. The Court finds the parties' settlement, as set forth more fully in the Settlement Agreement, is fair, reasonable, and adequate. The Settlement is therefore awarded final approval by the Court.

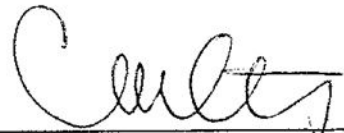
30. The Court notes that no person who has received notice of the settlement has filed an objection to the proposed Settlement with the Clerk of the Court as directed in this Court's Preliminary Approval Order. The Court also notes that no such person filed a notice of an intention to appear or provided a written statement that indicates any bases for objection and no such person appeared in person to object at the final fairness hearing held on January 18, 2018. Pursuant to this Court's Preliminary Approval Order, any Class Member issued notice as described herein and not objecting shall be deemed to have waived all objections and shall be foreclosed from making any objections to class certification, any attorney fee and cost award, and the settlement set forth in the Agreement and adopted by the Court.

VIII. Conclusion

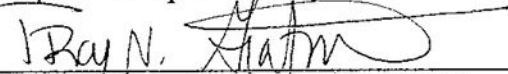
WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, DECREED, and ADJUDGED**, that the joint motion for final approval of class action settlement is **GRANTED**.

The Clerk is directed to send certified copies of this Order to all counsel of record.

ENTERED this 18 day of January, 2018.


Carrie L. Webster, Judge
Kanawha County Circuit Court

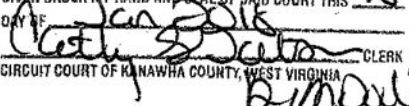
Prepared and presented by:


Troy N. Giatras, Esq. (WVSB #5602)
Matthew Stonestreet, Esq. (WVSB #11398)
THE GIATRAS LAW FIRM, PLLC
118 Capitol Street, Suite 400
Charleston, WV 25301
(304) 343-2900

Counsel for West Virginia Consumer Class


Nicholas P. Mooney II, Esq. (WVSB #7204)
Tai C. Shadrick, Esq. (WVSB #12261)
SPILMAN THOMAS & BATTLE, PLLC
P.O. Box 273
Charleston, WV 25321
(304) 340-3800

Counsel for Cavalry SPV I, LLC

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 18
DAY OF January, 2018.

CATHY S. GATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CAVALRY SPV I, LLC, as assignee
of CAPITAL ONE BANK, N.A.,

Plaintiff/Counterclaim Defendant,

v.

CIVIL ACTION NO.: 16-C-904
Judge Carrie Webster

JEFF HUGHES, individually and
on behalf of all others similarly situated,

Defendant/Counterclaim Plaintiff(s).

ADDENDUM TO CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

With reference to the "Class Action Settlement Agreement and Release" ("Settlement Agreement") entered into by the parties on October 10, 2017, the parties to the above-captioned action agree as follows:

1. The parties incorporate into this Addendum the defined terms set forth in the Settlement Agreement except insofar as those terms are amended by this Addendum.
2. The introductory paragraph to the Settlement Agreement designates the terms "Agreement" and "Settlement Agreement" to refer to the parties' Settlement Agreement. The parties amend that paragraph to provide that the terms "Agreement" and "Settlement Agreement" refer to the parties' Settlement Agreement and this Addendum.
3. Paragraph 14 of the Settlement Agreement provided that the Effective Date of the settlement was the date on which the last party signed the Settlement Agreement. The parties amend paragraph 14 to provide that the Effective Date of the settlement is the date on which the last party signs this Addendum.

4. Paragraph 31 of the Settlement Agreement sets forth the amount of the Monetary Payment that Cavalry, by its insurer and/or in combination with its own funds, will provide in settlement of the claims in this action and provides that such payment will be One Million Three Hundred Thousand Dollars (\$1,300,000). The parties amend paragraph 31 to provide that the amount of the total Monetary Payment will be One Million Four Hundred Seventy Thousand Dollars (\$1,470,000). The parties further amend paragraph 31 to provide that, with the exception of those funds to be distributed pursuant to paragraph 5 hereof, the Claim Administrator shall hold these funds in escrow and not distribute same to Class Members until all Class Members have received class notice and been provided with the opportunity to respond to class notice, whether by opt-in, opt-out, or objection

5. Paragraph 32.1 of the Settlement Agreement provides that Class Counsel shall receive an Attorney's Fees and Expense Award of \$1,050,000 in attorney's fees and \$38,000 in expenses. The parties amend paragraph 32.1 to provide that, upon receipt by the Claim Administrator of the One Million Four Hundred Seventy Thousand Dollars (\$1,470,000), the Claim Administrator shall distribute: (a) reasonable attorney's fees and costs for the prosecution of this matter to Class Counsel, which award shall be \$1,210,000 in attorney's fees and \$38,000 in expenses; (b) claim administration costs; and (c) Hughes' service award.

6. Paragraph 37 of the Settlement Agreement sets forth the Release of Claims by the Class Members. The parties supplement paragraph 37 to make clear that the release of claims provided in that paragraph is a release of claims for each and every Class Member who meets the definition of a Class Member, including the additional individuals, which total the Class Members to 520 individuals.

7. Any provision of the Settlement Agreement not amended or supplemented by this

Addendum shall remain in full force and effect.

Dated:

January 18, 2018

Dated:

January 18, 2018

By:

Troy N. Giatras

Troy N. Giatras, Esq. (WVSB #5602)
Matthew Stonestreet, Esq. (WVSB #11398)
THE GIATRAS LAW FIRM, PLLC
118 CAPITOL STREET, SUITE 400
Charleston, WV 25301
(304) 343-2900
Counsel for West Virginia Consumer Class

Nicholas P. Mooney II

Nicholas P. Mooney II, Esq. (WVSB #7204)
Tai C. Shadrick, Esq. (WVSB #12261)
SPILMAN THOMAS & BATTLE, PLLC
P.O. BOX 273
Charleston, WV 25321
(304) 340-3800
Counsel for Cavalry SPV I, LLC

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MAIA, LLC, doing business as VISITING ANGELS
LIVING ASSISTANCE SERVICES,

Plaintiff/Counterclaim Defendant,

v.

CIVIL ACTION NO: 16-C-605
Honorable Carrie Webster, Judge

ELAINE BROWN, individually and
on behalf of all others similarly situated,

Defendant/Counterclaim Plaintiff.

FINAL FAIRNESS HEARING APPROVAL ORDER

On July 6, 2017, came the Counterclaim Plaintiff, Elaine Brown, individually and on behalf of all others similarly situated, by counsel Troy N. Giatras, Matthew Stonestreet, and The Giatras Law Firm, PLLC, and the Counterclaim Defendant, MAIA, LLC, by counsel Arthur W. Zamosky of Bernstein-Burkley, P.C., for a hearing related to the entry of a Preliminary Approval Order of the settlement in this matter. This matter is before the Court upon the parties' joint request for Final Approval of Class Action Settlement. Upon review of the available documentary evidence, the parties proposed settlement terms, and all applicable statutes and rules, the Court ORDERS and ADJUDGES that the parties' request for final class action settlement approval is GRANTED as follows:

I. Background

This class action arises out of allegations that MAIA violated the West Virginia Consumer Credit and Protection Act (hereafter "WVCCPA") by engaging in consumer contracts which (1) improperly sought attorney fees for the collection of any debt; (2) misrepresented or otherwise failed to disclose the true cost of credit and interest accrual for

late payments and (3) generally used unfair or deceptive acts and practices in contracts with consumers, claims which MAIA has and continues to deny.

On May 8th, 2017, this Court certified a class consisting of approximately one hundred and eighty-one (181) individuals and granted preliminary approval to the proposed settlement of the parties. The settlement for which the parties now seek final approval was reached only after the parties conducted extensive investigation, researched the claims, and conducted discovery of the conduct at issue in the class complaint. For instance, MAIA provided the class representative and class counsel with every single written consumer contract comprised in the proposed class, various correspondence and communications, account statements, policies of the MAIA, and other relevant documentary evidence. Subsequent to the Court's entry of the Preliminary Approval Order, class notice and the administration of the consumer claims process ensued. Now, July 6, 2017, the Court considers the final approval of the settlement previously reached.

II. Definitions and Summary of Settlement Terms

1. The definitions and terms set forth in the Settlement Agreement are hereby adopted and incorporated into this Order.¹

2. This Court has jurisdiction over the subject matter of these proceedings and over all parties and the members of the previously certified class.

3. The Court approves the settlement, with total relief valued at more than \$623,400.00 and finds that: (a) the proposed settlement resulted from extensive arm's-length negotiations and was concluded only after Class Counsel had duly investigated the issues

¹ To the extent that there is an inconsistency between the Settlement Agreement and this Order, the Settlement Agreement shall control.

raised by settlement class members' claims; (b) the proposed settlement of this action makes available valuable consideration commensurate with the alleged harm to settlement class members; and (c) the proposed settlement evidenced by the parties' settlement agreement is sufficiently fair, reasonable, and adequate to warrant final approval.

4. Furthermore, the Court approves of the settlement, as set forth on the Settlement Agreement, as well as the administered notice that included (A) the Notice of Proposed Class Action Settlement and Fairness Hearing and (B) the Claim Form.

III. Summary of Final Settlement Terms

The parties jointly propose the following final settlement terms:

5. MAIA, by its insurer and/or in combination with its own funds, will pay the cash sum of three-hundred and fifty thousand dollars (\$350,000.00), said amount to be inclusive of attorney fees and costs, the class representative's service award, a consumer claim fund, and class action claims administration costs.

6. MAIA shall cease collections of the debt at issue in any dispute with the Class Members of any debt accrued during the Class Period. MAIA shall not report negative trade lines on any of the Class Member's credit reports with any agencies and/or credit bureaus regarding any debt accrued during the Class Period.

7. Class Counsel shall receive reasonable attorney's fees and costs for the prosecution of this matter in the amount of \$236,892 for attorney's fees and \$7,500 for expenses incurred to date and through the dismissal of the case.

8. MAIA shall never file individual credit reporting on class members with respect to any debts at issue during the proposed class timeframe in this matter.

9. The parties' agreement includes a mutual release, as set forth fully in the Settlement Agreement and also includes a dismissal of the Action with prejudice.

9.5. The Court directs the fund administrator to issue a check for \$900.00 to each claimant. TNG

10. The parties agree that any remaining monies unclaimed in the consumer relief fund shall be awarded *cy pres*, consistent with the West Virginia Supreme Court of Appeals rules, with 50% to benefit West Virginia Legal Aid, 25% to WVU College of Law for Advocacy Training, and 25% to the West Liberty University Foundation. JVC

11. Elaine Brown, the class representative, shall receive a service award of \$4,500.00, which the Court and the claims administrator deem to be fair and adequate for her service in representing the consumer class.

12. Wendy E. Radcliff, Esq. issued notice in this class action settlement by mail, provided updates to all counsel, and completed the Court approved claims administration process in this matter. The Court approves the payment from the claim fund consistent with the Order of the Court to Wendy E. Radcliff, Esq. for services as the claims administrator.

13. All other terms and conditions not included in this *Summary of Final Settlement Terms* are herein incorporated by reference from the parties' Settlement Agreement and Release.

IV. The Parties' Settlement Satisfies the Requirements for Final Approval

14. In this case, the parties reached a settlement after conducting significant and thorough investigation, legal research, and discovery. The discovery process and exchange of information included all consumer contracts comprised in the proposed class, various correspondence and communications, account statements, policies of the MAIA, and other

relevant documentary evidence. It should also be noted that the parties' conducted a formal eight (8) hour mediation to facilitate the investigation and prosecution of the claims encompassed in the proposed settlement ultimately reached over additional weeks of negotiation.

15. The investigation, research, and discovery conducted in this litigation satisfies the requirements outlined in West Virginia Rule of Civil Procedure 23(a)(4). Therefore, the settlement reached by the parties satisfies the necessary requirements for final approval because it is the result of significant investigation, class counsel appropriately and aggressively represented the consumer class, and also because the settlement is the result of arm's-length negotiation.

16. The settlement reached by the parties indicates that it is the product of arms-length negotiations. Not only are all of the West Virginia class members eligible for significant monetary claims in a consumer relief fund, many consumers will also receive the guarantee of no negative trade-lines on their credit reports for Debts accrued during the Class Period and MAIA agreed to remove language relating to the collection of attorney's fees in contracts going forward. The settlement of the parties is not a coupon settlement or one of nominal relief. To the contrary, it is a settlement directly addressing and remediating the alleged harm caused to consumers as alleged by class representative Counterclaim Plaintiff. Thus, the settlement award for the consumer class, inclusive of both monetary and equitable relief, is the result of arms-length negotiation and satisfies the factors required to obtain final approval.

V. Class Definition

17. The Court formerly certified a class pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the West Virginia Rules of Civil Procedure. The Class was defined as follows:

All consumers entering into written consumer service contracts with MAIA in West Virginia from April 21, 2012 through April 21, 2016 that improperly sought attorney's fees.

18. Excluded from the Settlement Class are (i), all employees of MAIA who were involved in the negotiation or preparation of the settlement of this Action, (ii) members of the judiciary of West Virginia who were involved in the adjudication of this matter, and (iii) Class Counsel and their employees.

19. As the Court noted in its Preliminary Approval Order, this class action satisfies the requirements of W. Va. R. Civ. P. 23(a), W. Va. R. Civ. P. 23(b)(1)(B), and W. Va. R. Civ. P. 23(c)(4)(b).

20. The Court previously appointed and approved Elaine Brown as the Class Representative and finds that Ms. Brown appropriately and effectively represented the interests of the defined class during the litigation in this case.

21. The Presiding Judge previously appointed and approved Troy N. Giatras and Matthew Stonestreet as counsel to the Settlement Class ("Settlement Class Counsel"). Throughout this case, the Giatras Law Firm, Troy N. Giatras, and Matthew Stonestreet represented the impacted consumers with vigor, specialized litigation knowledge, and applied the Firm's unique consumer law experience to achieve a positive result for the Settlement Class. Mr. Giatras and Mr. Stonestreet have been recognized, appointed, and

commended by various other courts in the handling of complex litigation and mass action matters. This Court concurs in that opinion. The Court recognizes the complexities, risks, and uncertainties of litigation and commends the Giatras Law Firm attorneys and Mr. Giatras for their pursuits. Thus, Settlement Class Counsel satisfied the first part of the adequacy requirement found in Rule 23(a). The Court also recognizes Arthur . Zamosky as an experienced litigation attorney and commends him for his knowledge and skill to bring about a prompt and effective resolution to a complex matter while vigorously protecting his client's rights.

22. Under West Virginia Rule of Civil Procedure 23, the requirements of class certification are divided into two subsections, Rules 23(a) and 23(b). For a class to be certified, each of the four requirements of Rule 23(a), as well as one of the three requirements of Rule 23(b), must be satisfied. The Court previously certified a Class and determines further that the requirements of the West Virginia Rules of Civil Procedure and any other applicable rules or law have been met with respect to the final Settlement.

VI. Summary of Claims Administration

23. Wendy E. Radcliff, Esq. served as the claims administrator in this matter. She issued notice of this class action settlement by mail, provided frequent updates to all counsel, promptly issued consumer class notices, and completed the Court approved claims administration process in this matter. The claims administrator provided adequate notice to the Settlement Class of potential claims and also to advise the individuals in the Class of various procedural rights. She properly implemented the notice plan and the claims process set forth in the Agreement and this Court's prior Order. Approximately twenty percent (20%) of the impacted class participated in completing claim forms. Also important, regardless of

claim form completion, ninety-eight percent (98%) of the impacted consumers shall receive negative trade-line agreements and injunctive relief of compliant contracts.

24. The parties' notice plan for effectuating notice to the Class consisting of a claim form and mailing notices to impacted individuals regarding the final fairness hearing is now complete. The Court finds that this effectuation of notice constitutes the best notice practicable in this case and satisfies the requirements of due process and complies with the requirements of W. Va. R. Civ. P. 23. The Court further finds that the form and mail notice procedure are the best practicable and are reasonably calculated, under all the circumstances, to apprise the Settlement Class of the pendency of this litigation. The proposed notice also affords any class member an opportunity to present any objections to the settlement. Thus, the Presiding Judge finds that the notice plan as effectuated complied in all respects with W. Va. R. Civ. P. 23 and all the requirements of due process.

25. The Claims Administrator's Report, filed separately by Wendy E. Radcliff, shall be incorporated by reference into this Order. This report provides a summary of the notice plan and the results subsequent to implementation.

The Claims Administrator (U)
shall be paid \$10,000 dollars, inclusive of fees and expenses.

VII. Determination of Final Fairness

26. The Court finds the parties' settlement, as set forth more fully in the Settlement Agreement, is fair, reasonable, and adequate. The Settlement is therefore awarded final approval by the Court.

27. All Class Members were afforded the right to appear at the Fairness Hearing on July 6, 2017, in person or by counsel, and to be heard to in support of or in opposition to class certification, the fairness, reasonableness, and adequacy of the settlement set forth in the Agreement, and any applications for an award of attorney's fees, costs, and expenses.

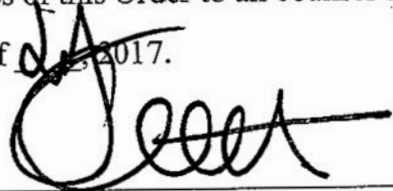
28. The Court notes that no person filed an objection to the proposed Settlement with the Clerk of the Court as directed in this Court's Preliminary Approval Order. The Court also notes that no person filed a notice of an intention to appear or provided a written statement that indicates any bases for objection and no person appeared in person to object at the final fairness hearing held on July 6, 2017. Pursuant to this Court's Preliminary Approval Order, any Class Member whom did not object shall be deemed to have waived all objections and shall be foreclosed from making any objections to class certification, any attorney fee and cost award, and the settlement set forth in the Agreement and adopted by the Court.

VIII. Conclusion

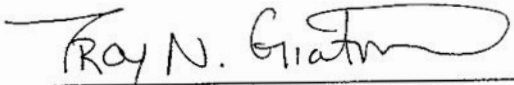
WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, DECREED, and ADJUDGED**, that the joint motion for final approval of class action settlement is hereby **GRANTED**.

The Clerk is directed to send certified copies of this Order to all counsel of record.

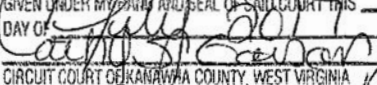
ENTERED this 6 day of July, 2017.


Carrie Webster, Judge
Kanawha County Circuit Court

Prepared and presented by:


Troy N. Giatras, Esq. (WVSB #5602)
Matthew Stonestreet, Esq. (WVSB #11398)
THE GIATRAS LAW FIRM, PLLC
118 Capitol Street, Suite 400
Charleston, WV 25301
(304) 343-2900
Counsel for West Virginia Consumer Class


Arthur W. Zamosky, Esq. (WVSB #10905)
BERNSTEIN-BURKLEY, P.C.
707 Grant Street
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8100
Counsel for Mada

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF July, 2017.

CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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FILED

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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

E.S., individually and
on behalf of all others similarly situated,

Plaintiff,

v.

CIVIL ACTION NO.: 20-C-300
Honorable Tera L. Salango, Judge

ALLOY FEDERAL CREDIT UNION,

Defendant.

FINAL FAIRNESS HEARING ORDER

On July 21, 2021, came the Plaintiff, E.S., individually and on behalf of all others similarly situated ("Plaintiff"), by counsel Troy N. Giatras, Matthew Stonestreet, and The Giatras Law Firm, PLLC, and the Defendant, Alloy Federal Credit Union,¹ by counsel, Trisha A. Gill and Litchfield Cavo, LLP, for hearing. This matter is before the Court upon the parties' joint request for Final Approval of Class Action Settlement. Upon review of the available documentary evidence, the parties proposed settlement terms, and all applicable statutes and rules, the Court ORDERS and ADJUDGES that the parties' request for final class action settlement approval is GRANTED as follows:

I. Background

This class action arises out of Alloy Federal Credit Union's filing of collection lawsuits in Magistrate Court. During prior proceedings, the case was certified as a class consisting of those individuals sued by AFCU in the designated timeframe spanning five years. The debt collection lawsuits at issue were filed into the public record by AFCU with unredacted loan

¹ Hereinafter, Alloy Federal Credit Union will be referred to as "defendant" or "AFCU."

documentation of consumers, social security numbers, and other private sensitive consumer information.

After certifying this matter as a class pursuant to West Virginia Rule of Civil Procedure 23, the Court held a pretrial proceeding involving numerous motions *in limine* and dispositive motions of the parties. Partial summary judgment was then entered against AFCU on Count IV of the Class Complaint. Ultimately, on May 17, 2021, this Court granted preliminary approval to the proposed settlement and agreement reached by the parties subsequent to significant litigation. The settlement for which the parties now seek final approval was reached only after the parties conducted extensive investigation, researched the claims, and conducted discovery of the conduct at issue in the class complaint. For instance, AFCU provided the class representative and class counsel with debt lawsuits comprised in the proposed class, written policies of AFCU, and various other relevant documentary and lending evidence throughout the course of this matter. Subsequent to the Court's entry of the Preliminary Approval Order, class notice and the administration of the consumer claims process ensued. Now, the Court considers the final approval of the settlement previously reached.

II. Definitions and Summary of Settlement Terms

1. The definitions and terms set forth in the Preliminary Approval Order are hereby adopted and incorporated into this Order.
2. This Court has jurisdiction over the subject matter of these proceedings and over all Parties and the members of the Class, defined below and no party to this litigation disputes such jurisdiction.
3. The Court finds the settlement is fair with total relief valued at more than 1.2 million dollars (\$1,200,000.00), and finds that: (a) the settlement resulted from extensive

arm's-length negotiations and was concluded only after Class Counsel had duly investigated the issues raised by settlement class members' claims; (b) the settlement of this action makes available valuable consideration commensurate with the alleged harm to settlement class members; and (c) the settlement evidenced by the parties' settlement agreement is sufficiently reasonable and adequate to warrant a final finding of fairness. The Court compliments Class Counsel for their representation to bring about the best result for the Class.

4. The Court awards final approval to the settlement, and notes that relief such as negative tradeline deletion with the credit bureaus, judgment release, compliance with privacy laws, and, cessation of garnishments, are recognized by the parties to have a substantive value to the Class Members, and the Court finds that: (a) the settlement resulted from extensive arm's-length negotiations and was concluded only after Class Counsel had duly investigated the issues raised by class members' claims; (b) the settlement of this action makes available valuable consideration commensurate with the alleged harm to settlement class members; and (c) the settlement evidenced by the Parties' Settlement Agreement is sufficiently fair, reasonable, and adequate.

5. The Court approves the settlement, as set forth on the Settlement Agreement, as well as the already administered notice that included (A) the Notice of Proposed Class Action Settlement and Fairness Hearing and (B) the Claim Form.

III. Summary of Settlement Terms

The Parties jointly propose the following settlement terms for final approval:

6. AFCU agrees not to report negative trade lines on any Class member's credit report with any agencies and/or credit bureaus for debts accrued during the Class Period because the debts are disputed.

7. ACFU will remove from availability in the public record and/or seal all sensitive information from the public record regarding the subject consumers of this case and the at issue debt lawsuits.

8. The parties submitted to the Court the necessary documents to effectuate the preliminary and final approval of the settlement and dismissal of class case with prejudice at conclusion.

9. AFCU agrees to follow policies and procedures going forward for future practices of all consumers specifically in regard to protecting and securing the sensitive information of consumers. This is in regard to all financial institution members, and not only the consumers comprised in the class definition.

10. AFCU shall cease any collections from any member of the Class of any debt accrued during the Class Period subject to the debt lawsuits included in the class definition, including deficiency balances in excess of \$300,000.00.

11. Upon receipt by the Claim Administrator of the funds, the Claim Administrator shall commence distribution in compliance with the notice provided to the consumer class.

12. The Parties' Settlement Agreement includes a mutual release, as set forth fully therein and also includes a dismissal of the Certified Action, with prejudice.

13. The Parties agree that any remaining monies unclaimed in the consumer claim fund shall be awarded *cy pres* in accordance with the WVRCP, with remaining amounts to be distributed pursuant to further Order of the Court.

14. E.S. and W.C., shall receive a service award of three thousand five hundred dollars (\$3,500.00) each, which the Court and the claims administrator deem to be fair and adequate for his service in representing the consumer class.

15. The Court previously approved attorney's fees in the amount of 38% of the settlement value and \$15,000.00 for expenses for Class Counsel including claims administration. The Court reaffirms these amounts for Class Counsel.

16. AFCU shall cease all garnishments related to the debts at issue in the Class members' lawsuits. AFCU shall cease collections of the debts at issue in the Class Plaintiff's lawsuits. AFCU shall delete all of the Class members' impacted trade lines with all agencies and/or credit bureaus to which it previously reported.

17. AFCU shall not file tax reporting by standard 1099 with respect to debt-cancellation and/or other individual reporting on Class members as such debts are disputed.

IV. The Parties Settlement Satisfies the Requirements for Final Approval

18. In this case, the Parties reached a final settlement after conducting significant and thorough investigation, legal research, and discovery. The discovery process and exchange of information included numerous debt lawsuits, loan applications, bills of sale, AFCU's written policies, account statements, and various other relevant documentary evidence. It should also be noted that the Parties' conducted a lengthy litigation and formal mediation to facilitate the investigation and prosecution of the claims encompassed in the proposed settlement.

19. The investigation, research, and discovery conducted in this litigation satisfies the requirements outlined in West Virginia Rule of Civil Procedure 23(a)(4). Therefore, the settlement reached by the parties satisfies the necessary requirements for final approval because it is the result of significant investigation, class counsel appropriately and aggressively represented the consumer class, and also because the settlement is the product of adverse litigation surrounding dispositive motions, pretrial matters, and even injunctive relief.

20. The settlement reached by the Parties indicates that it is the product of arm's-length negotiations. Not only are all of the West Virginia class members eligible for monetary claims in a consumer relief fund, many consumers will also receive significant debt dispute resolution and the guarantee of no negative trade-lines on their credit reports for debts accrued during the Class Period. It is a settlement directly addressing and remediating the harm caused to consumers as alleged by Defendant. Thus, the settlement award for the consumer class, inclusive of both monetary and equitable relief, is the result of arm's-length negotiation and satisfies the factors required to meet final fairness and merits approval.

V. Class Definition

21. The Court formerly certified a class pursuant to Rule 23(a) and Rule 23(b)(1)(B) of the West Virginia Rules of Civil Procedure. The Class was defined as follows:

All West Virginia consumers sued by Alloy Federal Credit Union from March 6, 2015 through the present.

22. Excluded from the Settlement Class are (i) all employees of AFCU who were involved in the negotiation or preparation of the settlement of this Action, (ii) members of the judiciary of West Virginia who were involved in the adjudication of this matter, (iii) Class Counsel and their employees.

23. The Court FINDS that the Class satisfies certification requirements of W. Va. R. Civ. P. 23(a), W. Va. R. Civ. P. 23(b)(1)(B), and W. Va. R. Civ. P. 23(c)(4)(b).

24. The Court previously appointed and approved E.S. as the Class Representative and finds that he appropriately and effectively represented the interests of the defined class during the litigation in this case.

25. The Presiding Judge previously appointed and approved Troy N. Giatras and Matthew Stonestreet as counsel for the Class ("Class Counsel"). Appointed class counsel thoughtfully represented the consumer class throughout this matter and zealously litigated the case. With this in mind, it is clear that Settlement Class Counsel satisfied the first part of the adequacy requirement found in Rule 23(a).

26. The Court previously certified a Class and determines further that the requirements of the West Virginia Rules of Civil Procedure and any other applicable rules or law have been met with respect to the final Settlement in this matter.

VI. Summary of Claims Administration

27. ILYM Group, Inc. served as claims administrator ("Claims Administrator") in this matter. ILYM Group issued several rounds of notice of this class action settlement by mail to certain members of the class, provided frequent updates to all counsel, promptly issued form notices, and followed the Court approved claims administration process in this matter. The Claims Administrator provided adequate notice to certain members of the Settlement Class of potential claims and also to advise those individuals in the Class of various procedural rights. ILYM Group, Inc. properly implemented the notice plan and the claims process set forth in the Settlement Agreement and this Court's prior Preliminary Approval Order. Approximately 16.48% of the noticed class members participated in completing claim forms. Also important, regardless of claim form completion, approximately one hundred percent (100%) of all of the impacted consumers shall receive negative trade-line agreements, debt cancellation, and injunctive relief of compliant debt judgments. *See* "Claim Administrator Report" attached hereto as **Exhibit A**. The Court commends ILYM Group for their efficient claims administration to the Class.

28. The Parties effectuated notice plan, consisting of a claim form, and mailing notices to impacted individuals regarding the final fairness hearing, constitutes the best notice practicable in this case and satisfies the requirements of due process and complies with the requirements of W. Va. R. Civ. P. 23. The Court finds that the form and mail notice procedure are reasonably calculated, under all the circumstances, to apprise the Class Members of the pendency of this litigation. The notice also affords any Class member an opportunity to present any objections to the settlement.

VII. Determination of Final Fairness

29. The Court finds the parties' settlement, as set forth in this document, the Preliminary Approval Order of the Court, and the Settlement Agreement, is fair, reasonable, and adequate. The Settlement is therefore awarded final approval by the Court.

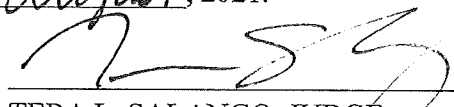
30. The Court notes that no person who has received notice of the settlement has filed an objection to the proposed Settlement with the Clerk of the Court as directed in this Court's Preliminary Approval Order. The Court also notes that no such person filed a notice of an intention to appear or provided a written statement that indicates any bases for objection and no such person appeared in person to object at the final fairness hearing held on July 21, 2021. Pursuant to this Court's Preliminary Approval Order, any Class Member issued notice as described herein and not objecting shall be deemed to have waived all objections and shall be foreclosed from making any objections to class certification, any attorney fee and cost award, and the settlement set forth in the Agreement and adopted by the Court.

VIII. Conclusion

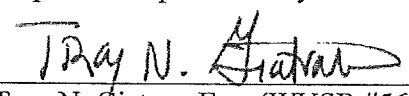
WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, DECREED, and ADJUDGED**, that the joint motion for final approval of class action settlement is **GRANTED**.

The Clerk is directed to send certified copies of this Order to all counsel of record.

ENTERED this 31st day of August, 2021.


TERA L. SALANGO, JUDGE
KANAWHA COUNTY CIRCUIT COURT

Prepared and presented by:


Troy N. Giatras, Esq. (WVSB #5602)
Matthew Stonestreet, Esq. (WVSB #11398)
The Giatras Law Firm, PLLC
118 Capitol Street, Suite 400
Charleston, West Virginia 25301
(304) 343-2900 / (304) 343-2942 *facsimile*
Counsel for West Virginia Consumer Class


Trisha A. Gill (Aug 30, 2021 14:09 EDT)
Trisha A. Gill, Esquire (WVSB #12643)
Litchfield Cavo, LLP
Two Gateway Center, 10th Floor
603 Stanwix Street
Pittsburgh, Pennsylvania 15222
Counsel for Alloy Federal Credit Union

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

A.H. and ADRIANA FLEMING,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TO BE FILED IN 16-C-497
Honorable Jennifer F. Bailey
A.H. et al. v. Matulis, et al. 18-C-176

CHARLESTON AREA MEDICAL CENTER, INC.,

Defendant.

**FINAL ORDER APPROVING CLASS SETTLEMENT
OF REMAINING CLAIMS AGAINST DEFENDANT CAMC**

On May 9, 2022, came the Plaintiffs A.H. and Adriana Fleming, individually and on behalf of all others similarly situated ("Plaintiffs"), by and through their undersigned counsel, and Defendant Charleston Area Medical Center, Inc. ("CAMC") (and collectively "the Parties"), by and through their respective undersigned counsel, for a final hearing on the moving Parties' joint request for the Court's final approval of their proposed class settlement that was given preliminary approval by the Court on or about March 10, 2022. Upon full review of the relevant record, of the Parties' proposed settlement terms, and of the applicable statutes and rules, the Court ORDERS and ADJUDGES that the Parties' request for full and final approval is GRANTED as follows:

I. Background

This putative class action arises out of contested allegations that Defendant CAMC engaged in certain actionable conduct toward female patients of Steven R. Matulis, M.D.—at the Charleston Area Medical Center from January 1, 2010 through February 17, 2016—upon whom Dr. Matulis performed colonoscopies and/or sigmoidoscopies. The proposed settlement for which the Parties seek final approval from this Court was reached only after the Parties conducted extensive

investigation, researched the claims, and negotiated aggressively regarding the matters at issue in the class complaint. On that basis, the Court previously granted preliminary approval of the settlement by *Order Granting Preliminary Approval of Proposed Class Action Settlement, Certifying a Settlement Class and Scheduling Final Fairness Hearing* (March 10, 2022) (hereinafter “Preliminary Approval Order”). Thereafter, the Parties effectuated the terms and conditions of the Preliminary Approval Order, and now, the Parties jointly propose final approval of the class action settlement.

II. Preliminary Matters

1. The Parties have negotiated and agreed to the terms and conditions of the settlement set forth herein.

2. The Court has maintained jurisdiction over the subject matter of these proceedings and over all Parties and the members of the proposed Settlement Class, defined below.

3. The Court preliminarily approved and now grants final approval of the settlement, with total relief valued at Five Million and 00/100 Dollars (\$5,000,000.00), and finds that: (a) the proposed settlement resulted from extensive arm’s-length negotiations and was concluded only after Settlement Class Counsel had duly investigated the issues raised by Settlement Class Members’ claims; (b) the settlement of this action makes available valuable consideration commensurate with the alleged harm to the Settlement Class Members; and (c) the settlement evidenced by the Parties’ Settlement Agreement is sufficiently fair, reasonable, and adequate to the Settlement Class and warranted holding a final fairness hearing to finally and fully effectuate the same.

4. In its Preliminary Approval Order, the Court approved (a) the Parties’ Settlement Agreement and (b) the Notice of Proposed Class Action Settlement and Fairness Hearing.

III. Terms of Final Settlement

The Parties resolved their remaining claims with the following settlement terms:

5. CAMC, by its insurer, will pay Five Million and 00/100 Dollars (\$5,000,000.00) (“the Gross Settlement Amount”), said amount to be inclusive of attorneys’ fees and expenses, the Settlement Class Representatives’ service awards, and a General Settlement Fund.

6. The parties have agreed that CAMC will pay up to \$100,000.00 for the fees and expenses incurred in the course of the claims administration.

7. Settlement Class Counsel sought attorney’s fees for the prosecution of this matter in an amount no greater than 39% of the Gross Settlement Amount and recovery of advanced costs and expenses.¹

8. The Parties’ Settlement Agreement will result in Plaintiffs’ full and final release of any and all remaining claims against CAMC in this matter and a dismissal of this civil action against CAMC, with prejudice, and the Plaintiffs agree to execute a full release of all claims against CAMC and its insurers upon entry of a Final Order Approving the Settlement.

9. Settlement Class Counsel requested that Settlement Class Representatives A.H. and Adriana Fleming be paid \$10,000.00 each from the Gross Settlement Amount for their service as Plaintiffs/Settlement Class Representatives.² This amount is in addition to any damages that each shall be entitled to receive as a Settlement Class Member.

¹ Settlement Class Counsel reported its requested attorneys’ fees and costs in its *Verified Petition for Award of Attorneys’ Fees and Expenses and Payment of Service Awards*, which was filed with the Court on April 11, 2022. Pursuant to the Notice Plan approved by the Court, Settlement Class Counsel’s *Verified Petition* was made available to Settlement Class Members upon request from the Claims Administrator prior to the deadline for opting out of the proposed settlement and prior to the deadline for objecting to the proposed settlement.

² Settlement Class Counsel initially requested service awards of \$2,500.00 for each Settlement Class Representative but reconsidered their position on this issue and requested the larger amount during the Final Fairness Hearing.

10. The Claims Administrator, with the assistance of the Guardian *Ad Litem*, conducted the claims administration process, including issuing notice of this Class Action Settlement, by first-class U.S. mail, to all individuals comprising the Settlement Class as defined herein. CAMC will pay the fees and expenses incurred in the course of the claims administration process in an amount not to exceed \$100,000.00. The Class Administrator reported to the Court that its Notice Plan had been thoroughly and completely implemented.

11. Each eligible Settlement Class Member shall receive an equal sum from the Gross Settlement Amount, after payment is made to Settlement Class Counsel (inclusive of all attorneys' fees and expenses) and the service awards are paid to the Settlement Class Representatives, pursuant to the terms and conditions set forth in the Notice Plan. The Parties and the Claims Administrator advised the Court that the Settlement Class consists of Two Thousand Five Hundred Twenty-Five (2,525) members, with nine (9) members opting out and thirty-three (33) members who could not be located and for whom no valid address could be found despite the diligent efforts of the Claims Administrator and Guardian *Ad Litem*.

12. Any and all sums remaining from the Gross Settlement Amount after payment to members of the Settlement Class, including any funds not claimed by eligible members of the Settlement Class, shall be distributed pursuant to Rule 23(f) of the West Virginia Rules of Civil Procedure.

13. All other terms and conditions of the parties' Settlement Agreement are incorporated fully herein by reference, to the extent not expressly included in this summary of the settlement.

IV. The Proposed Settlement Satisfies the Requirements for Final Approval

14. In this case, the Parties reached a proposed settlement only after conducting significant and thorough investigation, legal research, and intense negotiations, including multiple mediations conducted by Charles S. Piccirillo, Esq., an experienced mediator.

15. The investigation, research, and advocacy conducted in this litigation satisfy the requirements outlined in Rule 23 of the West Virginia Rules of Civil Procedure. The settlement reached by the Parties meets the requirements for final approval because it is the result of significant investigation, Settlement Class Counsel appropriately represented the Settlement Class, and the settlement is the result of arm's-length negotiation.

16. The settlement reached by the Parties is the product of arm's-length negotiations and is not a coupon settlement or one of nominal relief. To the contrary, this settlement directly addresses and remediates the harm that Plaintiffs allege that they (and members of the Settlement Class) incurred. Thus, the settlement award satisfies all requirements necessary for final approval by the Court.

V. Certification of Settlement Class

17. The Court certifies a Settlement Class pursuant to Rule 23(a) and Rule 23(b) of the West Virginia Rules of Civil Procedure (the "Settlement Class"). The Settlement Class is defined as follows:

All female patients of Steven R. Matulis, M.D., at the Charleston Area Medical Center from January 1, 2010, through February 17, 2016, upon whom Dr. Matulis performed colonoscopies and/or sigmoidoscopies.³

18. Excluded from the Settlement Class are (i) members of the judiciary of West Virginia who were directly involved in the adjudication of this matter, and (ii) Settlement Class

³ This same Settlement Class was previously certified by this Court in this matter on or about June 7, 2021, as to certain settled claims against the Defendant CAMC.

Counsel; (iii) the Claims Administrator/Guardian *Ad Litem*; (iv) female patients who were deceased prior to the date (March 31, 2017) that the original class action lawsuit was filed by Plaintiff Adriana Fleming in the Circuit Court of Kanawha County; (v) patients who have already settled their claims with CAMC outside of this civil action; and (vi) the nine individuals who elected to opt-out of the Settlement Class.

19. The Parties stipulated for the purposes of the proposed settlement, and the Court now finds in furtherance of final approval, that Settlement Class meets the requirements of Rule 23 of the West Virginia Rules of Civil Procedure.

20. The Court appointed and approved Plaintiffs A.H. and Adriana Fleming as the Settlement Class Representatives. Both are members of the Settlement Class.

21. The Court appointed and approved L. Dante diTrapano and David H. Carriger of Calwell Luce diTrapano PLLC, P. Rodney Jackson of the Law Offices of P. Rodney Jackson, Ben Salango and Kristina Salango of Salango Law, PLLC, Marvin W. Masters of The Masters Law Firm LC, Robert V. Berthold, Jr. of the Berthold Law Firm PLLC, as counsel for the Settlement Class and Matthew Stonestreet of The Giatras Law Firm, PLLC, as additional counsel for the Settlement Class. Throughout this case, all appointed Settlement Class Counsel represented the alleged impacted individuals with vigor and specialized litigation knowledge and applied their collective legal experience to achieve a positive result for the Settlement Class. Thus, all Settlement Class Counsel have satisfied the first part of the adequacy requirement found in Rule 23(a).

22. Under West Virginia Rule of Civil Procedure 23, the requirements of class certification are divided into two subsections, Rules 23(a) and 23(b). For a class to be certified, each of the four requirements of Rule 23(a), as well as one of the three requirements of Rule 23(b),

must be satisfied. The Parties stipulated for purposes of the proposed settlement of this Action and the Court now finds, fully and finally in furtherance of final approval, that the requirements of the West Virginia Rules of Civil Procedure, including that the Settlement Class may be certified pursuant to Rule 23(b)(3), and any other applicable rules or law have been met with respect to the Settlement.

VI. Notice to the Settlement Class and Administration of the Settlement

23. The Court found that The Ilym Group Inc. (“Ilym”) is qualified to serve as Claims Administrator and that Perry L. Shumate, Esq., is qualified to serve as Guardian *Ad Litem*. The Court appointed Ilym and Ms. Shumate to serve in those respective roles. Thereafter, the Claims Administrator, with the assistance of the Guardian *Ad Litem*, implemented the Notice Plan as contemplated and set forth in the Preliminary Approval Order, all as set forth in the Claim’s Administrator’s Declaration, which is attached hereto as **Exhibit A**. The Claims Administrator shall maintain the records concerning this matter in electronic format for a period of five (5) years from and after the entry of this Order.

24. The Parties proposed a Notice Plan for effectuating notice to the Settlement Class consisting of directly mailing, via first-class U.S. mail, a Court-approved Notice Form to proposed Settlement Class Members. The Notice Form provided additional information to the Settlement Class, provided a mechanism for Settlement Class Members to opt-out of the settlement, and advised Settlement Class Members of relevant deadlines, including deadlines to object and the date of the Final Fairness Hearing. The Court found that the mailing of the Notice Form and notice procedure were reasonably calculated, under all the circumstances, to apprise Settlement Class Members of the pendency of this litigation. The Notice Plan also afforded any Settlement Class Member the right to opt-out of the settlement or the opportunity to present any objections to the

settlement. The Notice Plan complied in all respects with Rule 23 of the West Virginia Rules of Civil Procedure and met all the requirements of due process.

25. Pursuant to the Court's Preliminary Approval Order, the Claims Administrator, with the assistance of the Guardian *Ad Litem*, accessed the requisite "Accessible Contact Information," that is, contact information for the Settlement Class Members, which was previously provided to the Class Administrator upon separate Order of this Court. In so ordering, this Court recognized and weighed the potential claims any Settlement Class Members may have in this settlement against their privacy rights, recognizing that identifying the patients and notifying them of this process provided them with a mechanism for addressing any alleged wrongdoing relative to their care. Additionally, the Court ordered that the Claims Administrator and Guardian *Ad Litem* continue to maintain the confidentiality of Settlement Class Members' protected health and identifying information and that such action would adequately protect the privacy interests of Settlement Class Members. The Court recognized that Defendant CAMC maintains its right to a full and fair defense against all allegations and that it, by law, is basing their statutorily mandated "satisfactory assurances" on the rulings and process set out by this Court. The Court found that no party (or former party) to this action shall face liability for any claims against it arising out of or related to the provision of the Settlement Class Members' Accessible Contact Information as directed by the Court herein.

26. The Claims Administrator, with the assistance of the Guardian *Ad Litem*, fully implemented the notice contemplated by the Court's Preliminary Approval Order as follows:

(a) The Claims Administrator mailed the Notice Form to all Settlement Class Members on March 21, 2022.

(b) Prior to mailing these items, the Claims Administrator compared the names and addresses previously provided with the best-known addresses for each class member, running the data through the Social Security Death Index or other like index or database to identify deceased Class Members, checked all addresses against the National Change of Address database which is maintained by the United States Postal Service and used other resources available and necessary to obtain the best-known addresses for each Class Member.

(c) The Court adopted the Notice Plan proposed by the Parties and the Notice Form attached to the Court's Preliminary Approval Order and found that it is/was clear, concise and written in plain, easily understood language. It provided substantial information, including specific instructions that Settlement Class members were to follow to exercise their rights, and background on issues in the case. It is/was designed to encourage understanding in a reader-friendly format.

(d) The Claims Administrator provided direct notice of the proposed settlement to all available Settlement Class members through First Class United States Mail. Direct notice consisted of mailing a Notice Package which contained a cover letter and the Notice Form (i.e., Exhibit A to the Preliminary Approval Order) to all Settlement Class Members and the personal representative, Executrix or Administratrix of any deceased Settlement Class Members (if known). The outside of the envelope that was mailed to Settlement Class Members included a call-out that read **"Important Notice About Class Action Settlement from the Circuit Court of Kanawha County, West Virginia"** or other similar language to allow recipients to distinguish it from junk mail.

(e) Requests for Exclusions or Opt-Outs from the Settlement Class were made returnable to the Claims Administrator. The Claims Administrator has forwarded a summary of Opt-Outs to

Class Counsel and counsel for Defendant CAMC as set forth in her Declaration. The Claims Administrator also maintained an adequately staffed telephone number for purposes of fielding and responding to questions from members of the Settlement Class and fielded and responded to any inquiries from members of the Settlement Class. When responding to questions from members of the Settlement Class, the Claims Administrator had the option of utilizing the assistance of the Guardian *Ad Litem* should such assistance have been necessary.

VII. Final Fairness Hearing

27. The Parties' Settlement Agreement was considered further at a Hearing held before this Court on May 9, 2022, at 1:00 p.m. at the Kanawha County Courthouse (the "Fairness Hearing"),⁴ at which time the Court determined that the settlement set forth in the Settlement Agreement is fair, reasonable, and adequate and should be fully and finally approved by the Court.

28. The Court, having reviewed Settlement Class Counsel's *Verified Petition for Award of Attorneys' Fees and Expenses and Payment of Service Awards*, agreed with the statements and arguments therein. The Court found that the work performed, risks taken, and results achieved by Settlement Class Counsel warrant a fee award that reasonably reflects and compensates Class Counsel for their diligent effort and services performed. The Court further found that Settlement Class Counsel's fee award should reflect the fact that they have zealously litigated a novel and complex case against multiple defendants over several years and achieved an exceptional result that will permit qualifying members of the Settlement Class to receive an additional and substantial cash award while remaining anonymous. There were no objections

⁴ This Fairness Hearing was conducted by remote means, as dictated by the specific circumstances of the COVID-19 pandemic on the specific hearing date. The Court was prepared to provide any member of the Settlement Class who timely and properly noticed the Court (and the Parties) of her intent to attend the hearing with information regarding remote access to the Court. Ultimately that was not necessary because no individual provided timely and proper notice to the Court and the Parties of any intent to attend the Fairness Hearing.

made to Settlement Class Counsel's fee request or to Settlement Class Counsel's request for reimbursement of expenses. Given the length and complexity of the litigation and the results obtained, the Court determined that the fee amount requested in the Verified Petition was fair, reasonable, and warranted by the circumstances of this litigation and awarded Settlement Class Counsel a fee of \$1,950,000.00 from the Gross Settlement. Given the length, scope, and complexity of the litigation and the risks undertaken by Settlement Class Counsel, the Court determined that the Settlement Class Counsel's expenses as set forth in the Verified Petition were reasonable and warranted by the circumstances of this litigation and ordered that Settlement Class Counsel be reimbursed advanced expenses of \$114,697.56 from the Gross Settlement.

29. The Court determined that the Claims Administrator has satisfactorily completed all work to-date in this matter and directed the Claims Administrator to directly invoice CAMC for such work (including that work to be completed in the future with respect to the distribution of the settlement monies) and that such amounts owed shall be paid by CAMC.

30. The Court determined that the Guardian *Ad Litem* has satisfactorily assisted the Claims Administrator in this matter and directed the Guardian *Ad Litem* to directly invoice CAMC for her work (including that work to be completed in the future with respect to assisting with the distribution of the settlement monies) and that such amounts owed shall be paid by CAMC.

31. The Court determined that the net settlement amount remaining, after deductions for the aforementioned attorneys' fees, expenses, and the service award to the Class Representatives is \$2,915,302.44. In accordance with the terms of the Settlement, the Notice provided to members of the Settlement Class, and following payment of the previously identified amounts from the Gross Settlement Amount, payment in the amount of \$1,100.00 shall be made to each member of the Settlement Class, excluding those Nine (9) members who elected to opt

out of the Settlement and also excluding those Thirty-Three (33) members who could not be located and for whom no valid address could be found.

32. Therefore, it is hereby **ORDERED** that the proceeds of the settlement shall be distributed in accordance with the terms and conditions as set forth in the Order and as follows:

(a) Within 5 business days of entry of this Order, the Guardian *Ad Litem* shall file, under seal, a list of those members of the Settlement Class to whom settlement checks will be distributed, and a list of those 9 persons who opted out of the settlement class and those 33 persons who could not be located and for whom no valid address could be found.

(b) Within 5 business days of entry of this Order, Defendant CAMC and/or their insurer shall pay \$2,064,687.56 as the Court-approved payment of attorney legal fees and expenses, to the trust account for Salango Law, PLLC, Truist Bank Account Number 1490004400748, and said counsel will then be responsible for distributing said amount amongst remaining Settlement Class Counsel within 3 days pursuant to their agreement.

(c) Immediately following payment of the aforementioned attorney legal fees and expenses to Settlement Class Counsel, Defendant CAMC and/or their insurer shall transfer all remaining Funds to a Qualified Settlement Fund established by the Claims Administrator in the name of "AH AND FLEMING ET AL V MATULIS ET AL," Account Number 1967889 at Enterprise Bank, 150 N. Meramac Avenue, Clayton, MO 63105 (ABA No. 081006162) for purposes of administration of the Settlement.

(d) Within 14 days of entry of this Order, the Claims Administrator shall pay \$10,000 to Plaintiff/Class Representative A.H. as the Court-approved service award.

(e) Within 14 days of entry of this Order, the Claims Administrator shall pay \$10,000 to Plaintiff/Class Representative Adriana Fleming as the Court-approved service award.

(f) Within 14 days of entry of this Order, the Claims Administrator shall distribute payments by check, as provided for in paragraph 31 herein, to each member of the Settlement Class, via first-class U.S. Mail, excluding those Nine (9) persons who opted-out of the settlement and also excluding those Thirty-Three (33) persons who could not be located and for whom no valid address could be found. The Court directs that each settlement check remain negotiable for a period of 60 days.

(g) All other sums which remain in the fund, shall remain in the fund until further order of the Court.

(h) The Plaintiffs are authorized and directed to execute a full release of all claims.

33. The date and time of the Fairness Hearing was set forth in the Notice Plan implemented by the Claims Administrator. The Court retained jurisdiction of this matter to consider all further applications arising out of or in connection with the Settlement Agreement.

34. Pursuant to the Notice Plan, the Settlement Class Members were given notice that they had the right to appear at the Fairness Hearing, in person or by counsel, and to be heard to the extent allowed by the Court in support of or in opposition to class certification, the fairness, reasonableness, and adequacy of the settlement set forth in the Settlement Agreement, and any applications for an award of attorney's fees, costs, expenses, and any service award to the Settlement Class Representatives.

36. The Court ordered that, unless such requirement is excused by the Court, no person shall be heard in opposition to the settlement, or the application for an award of attorney's fees, costs, and expenses, unless, on or before April 25, 2022, such person filed with the Clerk of the Court a notice of an intention to appear and provided a written statement that indicates all bases for objection; all documentation in support of the objection; legal authority, if any, supporting the

objection; and a list of any witnesses the person may call for live testimony. Copies of such notice, statement, and documentation, together with copies of any other papers or briefs filed with the clerk, were ordered to be simultaneously served on the Court and Counsel for the Parties. The Court further ordered that any Class Member who did not object in the foregoing manner would be deemed to have waived all objections and would be foreclosed from making any objections to class certification, any attorney fee and cost award, the Settlement, and any related issue. The Court received from no Settlement Class Member or other representative on her behalf any such notice of intention to appear.⁵ In short, no objections to the terms of the Settlement or its fairness have been raised by any Settlement Class Member or by any other person or party.

37. In sum, the Court finds that the settlement set forth in the Settlement Agreement is fair, reasonable, and adequate and should be fully and finally approved by this Court. The Claims Administrator shall commence distribution of the settlement monies in a manner consistent with the Court's rulings herein.

38. The Court retains jurisdiction for consideration of all further issues arising out of or in connection with this case.

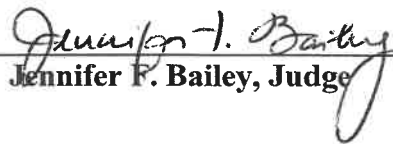
VIII. Conclusion

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, DECREED, and ADJUDGED**, that the Parties' joint motion for full and final approval of the Class Action Settlement is **GRANTED**.

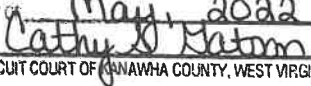
⁵ One purported member of the Settlement Class, Ms. Catherine McGraw, attended the Final Fairness Hearing by telephone. Ms. McGraw did not provide the Court with advance notice of her appearance. Ms. McGraw advised the Court that she no objection to the Settlement and that she simply wanted to observe the Hearing and to learn when she might expect to receive her settlement check.

The Clerk is directed to send certified copies of this Order to all counsel of record, as well as to Claims Administrator, Ilym Group, Inc., P.O. Box, Tustin, CA, and to the Guardian *Ad Litem*, Perry L. Shumate, Esq., P.O. Box 231, Mount Hope, WV 25880.

ENTERED this 20th day of May, 2022.



Jennifer F. Bailey, Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 20
DAY OF May, 2022


Cathy S. Gatson, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

A.H. and ADRIANA FLEMING, et al.,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

Steven R. Matulis, M.D. and Charleston Area
Medical Center, Inc.,

Defendants.

TO BE FILED IN 16-C-497
Honorable Jennifer F. Bailey
A.H. et al. v. Matulis, et al. 18-C-176

**DECLARATION OF STEPHANIE
MOLINA OF ILYM GROUP, INC. IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 9, 2022

Time: 1:00 p.m.

1 I, Stephanie Molina, declare as follows:

2 1. I am a resident of the United States of America and am over the age of 18. I am the
3 Operations Manager for ILYM Group, Inc., (herein after referred to as "ILYM Group"), the
4 professional settlement services provider who has been appointed by the Court and subsequently
5 retained by the Parties' to serve as the settlement administrator for the case styled *A.H. and Adriana*
6 *Fleming, et al. v. Matulis, et al., Civil Action No. 18-C-176*. I am authorized to make this Declaration
7 on behalf of ILYM Group. The following statements are based on my own personal knowledge and
8 information provided by other ILYM Group employees working under my supervision and, if called
9 upon to testify, I could and would testify competently to such facts.

10 2. ILYM Group has extensive experience in administering class action settlements,
11 including direct mail services, telephone and web-based support, database management, claims
12 processing and settlement fund distribution services for class actions ranging in size from 26 to 4.5
13 million class members.

14 3. ILYM Group was appointed by the Court and subsequently engaged by the Parties'
15 Counsel to provide notification services and settlement administration, pursuant to the Court's March
16 10, 2022 Order Granting Preliminary Approval of Settlement. Duties performed to-date include: (a)
17 verifying addresses for all class members; (b) printing and mailing the court approved Notice form; (c)
18 creating and hosting a dedicated website to provide settlement class members with easy and immediate
19 access to information regarding the proposed Settlement; (c) staffing a toll-free call-in number to field
20 and return calls from Settlement Class Members; (d) conducting address searches for class members
21 whose Notices were returned to our office as undeliverable; (e) receiving and processing requests for
22 opting out or exclusion from the Settlement; and (f) preparing this Declaration in support of Plaintiff's
23 Motion for Final Approval of the Settlement. Duties to be performed if and after Final Approval of the
24 Settlement is granted include: (a) processing and mailing settlement award checks; (b) handling tax
25 withholdings as required by the Settlement and the law; (c) preparing, issuing and filing tax returns and
26 other applicable tax forms; (d) handling the distribution of any unclaimed funds pursuant to the terms
27 of the Settlement; and (e) other tasks as the Parties mutually agree to and/or the Court orders ILYM
28 Group to perform.

1 4. The Court appointed **Perry L. Shumate, Esq.**, as **Guardian Ad Litem** for the
2 Settlement Class to protect the privacy of members of the Settlement Class and serve as a liaison
3 between the Settlement Administrator, the Parties and the Court.

4 5. The Court determined that notice via first class direct mail represented the best notice
5 practicable to the Settlement Class Members under the circumstances.

6 6. On March 14, 2022, ILYM Group received a copy of a Notice Form approved by the
7 Court and attached as Exhibit A to the Court's March 10, 2022 Order ("Notice Form"). ILYM Group
8 formatted the Notice Form and prepared it for mailing.

9 7. As part of the preparation for mailing, all 2,525 names and addresses used as part of the
10 previous class settlement of certain claims against Charleston Area Medical Center, Inc. in this matter
11 ("Class List") was processed against the National Change of Address ("NCOA") database, maintained
12 by the United States Postal Service ("USPS"), for purposes of updating and confirming the mailing
13 addresses of the Settlement Class Members before mailing of the Notice Form. The NCOA contains
14 requested change of addresses filed with the USPS. To the extent that an updated address was found in
15 the NCOA database, the updated address was used for the mailing of the Notice Form. To the extent
16 that no updated address was found in the NCOA database, the address used as part of the previous class
17 settlement of certain claims against Charleston Area Medical Center, Inc. in this matter was used for
18 the mailing of the Notice Form.

19 8. The Notice Form was mailed in an envelope that included a call-out on the front of the
20 envelope that read, "Important Notice About Class Action Settlement from the Circuit Court of
21 Kanawha County, West Virginia", pursuant to the Court's March 10, 2022 Order.

22 9. On March 21, 2022, the Notice Form was mailed, via U.S. First Class mail, to all 2,525
23 Settlement Class Members contained in the Class List. Attached hereto, as **Exhibit A**, is a true and
24 correct copy of the mailed Notice Form.

25 10. On March 21, 2022, ILYM Group established the dedicated website, [www.WVhospital-](http://www.WVhospital-settlement.com)
26 [settlement.com](http://www.WVhospital-settlement.com) to allow Settlement Class Members with access to information regarding the proposed
27 Settlement. The Notice of Proposed Class Action Settlement, the Order Granting Preliminary Approval
28 of Proposed Class Action Settlement, Certifying a Settlement Class and Scheduling Final Fairness

1 Hearing were posted on the website under Important Documents. On April 11, 2022, a copy of the
2 *Verified Petition for Award of Attorney's Fees and Payment of Service Awards* was posted to the
3 Settlement Website.

4 11. As of the date of this Declaration, a total of 130 Notice Forms have been returned to
5 ILYM Group's office as undeliverable by the USPS, none bearing a forwarding address. ILYM Group
6 performed a computerized skip search on all 130 returned Notice Forms, in an effort to obtain an
7 updated address for purposes of re-mailing the Notice Form.

8 12. As of the date of this Declaration, a total of 97 Notice Forms were re-mailed, as a result
9 of ILYM Group's skip searching efforts.

10 13. As of the date of this Declaration, 33 Notice Forms have ultimately been deemed
11 undeliverable, as no updated address was found notwithstanding ILYM Group's searching efforts.

12 14. As of the date of this Declaration, ILYM Group has received 9 requests for exclusion
13 from the Settlement, in which all were timely postmarked. The deadline to request exclusion from the
14 Settlement was April 18, 2022.

15 15. As of the date of this Declaration, ILYM Group will report a total of 2,516 Participating
16 Settlement Class Members, which represents 99.64% of the Settlement Class. The Participating
17 Settlement Class Members will receive an equal share of the Net Settlement Fund.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct. Executed on this 6th day of March 2022, at Tustin, California.
20
21

22 
23 _____
Stephanie Molina
24
25
26
27
28

EXHIBIT “A”

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**Women Who Received a Colonoscopy or Sigmoidoscopy at the CHARLESTON AREA MEDICAL CENTER
performed by Dr. Steven R. Matulis Between JANUARY 1, 2010, through FEBRUARY 17, 2016**

You are Eligible to Receive Money from a Class Settlement

The Honorable Jennifer F. Bailey, Circuit Judge of Kanawha County, West Virginia, has authorized this Notice. This is not a solicitation from a lawyer. You are not being sued.

- If you had a colonoscopy or sigmoidoscopy procedure performed at the CHARLESTON AREA MEDICAL CENTER by Dr. Steven R. Matulis during the period **January 1, 2010, through February 17, 2016**, you are a member of a proposed Settlement Class, and you are eligible for cash payments. **If you received this Notice in the mail from the Claims Administrator, then sealed Court records indicate that you are a member of the Settlement Class.**
- Information provided to the Court, under seal, indicates that you had a colonoscopy or sigmoidoscopy procedure during the above time period performed at the CHARLESTON AREA MEDICAL CENTER by Dr. Steven R. Matulis. The Court has appointed a Claims Administrator to contact you about this proposed Class Settlement. Neither the Court nor the Claims Administrator have ever reviewed or maintained copies of your medical records.

Your legal rights are affected even if you do nothing. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
PARTICIPATE IN THE SETTLEMENT	You are a member of the Settlement Class. If you do nothing in response to this letter, you will be included in the settlement and will receive a payment as part of the settlement once the settlement is approved by the Court. You are not required to complete a form, contact the Claims Administrator or take any other action.
ASK TO BE EXCLUDED	The only way you can individually sue CAMC is to ask to be excluded from the Settlement. If you ask to be excluded, you will receive no payment through this process.
OBJECT TO SOME PART OF THE SETTLEMENT	You may write to the Court about why you disagree with the Settlement.
GO TO A HEARING	You may speak in Court on May 9, 2022, at 1:00 p.m. about the fairness of the Settlement. You can only do this if you do not ask to be excluded from the settlement.
IF THE PATIENT HAS DIED	You should give this Notice to the Administrator or Executor of the Estate of the Patient and have them contact the Claims Administrator immediately. If you do not have an Executor or Administrator, please contact the Claims Administrator at (844) 744-8424 for further instructions.

- These rights and options – ***and the deadlines to exercise them*** – are explained in this Notice.
- The Court in charge of this case still must decide whether to approve the Settlement. Cash payments will only be made if the Court approves the Settlement. This process will take some time, so please be patient.

QUESTIONS? CALL (844) 744-8424 OR GO TO WWW.WVHOSPITAL-SETTLEMENT.COM

1. Why did I receive this notice?

BASIC INFORMATION

The Court in charge of this case authorized this Notice because you have a right to know about the proposed Settlement of certain Claims made against CAMC in this lawsuit and your options before the Court decides to give “final approval” to this Settlement. This Notice explains the Settlement, and it explains your legal rights.

The Honorable Jennifer F. Bailey, Judge of the Circuit Court of Kanawha County, West Virginia, is overseeing this case. This case is known as *A.H. and Adriana Fleming, et al., v. Matulis, et al.*, Kanawha County Civil Action No. 18-C-176.

The persons who sued are called the “Plaintiffs.” The “Defendant” is the Charleston Area Medical Center, Inc., a hospital where Dr. Steven Matulis performed colonoscopies and sigmoidoscopies.

Because your right to pursue claims against CAMC will be affected by the Settlement, you should carefully read this Notice.

2. What is this lawsuit about?

- (a) The Plaintiffs claim that the Defendant violated certain laws pertaining to discrimination and sexual harassment regarding female patients who had colonoscopy and sigmoidoscopy procedures performed by Dr. Steven R. Matulis, M.D, at the CHARLESTON AREA MEDICAL CENTER in Kanawha County, West Virginia between **January 1, 2010** and **February 17, 2016**.
- (b) The Defendant denies that it has done anything wrong. The Court has not yet ruled on the merits of any of Plaintiffs’ claims.
- (c) The settlement that is the subject of this Notice (see Question 6 below) will pertain to all claims made by the Plaintiffs against CAMC that still remain in the underlying lawsuit.

3. What is a class action, and why is this case a class action?

In a class action, one or more persons (called “Class Representatives”) sue on behalf of others with similar claims. In this case, there are two Class Representatives. All people with similar claims are called “Class Members.” When a class action is settled, it resolves the Class Representatives’ and the Class Members’ claims, except the claims of those who exclude themselves. The Court has preliminarily ordered that this case may proceed as a class action, but only for the limited purpose of settlement of the claims of all Class Members against the Defendant.

4. Why is there a Settlement?

The Class Representatives and their attorneys believe that the proposed Settlement with CAMC is, under all the circumstances, fair and in the best interest of all Class Members. By settling the remaining claims against CAMC, the parties avoid some uncertainties, costs, and risks associated with trial. The Court can now distribute money obtained from the Settlement to Class Members.

5. Who is included in the Settlement?

You are a member of a proposed Settlement Class and are eligible for cash payments if:

- You are a former female patient of Dr. Steven R. Matulis, and
- You had a colonoscopy or sigmoidoscopy procedure performed at the CHARLESTON AREA MEDICAL CENTER by Dr. Steven R. Matulis, and
- The colonoscopy or sigmoidoscopy was performed between **January 1, 2010, and February 17, 2016.**

Information provided to the Court, under seal, indicates that the person to whom this Notice is directed is a member of the Settlement Class.

6. What are the terms of the Settlement?

CAMC has agreed to pay a total of **\$5,000,000.00** (“the Gross Settlement Amount”) to settle the remaining claims of all members of the Settlement Class. This will be a final settlement and no other monies will be paid to the Class on behalf of CAMC. After deductions for attorneys’ fees and expenses and any service awards made to the Class Representatives (see Question 18 below), the remaining Net Settlement Fund will be available for equal distribution to members of the Settlement Class.

Further, the Court has determined that the costs of administering the settlement, including the costs of the Claims Administrator and Guardian *Ad Litem* will be paid by CAMC.

7. How much will my payment be?

The exact settlement payment you will receive cannot be determined at this time. The exact cash payment depends on:

- The number of Class Members who request to be excluded from the settlement;
- The number of Class Members who fail to cash checks mailed to them as part of the settlement process; and
- The amount of attorney fees, expenses, and any service awards to Class Representatives ~~which may~~ be approved by the Court.

The Net Settlement Fund will be distributed to Class Members upon Court approval of the settlement. There are **2,525** Class Members. The Court has structured this settlement so that Class Members receive an equal share of the Net Settlement Fund. To simplify the process, the Court has ordered that you do not need to complete a claim form or other paperwork to receive your share of the Net Settlement Fund.

Cash payments will be distributed after the Court holds a Final Fairness Hearing (see Question 14 below), grants final approval of the Settlement, and resolves any appeals.

8. What about my personal health information and medical records?

The Court has approved and appointed a Claims Administrator and Guardian *Ad Litem* to protect the confidentiality of your protected information and oversee the administration of the claims. The Court has appointed a Claims Administrator to contact you about this proposed Class Settlement, using contact information previously provided to the Court, under seal, by the CHARLESTON AREA MEDICAL CENTER pursuant

to a Court Order. Neither the Court, the Guardian *Ad Litem*, nor the Claims Administrator have ever reviewed or maintained copies of your medical records. The Guardian *Ad Litem* and Claims Administrator will not provide any information about you to any person or entity other than the Court.

9. What happens if I remain in the Settlement Class?

REMAINING IN THE SETTLEMENT CLASS

If the Settlement becomes final, you will give up your right to sue CAMC on your own for the claims being resolved by this Settlement unless you exclude yourself from the Settlement Class. You also will be bound by any decisions of the Court.

In return for paying the Settlement amount, CAMC will be released from all claims being resolved by this Settlement. If you have any questions concerning the settlement, you can talk to the Claims Administrator or law firms listed in Question 11 of this Notice for free, or you can, of course, talk to your own lawyer about what this means.

10. What if I do not want to be part of the Settlement?

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want benefits from this settlement, but you want to keep the right to sue CAMC on your own over the remaining claims in this case, then you must take steps to get out of the Settlement. This is called excluding yourself – or it is sometimes referred to as “opting out” of the Settlement.

To exclude yourself from the Settlement and receive no Settlement payment, you must send a signed Request for Exclusion by mail stating: (a) your name, address, and telephone number and (b) a statement that you wish to be excluded from the Settlement Class. Requests for Exclusion must be mailed to the following:

Claims Administrator
A.H./Fleming v. Matulis Class Settlement
c/o ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

Your request for exclusion must be postmarked no later than April 18, 2022. If you wish to individually sue CAMC, you should immediately consult an attorney since statutes of limitation could bar a claim if not filed promptly.

11. How do I tell the Court that I do not like the Settlement?

OBJECTING TO THE SETTLEMENT

You can submit a written objection to the Settlement if you do not like some or all of it. The Court will consider your views. Your objection must include the following:

- The name of the case, *A.H. and Adriana Fleming, et al., v. Matulis, et al.*, Kanawha County Civil Action No. 18-C-176;
- Your full name, address, telephone number, signature, and
- The specific reasons you are objecting, and any legal support or evidence you wish to use to support your objection.

QUESTIONS? CALL (844) 744-8424 OR GO TO WWW.WVHOSPITAL-SETTLEMENT.COM

You cannot both request exclusion from the Settlement Class by opting out *and* objecting to the Settlement. Only members of the Settlement Class may object to the Settlement.

Any comment or objection must be **in writing**, mailed to **ALL** the addresses on the following chart:

Court	Counsel for Settlement Class	Counsel for CAMC
Honorable Jennifer F. Bailey 111 Court Street, 4 th Floor Charleston, West Virginia 25301	L. Dante diTrapano, Esq. David H. Carriger, Esq. Calwell Luce diTrapano PLLC Law and Arts Center West 500 Randolph Street Charleston, WV 25302	Lee Murray Hall, Esq Jenkins Fenstermaker, PLLC P.O. Box 2688 Huntington, WV 25726-2688
	P. Rodney Jackson, Esq. P. Rodney Jackson & Associates 401 Fifth Third Center 700 Virginia Street, Suite 400 Charleston, West Virginia 25301	Heather Heiskell Jones, Esq. Spillman, Thomas & Battle, PLLC 300 Kanawha Blvd, East Charleston, WV 25301
	Ben Salango, Esq. Kristy Salango, Esq. Salango Law, PLLC 206 Capitol Street Charleston, WV 25301	Arie M. Spitz, Esq. Dinsmore & Shohl LLP P.O. Box 11887 Charleston, WV 25339-1887
	Martin W. Masters, Esq. The Masters Law Firm LC 181 Summers Street Charleston, WV 25301	
	Robert V. Berthold, Jr., Esq. Berthold Law Firm PLLC 208 Capitol Street P.O. Box 3508 Charleston, WV 25301	
	Matthew Stonestreet, Esq. The Giatras Law Firm, PLLC 118 Capitol Street, #400 Charleston, WV 25301	

Your objection must be postmarked no later than April 25, 2022.

12. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you cannot object to the Settlement because the case no longer affects you, and you will not get any benefits from the Settlement.

13. What if I do nothing?

DO NOTHING

Unless you exclude yourself from the Settlement Class, you will be bound by all Settlement terms and will receive a settlement payment, upon Court approval of the Settlement.

14. When and where will the Court decide whether to approve the Settlement?

THE FINAL FAIRNESS HEARING

The Court will hold a Final Fairness Hearing at **1:00 p.m. on May 9, 2022**, at the Kanawha County Courthouse, 111 Court Street, 4th Floor, Charleston, West Virginia 25301. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections or comments, the Court will consider them at that time and may listen to people who have asked to speak at the hearing. The Court will also decide how much to pay Class Counsel and the amount of any service award for the Class Representative. At or after the hearing, the Court will decide whether to approve the Settlement.

The hearing may be moved to a different date or time. If the hearing is moved, you will receive an additional notice from the Claims Administrator.

15. Do I need to attend the hearing?

No. Class Counsel will answer any questions the Court may have, but you are welcome to attend at your expense. If you send an objection or comment, you do not have to come to Court to talk about it. As long as you mailed your complete and valid written objection on time, as described above in Question 11, the Court will consider it. You may also hire your own lawyer at your own expense to attend on your behalf, but you are not required to do so.

16. May I speak at the hearing?

If you do not exclude yourself from the Settlement and object to some part of it, you have a right to appear and speak at the Final Fairness Hearing and present your objections. You may also appear by counsel if you wish. To be permitted to appear, however, you, or your legal counsel, must do the following on or before the hearing:

- File with the Court a notice of intention to appear, together with a statement detailing your objections (see Question 12) no later than **April 25, 2022**; and
- Serve copies of such notice and all supporting materials, either by hand delivery or by first-class mail, postage prepaid, to all ten of the addresses listed in Question 11.

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

Yes. The Court has appointed the attorneys listed in Question 11 as Settlement Class Counsel to represent Class Members.

However, if you exclude yourself from the Settlement Class, you will not be represented by Settlement Class Counsel and must hire a lawyer at your own expense. If you remain a member of the Settlement Class, you are represented by Settlement Class Counsel.

18. How will the lawyers be paid?

Settlement Class Counsel will file a petition with the Court seeking an award of attorneys' fees to be paid from the gross settlement payment by CAMC. Settlement Class Counsel will also ask the Court to approve reimbursement of the expenses they have advanced in bringing this case. Settlement Class Counsel will file a petition to fees and expenses with the Court on or before **April 11, 2022**. This petition will identify the amount of the fees and expenses sought by Settlement Class Counsel. It will be made available for your review by the Claims Administrator upon request and posted on the website **www.wvhospital-settlement.com**. Settlement Class Counsel will also request that the Class Representatives receive a service award for their service in this litigation in an amount that is to be determined and will be included in the petition for fees and expenses that Settlement Class Counsel will file on or before **April 11, 2022**.

GETTING MORE INFORMATION

19. How do I get more information?

This Notice summarizes the Settlement. If you have any questions or wish to have any additional information, you may contact the Claims Administrator, who will provide you with answers to your questions or you also may write with questions to Claims Administrator, A.H./Fleming v. Matulis Class Settlement c/o ILYM Group, Inc., P.O. Box 2031, Tustin, CA, 92781, visit website **www.wvhospital-settlement** or call the toll-free number **(844) 744-8424**.

CLERK OF CIRCUIT COURT
KANAWHA COUNTY COURTHOUSE
P.O. BOX 2351
CHARLESTON, WEST VIRGINIA 25328

David H. Carriger
L. Dante di Trapano
500 Randolph Street
Charleston, WV 25302



US POSTAGE
ZIP 25301
02 4W
0000373375

Exhibit B Deposition Dates and Witnesses

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CC-20-2017-C-765
Kanawha County Circuit Clerk
Cathy S. Gatson

Scheduled Date	Witness
11/19/2019	Eric Taylor
11/21/2019	Shelley Porter (30b7)
11/22/2019	Danny Baldwin
11/22/2019	Tim Engel
11/22/2019	Ryan Baldwin
12/13/2019	Carolyn Burdette (Colours Salon)
1/3/2020	Richard Jeffries
1/21/2020	Thomas Boggs
1/23/2020	Wayne Lorenz
1/29/2020	Michael Jacobson
1/30/2020	Derek Royster
11/9/2023	Sean Graves
11/15/2023	Jeff Ferrell
11/15/2023	Tod Reedy
11/28/2023	Laura Martin
11/28/2023	John Jarvis
12/5/2023	Gary Naumick
12/6/2023	Jian Yang
12/6/2023	James Chelius
12/7/2023	Shaoqing Ge
12/8/2023	Laura Martin
12/11/2023	Mark Shamblin
12/12/2023	Wayne Morgan
12/13/2023	Mark Sankoff
12/13/2023	Jeff McIntyre
12/14/2023	Brett Morgan
12/14/2023	Andy Zinkevich
2/15/2024	Joanna Diamond
5/17/2024	Wayne Lorenz
5/21/2024	Carl Yates
5/23/2024	Michael Jacobson
5/30/2024	Terry Deason
6/4/2024	George Rest
1/8/2025	James Chelius

Exhibit C List of Plaintiff's Legal Filings

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CC-20-2017-C-765
Kanawha County Circuit Clerk
Cathy S. Gatson

Date Filed	Document Filed
5/11/2018	Pltf Response in Opposition to MTD
5/29/2018	Pltf Response in Support in Part and Opposition in Part of Def Motion for Rule 16 Conference
9/7/2018	Plaintiffs' Opposition to Def. Second Motion for Protective Order
10/19/2018	Joint Motion for Protective Order
2/4/2020	Pltf Motion for Class Certification
3/3/2020	Pltf Reply Memo in Support of Motion for Class Certification
4/21/2020	Proposed Memorandum Opinion & Order Granting Pltf Motion for Class Certification
7/10/2020	Proposed Memorandum Opinion & Order Granting Pltf Motion for Class Certification
9/8/2020	Joint Motion for Stay Pending Disposition of Petition for Writ of Prohibition
10/8/2020	Response to Petition for Writ of Prohibition
1/21/2021	Respondents' Motion to Remand
4/15/2021	Pltf Memo in Support of Class Cert. Following Remand
5/12/2021	Pltf Reply in Support of Class Cert Following Remand
5/25/2021	Proposed Memorandum Opinion and Order Regarding Class Cert After Further Consideration in Light of State ex re. Surnaik Holdings of WV, llc v. Bedell
5/27/2021	Pltf Response in Opposition to WVAWC Motion for Leave to file a Surreply
9/20/2022	Pltf Motion to Dismiss Verified Petition for Writ of Prohibition
9/30/2022	Summary Response in Opposition to Verified Petition fro Writ of Prohibition
10/2/2023	Pltf Prosposed Trial Plan Following SC Review and Approval of Class Certification
3/12/2024	Pltf Supp Motion and Memo in Support of Pltf Proposed Trial Plan Following SC Review and Approval of Class Certification
3/19/2024	Pltf Response in Opposition to Def. Amended Motion to Strike Certain Portions of Lorenz Reports
3/26/2024	Pltf Reply in Support of Pltf Supp Motion and Memo in Support of Pltf Proposed Trial Plan
8/2/2024	Pltf Motion to Exclude Def Expert Terry Deason
8/16/2024	Pltf Response in Opposition to Def Motion to Exclude Certain Opinions of Wayne Lorenz
8/16/2024	Pltf Memo in Opposition to Def Motion for Partial SJ on Counts III and IV of Pltf Complaint
8/16/2024	Plaintiff's Omnibus Motion for Leave to File Under Seal
8/30/2024	Plaintiffs Reply in Support of Motion to Exclude Terry Deason
10/14/2024	Pltf MIL to Exclude Testimony RE Returns on Investments and other Financial Concepts
10/14/2024	Pltf MIL to Exclude Testimony RE Recurring Water Loss
10/14/2024	Pltf MIL to Exclude Testimony RE Revunue Generating Construction and Investments
10/14/2024	Pltf MIL for Jury Instructions or Findings RE Need to Utility to Show Loss to Claim Reduction in Maintenance
10/28/2024	Pltf Response in Opp to Def MIL to Exclude Motive Evidence in Phase I Class Trial
11/4/2024	Pltf Reply in Support of Motion for Jury Instructions RE Actual Loss
11/4/2024	Pltf Reply in Support of MIL to Exclude Financial Concepts
11/4/2024	Pltf Reply in Support of MIL RE Excluding Testimony RE Revenue Generating Construction
11/4/2024	Pltf Reply in Support of MIL RE Recurring Water Loss
11/8/2024	Combined Pretrial Memo
11/15/2024	Pltf Response in Opposition to Def Motion to Exclude Chapman Tech Documents and Related Witnesses or Continue Trial
11/22/2024	Pltf MIL to Prohibit Menton of Favorable Verdict Resulting in Increased Customer Rates
11/22/2024	Pltf MIL to Preculde Lay Witness Opinion as to Whether Service was Reasonable
11/29/2024	Pltf Response to Def Motion to Strike Pltf Corrected Notice of Motive Exhibits and Documents or to Continue Trial
12/1/2024	Pltf Reply in Support of MIL to Preclude Asking Lay Witnessed Opinon as to Whether Service was Reasonable
12/11/2024	Pltf Expedited Motion for Pretrial Scheduling Conference and to Set Trial for 1/21/25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CRYSTAL GOOD, individually and as
parent and next friend of minor children
M.T.S., N.T.K, and A.M.S, and MELISSA
JOHNSON, individually and as a parent of an
unborn child T.A.J., and JOAN GREEN and SUMMER JOHNSON
and MARY LACY and WENDY RENEE RUIZ and KIMBERLY
OGIER and ROY J. McNEAL and GEORGIA HAMRA and
MADDIE FIELDS and BRENDA BAISEDN, d/b/a FRIENDLY
FACES DAYCARE, and ALADDIN RESTAURANT, INC. and
R.G. GUNNOE FARMS LLC and DUNBAR PLAZA, INC.,
d/b/a DUNBAR PLAZA HOTEL, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v. Civil Action No. 2:14-cv-1374

WEST VIRGINIA-AMERICAN WATER COMPANY,
d/b/a WEST VIRGINIA AMERICAN WATER, and
AMERICAN WATER WORKS SERVICE COMPANY, INC.
and AMERICAN WATER WORKS COMPANY, INC. and
EASTMAN CHEMICAL COMPANY and GARY SOUTHERN
and DENNIS P. FARRELL,

Defendants.

ORDER GRANTING FINAL APPROVAL OF
THE *GOOD* CLASS SETTLEMENT AND ENTERING JUDGMENT

This matter comes before the court pursuant to a Joint
Motion ((filed by Plaintiffs and Defendants West Virginia-
American Water Company, American Water Works Service Company,
Inc., and American Water Works Company, Inc. and Eastman
Chemical Company ("Defendants"))) for Final Approval of the

Proposed Class Settlement and for Final Approval of Attorneys' Fees, Costs and Incentive Awards (the "Joint Motion"), dated December 29, 2017 [Doc. 1180]. A Final Fairness Hearing regarding the Settlement was held on January 9, 2018, and continued to February 1, 2018, before this court in Charleston.

In accordance with and for the reasons stated in the Memorandum Opinion and Order entered July 6, 2017 [Doc. 1146], as modified herein, together with the Order Granting Preliminary Approval Of The *Good* Class Settlement, Directing Notice To The Class, And Scheduling Fairness Hearing [Doc. 1166] entered September 21, 2017, the court finds and ORDERS as follows:

1. The proposed Settlement Class meets all the applicable requirements of Fed. R. Civ. P. 23(a) and (b)(3), and hereby confirms and finally certifies the following class for settlement purposes:

- a. All natural persons, including adults and minors (including in utero), who resided in residential dwellings that were supplied tap water by West Virginia American's Kanawha Valley Water Treatment Plant ("KVTP") on January 9, 2014.
- b. All businesses, and non-profit and governmental entities, that operated in real property locations that were supplied tap water by the KVTP on January 9, 2014.

- c. All natural persons who were regularly employed as hourly wage earners for businesses that operated in real property locations that were supplied tap water by West Virginia American's KVTP on January 9, 2014.
- d. The Settlement Class includes all persons and entities who are Exhibit A Plaintiffs as specified at Section 5.3.2 of the Amended Settlement except those who are Opt Outs.

Excluded from the Settlement Class are:

- a. West Virginia-American Water Company and its officers, directors, and employees and any affiliates of West Virginia American and their officers, directors, and employees;
- b. Eastman and its officers, directors, and employees and any affiliates of Eastman and their officers, directors, and employees;
- c. Judicial officers assigned to this case and their immediate family members and associated court staff assigned to this case, other than court reporters;
- d. Settlement Class Counsel and attorneys who have made an appearance for the Defendants in this case;
- e. The Settlement Administrator, Notice Administrator, Guardian ad Litem, or other consultants and associated staff assigned to this case; and
- f. Persons or entities who have excluded themselves from the settlement class (Opt Outs).

All persons or entities who have not submitted timely and proper exclusion requests and who otherwise fall within the class definition are members of the Settlement Class.

2. Settlement Class Counsel have met the standards of Fed. R. Civ. P. 23(g) and have fairly and adequately represented the interests of the Settlement Class. The court confirms the appointment of Settlement Class Counsel.

3. The appointment of the accounting firm, Smith, Cochrane and Hicks, as the Settlement Administrator to fulfill the tasks and obligations set forth in the Amended Settlement Agreement is confirmed.

4. The Notice transmitted to the Settlement Class met the requirements of Fed. R. Civ. P. 23(c), constituted the best notice practicable under the circumstances, and satisfied the Constitutional due process requirements of notice with respect to all Settlement Class Members, including minors and those who are incapacitated. The Notice reflected and documented the details of the court's preliminary approval of the Settlement as well as the request for an award of attorneys' fees, reimbursement of costs and approval of incentive awards. The Notice Program was executed by qualified and experienced Notice Administrators and was completed in timely fashion, and in coordination with an experienced Settlement Administrator who established channels of communication for Settlement Class Members including maintenance of a website which posted the Notices and related documents.

5. Defendants have fully complied, to the best extent possible, with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. §1715.

6. The appointment of John A. Carr, Esq. as Guardian Ad Litem is confirmed and there is accepted his Report Of The Guardian Ad Litem On The Fairness Of The Proposed Amended Settlement Agreement, dated January 19, 2018 (Doc. 1195). Based on that Report, the court finds that the Amended Settlement Agreement is fair, reasonable and adequate with respect to Settlement Class Members who are minors, lack capacity or are incompetent. For purposes of the function of the Guardian Ad Litem, a minor is a person under age 18 and the definition of a Class Member who lacks capacity is the definition of incapacity provided in W.Va. Code §39B-1-102(5). The Guardian Ad Litem shall have the authority to assist Settlement Class Members who are minors or incapacitated with the claims filed by them or on their behalf other than residential simple claims. As to residential simple claims, the filing of the claims and the division of proceeds distributed thereon is ordinarily to be handled by the person or persons in whose name the water company account is listed. If a minor or incapacitated person is in a dispute, under Section V.B.3 of Exhibit 3 to the Amended Settlement Agreement, with the account holder over the division

of proceeds, the Guardian Ad Litem may represent the interests of the minor or incapacitated person in the resolution of the dispute by the Settlement Administrator.

7. The Amended Class Action Settlement Agreement, which memorializes the Settlement, is fair, reasonable and adequate within the meaning of Fed. R. Civ. P. 23(e). The Amended Class Action Settlement Agreement, along with all Exhibits thereto, is adopted and fully incorporated by reference into this Order and Judgment. In making this determination, the court has considered the current posture of this litigation and other pending actions and the risks and benefits to the parties involved in both settlement of these claims and continuation of the litigation.

8. As of the Effective Date, the Class Release shall be given full force and effect and Plaintiffs and the Settlement Class Members shall have released and be deemed to have released any and all Released Claims as detailed in and as governed by Section 9 of the Amended Settlement Agreement. Settlement Class Members and Plaintiffs and any legal or natural persons who may claim by, through or under them are, by operation of the Release, permanently barred and enjoined from commencing, asserting or continuing any Released Claims against any Released

Entity, as those terms are defined in the Amended Settlement Agreement. Valid Opt Outs are not bound by the Amended Settlement Agreement or the Final Approval Order. This Amended Settlement Agreement is the exclusive remedy for any and all Released Claims against any and all Released Entities.

9. In the court's order of July 6, 2017, preliminary approval was given to an award of a 25% fee on the guaranteed funds (\$100,500,000) and on any amounts paid out of the contingent fund (\$50,000,000). Within the order is a thorough exposition of applicable law and the attorney fee awards in other class action cases of similar size and complexity, all of which is incorporated herein.

Note was taken of the empirical studies by Professors Thomas Eisenberg and Geoffrey P. Miller finding that the mean percentage fee in 69 cases ranging from approximately \$70 million to approximately \$175 million was 19.4%. Pet. For Fees 20-21. See Thomas Eisenberg & Geoffrey P. Miller, Attorney Fees and Expenses in Class Action Settlements: 1993-2008, 7 J. Empirical Legal Stud. 248 (2010); William B. Rubenstein, Newberg on Class Actions § 15:78, 81 (5th ed.)(Eisenberg and Miller's studies show that "the mean award for recoveries of \$1.1 million and less was 37.9%, while the mean for recoveries over \$175.5

million was 12%"); In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 339 (3d Cir. 1998) (fees in common fund cases exceeding \$100 million "ranged from 4.1% to 17.92%," noting the "inverse relationship" between fund size and attorney fee percentage); Carlson v. Xerox Corp., 596 F. Supp. 2d 400, 405 (D. Conn.), aff'd, 355 F. App'x 523 (2d Cir. 2009) (providing a chart of some of the largest class action settlements and noting that in only 6 of the top 26 cases was the fee awarded higher than 20% and in no case was it higher than 28%); Goldberger v. Integrated Res., Inc., 209 F.3d 43, 51-52 (2d Cir. 2000) (percentages in common fund cases between \$50 and \$75 million ranged between 11% and 19%). Order at 62-67, 76.

In the order of July 6, 2017, the court twice noted that it was unlikely that the \$50 million contingent fund would be exhausted (Id. at 68, 81). Indeed, it was stated that "there is a risk that claimants will not access the contingent fund at all." Id. at 68. The parties estimated the number of simple claims at 37,000 residential and 5,000 business. Id. at 88. Based on these and other like estimates, the notice to the class estimated, for example, payment of \$550 for each residential household plus \$180 for each additional household member.

Instead, the Settlement Administrator has been overwhelmed by the filing of some 87,000 simple residential claims (also containing claims for 126,000 additional residents) as well as some 6,750 simple business and government claims, and 2,700 individual review claims. The total dollar amount of all claims timely filed is just in excess of \$162,000,000. Although some of those claims will ultimately be denied, it is apparent that the entirety of the \$150,500,000 will be expended inasmuch as the settlement funds for distribution have been oversubscribed.

In arriving at preliminary approval of a 25% attorney fee, the court did so with the expectation that the contingent fund of \$50,000,000 would have been only partially accessed. Had all claims and costs and fees of all kind aggregated, say, \$120,000,000, a 25% attorney fee would have been \$30,000,000. While it is gratifying that the entire \$150,500,000 will be accessed, the attorney fee percentage should be modified from that preliminarily approved in order to reflect the unanticipated high dollar volume of claims received so as to avoid a potential windfall benefit. In fixing the fee, the court recognizes the favorable settlement result that has been achieved by the plaintiff attorneys and their state court counterparts through the exceptional skill and dedication that

they have so professionally displayed throughout these proceedings. Without their services and willingness to risk the loss of their highly valuable time and the costs of litigation, there would be no settlement funds to disburse.

After taking into account all of the factors relating to the award of attorney's fees, both in class action generally and this case in particular, the court concludes that an overall attorney fee of 22% is a fair and reasonable attorney fee in this case and is hereby finally approved. The 22% fee applies to the guaranteed funds of \$100,500,000, the contingent fund of \$50,000,000 and the sums recoverable from the individual defendants, Gary Southern and Dennis P. Farrell; and it is premised on the disbursement of the entirety of those funds, along with sums recovered from the two individual defendants, for the benefit of the class claimants and the payment of the 22% attorney fees and all costs of every kind approved by the court.

As requested by the parties, these attorney fees shall be paid by the Settlement Administrator to the order of Bonnett, Fairbourn, Friedman & Balint, P.C., with one-half of the amount payable from the aggregate amount of the Eastman Fund and the American Water Guaranteed Settlement Fund to be paid on the

Effective Date and the balance of that amount payable to be paid upon distribution of Simple Claim settlement benefits to the Settlement Class. Attorney fees based on payments made from the American Water Contingent Settlement Fund shall be paid in three installments, one 60 days after the first payments from the American Water Contingent Settlement Fund are first paid, the second 60 days later and the balance upon final distribution of payments to eligible Class Members. Only those attorneys' fees expressly delimited under paragraphs 13.1 of the Amended Settlement Agreement shall be borne by the Eastman Fund, the American Water Guaranteed Settlement Fund or the American Water Contingent Settlement Fund established thereunder. No other claims for attorney fees will be allowed by the court.

10. Attorneys representing Claimants in the Individual Review Option may earn up to 15% of the amount awarded under the Settlement to an eligible Claimant as a contingent fee from a Claimant, provided that the net payment to the Claimant after deducting fees and expenses must exceed the applicable Simple Claim Amount, if any. No person may charge a fee to a Claimant for assisting in the preparation or filing of Simple Claim Forms, except that attorneys representing individual Business Claimants with 2013 Annual Revenue in excess of \$100,000, may earn up to 15% of the amount awarded for a

Simple Claim Form claim if it was necessary for the attorney to analyze the Claim as an Individual Review Option claim to determine whether the Claimant should file a Simple Claim Form claim or an Individual Review Option claim. All attorneys' fees and retainer contracts remain subject to applicable regulations, including, without limitation, Rule 1.5 of the West Virginia Rules of Professional Conduct, governing fee agreements. The fees described in this paragraph shall be paid by the individual Claimant and shall not be paid from the Eastman Fund, the American Water Guaranteed Settlement Fund, or the American Water Contingent Settlement Fund.

11. The Settlement Administrator, Smith, Cochrane and Hicks, is engaged in the tedious process of examining each of those filed claims aggregating some \$162,000,000, sorting out the invalid claims and those that are in some manner or to some extent deficient, following which those who wish to cure the defects in their claims will be given a 30-day opportunity to do so. The Settlement Administrator, of course, cannot determine the amount to be paid on any given claim until the dollar amount of all those nearly 94,000 simple claims being paid can be determined. And that cannot be determined until the 30-day cure period has run and the Settlement Administrator has resolved the disputes relating to the 30-day cure claims.

What is quite clear is that there will not be sufficient funds to pay the entirety of the amounts that were presented in the class notice as being the projected claim recoveries. The likelihood, as seen at this juncture, is that the recoverable amount on the allowed claims will be in the range of twenty percent less than the projected figures set forth in the class notice to file claims.

In order for the initial payout to take place, the Amended Settlement Agreement provides that the Settlement Administrator must also first compute the aggregate value of all simple claim form claims and the aggregate maximum value of all Individual Review Option claims based on the requested individual review claim amounts, as well as administrative expenses, attorney fees and litigation costs. Inasmuch as the requested claim amounts in the individual review claim forms are in a great many instances in dispute, the Settlement Administrator is directed to simply estimate the aggregate maximum value of all Individual Review Option claims without regard to the "requested individual review claim amounts" in order that payment of the simple claims will not be unduly depressed in amount or delayed in payment. With that modification, the initial payment of simple claim form claims,

after the proposed payment is submitted to the parties and the court and reviewed and approved by the court, can then begin.

Payment of claims shall be by bank check and mailed at or within five days of the date of the check. The check shall carry the notation on its face that "This check void, and the claim may be deemed waived, unless presented for payment within 90 days of issue date." If the check is not presented to the bank on which it is drawn within 90 days of the date of the check, it shall be void and the claim may be deemed waived, and the sum for which the check is drawn shall be pooled with funds remaining for distribution that shall be distributed, along with any undistributed interest earned, to the claimants as the court may equitably direct in keeping with the provisions of the Amended Settlement Agreement and this order.

12. The court finds that reimbursement of the reasonable expenses incurred in the prosecution of this class action, and parallel litigation to the extent those efforts helped bring about the global resolution of this dispute, is appropriate. After reviewing the parties' updated submissions in support of the Joint Motion and in conjunction with the Final Fairness Hearing, the court finds that reimbursement of costs and expenses of \$2,579,836, is fair and appropriate, which sum

shall be allocated by the court on an equitable basis to the various settlement funds.

All administrative expenses of the Settlement Administrator and the Notice Administrator, as well as that of the Guardian Ad Litem, the Appeal Adjudicator, and any other similar costs that may be incurred are subject to approval by the court and allocation on an equitable basis to the various settlement funds.

13. The court finds that the named plaintiffs are entitled to incentive awards to be paid from the Eastman Fund and the American Water Guaranteed Settlement Fund, of \$15,000.00 each to Class Representatives Crystal Good; Melissa Johnson; Mary Lacy; Joan Green; Summer Johnson; Wendy Renee Ruiz; Kimberly Ogier; Roy J. McNeal; Georgia Hamra; Maddie Fields; Brenda Baisden, d/b/a Friendly Faces Daycare; Aladdin Restaurant, Inc.; R.G. Gunnoe Farms LLC; and Dunbar Plaza, Inc. d/b/a Dunbar Plaza Hotel; and \$10,000.00 each to the plaintiffs named in *In re Water Contamination Litigation*, No. 16-C-6000, filed in West Virginia Circuit Court and transferred to the West Virginia Mass Litigation Panel (the "MLP Action"): Craig Cook; Ann Perrine; Joanna Gibson; Krisi Ord; Nicholas Shahoup, DDS;

Scott Miller/Bar 101 LLC d/b/a Bar 101 and Ichiban; Better Foods, Inc.; and Capitol Hotels, Inc.

14. In reaching the findings in this Order, the court has given weight to the fact that the Settlement Class Members were afforded a full opportunity to object to the Settlement or any aspect of the Settlement, including the Motion for Award of Attorneys' Fees, Reimbursement of Costs and Incentive Awards, and that no objections to any aspect of the Settlement were formally or informally presented to the court. No objections were heard at either the January 9 or February 1 Final Fairness Hearings. The court finds that the lack of objections counsels in favor of final approval of the Settlement.

15. The court determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment with respect to all claims by Settlement Class Members be certified as final judgments. The court shall retain continuing and exclusive jurisdiction over the interpretation, enforcement and implementation of the Amended Settlement Agreement in accordance with its terms and this Order, including the confidentiality orders entered in this case and the included protections for information submitted by Claimants.

16. Settlement Class Members are ordered to dismiss with prejudice any Released Claims pending in any other Court.

17. The court permanently bars and enjoins each Settlement Class Member from filing, asserting, commencing, maintaining or consenting to any action against the Released Entities with respect to the Released Claims.

18. MLP Lead Counsel are ordered to seek dismissal with prejudice of all State Actions except any such action that is brought by an Opt Out.

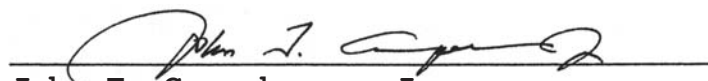
19. The court approves the distribution of an aggregate payment for all members of a Household or all owners of an Eligible Business Location to a single representative of a Household or a Business Location and further approves and authorizes the Settlement Administrator to mail multiple payment checks for members of a Household to a single representative of the Household.

20. The parties shall complete all remaining obligations under the Amended Settlement Agreement.

21. All capitalized terms not otherwise defined in this Order shall have the meanings set forth in the Amended Settlement Agreement.

22. The Clerk will transmit copies of this Order to counsel for the parties.

DATED: June 8, 2018


John T. Copenhaver, Jr.
United States District Judge

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**RICHARD JEFFRIES, and COLOURS
BEAUTY SALON, LLC, individually and
on behalf of all others similarly situated,**

Plaintiffs,

v.

**Civil Action No. 17-C-765
Judge Carrie L. Webster**

**WEST VIRGINIA-AMERICAN WATER
COMPANY**

Defendant.

DECLARATION OF VAN BUNCH

I, Van Bunch, do hereby declare and state as follows:

I am a partner in the law firm of Bonnett Fairbourn Friedman & Balint, PC (the “Firm”). My Firm is Co-Counsel for Richard Jeffries and Colours Beauty Salon, on behalf of themselves and the Eligible Class Members as defined in this Court’s Preliminary Order Approving Settlement. I submit this declaration in support of the application for reimbursement of expenses in connection with the services that my Settlement Class Counsel rendered on behalf of the Eligible Class Members.

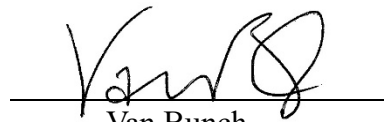
1. The information in this declaration is documented and reflected in time and expense printouts and supporting documentation prepared and maintained by my Firm and the other law firms prosecuting this action in the ordinary course of business. My Firm oversaw the Litigation Fund, which was used by Class Counsel for coordinating the payment of litigation expenses between the different law firms. Most, but not all, litigation expenses were paid from the Litigation Fund, which was funded by periodic contributions from the firms involved in the litigation. I am the partner from my Firm who conducted the day-to-day activities in this litigation and I have

reviewed this documentation in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the case-related information as well as the necessity for, and reasonableness of, the expenses committed to the litigation. As a result of this review, I believe that the expenses are all of the type that would normally be charged to a fee-paying client in the private legal marketplace.

2. The total of expenses paid directly from the Litigation Fund was \$382,416.18. In addition, the individual firms involved in the litigation directly paid another \$ \$103,292.62 in expenses. The total of all expenses paid to date is \$485,708.80. The foregoing expenses pertaining to this litigation are reflected in the books and records of the Firm, the Litigation Fund, and the individual firms. These books and records are prepared from receipts, expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of July, 2025, at Chattanooga, Tennessee.


Van Bunch