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S.C. SUPREME COURT

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Donald Stanley and Sean Reiter, )  
Individually and as Class Representatives, )

Plaintiffs, )

vs. )

Southern States Police Benevolent )  
Association, Inc., )

Defendant. )

C/A No. 2016-CP-10-4062

**ORDER GRANTING FINAL  
JUDGMENT, APPROVAL OF  
SETTLEMENT, AWARD OF  
ATTORNEYS' FEES,  
REIMBURSEMENT OF COSTS,  
CLASS REPRESENTATIVE  
INCENTIVES, AND DISMISSAL OF  
ACTION WITH PREJUDICE**

Before the Court is Plaintiffs' and Defendant's Joint Motion for Approval of Class Action Settlement and Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Expenses (the "Motion"). The Court has read and considered the documents filed in support of the Motion, including the Settlement Agreement and exhibits thereto, memoranda and arguments submitted on behalf of the settlement Class and the Defendant, and supporting affidavits and reports. Based on the foregoing, and after a fairness hearing conducted on May 16, 2023, followed by briefing on a question the Court raised at the hearing concerning the disposition of potential remaining funds under the Settlement, the Court **GRANTS** the Joint Motion for Approval of Class Action Settlement, **GRANTS** Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Costs, and **GRANTS** Plaintiffs' Motion for Award of Class Representative Incentives. The Court further **ORDERS** that this Action be **DISMISSED WITH PREJUDICE**.

**I. BACKGROUND**

Defendant, Southern States Police Benevolent Association, Inc. ("PBA"), is a 501(c)(5) non-profit, tax-exempt corporation organized and headquartered in Georgia. PBA operates as a labor organization for the welfare of its police officer members to improve working conditions,

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reduce the hazards of law enforcement, and enhance the professionalism of law enforcement. PBA is funded by membership dues and its benefits from those dues include lobbying efforts, endorsement of candidates for office, accidental death benefits, publication of a police magazine, a legal defense benefit, and representation in grievance and disciplinary matters in the administrative context. The legal defense benefit provided as part of the PBA Membership Plan provides, subject to terms and conditions, payment for an attorney to represent the member should a member be involved in a critical incident such as a shooting or sued as a result of actions taken as a result of employment as a law enforcement officer, including criminal investigation or civil litigation.

Plaintiff Stanley is a lieutenant in the Charleston County Sheriff's Office who joined PBA in 1994. Plaintiff Reiter worked for the Charleston County Sheriff's Office from 2002 to 2007 and for the North Charleston Police Department from 2009 to 2016. Plaintiffs filed this lawsuit in 2016, asserting numerous contract and tort claims against PBA. The Circuit Court's Order Certifying Plaintiff Class entered January 3, 2019 states Plaintiffs allege the Plan was actually either (1) a policy of insurance; or (2) a "prepaid legal services plan," neither of which PBA was authorized to sell. Plaintiffs allege PBA did not comply with the legal services plan requirements under South Carolina law because it provided legal defense counsel to its members from a panel of defense attorneys rather than notifying its members they could choose their own attorneys. Plaintiffs further allege PBA failed to disclose to its members the Plan permitted PBA to withhold benefits its members pay for if it determines that the member "has committed an intentional, deliberate, and/or illegal act" (emphasis supplied). Plaintiffs sought injunctive relief and damages, including a refund of member dues or premiums paid. PBA has denied Plaintiffs' allegations.

## **II. PROCEEDINGS IN THE CASE**

Stanley filed his complaint on August 4, 2016, in the Court of Common Pleas for the Ninth Judicial Circuit, Charleston County. In November 2016, an amended complaint was filed, which added Reiter as a named Plaintiff. PBA filed a motion to dismiss, and Plaintiffs filed a motion to strike PBA's answer; the Court denied both motions in July 2017. PBA filed a summary judgment motion, which was denied in November 2017. Plaintiffs filed their motion for class certification on November 13, 2017. On January 3, 2019, following briefing and argument, the Circuit Court entered the Class Certification Order, which certified a class of "[a]ll residents of South Carolina who participated in the Defendant's Legal Defense Benefit Plan by paying 'member dues' to the Defendant in exchange for benefits of said Plan from August 4, 2013, to August 4, 2016."

On February 12, 2019, PBA filed its notice of appeal of the Class Certification Order. The parties briefed PBA's appeal, and the Court of Appeals heard oral argument on the appeal on November 10, 2021. On December 22, 2021, the Court of Appeals entered an order dismissing PBA's appeal for lack of appellate jurisdiction without ruling on the merits of PBA's appeal. *See Donald Stanley and Sean Reiter, Individually and as Class Representatives, v. Southern States Police Benevolent Association, Inc.*, Op. No. 5882 (Ct. App. filed Dec. 22, 2021). PBA filed a petition for certiorari with the South Carolina Supreme Court on March 25, 2022 which is pending. Meanwhile, the parties reached an agreement in principle and, by consent, referred this matter to the undersigned by order of October 19, 2022 to seek to conclude the settlement.

## **III. STANDARD OF REVIEW**

Rules 23(b), (c) and (d)(2), SCRCP, afford the Court the discretion to approve a class action settlement and to direct reasonable notice to the settlement class members. The Court is cognizant that South Carolina appellate decisions "have relied on federal precedent with respect to class action cases, but have also noted the significant differences between the two rules." *Salmonsens v.*

*CGD, Inc.*, 377 S.C. 442, 454-55, 661 S.E.2d 81, 88 (2008) (citing *Littlefield v. S.C. Forestry Comm'n*, 337 S.C. 348, 354, 523 S.E.2d 781, 784 (1999); see also *McGann v. Mungo*, 287 S.C. 561, 570, 340 S.E.2d 154, 159 (Ct. App. 1986) (relying on federal precedent to interpret Rule 23, SCRPC). Accordingly, reliance on federal precedent as a baseline is appropriate in reviewing a motion to approve a class action settlement.

Judicial approval of a proposed settlement ensures that the rights of absent class members are adequately protected. See *In Re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991); *Clark v. Experian Info. Sols., Inc.*, 219 F.R.D. 375, 378 (D.S.C. 2003); see also Rule 23, SCRPC, advisory committee note (“It is necessary to protect the rights of all members of the class.”). It is well established that the law favors class action settlements. See, e.g., *S.C. Nat’l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990).

In assessing a proposed class action settlement, the federal precedent focuses on whether a settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). Courts generally bifurcate the process into two phases. During the preliminary approval phase, the inquiry before the court is whether the terms of the proposed settlement are “within the range of possible approval or . . . whether there is probable cause to give notice of the proposed settlement to class members.” *Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (quoting *Armstrong v. Board of School Directors*, 616 F.2d 305, 314 & n.13 (7th Cir. 1980) (internal citations omitted)); see also *Central Wesleyan College v. W.R. Grace & Co.*, 143 F.R.D. 628, 646 (D.S.C. 1992).

Following preliminary approval, and prior to final approval, the Court conducts a fairness hearing where class members may participate. The Court may approve the proposed settlement after a hearing and only on finding that the proposed settlement fairly and adequately protects the interests of the persons on whose behalf the action is brought or defended. See Rules 23(b) and

(d), SCRCP; *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Practices & Prod. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020).

#### IV. DISCUSSION AND FINDINGS

##### 1. **THE PREREQUISITES OF RULE 23 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE HAVE BEEN SATISFIED.**

Plaintiffs brought this action on behalf of a group of allegedly similarly situated persons.

The Parties<sup>1</sup> have agreed to resolve the claims raised by Plaintiffs on behalf of a Settlement Class that is defined as follows:

**All persons who were members of the PBA between and including the Class Period of August 4, 2013, and August 4, 2016, and (1) who resided in South Carolina and (2) were employed by South Carolina Public Law Enforcement during the Class Period.**

All persons within the Settlement Class who do not request to exclude themselves from the Settlement Class are referred to as Class Members.<sup>2</sup> The Court confirms its previous findings in the Preliminary Approval Order entered February 6, 2023 and finds that the above-captioned action satisfies the applicable prerequisites for class action treatment under Rule 23 of the South Carolina Rules of Civil Procedure. The Settlement Class is so numerous that joinder of all members is not practicable, there are questions of law and fact common to the Settlement Class, Class Members have each claimed at least \$100 in controversy, and Settlement Class Counsel will fairly and adequately protect the interests of the Class.

##### 2. **THE SETTLEMENT IS FAIR, ADEQUATE, REASONABLE, AND WAS BARGAINED FOR AT ARM'S LENGTH.**

<sup>1</sup> Capitalized terms used in this Order correspond to those terms as defined in the Parties' Settlement Agreement.

<sup>2</sup> The Court previously considered the Rule 23, SCRCP, requirements for class certification when it reviewed the Plaintiffs' Motion for Class Certification. The Court finds that the Rule 23 prerequisites for class certification (numerosity, typicality, adequacy of representation, and amount in controversy) are satisfied for the sole purpose of certifying the Settlement Class.

**i. The Settlement Is Fair, Adequate, and Reasonable.**

According to the Settlement Agreement, Class Members who complete and perfect a claim for settlement benefits will receive a pro rata share of the funds deposited in the Settlement Fund, after deduction from the Settlement Fund for Notice and Administration Expenses, Class Counsel's attorneys' fee award, Class Representative Incentives, and other disclosed costs and expenses. The pro rata share also will be based upon the following:

- (a) After receiving a Class Member's signed Notice of Claim Form, the PBA shall determine the number of months that the Class Member was a member of the PBA within the Class Period.
  - (i) Each Class Member who timely returns a signed Notice of Claim Form shall be entitled to receive a payment from the Settlement Fund (a "Settlement Payment"), to be calculated as follows:  
  
*(Months during Class Period claimant was a member of PBA) x \$15*
    - (ii) In the event the claims submitted exceed the amount remaining in the Settlement Fund, each Settlement Payment will be reduced pro rata such that the total amount paid will not exceed the Settlement Fund.
    - (iii) All Settlement Payments will be limited by the amount remaining in the Settlement Fund.
- (b) If a Class Member owes money to the PBA for any reason, including but not limited to the payment of dues, then the amount owed the PBA by such Class Member will be deducted from that Class Member's Settlement Payment.

The total Settlement Amount is \$750,000.00. Payments will be made in accordance with the following schedule:

- a. The PBA will transfer or cause to be transferred Seven Hundred Fifty Thousand (\$750,000.00) dollars into the Settlement Account no later than thirty (30) days after the Effective Date.
- b. Five (5) days after the Effective Date, the Fee and Expense Award shall become payable from the Settlement Fund.

- c. Within thirty (30) days following the Effective Date, the Fund will disburse the Settlement Fund.

The court finds support for the Settlement benefits above, including the timing of payment, is fair and reasonable based upon Defendant's financial status. Moreover, the pro rata distribution, based upon the amounts paid means the Class Members will receive proportional damages, making the Settlement fair among the Class Members. Finally, the Court finds that the consideration to be paid to the Settlement Class is fair and reasonable in light of the complexity, expense and duration of litigation and the risks involved in establishing liability, damages, and in maintaining the class action through trial and appeal.

Furthermore, Settlement negotiations included a mediation presided over by Certified Mediator Tom Traxler, Esquire. The Settlement negotiations were at arm's length and conducted on a parallel track with discovery. As a result, the Court finds the monetary portion of the Settlement to be fair, adequate, and reasonable

**ii. PBA May Properly Retain Any Remaining Settlement Funds.**

During the fairness hearing, the Court questioned the Parties' counsel concerning the disposition of any monies remaining in the Settlement Fund and whether Rule 23(e), SCRPC, might be implicated. The relevant provision states:

Any order, judgment, or approved compromise in a class action under this rule that establishes a process for identifying and compensating members of the class may provide for the disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent of residuals must be distributed to the South Carolina Bar Foundation to support activities and programs that promote access to the civil justice system for low income residents of South Carolina. The court may disburse the balance of any residual funds beyond the minimum percentage to the South Carolina Bar Foundation to any other entity or entities for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive and procedural interests of members of the class.

SCRPC 23(e)(2).

Here, the Parties' Settlement Agreement states if any monies remain after all claims, attorney's fees, expenses, and incentive payments are made, "then the PBA will retain the balance." Settlement Agmt., § 12(e). The Court invited further briefing on this issue.

The Court has reviewed the submissions of the parties, including the Affidavits of lead counsel for both Plaintiffs and Defendant, and finds Rule 23(e) is not implicated by § 12(e) of the Settlement Agreement. Rule 23(e) envisions the creation of a "common fund" whereby the settlement funds are transferred, in trust, to a disinterested third party (such as a claims administrator) to manage the settlement, including dissemination of notice and payment of class member claims, where "residual funds" are held by the third-party administrator. In the Settlement before the Court, there was no "common fund" created because the Settlement funds never left the possession of PBA, which also means there are no "residual funds" held in trust by the administrator; indeed, the Settlement Agreement does not use the terms "common fund" or "residual funds." See *Stanikzy v. Progressive Direct Ins. Co.*, 2022 WL 1801671, \*3 (W.D. Wash. June 2, 2022) (making this distinction).<sup>3</sup>

Here, the retention by PBA of any remaining funds serves the best interests of the Class. PBA is a non-profit organization that exists for the advantage of its law enforcement members. In this case, the Class Members are (with some exception for former members), members of PBA and, therefore, will directly benefit from any funds PBA retains. Stated simply, this Settlement was intentionally structured to provide (i) an immediate benefit to Class Members in the form of a payment paid pursuant to the formula outlined in the Settlement Agreement, and then (ii) a secondary benefit to the Class Members through the PBA's retention of funds for use in

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<sup>3</sup> Rule 23(e) is a codification of the *cy pres* doctrine, which was not recognized at common law in South Carolina – and, for that matter, has never been recognized by the Supreme Court in its original setting of charitable trusts. See *Epworth Children's Home v. Beasley*, 365 S.C. 157, 169, 616 S.E.2d 710, 717 (2005) ("This Court has rejected the doctrine of *cy pres*. . .").

administering the many Class Member benefits it provides to its members. Significant to the court, no Class Members have objected to the Settlement, including the provision permitting PBA to retain its own funds from the Settlement Amount. Accordingly, given the “strong judicial policy in favor of settlements, particularly in the class action context,” *Reed v. Big Water Resort, LLC*, 2016 WL 7438449, \*5 (D.S.C. May 26, 2016) (quotations omitted), the Court finds that Rule 23(e) does not apply to this Settlement.

### 3. SUFFICIENT NOTICE WAS PROVIDED TO THE CLASS.

The notice must be the best practicable, “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15; 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75, 94 S. Ct. 2140, 2151, 40 L. Ed. 2d 732 (1974). The notice should describe the action and the plaintiffs’ rights in it. Additionally, due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an “opt out” or “request for exclusion” form to the court. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S. Ct. 2965, 2974, 86 L. Ed. 2d 628 (1985).

Here, the notice was provided in accordance with the Court’s Preliminary Approval Order. Notice was e-mailed or sent via first class mail to Class Members at addresses maintained by Defendant. The Notice, previously approved by the Court in its Preliminary Order provides Class Members the mechanism to exclude themselves, object to the Settlement, or participate in the Settlement. The Court finds that notice has been given in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies all requirements of Rule 23 and due process.

Further, five (5) members have timely excluded themselves from this settlement (Exhibit A, Aff. of Charles Cordell). The Court approves the requests for exclusion of the five (5) members, and they are not bound by the final judgment in this case.

**4. PLAINTIFFS' (1) COMBINED APPLICATION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND (2) APPLICATION FOR AWARD OF CLASS REPRESENTATIVE INCENTIVES ARE GRANTED.**

The law firms Bland Richter, LLP; Savage Law Firm; and Pierce, Hems, Sloan & Wilson, LLC participated in this litigation and secured settlement on behalf of the Settlement Class. The law firms incurred a total of \$35,222.06 in unreimbursed expenses in connection with the prosecution of this litigation. This litigation has spanned almost seven years since its inception, involved appeals to the South Carolina Court of Appeals and the South Carolina Supreme Court, extensive discovery, depositions, and mediations. Plaintiffs' counsel seek fees of \$250,000, supported by affidavit testimony and evidence. Further, Plaintiffs request incentive payments to the two Class Representatives in the amount of \$10,000 each.

The Court **GRANTS** Plaintiffs' Motion for Award of Attorneys' Fee and Reimbursement of Costs in the amount of \$250,000.00 in fees and \$35,222.06 to be paid five (5) days after the Effective Date as provided in the Settlement Agreement. The Claims Administrator shall send reimbursement for Plaintiffs' expenses and attorneys' fees to Bland Richter, LLP for disbursement.

The Court **GRANTS** Plaintiffs' Motion for Award of Class Representative Incentives. Donald Stanley and Sean Reiter are awarded incentive payments in the amount of \$10,000 each, to be paid five (5) days after the Effective Date.

All settlement payment checks will expire and become non-negotiable 180 days after issuance. A final accounting shall be filed with the Court forty-five (45) days after the expiration

of the 180 days following the sending of the final settlement payments as provided in Section 12.3(g) of the Settlement Agreement.

**5. THIS ACTION IS DISMISSED WITH PREJUDICE.**

The Court incorporates all findings stated on the record at the May 16, 2023, fairness hearing. For those reasons, and for the reasons stated herein, the Court finally approves the Settlement of this Action in accordance with the terms of the Settlement Agreement and finds that the Settlement is fair, reasonable, and adequate in all respects. The Released Claims, as defined in the Settlement Agreement, are hereby finally compromised, settled, released, discharged, and dismissed with prejudice against the Released Parties, as defined in the Settlement Agreement. Class Members and their successors and assigns are hereby permanently barred and enjoined from instituting, commencing, prosecuting, or continuing to prosecute, either directly or indirectly, any Released Claim against any of the Released Parties in any forum.

**6. CONTINUING JURISDICTION**

It is in the best interests of the Parties and the Class Members and consistent with the principles of judicial economy that any dispute between any Class Member and any Released Party which in any way relates to the applicability or scope of the Settlement Agreement or this Final Order of Judgment should be presented exclusively to this Court for resolution by this Court. Therefore, without affecting the finality of this judgment, the Court retains jurisdiction of this settlement, including the administration and consummation of the Settlement. In addition, the Court retains exclusive jurisdiction of the Defendant and each member of the Class are hereby deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of or relating to this Order, the Settlement Agreement or the applicability of the Settlement Agreement.

**V. CONCLUSION**

Based on the foregoing, the Court **GRANTS** Plaintiffs and Defendant's Joint Motion for Approval of Class Action Settlement, **GRANTS** Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Costs, and **GRANTS** Plaintiffs' Motion for Award of Class Representative Incentives. This Action is hereby **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**

**SIGNATURE PAGE TO FOLLOW**



Charleston Common Pleas

**Case Caption:** Donald Stanley , plaintiff, et al VS Southern States Police  
Benevolent Association Inc  
**Case Number:** 2016CP1004062  
**Type:** Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062



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**Document(s) Submitted:** Master/Order Granting Several Motions,Dismiss w/Prejudice Master/Order/Other  
**Filed by or on behalf of:** Mikell Scarborough

This notice was automatically generated by the Court's auto-notification system.

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**The following people were served electronically:**

James Andrew Yoho for Southern States Police Benevolent Association Inc  
John Patrick Turner Norris for Southern States Police Benevolent Association Inc  
Kent Taylor Stair for Southern States Police Benevolent Association Inc  
Daniel Francis Lynch, IV for Donald Stanley et al  
Andrew John Savage, III for Donald Stanley et al  
Eric Steven Bland for Donald Stanley et al  
James Edward Bradley for Southern States Police Benevolent Association Inc  
Carl Everette Pierce, II for Donald Stanley et al  
Ronald L. Richter, Jr. for Donald Stanley

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Barry Goheen for Southern States Police Benevolent Association Inc