

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 17-cv-0304-WJM-NRN

PEACE OFFICERS' ANNUITY AND BENEFIT FUND OF GEORGIA, individually and on behalf of all others similarly situated; and
JACKSONVILLE POLICE AND FIRE PENSION FUND, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

DAVITA INC.;
KENT J. THIRY;
JAMES K. HILGER; and
JAVIER J. RODRIGUEZ,

Defendants.

**ORDER GRANTING LEAD PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL
OF DISTRIBUTION OF NET SETTLEMENT FUND**

WHEREAS, in the above-captioned action (the "Action"), the Court-appointed Claims Administrator has completed the administration of the Settlement Fund, including the processing of all submitted Claim Forms, and is now prepared, with the approval of the Court, to distribute the net proceeds of the Settlement;

WHEREAS, on September 18, 2020, the parties entered into a Stipulation and Agreement of Settlement ("Settlement Agreement") (ECF No. 103-1);

WHEREAS, on October 27, 2020, the Court issued a written order granting Lead Plaintiffs' Motion for Preliminary Approval of Class Action Settlement that, among other things, preliminarily approved the Settlement Agreement as fair and reasonable (ECF No. 104);

WHEREAS, the Court held a Settlement Fairness Hearing on March 30, 2021 and issued an oral ruling granting Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF No. 114);

WHEREAS, on April 13, 2021, the Court issued its Order Granting Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF No. 118) and approved and retained jurisdiction over the interpretation and implementation of the Settlement Agreement, including the administration and distribution of the Net Settlement Fund;

WHEREAS, on July 15, 2021, the Court issued its Order Granting Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (ECF No. 122);

WHEREAS, on August 9, 2021, the Court granted the Parties' Joint Motion for Entry of Judgment under Rule 58(d) (ECF No. 124); and Final Judgment was entered on the same day (ECF No. 125);

WHEREAS, as referred to in the Order Granting Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 104), the deadline for Settlement Class Members to submit claims to participate in a distribution from the Net Settlement Fund was March 20, 2021;

WHEREAS, as reflected in the Declaration of Melissa Mejia in Support of Lead Plaintiffs' Motion for Approval of Distribution of Net Settlement Fund ("Mejia Dec." or "Mejia Declaration"), the Claims Administrator has completed the process of reviewing all submitted Claims, and has made a recommendation as to the eligibility of each submitted Claim;

WHEREAS, Lead Plaintiffs and the Claims Administrator now seek authorization to distribute the Net Settlement Fund to Authorized Claimants; and

WHEREAS, after reviewing Lead Plaintiffs' Unopposed Motion for Approval of Net Settlement Fund, the Memorandum in support thereof, the Mejia Declaration, and all other exhibits and papers submitted in support thereof, the Court has determined that good cause exists for the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Lead Plaintiffs' Unopposed Motion for Approval of Distribution Plan (ECF No. 128) is GRANTED.
2. This Order incorporates by reference the definitions in the Settlement Agreement and the Mejia Declaration and all capitalized terms used in this Order shall have the same meanings as defined in the Stipulation or in the Mejia Declaration.
3. This Court has continuing jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.
4. Lead Plaintiffs' proposed plan for distribution of the Net Settlement Fund to Authorized Claimants is APPROVED. Accordingly:
 - a) The administrative recommendations of the Court-approved Claims Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq"), to accept the Timely Eligible Claims stated in Exhibit D-1 to the Mejia Declaration and the Late But Otherwise Eligible Claims stated in Exhibit D-2 to the Mejia Declaration, are adopted;
 - b) The Claims Administrator's administrative recommendations to reject wholly ineligible Claims, as stated in Exhibit D-3 to the Mejia Declaration, including the Disputed Claims discussed in paragraph 28 of the Mejia Declaration and set forth in

Exhibit C to the Mejia Declaration, are adopted;

c) Epiq is directed to conduct an Initial Distribution of the Net Settlement Fund, after deducting all payments previously allowed and the payments approved by this Order, and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, while maintaining a 5% reserve from the Net Settlement Fund to address any tax liability and claims administration-related contingencies that may arise as stated in paragraph 39(a) of the Mejia Declaration.

Specifically, as stated in paragraph 39(a) of the Mejia Declaration: (1) Epiq will calculate award amounts for all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now. In accordance with the Court-approved Plan of Allocation, Epiq will calculate each Authorized Claimant's pro rata share of the Net Settlement Fund as stated in subparagraph 39(a)(i) of the Mejia Declaration;

(2) Epiq will, in accordance with the terms of the Court-approved Plan of Allocation, calculate the total amount each Authorized Claimant would recover in accordance with the calculations stated above and then it will eliminate from the distribution any Authorized Claimant whose total pro rata share of the Net Settlement Fund is less than \$10.00. These Claimants will not receive any payment from the Net Settlement Fund and will be so notified by Epiq;

(3) After eliminating Claimants who would have received less than \$10.00, Epiq will calculate the pro rata shares of the Net Settlement Fund for Authorized Claimants who would have received \$10.00 or more (the "Distribution Amount");

(4) Authorized Claimants whose Distribution Amount calculates to less than

\$100.00 under subparagraph (c)(3) above will be paid their full Distribution Amount in the Initial Distribution (“Claims Paid in Full”). These Authorized Claimants will get no additional funds in subsequent distributions;

(5) 95% of the remaining balance of the Net Settlement Fund will be distributed pro rata to Authorized Claimants whose Distribution Amount calculates to \$100.00 or more under subparagraph (c)(3) above. The remaining 5% of the Net Settlement Fund will be held in reserve (the “Reserve”) to address any tax liability and claims administration-related contingencies that may arise. To the extent the Reserve is not depleted, the remainder will be distributed in the “Second Distribution” described in subparagraph (f) below;

d) In order to encourage Authorized Claimants to deposit their checks promptly, all Distribution checks will bear the following notation: “DEPOSIT PROMPTLY. VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT NEGOTIATED WITHIN 90 DAYS OF DISTRIBUTION”;

e) Authorized Claimants who do not deposit their Initial Distribution checks within the time allotted or on the conditions stated in the Mejia Declaration will irrevocably forfeit all recovery from the Settlement, and the funds allotted to all of these stale-dated checks will be available to be distributed to other Authorized Claimants in the Second Distribution. Similarly, Authorized Claimants who do not deposit their second or subsequent distributions (should such distributions occur) within the time allotted or on the conditions stated in the Mejia Declaration will irrevocably forfeit any further recovery from the Net Settlement Fund;

f) After Epiq has made reasonable and diligent efforts to have Authorized

Claimants deposit their Initial Distribution checks, as provided in the Mejia Declaration, but not earlier than nine months after the Initial Distribution, Epiq will, after consulting with Lead Counsel, conduct a second distribution (the “Second Distribution”), in which any amount remaining in the Net Settlement Fund after the Initial Distribution (including from the Reserve and the funds for all void stale-dated checks), after deducting Epiq’s fees and expenses incurred in administrating the Settlement for which it has not yet been paid (including Epiq’s estimated costs of the Second Distribution), and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to all Authorized Claimants in the Initial Distribution who deposited their Initial Distribution check and are entitled to receive at least \$10.00 from the Second Distribution based on their pro rata share of the remaining funds;

g) Additional distributions, after deduction of costs and expenses as described above and subject to the same conditions, may occur thereafter in six-month intervals until Lead Counsel, in consultation with Epiq, determines that further distribution is not cost-effective;

h) At such time as Lead Counsel, in consultation with Epiq, determines that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be donated among the Children’s Hospital Colorado Foundation, the Investor Protection Trust, and the Legal Aid Foundation of

Colorado;

i) In order to allow the full and final distribution of the Net Settlement Fund, it is necessary to bar any further claims received after July 31, 2021 from eligibility in the distribution of the Net Settlement Fund; and

j) Epiq will destroy any paper copies of the Claim Forms, and all related paper documents, one year after distribution of the Net Settlement Fund is complete, and any electronic copies of the same three years after initial distribution of the Net Settlement Fund is complete.

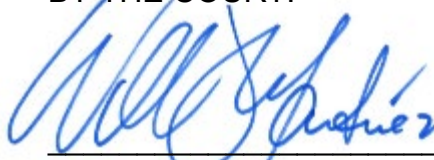
5. Epiq shall be paid the outstanding balance of its fees and expenses in connection with the services performed, and to be performed, in administering the Claim Forms and distributing the Net Settlement Fund in the total amount of \$552,940.09 out of the Settlement Fund.

6. All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement fund, are hereby released and discharged from any and all claims arising out of that involvement, and all Settlement Class Members and other Claimants, whether or not they receive payment from the Net Settlement Fund, are hereby barred from making any further claims against the Net Settlement Fund, Lead Plaintiffs, Lead Counsel, the Claims Administrator, the Escrow Agent, or any other agent retained by Lead Plaintiffs or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund, or any other person released under the Settlement beyond the amounts allocated to Authorized Claimants.

7. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and any other and further relief that this Court deems just and proper.

Dated this 28th day of March, 2022.

BY THE COURT:



William J. Martinez
United States District Judge