

**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 JOINT MOTION FOR ENTRY OF JUDGMENT
UNDER RULE 58(d)**

This matter is before the Court on the Joint Motion for Entry of Judgment Under Rule 58(d) ("Motion"). (ECF No. 123.) For the following reasons, the Motion is granted.

The parties entered into a Stipulation and Agreement of Settlement ("Settlement Agreement") dated September 18, 2020, that, subject to the approval of this Court, provided for a complete dismissal with prejudice of the claims asserted against Defendants on the terms and conditions set forth in the Settlement Agreement. (See, e.g., ECF No. 103-1 at ¶ 5.7 ("The Judgment shall [] provide for the dismissal with prejudice of the Action against the Defendant Releasees. . . .").)

On October 27, 2020, the Court issued a written order granting the 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.)

The Court held a Settlement Fairness Hearing on March 30, 2021, and issued an oral ruling granting the Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation. (ECF No. 114.) Subsequently, on April 13, 2021, the Court issued a written order that stated the reasons for the Court's decision to grant the Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and approve the Settlement Agreement. (ECF No. 118.) The Court approved and retained jurisdiction over the interpretation and implementation of the Settlement Agreement. (*See id.* at 15.)

On July 15, 2021, the Court granted Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses. (ECF No. 122.) The parties state that while Lead Counsel will continue to expend additional time in connection with the settlement administration process, Lead Counsel will not be making any further requests for attorneys' fees or reimbursement of Litigation Expenses in connection with the settlement administration process. (ECF No. 123 at 2.)

The parties state that pursuant to the Settlement Agreement, once the claims administration is complete, Lead Plaintiffs will apply to the Court for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any administration fees and expenses incurred by the Claims Administrator associated with the administration of the Settlement from the Escrow Account; and (c) directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow

Account. (ECF No. 123 at 3; *see, e.g.*, ECF No. 103-1 at ¶ 4.11.) According to the parties, the Claims Administrator, under Lead Counsel’s supervision, is currently evaluating the validity of the submitted claims, including communicating with claimants in writing who have submitted deficient Claim Forms, to give the claimants the chance to remedy any curable deficiencies. (ECF No. 123 at 3; *see, e.g.*, ECF No. 103-1 at ¶ 4.9.) Thus, in consultation with the Claims Administrator, Lead Plaintiffs anticipate that they will file their motion requesting entry for a Class Distribution Order in approximately four months. (ECF No. 123 at 3.)

Federal Rule of Civil Procedure 58(a)(1) provides that “every judgment and amended judgment must be set out in a separate document,” subject to certain exceptions not applicable to this case. Furthermore, the Conditions of Settlement, as agreed to by the parties in the Settlement Agreement, include: “entry of the Judgment” and “the Judgment becoming Final.” (ECF No. 103-1 at ¶ 8.1.) The parties state that the Settlement Agreement is fully executed and finalized, and in the process of being carried out through claims administration, subject to these necessary agreed-upon conditions. (ECF No. 123 at 3.)

Given the foregoing, the Court finds that this case is due to be dismissed with prejudice and that judgment should enter under Rule 58(d).

For the reasons stated above, the Court ORDERS:

1. The Joint Motion for Entry of Judgment Under Rule 58(d) (ECF No. 123) is GRANTED;
2. This case is DISMISSED WITH PREJUDICE; and
3. The Clerk shall enter judgment in this action in conformity with this and the

Court's pertinent prior Orders.

Dated this 9th day of August, 2021.

BY THE COURT:



William J. Martinez
United States District Judge