

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 18-CVS-9565

2018 MAR -2 A 9:49

ERICA LEWIS and JOSEPH LEWIS, on)
behalf of themselves and all others)
similarly situated,)

WAKE CO., C.S.C.
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Plaintiffs,)

v.)

BRIDGE PROPERTY)
MANAGEMENT, LLC, BRIDGE)
PROPERTY MANAGEMENT, L.C.,)
ROC III NC MISSION CAPITAL)
CROSSING, LLC d/b/a MISSION)
CAPITAL CROSSING,)

Defendants.

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF HIS
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT,
CERTIFICATION OF SETTLEMENT CLASSES, APPROVAL OF CLASS NOTICE
AND SCHEDULING OF FINAL APPROVAL HEARING**

Plaintiffs Erica Lewis and Joseph Lewis (“Plaintiffs”), on behalf of themselves and all others similarly situated, have entered into a Settlement Agreement with Bridge Property Management, LLC, Bridge Property Management, L.C., and ROC III NC Mission Capital Crossing, LLC d/b/a Mission Capital Crossing (collectively “Bridge”). Plaintiff is moving for (1) preliminary approval of a proposed class action settlement (the “Settlement”), (2) certification of the Settlement Classes for purposes of the proposed settlement, (3) appointment of Whitfield Bryson & Mason LLP and Maginnis Law PLLC as Class Counsel, (4) an order directing that notice of the proposed settlement be sent to the Settlement Classes, and (5) the scheduling of a final approval hearing on the proposed settlement.

I. INTRODUCTION

The Settlement reached by the parties should be preliminary approved because it provides meaningful and substantial benefits to Settlement Class members and is based upon Plaintiffs’ good faith assessment of the strengths and weaknesses of the claims. Settlement Class members can receive substantial benefits under the Settlement. First, Collection Letter Class members are eligible to receive \$50 for each Collection Letter sent, up to \$150. Second, Eviction Fee Class members are eligible to receive approximately \$604, subject to a pro-rata increase if the Collection Letter Class is under-subscribed. If any amounts allocated cannot be evenly distributed among all Settlement Class members, such amounts shall be allocated to the *cy pres* recipient(s) as ordered by the Court. In addition, any amounts unclaimed for the Settlement Class shall be allocated to the *cy pres* recipient(s) as ordered by the Court.

In determining whether to preliminarily approve the Settlement, the Court need only determine whether the Settlement appears to fall within a range of reasonableness, that is, whether it was the product of arm’s length bargaining free from collusion. Such a finding

justifies the Court to order that notice be provided to class members and allow them to comment on the Settlement at the Final Approval Hearing. The Settlement exceeds this standard. Accordingly, preliminary approval should be granted and notice of the Settlement and Final Approval Hearing should be disseminated to the members of Settlement Classes.

II. SUMMARY OF THE LITIGATION

Plaintiffs filed a putative class action complaint against Bridge in the General Court of Justice, Superior Court Division, in Wake County on July 30, 2017 (“the Action”). Plaintiffs sought monetary, equitable, and injunctive relief on behalf of the classes for violating the North Carolina Residential Rental Agreements Act (N.C.G.S. § 42-46), the North Carolina Debt Collection Act (N.C.G.S. § 75-50, *et seq.*), and the North Carolina Unfair and Deceptive Trade Practices Act (N.C.G.S. § 75-1.1, *et seq.*). On August 15, 2017, Bridge answered Plaintiffs’ complaint and moved to dismiss, claiming lawful authority to charge eviction-related fees.

On June 25, 2018, an amendment to N.C.G.S § 42-46 was ratified and made into law (the “Amendment”). The Amendment added two subsections to § 42-46 – (i) and (j) – which authorized landlords to charge and recover out-of-pocket expenses including Eviction Fees and to include these amounts in the amount required to cure a default.

The Parties have conducted a thorough examination of the facts and law relating to the asserted and potential claims and defenses in the Action. The Parties have engaged in extensive, arm’s length negotiations regarding the settlement of this Action, assisted by a respected mediator, retired North Carolina Court of Appeals Judge Douglas McCullough.

The terms of the proposed settlement is fair, adequate, and reasonable, the proposed classes meet all requirements for certification for purposes of settlement, and the proposed notice provides the best practicable notice and comports with due process. Accordingly, Plaintiffs

requests that the Court enter the proposed Preliminary Approval Order, which: (1) grants preliminary approval of the proposed Settlement; (2) certifies the two Settlement Classes contemplated by the Settlement Agreement; (3) appoints Whitfield Bryson & Mason LLP and Maginnis Law, PLLC as Class Counsel; (4) orders the proposed Notice be sent to the Settlement Classes; and (5) schedules a final approval hearing to consider final approval of the proposed Settlement Agreement as well as approval of attorneys' fees, costs, and service award to the Class Representative.

III. TERMS OF THE PROPOSED SETTLEMENT

The settlement's key terms are as follows:

A. Certification of Settlement Classes

The settlement provides significant benefits to two classes: the Collection Letter Class and the Eviction Fee Class. Collection Letter Class members are defined as all natural persons who (a) at any point between July 30, 2014 and June 25, 2018, (b) resided in any of the properties in North Carolina owned and/or managed by Defendant and (c) received a Collection Letter. A Collection Letter is defined as any letter sent by Defendants to Settlement Class members during the Relevant Time Period that asserts that Settlement Class Members will either (a) be charged with Eviction Fees upon the filing of a summary ejectment action or (b) that Eviction Fees are owed. An Exemplar Collection Letters is attached to the settlement agreement as Exhibits A. The Eviction Fee Class is defined as all natural persons who (a) at any point between July 30, 2014 and June 25, 2018, (b) resided in any of the properties in North Carolina owned and/or managed by Defendants and (c) were charged and (d) paid Eviction Fees.

B. Settlement Benefits to the Settlement Classes

Settlement Class members will receive benefits based on their class membership, either Monetary Relief and/or Non-Monetary Relief. Monetary Relief is composed of \$510,000.00 in cash.

Collection Letter Class members are eligible to receive \$50 for each Collection Letter received from Defendants, up to a total of \$150. Collection Letter Class members are allotted \$35,000.00 from the Cash Fund. Collection Letter Class members' benefits are available on a claims-made basis. Any amounts unclaimed from the \$50,500.00 allotted for the Collection Letter Class shall be allocated to the Eviction Fee Class.

Defendants' records demonstrate those individuals who were charged and actually paid Settlement Class to Defendants during the Relevant Time Period. Accordingly, members of the Settlement Class shall receive compensation directly without the submission of a claim form. Settlement Class members shall receive approximately \$604.00, subject to pro rata increase if the Collection Letter Class is undersubscribed. If any amounts allocated pursuant to this Section cannot be evenly distributed among all Settlement Class members, such amounts shall be allocated to the *cy pres* recipient(s) as ordered by the Court.

C. Appointment of Class Representative and Class Counsel

Plaintiffs and their counsel are adequate under Rule 23. There are no conflicts between their interests and the interests of the proposed Settlement Classes. The parties agree that Plaintiff should be appointed Class Representative. The parties have further agreed that Edward H. Maginnis and Karl S. Gwaltney of Maginnis Law, PLLC, and Scott C. Harris and Patrick M. Wallace of Whitfield Bryson & Mason LLP should be appointed class counsel ("Class Counsel").

D. Administration of Notice and Claims

Angeion Group (“Angeion” or “Settlement Administrator”) will act as the Settlement Administrator to oversee the administration of the Collection Letter and Eviction Fee Classes. All reimbursable notice and administration expenses incurred will be paid pursuant to the Settlement Agreement. A fund will be established by the Settlement Administrator for the purposes of depositing the Cash Fund for payment of all notice and administration costs and for issuing money to Settlement Class members. The cost of notice and administration is approximately \$45,000, which will be paid to the Settlement Administrator from the Cash Fund.

As set forth in the Settlement Agreement, Defendants, in cooperation with Class Counsel, has generated and furnished a class list with Collection Letter and Eviction Fee Class members’ information. Within 14 days after preliminary approval, the Settlement Administrator will use this information to send notice of the settlement either by email (where available) or first-class mail. The Claims Administrator will also establish a settlement website with pertinent documents, including the Long Form Notice.

Within twenty-one (21) calendar days from the Settlement’s Effective Date, Defendants, or its insurers, will pay to the Settlement Administrator the Cash Fund, less the amounts already paid for the costs of notice and claims administration, less any amounts awarded in attorneys’ fees, costs, and expenses, awarded service award, and any additional amounts awarded to the Claims Administrator for the costs of notice and claims administration. Defendants will separately pay Class Counsel any awarded amounts in attorneys’ fees, costs, and expenses, and service award for Plaintiff.

Forty-two (42) days after the Claims Period ends the Claims Administrator shall disburse all approved amounts to the Settlement Class members. Any disbursement checks not cashed

within 6 months shall be disbursed to a Court-approved *cy pres* recipient. Class Counsel will request the *cy pres* recipient to be the North Carolina Advocates for Justice.

E. Attorneys' Fees and Service Awards

Subject to the approval of the Court, attorneys' fees, costs, and expenses for Class Counsel will be paid by Defendant separately. Defendant has agreed to not oppose Class Counsel's fee request of one-third of the Settlement Fund, plus reimbursements of costs and expenses. In addition, Class Counsel will apply for, and Defendant will not oppose, a service award of \$2,5000 for the Plaintiffs for a total of \$5,000. The parties did not discuss the issue of attorneys' fees and expenses or service award until after reaching agreement on the Settlement Class Member benefits. *See* Affidavit of Scott C. Harris. Plaintiff will file a separate motion for approval of attorneys' fees and costs in accordance with the proposed schedule discussed *infra*.

F. Release

Upon reaching the Effective Date, each Settlement Class member who has not timely opted out shall be deemed to have released Defendant from all claims relating to the charging or threatening to charge Eviction Fees.

IV. THE COURT SHOULD APPROVE THE SETTLEMENT

Under Rule 23(c) of the North Carolina Rules of Civil Procedure, a "class action shall not be dismissed or compromised without the approval of the judge." Courts considering a proposed settlement under Rule 23, or its federal law counterpart, typically engage in a three-step process. First, the Court determines whether the proposed settlement merits preliminary approval. Second, the Court directs that notice of the proposed settlement be distributed to the settlement class, thereby providing class members with the opportunity to object to the settlement. Third, the Court evaluates whether final approval of the settlement is warranted and, if so, grants final

approval. See Manual for Complex Litigation, Fourth Ed. (“MCL 4th”) § 21.632; N.C. Gen. Stat. § 1A-1, Rule 23(c); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 622 (1997).

A. The Settlement Merits Preliminary Approval

1. Legal Standard for Preliminary Approval

The preliminary approval process is the Court’s initial assessment of the proposed settlement, the purpose of which is to determine (1) whether the proposed settlement is within the range of reasonableness; (2) whether it is worthwhile to provide notice to the class of the terms and conditions of the settlement; and (3) whether to schedule a final approval hearing. 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* §11.25 (4th ed. 2002). The question at the preliminary approval stage is thus whether the settlement appears to be within the range of possible approval and was “[t]he result of good-faith bargaining at arm’s length, without collusion.” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991); see also *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975). This standard has been adopted in North Carolina. See *Ehrenhaus v. Baker*, 216 N.C. App. 59, 73, 717 S.E.2d 9, 19 (2011) (stating that the purpose of preliminary approval is “to determine whether the proposed settlement is within the range of possible approval or, in other words, whether there is probable cause to notify the class of the proposed settlement”) citing *Horton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (internal quotation omitted).

2. The Proposed Settlement Meets the Standard for Preliminary Approval

In granting preliminary approval, a court may consider a number of factors, no one of which is determinative. The relevant factors include: whether the settlement has no obvious deficiencies and otherwise falls within the range of possible approval, whether it unreasonably grants preferential treatment to the plaintiff or segments of the class, and whether it appears to be

the product of serious, informed and non-collusive negotiations. MCL 4th § 21.631. If the settlement survives scrutiny under these criteria, the Court should direct that notice of a final approval hearing be given to class members, at which time arguments and evidence may be presented in support of and (to the extent there are any objectors) in opposition to the settlement. *Id.*, §§ 21.632, 21.633.

i. *The Settlement Has No Obvious Deficiencies and is Within the Range of Reasonableness*

It is well-established that the public interest favors settling litigation. *See Hardin v. KCS Int'l, Inc.*, 682 S.E.2d 726, 737–38 (N.C. Ct. App. 2009). Not only do settlements conserve judicial resources, but they are the preferred method of resolving legal disputes because they reflect the collective judgment of the litigants, who are in the best position to evaluate the strengths and weaknesses of their legal positions. *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (quotation omitted). Indeed, most courts recognize that the opinion of experienced counsel supporting the settlement is entitled to considerable weight. *See, e.g., Reed v. GMC*, 703 F.2d 170, 175 (5th Cir. 1983) (“In reviewing proposed class settlements, a trial judge is dependent upon a match of adversary talent because he cannot obtain the ultimate answers without trying the case.”). Against this backdrop, preliminary approval of a settlement is warranted when there is “probable cause” to believe that the settlement is fair, reasonable and adequate and that the Class should be notified. *Ehrenhaus*, 216 N.C. App. at 73, 717 S.E.2d at 19.

The Settlement resolves the parties’ legal disputes in a reasonable manner. The Settlement provides a guaranteed payment to all Settlement Class members. Eviction Fee Class members will automatically receive approximately \$604.00, subject to pro rata increase.

Collection Letter Class members will receive \$50 for each Collection Letter received, up to \$150, subject to pro rata reduction based on class member participation.

Settlement Class members will be able to obtain their benefits relatively quickly, rather than waiting several more years to see whether this litigation, if not settled, would provide any relief. Further, the Settlement reflects Class Counsel's assessment of the strengths and weaknesses of both classes, as well as the amount of damages class members could expect to receive from a favorable verdict. Therefore, the Settlement is within the range of reasonableness.

ii. *The Settlement Does Not Unreasonably Treat Segments of the Class Differently*

The Settlement provides reasonable benefits to the Settlement Classes members. Eviction Fee Class members actually paid approximately \$604.00. Collection Letter Class members¹, on the other hand, are those who received a letter threatening to charge Eviction Fees, or claiming that Eviction Fees are owed, but did not pay any additional amounts. Accordingly, Collection Letter Class members shall receive a lesser amount, \$50 per letter received up to \$150, subject to pro rata reduction based on class member participation. In addition, the potential existed for the Collection Letter Class to absorb the entirety of the Cash Fund due to the large size of the Collection Letter Class; accordingly, this class shall be allotted a total of \$35,000 from the Cash Fund. If this amount is undersubscribed, then any remaining amounts will be distributed pro rata to the Eviction Fee Class members.

¹ Eviction Fee Class Members can also be Collection Letter Class members.

iii. *The Settlement is the Product of Non-Collusive Negotiations*

The Settlement was unquestionably “the result of good-faith bargaining at arm’s length, without collusion.” *Jiffy Lube*, 927 F.2d at 159. Plaintiff’s counsel has extensive experience in litigating claims similar to those asserted in this case. *See* Exhibits 2-3 to Harris Aff.

Prior to reaching an agreement, each side was able to independently assess and weigh the costs and risks of proceeding to trial, as well as the relative strengths and weaknesses of their respective claims and defenses. The discovery taken by all parties confirmed to the satisfaction of their counsel that the proposed settlement is fair. At each step of the Action the parties’ relationship has always been adversarial. The Settlement itself was the product of negotiations with mediator ret. Judge McCullough, and then subsequent discussions after there was a dispute on the potential number of class members and alleged violations of the class members. The proposed Settlement was clearly the product of non-collusive negotiations.

V. THE COURT SHOULD PRELIMINARILY CERTIFY THE SETTLEMENT CLASSES

In order to certify a class under Rule 23 of the North Carolina Rules of Civil Procedure, Plaintiff must establish: (1) the existence of a class (i.e. that shared issues of law or fact predominate over individual issues); (2) the named representatives are adequate representatives (i.e. they will fairly and adequately represent the class, there is no conflict of interest between the named representatives and the class, and the named parties have a genuine personal interest in the outcome of the case); (3) class members are so numerous to make joinder impractical; (4) adequate notice can be given to the class; and (5) a class action is superior to individual actions. *Crow*, 319 N.C. at 282, 354 S.E.2d at 465; *see also Faulkenbury*, 345 N.C. at 697, 483 S.E.2d at 431. These class certification requirements are properly considered when determining whether to certify a class for settlement purposes. *See, e.g., Nakatsukasa v. Furiex Pharms., Inc.*, 2015

NCBC 68, at ¶¶ 10-15 (N.C. Super Ct. July 1, 2015); *In re Newbridge Bancorp S'holder Litig.*, 2016 NCBC 87, at ¶ 37 (N.C. Super Ct. Nov. 22, 2016).

Plaintiffs' proposed Settlement Classes satisfy all requirements under Rule 23. Both classes share similar issues of fact and law. The Collection Letter Class members all share the same fact pattern: they were tenants at a property owned and/or managed by Defendants when they received a Collection Letter. Eviction Fee Class members' similar issue is whether they were charged and paid Eviction Fees in violation of N.C. Gen. Stat. § 42-46. Both classes also share the same legal issue: whether threatening to charge and charging Eviction Fees violates the North Carolina Debt Collection Act and the North Carolina Unfair and Deceptive Trade Practices Act.

Plaintiffs are adequate class representatives for both classes. Plaintiffs both received Collection Letters from one of Defendants' properties and were charged and paid Eviction Fees. As such, they have a genuine personal interest in the outcome of the case. Plaintiffs participated in Class Counsel's pre-suit investigation, assisted with discovery, and remained in contact throughout the mediation. As such, Plaintiffs have demonstrated their devotion to the prosecution of this case and to the Settlement Classes.

Settlement Class members are too numerous to make joinder possible, and a class action is superior to individual litigation in this context. Settlement Class members count into the hundreds, making them too numerous for joinder. Additionally, given the relatively low actual damages figure, it is unlikely that, absent a class action, these claims would be pursued as individual cases. Indeed, Class Counsel is aware of no other attorneys who are prosecuting similar cases in North Carolina.

Finally, Class Counsel has, with the assistance of the Claims Administrator, developed a notice plan that will provide actual, direct notice to nearly all members in the class. *See Jeter Affidavit*.

VI. THE COURT SHOULD APPROVE THE NOTICE PLAN

A. The Notice Plan Will Provide the Best Practicable Notice to Settlement Class Members

Under Rule 23(c) of the North Carolina Rules of Civil Procedure, notice of a proposed settlement “shall be given to all members of the class in such a manner as the judge directs.” The rule does not set forth the contents of the notice, which are “dictated by ‘fundamental fairness and due process.’” *Frost v. Mazda Motor of Am., Inc.*, 353 N.C. 188, 197, 540 S.E.2d 324, 330 (2000) (quoting *Crow*, 319 N.C. at 283, 354 S.E.2d at 463). “The trial court should require that the best notice practical under the circumstances be given to class members. Such notice should include individual notice to all members who can be identified through reasonable efforts, but it need not comply with the formalities of service of process.” *Crow*, 319 N.C. at 283-84, 354 S.E.2d at 466.

Settlement Class members will receive the best notice practicable under the proposed notice plan because Settlement Class members will directly receive notice of the Settlement. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974) (“the express language and intent of [Federal Rule of Civil Procedure] 23 (c)(2) leave no doubt that individual notice must be provided to those class members who are identifiable through reasonable effort.”). Under the Settlement, Settlement Class members will receive either an email (if available) or a postcard containing notice of the settlement.

The Settlement Notice and Claim Form will adequately apprise Settlement Class members of the Settlement and provide the means for them to apply for its benefits. The

Settlement Notice will set forth a summary of the settlement terms; an explanation of the persons and claims being released under the Settlement; a description of the Settlement Classes; the date, time, and location of the Final Approval Hearing; a statement of Settlement Class members' rights to appear and object and the procedures that must be followed to be heard; a statement that Class Counsel intends to petition for a payment of attorneys' fees and expenses; and whom to contact for more information about the Settlement. The Claim Form will be written in a short and plain manner that can be easily followed, and will be in substantially the same form as Exhibit 2 to the Settlement Agreement. The Settlement Notice will be in a substantially similar form as those attached as Exhibits to the Settlement Agreement.

In addition to the direct notice discussed above, the Claims Administrator will create a website which provides key information about the Settlement. Class members will be able to use the settlement website to access the Settlement Notice and the Claim Form. The notice plan's blend of direct notice and the establishment of a settlement website will achieve the best notice practicable to Settlement Class members as required by Rule 23 of the North Carolina Rules of Civil Procedure.

B. A Final Approval Hearing Should be Scheduled

This Court should schedule a Final Approval Hearing because the Settlement is within the range of reasonableness and the notice plan provides the best practicable notice to Settlement Class members. Plaintiff proposes the following schedule of events leading to the final approval hearing:

Item	Deadline
Dissemination of Notice to Class Members	Within fourteen (14) days following the entry of the preliminary approval order.
Deadline to File Motions for Final Approval	Seven (7) days before the Final Approval

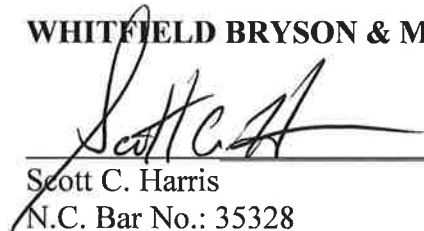
And Award of Attorneys Fees	Hearing
Last day for Settlement Class Members to Object to the Settlement	Fifteen (15) days after the Notice Period.
Final Approval Hearing	No earlier than sixty (60) days after entry of Preliminary Approval Order.

VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court to: (1) preliminarily approving the proposed Settlement set forth in the Stipulation; (2) preliminarily certifying two Settlement Classes described *infra*; (3) approving the form and manner of notice set forth herein, and (4) setting a hearing date for final approval of the proposed Settlement and corresponding interim deadlines for dissemination of notice and for objections by class members; and to grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 2nd day of March, 2020.

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served upon all counsel of record by mailing a copy thereof to this address indicated below with the proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Postage Service in Raleigh, NC.

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