

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 05-23037-CIV-JORDAN/O'SULLIVAN

**FLORIDA PEDIATRIC SOCIETY/THE
FLORIDA CHAPTER OF THE AMERICAN
ACADEMY OF PEDIATRICS; FLORIDA
ACADEMY OF PEDIATRIC DENTISTRY,
INC., et al.,**

Plaintiffs,

vs.

ELIZABETH DUDEK, et al.,

Defendants.

**ORDER APPROVING SETTLEMENT, STAYING PROCEEDINGS,
and ADMINISTRATIVELY CLOSING CASE**

The Plaintiffs, Florida Pediatric Society, *et al.*, have moved for approval of the Settlement Agreement between the parties that was attached as Exhibit A to the Plaintiffs' Motion, D.E. 1399. After conducting a hearing on June 28, 2016, reviewing all papers submitted by the parties and others, and being otherwise fully informed in the matter, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Reasonable notice of the Settlement Agreement and this Motion was provided to all class members in accordance with this Court's previous order, D.E. 1393. This notice, which included publication in 13 different newspapers, twice in each, at one-week intervals, and publication on various websites, fully satisfied the requirements of Due Process and Rule 23 of the Federal Rules of Civil Procedure.

2. The Court finds that the Settlement Agreement is fair, reasonable, and adequate. Applying the test provided by the Eleventh Circuit, the Court has considered: "(1) the likelihood

of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1240 (11th Cir. 2011). The Court finds that this Settlement Agreement avoids significant complexity, expense, risks, and uncertainty associated with further litigation while providing substantial relief for the benefit of the class. The settlement contains provisions that address each of the substantive areas identified in this Court’s prior findings after an extensive trial, with the objective of the Florida Medicaid program meeting national norms for medical and dental care. The Settlement, in providing for increased remedial measures if interim benchmarks are not attained, and in providing for a return to court in the event the Agreement is materially breached, provides substantial redress for the plaintiff class. Moreover, the Settlement comes at a stage in the proceedings sufficiently advanced for all parties, their counsel, and this Court to meaningfully evaluate the Agreement. The Court further finds that no class member (nor any parent or guardian of a class member) has objected to the Settlement Agreement. One physician expressed concerns about how the Settlement Agreement would provide for reimbursement of non-board-certified physicians and for nurse practitioners and physician assistants, but after consideration, I find that these concerns do not undermine the fairness, reasonableness, and adequacy of the settlement agreement.

3. This Court further finds that the Settlement Agreement was negotiated at arms’ length, after extensive mediation, under the supervision of Magistrate Judge McAliley, and by experienced counsel, agency representatives, and physicians and dentists representing the best interests of all parties. The Settlement Agreement is not the product of fraud or collusion.

4. This Court further finds that the provision for attorneys' fees in the Settlement Agreement is fair and reasonable. Had plaintiffs litigated this case to conclusion and won a final judgment in their favor, they would have been entitled to recover costs and attorneys fees. *See generally ACLU v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999). In the Settlement Agreement, Plaintiffs' counsel have agreed to accept \$12 million from the Defendants as full settlement for all attorneys' fees and costs incurred in over ten years of litigating this matter. Moreover, because the class sought only equitable and not monetary relief, the payment does not divert any relief from the class members. This reasonable fee award, reflecting approximately forty percent less than the firms' accumulated lodestar and expenses, is an appropriate component of the Settlement Agreement.

5. Accordingly, the Settlement Agreement is hereby approved in all respects under Rule 23 of the Federal Rules of Civil Procedure. The Settlement Agreement shall be consummated in accordance with its terms and provisions, and the parties are hereby directed to perform the terms of the Agreement.

6. Furthermore, this Court approves the Plaintiffs' plan to award incentive payments, drawn from the \$12 million set aside for attorneys' fees and costs, to the class representatives. The Court has considered "(1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation." *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1357 (S.D. Fla. 2011). The Court finds the class representatives invested substantial time and effort in this litigation, including active participation throughout discovery and testifying at trial. Through the efforts of these class representatives, Plaintiffs were able to pursue this complex case and achieve a Settlement

Agreement providing extensive relief to class members. Accordingly, the Court finds that the payment of \$2,500 to each class representative is fair and reasonable.

7. In accordance with the Settlement Agreement, all proceedings in this action are STAYED until no later than September 30, 2022, unless a motion to lift the stay is filed before then pursuant to the terms of the Settlement Agreement. The Court retains jurisdiction as set forth in the Settlement Agreement.

8. This case is administratively closed, but will be reopened upon the filing of a motion to lift the stay.

DONE and ORDERED in chambers in Miami, Florida, this 28th day of June, 2016.



Adalberto Jordan
United States District Judge

Copy to: All counsel of record
Magistrate Judge John O'Sullivan
Magistrate Judge Chris M. McAliley