IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MAURICE WALKER, on behalf of himself and others similarly situated, Plaintiff, v. CITY OF CALHOUN, GEORGIA, Defendant.	)	CIVIL ACTION NO. 4:15-CV-170-HLM

PRELIMINARY APPROVAL ORDER

The parties have reached a proposed Class Action Settlement Agreement resolving the claims for injunctive and declaratory relief in this case. (Doc. 132, Ex. A.) Pursuant to Federal Rule of Civil Procedure 23(e), the parties have jointly moved the Court to grant: (a) preliminary approval of the Class Action Settlement Agreement; (b) approval of a process for giving notice to the class; (c) scheduling of a final fairness hearing; and (d) following the final fairness hearing, final approval of the settlement agreement.

BACKGROUND

On September 8, 2015, Plaintiff Maurice Walker filed this class action challenging the City of Calhoun's post-arrest bail policy. (Doc. 1 ¶¶ 1-2.) Under

the policy in effect at the time of filing, people arrested by the City for alleged misdemeanors and ordinance violations waited in jail up to seven days for a court hearing, and sometimes longer, unless they could deposit cash bail equal to the ultimate fine for their charges. (Doc. 1 ¶¶ 16-23.) As a result, Maurice Walker spent six nights in jail because he could not pay $160, which was the fine amount and the bail amount that the City charged for Walker's alleged offense of being a "pedestrian under the influence." (Doc. 1 ¶¶ 10-11.)

Upon filing this action, Walker moved for a preliminary injunction against the City's bail policy. (Doc. 4; Doc. 7.) He argued that the policy violated the principle against wealth-based detention established in cases such as *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983), *Tate v. Short*, 401 U.S. 395, 398 (1971), *Pugh v. Rainwater*, 572 F.2d 1053, 1056 (5th Cir. 1978) (en banc), and *Frazier v. Jordan*, 457 F.2d 726, 728-29 (5th Cir. 1972). (*See* Doc. 7 at 6-15; Doc. 34 at 7-11 & nn.8-9.) After Walker filed his motion, the City's municipal judge modified the City's bail policy by providing for, among other things, an indigency hearing within 48 hours of arrest. (Doc. 29 at 3-4.)

On January 28, 2016, the Court entered a 74-page order granting a preliminary injunction. (Doc. 40.) In a separate order, the Court certified a class consisting of "[a]ll arrestees unable to pay for their release who are or will be in

the custody of the City of Calhoun as a result of an arrest involving a misdemeanor, traffic offense, or ordinance violation." (Doc. 41 at 43.)

The City took an interlocutory appeal, and the Eleventh Circuit vacated the injunction order because its operative text failed to meet the specificity requirements of Rule 65(d) of the Federal Rules of Civil Procedure. *Walker v. City of Calhoun*, 682 F. App'x 721, 724-25 (11th Cir. 2017).

On remand from the first appeal, the Court entered a revised preliminary injunction with more specific language (Doc. 68). The Court reaffirmed and incorporated the reasoning of its first injunction order (Doc. 68 at 11) and entered an order requiring the City to use an affidavit procedure instead of judicial proceedings to determine indigency, and to make the indigency determination within 24 hours of arrest (Doc. 68 at 22-29). The City took a second interlocutory appeal, and the Eleventh Circuit vacated the injunction on August 22, 2018. *Walker v. City of Calhoun*, 901 F.3d 1245, 1272 (11th Cir. 2018). The Eleventh Circuit held that "the district court was correct to apply the *Bearden/Rainwater* style of analysis" to Walker's claims. *Id.* at 1265. However, it held that the City's revised policy was constitutional because it provided for an indigency hearing within 48 hours of arrest. *Id.* at 1272. With respect to the City's original bail policy, the Eleventh Circuit held that this Court "did not err in declaring the

original bail policy to be unconstitutional, and it accordingly may enjoin the City's future use of that policy." *Id.* at 1271.

On remand, the parties engaged in good-faith, arm's length negotiations in an effort to resolve the claims of Walker and the class members without the need for extensive discovery and litigation. To that end, Walker filed an unopposed motion to refer the case to a mediator (Doc. 123; Doc. 128), which the Court granted (Doc. 129). A mediation and settlement conference was set for October 21, 2019 (Doc. 130 at 1), but the parties reached a settlement of all claims in this case prior to the mediation date (*see* Doc. 131 at 1-2).

Under the attached Class Action Settlement Agreement (Ex. A), the City agrees to three substantive policies for the benefit of the class members. First, the City will not return to the bail policies or procedures that were in effect when Plaintiff Maurice Walker was arrested in September 2015.

Second, the City will provide a copy of the 2019 Standing Bail Order to the Gordon County Sheriff's Office to ensure that no arrestee under the jurisdiction of the City of Calhoun Municipal Court will be held in jail after arrest pursuant to a secured monetary bond solely because the arrestee cannot afford to pay the bond amount, except for a reasonable amount of time, not to exceed 48 hours, needed to

process the arrestee and bring her or him before a neutral decision maker for a hearing on the arrestee's indigence and alternative release provisions.

Third, the City will incorporate into a resolution for reappointment of the current municipal court judge, and all future municipal judges, a provision requiring that the 2019 Standing Bail Order is followed as the policy of the Calhoun Municipal Court.

By an agreement that was negotiated separately from the Class Action Settlement Agreement, the City agrees to monetary payment to Maurice Walker to resolve his individual damages claims, and an agreed upon award of attorney's fees for Walker's counsel.

DISCUSSION

I. CLASS CERTIFICATION UNDER RULE 23

On January 28, 2016, the Court certified a class defined as "[a]ll arrestees unable to pay for their release who are or will be in the custody of the City of Calhoun as a result of an arrest involving a misdemeanor, traffic offense, or ordinance violation." (Doc. 41 at 43.) The Court's class certification order remains in effect. For the reasons set forth in that order, the Court finds that class certification remains appropriate and that Plaintiff Maurice Walker and his counsel

remain adequate class representatives for purposes of settling the claims for prospective relief asserted by Walker on behalf of the class.

II. PRELIMINARY APPROVAL UNDER RULE 23

Under Rule 23(e), the claims of a proposed class "may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). To approve a class settlement, the Court must find "that it is fair, reasonable, and adequate" in light of the adequacy of the representation of the class, the manner in which the settlement was negotiated, the adequacy of the relief provided to the class under the agreement, and the fairness of treatment of the class members relative to each other. Fed. R. Civ. P. 23(e)(2). "Determining the fairness of the settlement is left to the sound discretion of the trial court." *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984).

A. Adequate Representation of the Class, and Informed and Arm's-Length Negotiation

Rule 23 requires the Court to consider whether "the class representatives and class counsel have adequately represented the class," Fed. R. Civ. P. 23(e)(2)(A), and whether "the proposal was negotiated at arm's length," Fed. R. Civ. P. 23(e)(2)(B). These requirements speak to "'procedural' concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23 Advisory Comm.'s Note, 2018 amend. The focus

should be "on the actual performance of counsel acting on behalf of the class," including whether class counsel "had an adequate information base" and whether negotiations "were conducted in a manner that would protect and further the class interests." *Id.*; *see Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005) ("The stage of the proceedings at which a settlement is achieved is evaluated to ensure that Plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation.").

Here, the parties' settlement agreement is the product of arm's-length, adversarial negotiations between experienced and knowledgeable counsel who have prosecuted and defended this litigation for over four years. *See, e.g.*, *Poertner v. Gillette Co.*, 618 F. App'x 624, 630 (11th Cir. 2015) (affirming approval of classwide settlement agreement where "the parties settled only after engaging in extensive arms-length negotiations"). Although the parties did not engage in extensive discovery prior to settlement, the parties represent that Walker's counsel obtained reliable information about the challenged policy through public records requests and other sources, and the material terms of the challenged policy are undisputed. Therefore, Walker and his counsel were well

positioned to negotiate effective relief on behalf of the class despite limited formal discovery.

Therefore, the Court finds that Walker and his counsel adequately represented the class, and that the Class Action Settlement Agreement is the product of good faith, arm's length negotiations.

B. Fair and Adequate Relief

The Court finds, based on the stipulations of the parties and its own independent review of the record, that the Class Action Settlement Agreement provides adequate substantive relief for the class members and treats class members equitably. *See* Fed. R. Civ. P. 23(e)(2)(C)–(D). Factors that must be considered in determining the substantive adequacy of relief include:

> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3).

Fed. R. Civ. P. 23(e)(2)(C). In addition to the factors enumerated above, decisions under previous versions of Rule 23 require courts to consider "(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); *see also Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 434 (11th Cir. 2012). The relevant factors are discussed below.

1. Likelihood of success at trial, and associated costs and delay

Maurice Walker claims that the City violated his and the class members' rights under the United States Constitution by following a policy of detaining indigent arrestees for up to a week, sometimes longer, solely because they could not afford to pay the amounts set by the City's bail schedule. This Court previously found that "[t]he bail policy under which [Walker] was arrested clearly is unconstitutional" (Doc. 40 at 56), and the Eleventh Circuit did not disturb that conclusion. *See Walker v. City of Calhoun*, 901 F.3d 1245, 1271 (11th Cir. 2018) ("The district court therefore did not err in declaring the original bail policy to be unconstitutional."). On the other hand, the City has raised procedural objections to the Court's ability to enter prospective relief (Doc. 117 at 8-18) and moved to decertify

the class (Doc. 118). The parties acknowledge that the process of obtaining rulings on the City's defenses, as well as the possibility of further appeals from any ruling granting or denying injunctive relief, creates uncertainty about the ultimate outcome of the case and risks significant delay and expense before a trial on the merits could occur. Before a trial could occur in this case, the parties and the Court would need to continue litigating pending motions, complete discovery, address any motions for summary judgment submitted, and litigate numerous pretrial matters. The cost of further litigation would be considerable in terms of time and funds expended.

The Court finds, based on the stipulations of the parties and its own independent review of the record, that this factor weighs in favor of a finding that the relief provided in the Class Action Settlement Agreement is fair and adequate to class members.

2. Range of possible recovery

"In determining whether a settlement is fair and reasonable, the court must also examine the range of possible damages that plaintiffs could recover at trial and combine this with an analysis of plaintiffs' likely success at trial to determine if the settlements fall within the range of fair recoveries." *Columbus Drywall & Insulation Inc. v. Masco Corp.*, 258

F.R.D. 545, 559 (N.D. Ga. 2007). Here, if Walker established the City's liability at trial, the City likely would be enjoined from reimplementing its original bail policy, and would be required to follow a constitutional policy. Given the Eleventh Circuit's recent holding that the City's Standing Bail Order is constitutional, *Walker v. City of Calhoun*, 901 F.3d 1245, 1272 (11th Cir. 2018), the prospective relief awarded after a trial on the merits likely would amount to an order for the City to follow its Standing Bail Order.

The parties' Class Action Settlement Agreement provides similar relief to what would have been available following a trial on the merits. Under that agreement, the City will not reinstitute its original bail policy, and will take reasonable steps to adopt the 2019 Standing Bail Order as the City's policy going forward. Given the uncertainties discussed in the preceding section, the proposed settlement is fair and well within the range of possible recovery at trial. *See Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1218 (11th Cir. 2012) ("If [defendant] prevails at trial, the class will be left with no remedy at all.").

The Court finds, based on the stipulations of the parties and its own independent review of the record, that this factor weighs in favor of a finding that

the relief provided in the Class Action Settlement Agreement is fair and adequate to class members.

3. Complexity, expense, and duration of litigation

As noted above, litigating this case would be expensive and time consuming. Further litigation of this case would involve extensive adversarial proceedings and would require a substantial amount of time and effort by the parties as well as the Court. *Cf. Melanie K. v. Horton*, No. 1:14-CV-710-WSD, 2015 WL 1799808, at *3 (N.D. Ga. Apr. 15, 2015) (granting preliminary approval of settlement partly because "the Parties w[ould] be highly motivated to aggressively litigate this case if a settlement was not approved"). The discovery in this case would be time and resource intensive, with depositions of numerous witnesses, extensive document production and file review, and contested motions concerning claims of privilege and similar matters. Likewise, a trial on the merits would entail presentation of a significant number of records and witnesses. Approval of the parties' agreement will avoid the time and expense of further litigation.

The Court finds, based on the stipulations of the parties and its own independent review of the record, that this factor weighs in favor of a finding that the relief provided in the Settlement Agreement is fair and adequate to class members.

4. Anticipated opposition to settlement

"In determining whether to certify a settlement class, a court must also examine the degree of opposition to the settlement." *Columbus Drywall,* 258 F.R.D. at 560. Where "no notice has been provided to the class members, the Court cannot assess whether there are any objectors." *Id.* For that reason, the Court will address this issue after notice has been provided to the members of the Class. *See id.*

5. Effectiveness of proposed method of distributing relief

Because the Class Action Settlement Agreement requires policy changes that will apply to the class as a whole, the "method of distributing relief to the class" will effectively benefit every member of the class.

The Court finds, based on the stipulations of the parties and its own independent review of the record, that this factor weighs in favor of a finding that the relief provided in the Settlement Agreement is fair and adequate to class members.

6. Terms of attorney's fees award

Rule 23 requires a district court to assess "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). There are no "rigid limits" on attorney's fees but "the relief actually delivered to

the class can be a significant factor in determining the appropriate fee award." Fed. R. Civ. P. 23 Advisory Comm.'s Note, 2018 amend.

Here, the parties have agreed to an award of $30,000 in attorneys' fees and costs for Walker's counsel in lieu of a fee petition under 42 U.S.C. § 1988. Based on the Court's experience with this case and similar cases brought in the Rome Division, the Court finds that the parties' agreed fee award of $30,000 is well within the range of a reasonable fee award.

7. Agreements made in connection with the proposed settlement

Rule 23 requires the parties to file with the Court "a statement identifying any agreement made in connection with" a proposed class settlement. Fed. R. Civ. P. 23(e)(3). Here, the parties represent that the only agreement made in connection with the proposed settlement is the Class Action Settlement Agreement. The parties represent that they also negotiated and agreed to an individual damages award of $20,000 to resolve Maurice Walker's individual claims for monetary damages, but the amount of damages award was negotiated separately from the terms of the Class Action Settlement Agreement and did not affect the substantive terms of that agreement. The Court finds, based on the stipulations of the parties and its own independent review of the record, that Walker's agreement concerning

his damages claims in no way compromises the fairness or adequacy of the Class Action Settlement Agreement.

C. Equitable Treatment of Class Members Relative to Each Other

Rule 23(e)(2)(D) of the Federal Rules of Civil Procedure, requires the Court to find that a proposed settlement "treats class members equitably relative to each other." Based on the representations of the parties and its own review of the record, the Court finds that Class Action Settlement Agreement provides for policies and practices that apply equally to all class members, and thus clearly treats class members equitably relative to each other.

III. NOTICE TO CLASS MEMBERS AND OPPORTUNITY TO OBJECT OR COMMENT ON SETTLEMENT AGREEMENT

Finally, the Court finds that the proposed notice to the class and process for notifying the class and receiving objections to or comments on the Settlement Agreement meet the requirements of Federal Rule of Civil Procedure 23(c)(2) and 23(e)(1). Due to the fluid nature of the class, the Court finds that personal notice of the agreement is not practicable. The Court finds that the parties' proposal of publishing a notice of the settlement for two weeks in the Rome News-Tribune and the Calhoun Times newspapers, and posting copies of the notice in the Gordon County Jail, mailing copies of the notice to City of Calhoun arrestees currently incarcerated in the Gordon County Jail, and posting an electronic copy of the

notice on the website for the Southern Center for Human Rights, is reasonable and the best notice practicable under the circumstances of this case.

* * *

It is therefore ORDERED that the joint motion for preliminary approval (Doc. 132) is granted as follows:

1. The Court readopts and reaffirms its order certifying a class defined as "[a]ll arrestees unable to pay for their release who are or will be in the custody of the City of Calhoun as a result of an arrest involving a misdemeanor, traffic offense, or ordinance violation." (Doc. 41 at 43.)

2. The Southern Center for Human Rights and Civil Rights Corps are appointed as class counsel to represent the settlement class under Federal Rule of Civil Procedure 23(g).

3. The proposed Settlement Agreement (Doc. 132-2, Ex. A) is preliminarily approved under Federal Rule of Civil Procedure 23(e), with final approval subject to a fairness hearing and review by the Court of any objections to or comments about its terms.

4. Defendants are to provide notice of the proposed Settlement Agreement as further outlined below:

a. The parties' proposed notice (Doc. 132-3, Ex. B) is approved by the Court under Rule 23(e), with the following additions: the postmark-by date shall be December 27, 2019, and the final fairness hearing date shall be January 16, 2020.

b. Within 30 days of the date of this Order, the parties shall publish the proposed notice as advertisements in the Rome News-Tribune and the Calhoun News newspapers, to run for a period of two weeks.

c. As soon as practicable following the entry of this Order, the parties shall mail copies of the notice to all City of Calhoun arrestees currently incarcerated in the Gordon County Jail as of the date of this Order.

d. For the period beginning on the date this Order is entered, and continuing for 30 days thereafter, the parties shall post copies of the notice (a) in each area of the Gordon County Jail used to book and/or hold City of Calhoun arrestees; and (b) electronically on the website of the Southern Center for Human Rights.

e. By no later than December 31, 2019, the Clerk of Court shall compile all objections or comments received and file them on the docket.

5. A fairness hearing is set for 2:00 p.m. on January 16, 2020, at United States Courthouse, 600 East First Street, Rome, GA 30161-3149. At this hearing, counsel for both parties shall be prepared to respond to any objections raised and comments made by class members.

DONE, this the 22nd day of November, 2019.

SENIOR UNITED STATES DISTRICT JUDGE