

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

JENNIFER FORD, ERIC BEARD, and
BRIAN OTTERS, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

VETERANS GUARDIAN VA CLAIM
CONSULTING, LLC,

Defendant.

Case No. 1:23-cv-756-CCE-LPA

CLASS ACTION

JURY TRIAL DEMAND

**PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF VOLUNTARY
DISMISSAL OF NCDCA CLAIM UNDER N.C. GEN. STAT. § 75-54(7)**

Plaintiffs Jennifer Ford, Eric Beard, and Brian Otters (“Plaintiffs”), individually and on behalf of the certified NCDCA Class, respectfully move pursuant to Federal Rule of Civil Procedure 23(e) for approval to voluntarily dismiss without prejudice one of their two remaining theories of liability under their North Carolina Debt Collection Act (“NCDCA”) claim. Defendant Veterans Guardian VA Claim Consulting, LLC (“Veterans Guardian”) does not oppose this Motion. The Court also addressed this issue with the parties at the hearing on August 21, 2026.

I. INTRODUCTION

Plaintiffs seek approval to voluntarily dismiss without prejudice one of their two theories of liability under their NCDCA claim presently asserted on behalf of the certified Class. Specifically, Plaintiffs seek to dismiss their NCDCA claim to the extent

that it is based on N.C. Gen. Stat. § 75-54(7), which alleges that Veterans Guardian falsely represented the status or true nature of the services rendered. If the requested dismissal is approved, Plaintiffs and the certified NCDCA Class will proceed under their remaining NCDCA claim pursuant to N.C. Gen. Stat. § 75-55(2), which prohibits the collection or attempted collection of a fee or charge to which the debt collector is not legally entitled. Because under N.C. Gen. Stat. §75-76, a violation of §75-55(2) constitutes unfair or deceptive acts or practices proscribed by G.D. §75.1.1, Plaintiffs' certified UDTPA class members will not be detrimentally affected by the requested dismissal.

Because the NCDCA Class has already been certified, Rule 23(e) requires Court approval before Plaintiffs may voluntarily dismiss the § 75-54(7) claim. Plaintiffs therefore seek dismissal of that claim without prejudice. Class Members will still be entitled to their damages under the NCDCA claim, should Plaintiffs ultimately prevail. That limitation is significant under Rule 23(e) because notice is only required when the dismissal compromise the entire claim.

Nor does the requested dismissal arise from a settlement or compromise, which also requires court approval under Rule 23(e). If the Motion is granted, the certified NCDCA Class will simply proceed against Veterans Guardian under § 75-55(2), and Plaintiffs will seek all NCDCA relief still available to the Class under that claim.

Accordingly, Plaintiffs respectfully request that the Court approve dismissal of the § 75-54(7) claim without prejudice to absent Class Members' individual rights and without requiring additional notice to the Class.

II. STANDARD UNDER RULE 23(e)

Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or defenses of a certified class . . . may be settled, voluntarily dismissed, or compromised only with the court’s approval.” Fed. R. Civ. P. 23(e). As the Fourth Circuit has recognized, “[o]nce the suit is certified as a class action, it may not be settled or dismissed without the approval of the court.” *Shelton v. Pargo, Inc.*, 582 F.2d 1298, 1303 (4th Cir. 1978) (quoting *Sosna v. Iowa*, 419 U.S. 393, 399 n.8 (1975)).

The purpose of Rule 23(e) is to protect absent class members. As *Shelton* explained, “the primary purpose of 23(e)” was to protect an absent class member against whom a dismissal with prejudice would operate as res judicata, and “the rationale for 23(e) is protection of the absent members of a duly certificated ‘class action.’” *Id.* at 1303.

Rule 23(e), however, distinguishes between the requirement of court approval and the requirement of notice to absent class members. Although court approval is required for even the voluntary dismissal of claims or issues of a certified class, Rule 23(e)(1)(B) requires the Court to direct notice only “to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). A dismissal that does not prejudice absent class members does not have that effect.

Consistent with that distinction, courts applying the applicable standard have held that a dismissal without prejudice and prior to a ruling on the merits does not require individual class notice where absent class members will not be prejudiced. *See LaVigne v. First Cmty. Bancshares, Inc.*, 2021 WL 4477921, at *4–5 (D.N.M. Sept. 30,

2021) (approving voluntary dismissal without prejudice and concluding that individual notice was unnecessary because absent class members would not be bound or prejudiced).

The Fourth Circuit has likewise recognized that Rule 23(e)'s protective purpose does not impose an inflexible notice requirement where dismissal will not prejudice absent class members. *See Shelton*, 582 F.2d at 1314–15 (recognizing the district court's authority to approve dismissal without notice upon determining that there is no prejudice to absent class members).

III. ARGUMENT

A. The Proposed Dismissal Should Be Approved Because It Does Not Compromise or Prejudice the Rights of Absent Class Members.

The proposed dismissal presents none of the concerns Rule 23(e) is designed to guard against. There is no settlement or compromise between Plaintiffs and Veterans Guardian. There is no payment or other consideration for the dismissal, no release of individual claims, and no agreement providing any benefit to the Class Representatives or Class Counsel. Veterans Guardian does not oppose Plaintiffs' request to dismiss the § 75-54(7) claim.

Nor would approval of the requested dismissal terminate the certified NCDCA Class or its claims against Veterans Guardian. If the Motion is granted, Plaintiffs and the certified Class would continue to prosecute their NCDCA claim under § 75-55(2), including all relief available under that statute.

The requested dismissal will not adjudicate the merits of an absent Class Member's individual § 75-54(7) claims. Nor would any absent Class Member release or compromise such a claim. That distinction addresses the concern at the heart of Rule 23(e). As the Fourth Circuit explained in *Shelton*, the Rule exists to protect absent class members from the *res judicata* consequences of a dismissal with prejudice. 582 F.2d at 1303. Here, Plaintiffs seek an order that expressly avoids that consequence by dismissing the claim without prejudice.

The proposed dismissal is therefore consistent with Rule 23(e)'s purpose and should be approved.

B. Because the Proposed Dismissal Would Not Prejudice Class Members, Notice is Not Necessary.

For the reasons set forth above, the Court may approve the requested dismissal without directing additional notice to the Class.

Rule 23(e)(1)(B) does not require notice of every voluntary dismissal involving a certified class. It requires notice “to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B) (emphasis added). The Advisory Committee explains that this requirement applies when the disposition “binds the class through claim or issue preclusion.” *See*, Fed. R. Civ. P. 23(e) advisory committee's note to 2003 amendment. And, Plaintiffs' proposed dismissal would do neither.

LaVigne applied this distinction in approving the voluntary dismissal of certified class claims without individual notice. 2021 WL 4477921, at *4–5. That court concluded that “individual notice is not required under Rule 23(e) because dismissal

is without prejudice,” reasoning that Rule 23 requires notice only to class members “who would be bound by the proposal” and that the proposed dismissal would not bind or prejudice the class. *Id.*

The Fourth Circuit’s reasoning in *Shelton* is consistent with that result. 582 F.2d at 1314–15. Although *Shelton* involved dismissal before certification, the court rejected an automatic notice requirement and recognized that, where there is neither collusion nor prejudice to absent class members, dismissal may be approved without class notice. *Id.* Here, additional notice would serve no protective purpose as the remaining claims will still go to trial, the Plaintiffs will still seek damages under the NCDCA, and the designated classes remain intact.

The Court may accordingly approve the requested dismissal without additional notice to the NCDCA Class.

IV. CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court enter an Order:

1. approving Plaintiffs’ voluntary dismissal of their NCDCA claim under N.C. Gen. Stat. § 75-54(7);
2. dismissing that claim without prejudice to any individual rights absent Class Members;
3. determining that additional notice to the Class is unnecessary under Rule 23(e)(1)(B);
4. granting such other and further relief as the Court deems appropriate.

Date: August 28, 2026

Respectfully submitted,

VARNELL & WARWICK P.A.

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CERTIFICATION OF MEET AND CONFER

Undersigned counsel further certifies that Plaintiffs conferred via Zoom with Defendant through counsel regarding the relief requested in this Motion on August 18, 2026. Additionally, the Court addressed this issue with the parties at the hearing on August 21, 2026. On both occasions, Defendant stated that it does not oppose Plaintiffs' request for Court approval to dismiss the NCDCA claim arising under N.C. Gen. Stat. § 75-54(7).

Date: August 28, 2026

/s/ Brian W. Warwick
Brian W. Warwick

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2026, a copy of the foregoing document was filed using CM/ECF which will serve an electronic copy on all counsel of record.

/s/ Brian W. Warwick
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