

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

BETTY MORRIS, et al.,

Plaintiff,

v.

CASE NO. 8:20-cv-105-SDM-CPT

US FOODS, INC.,

Defendant.

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**ORDER**

Betty Morris and Donald Reed allege (Doc. 19) that US Foods, Inc., delivered misleading piecemeal notices to former employees that failed (1) to specify the day on which COBRA coverage would end and (2) to explain in plain language how to enroll in COBRA. The parties twice mediated and on June 23, 2020, the mediator announced (Doc. 34) a settlement. On January 22, 2021, Morris and Reed moved (Doc. 47) unopposed for a preliminary approval of a class settlement and for a certification of a settlement-only class. A July 14, 2021 order (Doc. 51) adopts a report and recommendation (Doc. 49), preliminarily approves the settlement, and certifies a settlement-only class that comprises:

all participants and beneficiaries in US Food's group health plan who, from January 14, 2016, until the effective date of the Settlement Agreement, received a COBRA notice from US Foods, as determined by US Foods's records, and who did not elect continuation coverage (Settlement Class)—a class of about 13,000 people.

(Doc. 49 at 3)

In accord with the July 14, 2021 order, the settlement administrator mailed to each class member a notice of the proposed settlement. (Doc. 53 at 9) No class member objected. (Doc. 53 at 9) Only two members, William E. Ryan, Jr., and Rodney B. Simmons, timely submitted requests for exclusions. (Doc. 54-1 at 7) The plaintiffs move (Doc. 54) unopposed for a final approval of the settlement and move (Doc. 53) unopposed for approval of an attorney's fee and costs of settlement administration. At an October 28, 2021 fairness hearing, class counsel and defense counsel requested final approval, and no person at the hearing objected to the settlement.

## **DISCUSSION**

### **Approval of the Class Settlement**

If fair, adequate, and reasonable, a class settlement warrants approval. *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). Approval depends partly on the absence of collusion between the parties. *Bennett*, 737 F.2d at 986. Jack Townsend, a certified mediator, facilitated negotiations. The parties settled (Doc. 47-2), and the record suggests no collusion. Although it denies any wrongful act and denies that Morris and Reed's claims warrant class treatment, US Foods agrees that certification for settlement purposes efficiently resolves this action. (Doc. 53 at 6)

The settlement entitles each class member to forty dollars, subject to a reduction if insufficient funds exist to cover each claim after payment of an attorney's fee and costs. (Doc. 47-2 at 7–8) The common settlement fund totals \$450,000.

(Doc. 53 at 7) Money from the fund will pay any class member's claim, an attorney's fee, and costs. (Doc. 53 at 7) If it remains after completion of the claims process, money will revert to US Foods. (Doc. 53 at 7)

Among other factors, the complexity, expense, and duration of litigation; the stage at which the parties settled; the opposition to the proposed settlement; and the comparison to results achieved in similar actions guide evaluating a proposed settlement. *See Bennett*, 737 F.2d at 986; *Manual for Complex Litigation* § 21.62 (4th ed. 2004). Morris and Reed argue that US Foods "had available to it myriad defenses," including challenges to certification, the merits of claims asserted, and damages. (Doc. 53 at 6) The parties settled after "early mediation" to "avoid the substantial expense of prolonged litigation." (Doc. 53 at 5–6) The settlement administrator mailed 18,637 notices to class members and no member objected. (Doc. 53 at 8) To date, over 1,500 members submitted claims. (Doc. 53 at 8) In an action over an allegedly defective COBRA notice, a plaintiff often receives a modest sum. This action's settlement equates to results achieved in similar actions, and the settlement is fair, adequate, and reasonable.

### **Attorney's Fee and Costs**

Morris and Reed request (Doc. 53 at 24) an attorney's fee of \$150,000, which amounts to one-third of the common fund available to class members, and \$2,568.40 in costs. *Camden I Condo. Ass'n Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) ("[T]he percentage of the fund approach is the better reasoned [approach] in a

common fund case.”). Considering the results achieved by class counsel, the risks associated with this action, class counsel’s ability and experience, and fee awards in comparable actions, the amount is fair and reasonable. *See Valdivieso v. Cushman & Wakefield, Inc.*, Case No. 8:17-cv-118-SDM-JSS (Doc. 92) (awarding a fee one-third of the common fund); *Carnegie v. FirstFleet, Inc., of Tennessee*, Case No. 8:18-cv-1070-WFJ-CPT (Doc. 62) (same).

Morris and Reed’s unopposed motion (Doc. 54) for a final approval of the settlement is **GRANTED**. The settlement class is **CERTIFIED**. Luis A. Cabassa and Brandon J. Hill of Wenzel Fenton Cabassa, P.A., and Marc Edelman of Morgan & Morgan, P.A., are **APPROVED** as class counsel. Betty Morris and Donald Reed are **APPROVED** as class representatives. The settlement (Doc. 47-2) is **APPROVED**. In accord with the settlement, the administrator must distribute the fund.

Morris and Reed’s unopposed motion (Doc. 53) for an attorney’s fee and costs is **GRANTED**. An attorney’s fee of \$150,000 and costs of \$2,568.40 are **APPROVED**. Jurisdiction is retained for the purpose of enforcing the settlement only. The clerk must close the case.

ORDERED in Tampa, Florida, on November 5, 2021.



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STEVEN D. MERRYDAY  
UNITED STATES DISTRICT JUDGE