

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALEXANDRA STARK, individually)
and on behalf of all others similarly)
situated,)

Plaintiff,)

v.)

1:23-CV-22

BLUE CROSS AND BLUE SHIELD)
OF NORTH CAROLINA and)
CHANGE HEALTHCARE)
RESOURCES, LLC,)

Defendants.)

ORDER

The plaintiff, Alexandra Stark, individually and on behalf of the proposed Settlement Class, and the defendants, Blue Cross and Blue Shield of North Carolina and Change Healthcare Resources, LLC, have entered into a Settlement Agreement, dated May 31, 2024, that, if approved, would resolve this action. Under Federal Rule of Civil Procedure 23, Ms. Stark moves for: 1) preliminary approval of the class action settlement; 2) provisional certification of the proposed settlement class; 3) appointment of class counsel, a class representative, and a settlement administrator; 4) approval of the proposed notice plan; and 5) scheduling of the Final Approval Hearing.

The Court has considered the record, consulted with counsel at a hearing held on June 26, 2024, and thoroughly reviewed the Settlement Agreement together with all exhibits and attachments thereto. Based on the evidence and its experience managing

class actions, and in its discretion, the Court **FINDS**, for the purposes of this Order only and subject to reconsideration, and **ORDERS**:

I. PRELIMINARY APPROVAL

1. Unless otherwise defined herein, all terms that are capitalized shall have the same meaning ascribed to those terms in the Settlement Agreement.

2. The Court has jurisdiction over this Litigation, Representative Plaintiff, Defendants, and the Settlement Class Members, and any party to any agreement that is part of or related to the Settlement Agreement.

3. The Court has reviewed the terms of the proposed Settlement Agreement, the exhibits and attachments thereto, Plaintiff's motion papers and briefs, and the declarations of counsel. On June 26, 2024, the Court also held a hearing, during which it asked counsel several clarifying questions about the Settlement.

4. Based on its review, the Court finds that the Settlement Agreement is the result of extensive discovery, Doc. 63-2 at p. 6 ¶ 12, and informed, arm's-length negotiations conducted with the assistance of an experienced mediator, former Magistrate Judge David Jones, during a mediated settlement conference on January 29, 2024, and follow-up negotiations. Doc. 60 at ¶¶ 1–4. The terms of the Settlement Agreement do not improperly grant preferential treatment to any individual or segment of the Settlement Class and fall within the range of possible approval as fair, reasonable, and adequate.

5. The Court therefore grants preliminary approval of the Settlement Agreement and all of the terms and conditions contained therein, subject to review upon motion for final approval.

6. The Court’s preliminary approval is subject to the right of any Settlement Class Member to challenge the Settlement and to show cause, if any exists, why a Final Approval Order and Judgment, dismissing this action based on the Settlement should not be entered, after due and adequate notice has been provided to the Settlement Class and a Final Approval Hearing has been held as otherwise ordered herein.

II. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

7. Under Federal Rule of Civil Procedure 23, the Court preliminarily certifies, for settlement purposes only, the Settlement Class defined in the Settlement Agreement as follows:

All regular users or subscribers to numbers assigned to wireless carriers which Change Healthcare, on behalf of BCBSNC, called during the Settlement Class Period using an artificial or pre-recorded voice who were not members or subscribers of BCBSNC or that opted out of receiving calls from Change Healthcare.

Doc. 63-1 at p. 6 ¶ 1.1.33. Excluded from the Settlement Class are:

“(1) the Judges presiding over this action and members of their families; (2) the Defendants, Defendants’ respective subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded person(s).”

Id.

8. The Court preliminarily finds that the Settlement Class satisfies the requirements of Federal Rule of Civil Procedure 23(a) for settlement purposes only: the Settlement Class is made up of more than 1,400 individuals; there are questions of law

and fact common to the Settlement Class; the Representative Plaintiff's claims are typical of those of the Settlement Class Members; and the Representative Plaintiff will fairly and adequately protect the interests of the Settlement Class.

9. The Court preliminarily finds that the Settlement Class satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only: the questions of law and fact common to the Settlement Class predominate over individual questions and class action litigation is superior to other available methods for the fair and efficient adjudication of this controversy.

10. The Court hereby appoints Alexandra Stark as the class representative of the Settlement Class. The Court provisionally finds that Ms. Stark is similarly situated to absent Settlement Class Members and therefore typical of the Settlement Class and that she will be an adequate class representative.

11. The Court finds the following counsel are experienced and adequate counsel and appoints them as Class Counsel for the Settlement: Avi R. Kaufman of Kaufman P.A., located at 237 South Dixie Highway, Floor 4, Coral Gables, FL 33133, and Stefan Coleman of Coleman PLLC, located at 66 West Flagler Street, Suite 900, Miami, FL 33130. Other counsel of record may and shall participate as needed and appropriate.

III. NOTICE AND ADMINISTRATION

12. The Court provisionally finds KCC Class Action Services LCC is experienced and capable, Doc. 65-1, and appoints it as the Settlement Administrator.

KCC shall perform all the duties of the Settlement Administrator set forth in the Settlement Agreement.

13. The Court finds that the Notice Plan and Long-Form Notice, Exhibit B, Doc. 63-1 at pp. 33–40, in the Settlement Agreement, as clarified at the June 26, 2024, hearing, and the Summary Notice, Exhibit C, as revised, Doc. 65-3, satisfy the requirements of due process and Federal Rule of Civil Procedure 23. The Parties shall serve subpoenas on 10 telephone carriers¹ to obtain the names and addresses of potential Identifiable Settlement Class Members, Doc. 63-1 at p. 12 ¶ 6.5.2, and will provide such information to the Settlement Administrator, who shall mail them the Summary Notice. *Id.* at p. 12 ¶ 6.5.3.

14. The Notice Plan, Long-Form Notice, and Summary Notice provide the best notice practicable under the circumstances. They are reasonably calculated to apprise Settlement Class Members of the nature of this Litigation, the scope of the Settlement Class, the terms of the Settlement Agreement, the rights of the Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the processes for doing so, and the date of the Final Approval Hearing. The Court therefore approves the Notice Plan, Long-Form Notice, and Summary Notice, as clarified herein, and directs the Settlement Administrator to proceed with providing notice to Settlement Class Members under the terms of the Settlement Agreement and this Order.

¹ The 10 carriers are AT&T, Carolina West Wireless, CSC Wireless, MetroPCS, Omnipoint Mobile, PCS Wireless, Sprint, T-Mobile, US Cellular, and Verizon.

15. The Court approves the proposed Claim Form, as revised. Doc. 65-2. The Court confirmed at the hearing that Identifiable Settlement Class Members whose summary notices are not returned and who do not opt out of the Settlement will automatically receive payment without having to complete, sign, and submit a Claim Form. Two categories of Class Members must submit a Claim Form to receive payment: 1) Identifiable Settlement Class Members whose mailed Summary Notices are returned as undeliverable and 2) Unidentifiable Settlement Class Members. Doc. 63-1 at p. 9 ¶ 4.3.2. For those required to submit a Claim Form to receive payment, the deadline for submission is December 2, 2024, which is approximately 135 days from entry of this Order.

16. Administrative costs can be reduced by using electronic payment methods instead of mailing checks. The Parties will use the revised Summary Notice and Claim Form, Doc. 65-2; Doc. 65-3, to provide Settlement Class Members with the option to receive payment electronically.

17. The Settlement Administrator shall commence and conclude the Notice Plan within the time required by the Settlement Agreement and in compliance with the requirements in this Order. The Settlement Administrator shall file a declaration under oath attesting to its compliance with the requirements of the Notice Plan and providing the number of people reached by the Notice Plan and the number of Settlement Class Members who opt out of the Settlement. The Settlement Administrator shall not use or disclose the names, contact information, or any personal information disclosed to them as

part of administering this Settlement except to accomplish the purposes of this Settlement. Selling or trading any such information is prohibited.

IV. EXCLUSION AND OBJECTIONS

18. Settlement Class Members who wish to opt out and exclude themselves from the Settlement Class may do so by notifying the Settlement Administrator in writing, postmarked no later than December 2, 2024, which is approximately 135 days from entry of this Order. To be valid, each request for exclusion must be made in writing and: (a) signed by the Settlement Class Member; (b) include the Settlement Class Member's name, address, and the phone number or numbers at which the Settlement Class Member received calls covered by this Settlement; and (c) state that the Person wishes to be excluded from the Litigation and the Settlement. Doc. 63-1 at p. 17 ¶ 9.4.1. Any request that does not include all of this information and is not postmarked by the Opt Out Deadline and received by the Settlement Administrator at the specified address will be invalid. *Id.* Requests for a "mass" or "class" opt out, seeking exclusion of more than one Settlement Class Member, will not be permitted. *Id.*

19. All Settlement Class Members who do not opt out and exclude themselves shall be bound by the Court's Orders in this Litigation and by the Settlement Agreement. *Id.* at pp. 17–18 ¶¶ 9.4.1, 9.4.3.

20. Settlement Class Members who wish to object to the Settlement may do so by notifying the Clerk's Office of the United States District Court for the Middle District of North Carolina at 324 W. Market Street, Greensboro, NC 27401, in writing, postmarked no later than December 2, 2024, which is approximately 135 days from entry

of this Order. *Id.* at p. 16 ¶ 9.2.1. To be valid, each request for exclusion must be made in writing and contain: (a) a caption or title that identifies it as “Objection to Class Settlement in *Stark v. Blue Cross Blue Shield of North Carolina and Change Healthcare Resources, LLC*, No. 1:23-cv-00022-CCE-LPA;” (b) the objector’s name, address, and telephone number; (c) the phone number or numbers at which the Settlement Class Member received calls covered by this Settlement; and (d) the factual basis and legal grounds for the objection. *Id.* at p. 16 ¶ 9.2.2.

21. Settlement Class Members may raise an objection either on their own or through an attorney hired at their own expense. *Id.* at p. 16 ¶ 9.2.1. Any Person who submits a request to opt out may not file an objection to the Settlement. *Id.* at p. 18 ¶ 9.4.4.

22. Any Settlement Class Member who does not timely submit a written objection in accordance with these procedures and those detailed in the Settlement Agreement shall be deemed to waive any objection, shall not be permitted to object to the Settlement, and shall be precluded from seeking any review of the Settlement Agreement or the Final Approval Order by appeal or other means. *Id.* at p. 17 ¶ 9.2.3.

V. FINAL APPROVAL HEARING

23. The Court will hold a Final Approval Hearing on December 16, 2024, at 9:30 a.m. in the United States District Court, Middle District of North Carolina, 324 W. Market Street, Greensboro, North Carolina 27401.

24. At the Final Approval Hearing, the Court will consider whether: (a) the Settlement is fair, reasonable, and adequate; (b) the preliminary certification of the

Settlement Class should be made final; (c) the preliminary appointment of Class Counsel, the class representative, and the Settlement Administrator should be made final; (d) Class Counsels’ motion for a Fee Award should be granted; and (g) a final Judgment should be entered.

25. As needed and in its discretion, the Court may continue the date of the Final Approval Hearing without further written notice to Settlement Class Members. The Settlement Administrator shall post any changes to the date and time of the Final Approval Hearing on the Class Settlement Website.

VI. DEADLINES & TERMINATION

From Settlement Agreement Filing Date	May 31, 2024
CAFA Notice: Settlement Administrator shall serve CAFA Notice on the appropriate federal and state officials. Doc. 63-1 at p. 11 ¶ 6.4.1.	+10 days June 10, 2024
From Order Granting Preliminary Approval	July 17, 2024
Class Contact Information: Parties shall serve subpoenas on 10 telephone carriers to obtain names and addresses of any potential Identifiable Settlement Class Members. <i>Id.</i> at p. 12 ¶ 6.5.2.	+5 days July 22, 2024
Funding Date: Defendants shall create a Settlement Fund. <i>Id.</i> at pp. 4, 9 ¶¶ 1.1.17, 4.1.	+20 days August 6, 2024
Notice Date: Settlement Administrator shall send mailed notices. <i>Id.</i> at pp. 4, 12 ¶¶ 1.1.20, 6.5.3.	+75 days September 30, 2024
Class Settlement Website: Settlement Administrator shall create and activate website. <i>Id.</i> at pp. 11–12, ¶¶ 6.3.1, 6.5.4.	+75 days September 30, 2024
Fee Award Deadline: Class Counsel must file any motion for attorneys’ fees, expenses & costs. <i>Id.</i> at p. 10 ¶ 5.1.	+105 days October 30, 2024
Claims Deadline: Settlement Class Members must submit Claims Forms to Settlement Administrator. <i>Id.</i> at pp. 3, 12–13 ¶¶ 1.1.4, 7.1	+ approximately 135 days December 2, 2024

Opt Out Deadline: Persons who want to be excluded from the Settlement must mail written request to the Settlement Administrator. <i>Id.</i> at pp. 4, 17 ¶¶ 1.1.22, 9.4.1.	+ approximately 135 days December 2, 2024
Objection Deadline: Settlement Class Members who want to object must mail written request to the Court’s Clerk. <i>Id.</i> at p. 16 ¶ 9.2.1.	+ approximately 135 days December 2, 2024
Motion for Final Approval Deadline: Parties must file such motion with the Court. <i>Id.</i> at pp. 18–19 ¶ 9.4.5.	+ approximately 135 days December 2, 2024
Settlement Administrator Declaration: Settlement Administrator shall file declaration under oath attesting to compliance with the Notice Plan and providing number of valid opt out requests.	+145 days December 9, 2024
Final Approval Hearing: <i>Id.</i> at p. 15 ¶ 9.1.2.	+ approximately 150 days December 16, 2024
From Effective Date	TBD
Payment of Fee Award: Settlement Administrator shall issue payment for attorneys’ fees, expenses & costs by wire transfer. <i>Id.</i> at p. 10 ¶ 5.4.	+10 days
Deactivation of Class Settlement Website: The Class Settlement Website will terminate. <i>Id.</i> at p. 11 ¶ 6.3.2.	+120 days
Payment of Claims: Settlement Administrator shall issue payment by check or electronic payment from the Settlement Fund. <i>Id.</i> at p. 13 ¶ 7.3.	+60 days

26. All proceedings and deadlines in this matter, except those necessary to implement this Order and the Settlement, are hereby stayed and suspended until further order of the Court.

27. All Settlement Class Members who do not validly opt out and exclude themselves are hereby enjoined from pursuing or prosecuting any of the Released Claims as set forth in the Settlement Agreement until further order of the Court.

28. If the Settlement Agreement is terminated according to the terms of the Settlement Agreement: (a) the Settlement Agreement and this Order shall become null and void; (b) the Parties will be returned to the *status quo ante* in the Litigation as of February 5, 2024, as if no Settlement Agreement had been negotiated or entered into; and (c) any portion of the Settlement Fund remaining shall be returned to Defendants proportionally based on the amount of their contributions. *Id.* at pp. 16, 19, 22 ¶¶ 9.1.5, 10.1, 12.4.

29. The Clerk shall post this Order and the Settlement Agreement, *id.* at pp. 1–29, on the Court website for 60 days.

30. The plaintiff’s motion for preliminary approval of class action settlement, Doc. 62, is **GRANTED**.

SO ORDERED, this the 17th day of July, 2024.


UNITED STATES DISTRICT JUDGE