STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Plaintiff, vs. Horry County, Defendant.	)	CIVIL ACTION NO. 2019-CP-26-01732 **ORDER FINALLY APPROVING CLASSWIDE SETTLEMENT AGREEMENT**

This matter is before the Court on joint motion of Plaintiff City of Myrtle Beach's ("City") and Defendant Horry County ("County") to give final approval to the February 12, 2021 Class Action Settlement Agreement ("Agreement") in this matter. The Court held a hearing on the Motion on April 16, 2021, and afforded class members an opportunity to raise any objections to the Agreement. Having duly considered the Motion, the submissions of the parties, the arguments of counsel, and all arguments and statements made at the hearing on the Motion, the Motion is hereby GRANTED.

FACTUAL/PROCEDURAL BACKGROUND

The City, individually and on behalf of all other similarly situated plaintiffs, brought this lawsuit challenging the validity of the County's 1.5% uniform service charge imposed on the purchase of accommodations, prepared food and beverage, and admissions to amusements, and a 2.5% uniform service charge on rental cars, within the corporate limits of Horry County municipalities ("Hospitality Fee"). The full factual and procedural history of this matter are detailed in this Court's February 16, 2021 Order Certifying Settlement Class, Preliminarily Approving Settlement Agreement, and Approving Notice Plan ("Preliminary Approval Order"), which is incorporated herein by reference. In the Preliminary Approval Order, this Court certified

a class consisting of "all individuals, businesses, sole proprietorships, corporations, companies, associations, firms, partnerships, societies, joint stock companies, political subdivisions, United States government agencies, counties, municipalities, state agencies, and instrumentalities of the State of South Carolina who have paid" the Hospitality Fee on or after January 1, 2017, and/or who are subject to paying the Hospitality Fee going forward ("Class Members").

As found in the Preliminary Approval Order, the Agreement was heavily negotiated by the parties, their inside counsel, and their outside counsel over hundreds of hours of formal mediation and other communications through a court-appointed mediator and among counsel directly, and ultimately was approved by eight different political subdivisions via public votes by their respective governing bodies. The Agreement provides for the following relief:

- The County will pay $19 Million to the City for the establishment of a Common Fund from which the City will pay verified claims made by Class Members for reimbursement of the Hospitality Fee they paid on or after January 1, 2017. The City may obtain reimbursement for the costs incurred in providing notice to the Class Members and a 0.25% class representative fee to the City that will be used to defray the City's cost of administering the settlement, from the Common Fund. No attorneys' fees will be paid from the Common Fund nor will the City use any distribution it receives from the Common Fund to compensate class counsel. The City will compensate class counsel from other funds of the City.

- The Common Fund balance remaining after these disbursements will be distributed as follows: 50% to the City and the Participating Municipalities for use consistent with S.C. Code Ann. §§ 6-1-530 and 6-1-730, as amended, 25% to the South Carolina Bar Foundation for use on access to justice and related programs and services as per the Agreement, and 25% to be held in escrow for three years to pay any additional claims, costs, and class representative and class counsel litigation fees and expenses related to the settlement, and any escrowed funds remaining after three years will be distributed to the City and the Participating Municipalities for use consistent with §§ 6-1-530 and 6-1-730.

- The City and Participating Municipalities consent to the County's continued imposition and collection of the Hospitality Fee within their corporate limits. All such Hospitality Fee collections will be returned to the City and Participating Municipalities in which they were collected less the County's 1% administrative fee. The City and the Participating Municipalities may only use these funds for uses consistent with §§ 6-1-530 and 6-1-730, as amended. (By separate letters which have been placed into the

record, the City and the Participating Municipalities have acknowledged that the County will recommence collection of the Hospitality Fee within municipal corporate limits on July 1, 2021.)

- In exchange for consenting to the continued imposition of the Hospitality Fee within their corporate limits, the City and Participating Municipalities will return their local accommodations and hospitality fees and taxes to the levels as they existed on January 1, 2019 (which, by the letters referenced above, will be effective July 1, 2021).

- The fee disposition provision of the County's Hospitality Fee Ordinance No. 93-16 has been amended to remove the prior limitation on the use of fee revenues for road plan projects only.

NOTICE TO CLASS MEMBERS

This Court preliminarily approved the Settlement Agreement and also approved the proposed Notice Plan which consisted of advising Class Members of the settlement, their right to opt-out of the reimbursement process but not the recommencement of collection provisions, their right to object to the Agreement, the binding nature of the Agreement, and their right to appear at the hearing for final approval through publication of an agreed-upon notice in twelve newspapers and via a public website. As a result of that Order the parties commenced a nationwide notice plan pursuant to Rule 23(c), SCRCP, which states, "A class action shall not be dismissed or compromised without the approval of the court and notice of the proposed dismissal shall be given to all members of the class in such manner as the court directs."

Consistent with Rule 23(c) and *Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E. 2d 494 (2014), in excess of $100,000.00 has been expended on the Notice Plan. In an attempt to reach all class members who might have had claims, notice has been published in the following newspapers: (1) *New York Times*; (2) *The Sun News*; (3) *USA Today*; (4) *Post and Courier*; (5) *The Star News* (Wilmington, NC); (6) *News and Record* (Greensboro, NC); (7) *The Charlotte Observer*; (8) *The News and Observer* (Raleigh, NC); (9) *The Florence Morning News*; (10) *The*

State; (11) *The Baltimore Sun*; and (12) *The Greenville News*. Further, copies of the Affidavits of Publication for each of these newspapers have been placed in the record.

The Court has been advised that the Notice Plan has been complied with by the parties, albeit with two minor deviations. Specifically, the Raleigh *News and Observer* published the Notice on February 25 but failed to publish it on March 4 and 11, and the Wilmington *Star News* failed to publish on any of the requested dates. These failures occurred despite the papers' agreements to make these publications and being fully paid for the same in advance. Once the parties became aware of these issues, the parties contacted the *Star News* and *News and Observer*, and publication was effected on April 8, 10, and 11, 2021 for the *Star News* and April 9 and 11, 2021, for the *News and Observer*.

The Court finds that these errors in publication are of no consequence since the parties have republished the Notice for the *Star News* and the *News and Observer* the week before the hearing. Furthermore, a number of the other publications which did publish the Notice timely overlap the geographic area which the *Star News* and the *News and Observer* cover, *e.g.*, *USA Today*, the *New York Times*, the Greensboro *News and Record*, and the Myrtle Beach *Sun News*. Thus, the Court finds that even though the Notice was not timely published in the *Star News* and Raleigh *News and Observer* pursuant to the Preliminary Approval Order, the late notices, and all other notices provided, ultimately provide absent class members adequate notice of the hearing.

The Court also finds that because the absent class members in this case could not be identified or located through reasonable means, the only possible notice available was through publication, and this has been carried out by the parties.

HEARING

The Court held this hearing at 10:00 am on April 16, 2021, consistent with the Notice published in the various newspapers and on the public use website. The Court conducted this hearing in person at the Horry County Government and Justice Center in Courtroom 3D to allow any individuals who might want to come and object and/or state their concerns to be heard in open court. Also, at the commencement of the hearing, the Court opened its virtual courtroom to comply with the Notice and allow anyone who might want to make a comment to do so virtually as contemplated by the Notice. No one appeared either virtually or in person to object to this settlement and the Court finds that this is actually good evidence that proper notice was given and that the absent class members are satisfied with the settlement.

LAW/ANALYSIS

This Court's approval is required to settle this matter. Rule 23(c), SCRCP. The Court's primary concern is protecting the absent Class Members by ensuring that the settlement is fair, reasonable, and adequate. *DeWitt v. Darlington Cty., S.C.*, No. 4:11-cv-00740-RBH, 2013 WL 6408371, *3 (D.S.C. Dec. 6, 2013). South Carolina's appellate courts have not delineated what factors this Court must consider when granting final approval to a class action settlement agreement. Federal courts in South Carolina and the Fourth Circuit apply a varying array of factors that, broadly speaking, examine the stage of the proceedings, the nature and quality of the negotiations, and the substantive fairness of the settlement to the absent Class Members. *Id.* (listing factors considered by different courts). There is a "strong presumption" in favor of approving a class action settlement, and "the court should defer to the evaluation and judgment of experienced trial counsel." *Id*. In the end, approval is within this Court's discretion, and this Court should exercise its discretion "'in light of the general judicial policy favoring settlement.'" *Reed v. Bid*

Water Resort, LLC, No. 2:14-cv-01583-DCN, 2016 WL 7438449, *6 (D.S.C. May 26, 2016) (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 280 (S.D.N.Y. 1999)); *see also Doe*, 407 S.C. at 138, 754 S.E.2d at 499 (holding class members are bound by the resolution of a class action after receiving sufficient notice).

The Court finds the Agreement to be fair, reasonable, and adequate. This matter was forcefully litigated by both sides, both before this Court and the South Carolina Supreme Court. The parties engaged in extensive arms' length negotiations, and they reached a compromise that ultimately was approved by the governing bodies of eight political subdivisions before being presented to this Court. The ultimate resolution of this case returns the allegedly improper Hospitality Fee collections to the payors of the fee, with the unclaimed balance of the Common Fund otherwise being used to the benefit of the Class Members, and further keeps future Hospitality Fee collections with the respective municipalities to provide additional benefits to the Class Members. The Court also reiterates and reaffirms its prior finding that the Agreement does not grant unduly preferential treatment to the City as class representative. The City is entitled to reimbursement of its costs for providing notice to the Class Members and a 0.25% class representative fee, *see Jenkins v. Trustmark Nat. Bank*, 300 F.R.D. 291, 305-06 (S.D. Miss. 2014); *Manual for Complex Litigation* § 21.312 (4th ed. Supp. 2020), and the proposed distribution of a portion of the balance of the Common Fund to the City is reasonable as Class Member claims will have been paid and the leftover funds can be used only for tourism-related projects, which mirrors the purpose for which they were collected.

The Court therefore finds the Agreement to be fair, reasonable, and adequate and gives it final approval.

CONCLUSION

For the foregoing reasons, the Court GRANTS the Motion and it is ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction over all Class Members, and all Class Members are bound by this Order.
2. The Notice and method used to provide notice of the Agreement, which was previously approved by this Court was substantially complied with and is adequate to protect the due process rights of all Class Members. The Notice Plan was the best practicable and was reasonably calculated, under all the circumstances, to apprise the Class Members of the pendency of this action and their rights therein, including affording them an opportunity to present their objections to the Agreement and/or to opt out of the reimbursement portion of the Agreement.
3. The Agreement and the terms and conditions of the settlement contained therein are approved as fair, reasonable, and adequate.
4. The Agreement is adopted by the Court and made a part of this Order as if fully set out herein.
5. The City, as the named class representative, has adequately protected the interests of the Class members.
6. John M. S. Hoefer, Chad N. Johnston, and R. Walker Humphrey, II, all of Willoughby & Hoefer, P.A., have fairly and adequately represented the Class Members as appointed class counsel.
7. All other requirements of statute, rule, and constitutional principles necessary to effectuate settlement have been met and satisfied.

8. This Court shall retain continuing jurisdiction for all purposes necessary and proper to effectuate the Agreement through final dismissal of this matter.

IT IS SO ORDERED.

[COURT'S ELECTRONIC SIGNATURE PAGE FOLLOWS]

Horry Common Pleas

Case Caption: Myrtle Beach City Of VS Horry County Of , defendant, et al

Case Number: 2019CP2601732

Type: Order/Approval Of Settlement

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157