

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

INDIANA STATE CONFERENCE OF THE)	
NAACP, for itself and all persons similarly)	
situated,)	
)	
Plaintiff,)	
)	
v.)	CASE NO: 1:09-cv-0849-TWP-DML
)	
MICHAEL A. GARGANO, in his official)	
capacity as Secretary of the Indiana Family)	
and Social Services Administration, et al.,)	
)	
Defendants.)	

**ORDER APPROVING CLASS ACTION SETTLEMENT AND AN
AWARD OF ATTORNEY’S FEES AND COSTS**

The parties to this action have jointly moved, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for approval of the Settlement Agreement [doc. 143-1] signed by counsel for the parties in April 2011 to resolve the instant class action lawsuit. In the same motion, the parties jointly seek approval of an award of attorney’s fees and litigation costs, pursuant to Rule 23(h) and Rule 54(d)(2), which the parties have agreed upon and is set forth in the Settlement Agreement. On August 25, 2011, this Court held a fairness hearing to determine whether, as required by Rule 23(e)(2), the class action settlement is “fair, reasonable, and adequate.” The parties appeared through counsel at the hearing.

Having considered the April 2011 Settlement Agreement, the memorandum of law the parties submitted in conjunction with the pending motion, the parties’ Joint Report on Response to Class Notice [doc. 146], and the presentations at the fairness hearing, this Court hereby makes the following findings of fact and conclusions of law.

1. This lawsuit was filed on July 9, 2009 to remedy the alleged failure of Indiana state officials to offer voter registration at public assistance offices in the State, as required by Section 7 of the National Voter Registration Act (“NVRA”), 42 U.S.C. § 1973gg-5.

2. Section 7 of the NVRA requires that the Indiana Family and Social Services Administration (“FSSA”) distribute voter registration applications to individuals when they apply for public assistance, renew or recertify their public assistance benefits, or notify officials of a change of address in connection with their benefits, and requires that FSSA provide assistance to FSSA clients in completing the voter registration application. 42 U.S.C. § 1973gg-5(a)(4)(A), & (a)(6)(A) & (C). Section 7 further requires that FSSA provide public assistance clients with a standard form that provides information relevant to the voter registration process, 42 U.S.C. § 1973gg-5(a)(6)(B), and that asks the client whether he or she would “like to apply to register to vote here today?.” 42 U.S.C. § 1973gg-5(a)(6)(B)(i). Section 7 requires that FSSA accept completed voter registration applications and transmit them to state election officials for processing. 42 U.S.C. § 1973gg-5(a)(4)(A)(iii).

3. The Amended Complaint [doc. 51], filed September 14, 2009, alleges that FSSA, in its day-to-day practices at public assistance offices across the State, was failing to regularly distribute voter registration applications in connection with public assistance applications, renewals and recertifications, and changes of address, and thus was acting contrary to the NVRA. The named Plaintiff is the Indiana State Conference of the NAACP.¹ Defendants include the Secretary of the FSSA, the Director of FSSA’s Division of Family Resources, the Co-Directors of the Indiana Election Division (who are designated by the State as the NVRA “chief State election official,” pursuant to Section 10 of the NVRA, 42 U.S.C. § 1973gg-8), and

¹ The Amended Complaint included two other Plaintiffs who subsequently were voluntarily dismissed. [Docs. 96 & 115].

the four members of the Indiana Election Commission. All Defendants are sued in their official capacities. The Amended Complaint sought injunctive and declaratory relief.

4. On May 18, 2011, this Court entered an order certifying this case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. [Doc. 144]. The definition of the certified class is as follows:

All residents of the State of Indiana who have applied for public assistance through FSSA/DFR, or who have requested recertification or renewal or submitted a change of address relating to public assistance through FSSA/DFR, and who claim that they were not offered the opportunity to register to vote in that transaction or claim that they were not offered assistance in completing a voter registration application, in accordance with 42 U.S.C. § 1973gg-5.

5. This Court has jurisdiction over the subject matter of this action and all the parties, including members of the certified class.

6. The class has been given reasonable notice of the proposed class action settlement and the proposed award of attorney's fees and costs, as required by Rule 23(e)(1) and Rule 23(h)(1), in compliance with this Court's May 18, 2011 Order Directing Notice to Class of Proposed Class Action Settlement and Setting Case for Fairness Hearing. [Doc. 145].

7. The parties have reported to the Court that no class members contacted Plaintiffs' or Defendants' counsel pursuant to the class action notice. [Doc. 146]. Likewise, no class members appeared at the August 25, 2011 fairness hearing.

8. The proposed settlement sets forth a detailed set of procedures to govern the distribution of voter registration applications to public assistance clients in Indiana. The new procedures address both public assistance transactions which take place in-person at FSSA offices, and remote transactions between FSSA and its clients which take place by telephone, the mail, or the internet. The settlement also addresses the manner in which FSSA is to assist clients in completing the voter registration application, the use of the standard form mandated by the

NVRA for providing information on the voter registration process to public assistance clients and inquiring as to their registration preference, and the acceptance of completed registration forms by FSSA. The settlement further includes a number of measures aimed at facilitating compliance, including provisions for the appointment of NVRA coordinators at each FSSA local office, the appointment of a statewide FSSA NVRA coordinator, training, data collection and reporting by FSSA and the Election Division Co-Directors, and compliance monitoring. The settlement is to remain in effect until April 1, 2014, and this Court is to have continuing jurisdiction to enforce the terms of the agreement. Finally, upon approval by this Court, Defendants are to pay Plaintiff the amount of \$350,479.77 in attorney's fees and costs.

9. Pursuant to the factors set forth by the Seventh Circuit, in *Synfuel Technologies v. DHL Express (USA)*, 463 F.3d 646 (2006), this Court finds that the April 2011 Settlement Agreement is fair, reasonable, and adequate.

a. The first and most important *Synfuel* factor requires the Court to compare the strength of Plaintiff's case to the relief contained in the proposed settlement.

The proposed settlement substantially augments the relevant pre-existing agency procedures regarding voter registration, to the benefit of the class members. As set forth above, Section 7 of the NVRA contains three basic requirements regarding voter registration at state public assistance offices: distribution of voter registration applications and the standard information/preference form; assistance in completing registration applications; and transmission of registration applications to the appropriate election officials. The settlement makes improvements in how FSSA will address all three of these requirements and, in particular, sets out the specific manner in which voter registration applications are to be distributed both in in-person transactions at FSSA offices in remote transactions. The settlement further provides for

an extensive set of procedures, including training, data collection and reporting, and monitoring, aimed at facilitating compliance with the in-office and remote registration procedures. These procedures bind FSSA to compliance measures specifically tailored to this case and which provide important safeguards to ensure continued compliance with FSSA's voter registration obligations.

Under these circumstances, additional specific findings concerning the strength of Plaintiff's case would not materially affect the Court's conclusion that the settlement is "fair, reasonable, and adequate." Accordingly, this factor weighs heavily in favor of approving the Settlement Agreement.

b. *Synfuel* also requires that this Court consider the complexity, length and expense of the litigation, and the stage of the proceedings and the amount of discovery completed at the time of settlement. Should this case not settle, there is a reasonable prospect of substantial additional litigation. In particular, Plaintiff has taken seven depositions, but, given the statewide nature of the claim, represents that fully litigating the case would require a substantial number of additional depositions. The cost of such further discovery and trial, and the attendant delay in granting a remedy to the class for the alleged NVRA violation, both weigh in favor of this Court granting approval to the settlement.

c. A further consideration is the amount of opposition to the settlement. Since no class member has expressed any opposition to the Settlement Agreement, this factor also weighs strongly in favor of approval.

d. The last factor is the opinion of class counsel. Plaintiff's counsel include individuals with extensive experience in voting rights litigation in general, and NVRA litigation in particular, and are highly experienced and knowledgeable regarding the requirements of the

NVRA, including Section 7. Based on that experience and knowledge, Plaintiff's counsel strongly believe that the relief provided to the class by the proposed settlement is "fair, reasonable, and adequate," and thus urge the Court to approve the settlement.

10. For these reasons, all the factors enumerated by the Seventh Circuit support a finding that the April 2011 Settlement Agreement is "fair, reasonable, and adequate," as required by Rule 23(e)(1).

11. Rule 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." The rule further provides (in subsection 1) that "[a] claim for an award must be made by motion under Rule 54(d)(2)," and specifies (in subsection 3) that "[t]he court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a)."

12. An award of attorney's fees and costs to Plaintiff is authorized by law. Section 11(c) of the NVRA, 42 U.S.C. § 1973gg-9(c), provides that "[i]n a civil action under [the NVRA], the court may allow the prevailing party (other than the United States) reasonable attorney fees, including litigation expenses, and costs." It is well established that a plaintiff that enters into a court-approved and court-enforceable consent judgment, such as the Settlement Agreement now before this Court, qualifies as a "prevailing party" under federal fee-shifting statutes, such as Section 11(c) of the NVRA, regardless of whether the consent judgment includes an admission of liability by the defendant. *Buckhannon Board & Care Home. v. West Virginia Dept. of Health & Human Services.*, 532 U.S. 598, 604 (2001); *Maher v. Gagne*, 448 U.S. 122, 129-30 (1980).

13. The settlement agreement provides for an award of fees and costs that is reasonable in its amount. The amount the parties agreed upon was recommended by Magistrate Judge Lynch pursuant to a mediation procedure agreed upon by the parties. Judge Lynch made her

settlement recommendation after considering information provided to her by Plaintiff and Defendants, including information regarding the hours Plaintiff's counsel worked on this case, the appropriate hourly rates for Plaintiff's counsel, and the litigation costs incurred. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). No class member has objected to this award.

IT IS THEREFORE ORDERED that the parties' April 2011 Settlement Agreement is approved, including the provision of the Agreement providing for an award of attorney's fees and costs.

08/25/2011

Date



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

Distribution List:

Anson Asaka
NAACP
aasaka@naacpnet.org

Brenda Wright
DEMOS
bwright@demos.org

Gavin M. Rose
ACLU of INDIANA
grose@aclu-in.org

Mark A. Posner
LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW
mposner@lawyerscommittee.org

Nicole Kovite Zeitler
PROJECT VOTE
nzeitler@projectvote.org

Judson H. Miner
MINER, BARNHILL & GALLAND, PC
jminer@lawmbg.com

Betsy M. Isenberg
OFFICE OF THE INDIANA ATTORNEY GENERAL
Betsy.Isenberg@atg.in.gov