VIA ELECTRONIC MAIL

October 8, 2021

Honorable, Jennifer Bailey, Judge
Kanawha County Circuit Clerk
P.O. Box 2351
111 Court Street
Charleston, WV 25301

RE: T.W. v. Steven R. Matulis, M.D., et al.
Kanawha County Circuit Court
Consolidated Civil Action No.: 16-C-497
A.H. & Adriana Fleming v. Matulis, et al 18-C-176

Dear Judge Bailey:

In accordance with the entered Order, enclosed please find the, "*Verified Petition for Award of Attorneys' Fees and Payment of Service Awards*" with regard to the above styled civil action.

Should you have any questions, please contact me.

Very truly yours,
CALWELL LUCE DITRAPANO PLLC

By: _____
David H. Carriger, Esquire
dcarriger@cldlaw.com

DHC/kw
Enclosures as stated:
cc.(via electronic mail)

P. Rodney Jackson, Esq.
Perry W. Oxley, Esq.
L.R. Sammons, III, Esq.
David E. Rich, Esq.
Eric D. Salyers, Esq.
Michael W. Carey, Esq.
John A. Kessler, Esq.
David R. Pogue, Esq.
Tamela J. White, Esq.
Bernard S. Vallejos, Esq.
Heather Heiskell Jones, Esq.
Don C.A. Parker, Esq.
Joseph A. Ford, Esq.
Lee Murray Hall, Esq
Charlotte A. Hoffman Norris, Esq.
Sarah A. Walling, Esq.
Benjamin Salango, Esq.
Marvin Masters, Esq.
Robert V. Berthold, Esq.
Adam Campbell, Esq.
Matthew Smith, Esq.
Michael J. Del Guidice, Esq.
William M. Tiano, Esq.
Tony O'Dell, Esq.
Jan Dils, Esq.
Kelly Little Guice, Esq.
David L. Shuman, Esq.
Roberta F. Green, Esq
Cheryl A. Fisher, Esq.
Richard D. Lindsey, II, Esq.
Issac Forman, Esq.
Mathew Stonestreet, Esq.
Tim J. Yianna, Esq.
Thomas P. Mannion

VIA USPS FIRST CLASS MAIL

October 8, 2021

Cathy S. Gatson
Kanawha County Circuit Clerk
P.O. Box 2351
111 Court Street
Charleston, WV 25301

RE: T.W. v. Steven R. Matulis, M.D., et al.
Kanawha County Circuit Court
Consolidated Civil Action No.: 16-C-497
A.H. & Adriana Fleming v. Matulis, et al 18-C-176

Dear Ms. Gatson:

Enclosed for filing please find the original, "*Verified Petition for Award of Attorneys' Fees and Payment of Service Awards*" with regard to the above styled civil action.

Thank you for your assistance. Should you have any questions, please contact me.

Very truly yours,
CALWELL LUCE DITRAPANO PLLC

By: _____
David H. Carriger, Esquire
dcarriger@cldlaw.com

DHC/kw
Enclosures as stated:

cc.(via electronic mail)
P. Rodney Jackson, Esq.
Perry W. Oxley, Esq.
L.R. Sammons, III, Esq.
David E. Rich, Esq.
Eric D. Salyers, Esq.
Michael W. Carey, Esq.
John A. Kessler, Esq.
David R. Pogue, Esq.
Tamela J. White, Esq.
Bernard S. Vallejos, Esq.
Heather Heiskell Jones, Esq.
Don C.A. Parker, Esq.
Joseph A. Ford, Esq.
Lee Murray Hall, Esq
Charlotte A. Hoffman Norris, Esq.
Sarah A. Walling, Esq.
Benjamin Salango, Esq.
Marvin Masters, Esq.
Robert V. Berthold, Esq.
Adam Campbell, Esq.
Matthew Smith, Esq.
Michael J. Del Guidice, Esq.
William M. Tiano, Esq.
Tony O'Dell, Esq.
Jan Dils, Esq.
Kelly Little Guice, Esq.
David L. Shuman, Esq.
Roberta F. Green, Esq
Cheryl A. Fisher, Esq.
Richard D. Lindsey, II, Esq.
Issac Forman, Esq.
Mathew Stonestreet, Esq.
Tim J. Yianna, Esq.
Thomas P. Mannion

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

A.H. and ADRIANA FLEMING,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TO BE FILED IN: 16-C-497
Honorable Jennifer Bailey
A.H. and Adriana Fleming
v. Matulis, et al. – 18-C-176

STEVEN R. MATULIS, M.D.;
CHARLESTON GASTROENTEROLOGY
ASSOCIATES, P.L.L.C.; and
CHARLESTON AREA MEDICAL CENTER, INC.;

Defendants.

VERIFIED PETITION FOR AWARD OF ATTORNEYS' FEES AND PAYMENT OF SERVICE AWARDS

Class Counsel respectfully submits the instant Petition for Award of Attorneys' Fees for Class Counsel's work in the above-referenced civil action which ultimately resulted in a proposed class settlement of Two Million Forty-Eight Thousand Six Hundred Fifty-Five and 00/100 Dollars ($2,048,655.00) with Defendants Steven R. Matulis, M.D. (Defendant Matulis) and Charleston Gastroenterology Associates, PLLC (Defendant CGA), after many years of active and contentious litigation first beginning in 2016. Class Counsel also moves the Court for payment of service awards to the proposed Class Representatives. This proposed Class Settlement has already received preliminary approval from the Court.

Summary of Litigation

This litigation was commenced when Plaintiff/Class Representative Adriana Fleming filed her Class Action Complaint against the Defendants on or about March 31, 2017.[1] Ms. Fleming's case was assigned Kanawha County Civil Action No. 17-C-456 and assigned to the Honorable Joanna Tabit. The Defendants immediately sought to have the case dismissed on numerous legal grounds, leading to an in-person hearing and arguments on the pending motions on September 7, 2017. By order dated January 29, 2018, Judge Tabit denied the Defendants' motions to dismiss. Plaintiff/Class Representative A.H. filed her Class Action Complaint against the Defendants on or about February 22, 2018. A.H.'s case was assigned Kanawha County Civil Action 18-C-176 and originally assigned to the late and Honorable J. Stucky.

Shortly thereafter, Defendant Charleston Area Medical Center (CAMC) moved, pursuant to Trial Court Rule 26.06, to refer both the *Fleming* and *A.H.* cases, as well as all other pending lawsuits involving Defendant Matulis to the Mass Litigation Panel. Plaintiffs A.H. and Fleming were both opposed to such a referral and, instead, sought to consolidate their cases (and the remainder of the Matulis litigation) before this Court pursuant to W.Va.R.Civ.P. 42. This Court held a hearing on the issue of consolidation on August 15, 2018, and on September 27, 2018, this Court entered an order consolidating before it all Matulis litigation (including the Fleming and A.H. civil actions).[2]

Following the Court's consolidation of Matulis-related cases, Plaintiffs/Class Representatives Fleming and A.H. consolidated their claims and filed a joint Amended Class

---

[1] Prior to filing her Complaint, Ms. Fleming served Notices of Claim against the Defendants pursuant to the West Virginia Medical Professional Liability Act.

[2] The Supreme Court of Appeals of West Virginia would later deny CAMC's motion to refer all of the Matulis-related cases to the Mass Litigation Panel.

Action Complaint on or about October 17, 2018.[3] The Defendants immediately moved to dismiss the Amended Complaint filed motions to dismiss and asserted various arguments as to why Plaintiffs allegedly failed to state legally cognizable claims against them. On February 13, 2019 the Court entered a Scheduling Order in this matter which included both a class certification hearing date (November 22, 2019) and a trial date (April 6, 2020). The Court held a hearing and heard oral arguments on Defendants' motions to dismiss on March 1, 2019 and denied Defendants' motions from the bench.

All Parties continued to engage in extensive fact and expert witness discovery as the Court's hearing date for class certification grew nearer. During this period, Plaintiffs/Class Representatives and Defendants Matulis and CGA engaged in extensive settlement negotiations and mediations which culminated in a proposed class settlement of Plaintiffs' claims against Defendants Matulis and CGA.[4]

Summary of Settlement Benefits and Requested Attorneys' Fees and Service Awards

The pending class settlement negotiated by Class Counsel requires Defendants Matulis and CGA to pay a gross amount of $2,048,655.00 into a common fund. This amount will be inclusive of Class Counsel's attorneys' fees, expenses, any service awards to Class Representatives A.H. and Ms. Fleming. In addition to the forgoing amount, the pending class settlement also requires Defendants Matulis and CGA to separately pay all costs of claims administration (including the cost of a court-appointed guardian ad litem utilized in the claims administration process).

[3] The Consolidated Class Action Complaint retained Civil Action No. 18-C-176.

[4] During this same period, the professional liability insurance carrier for Defendants Matulis and CGA sought a ruling from the Court that would have eliminated any available insurance coverage for Plaintiffs' claims (and the claims of the proposed Class) against Matulis and CGA.

After nearly a half-decade of litigation, Plaintiffs' pending class settlement with Matulis and CGA received preliminary approval from the Court. Class Counsel is seeking payment of attorneys' fees of up to 39% (up to $798,975.45).[5] Class Counsel has previously requested that each Class Representative be granted a service award of up to $500.00 from the gross settlement amount (for a total of $1,000.00) in addition to their regular share of the settlement proceeds as a member of the proposed Settlement Class.

Should the Court (1) grant Class Counsel's request for payment of attorneys' fees and (2) grant payment of the requested service awards to the Class Representatives, then the amount available for distribution to the Settlement Class will be approximately $1,248,679.55. Under this scenario, each member of the 2,525-person proposed Settlement Class could receive an equal payment of approximately $494.52.

Discussion

I. Class Counsel's requested attorneys' fees are fair and reasonable given the novel and complex nature of the case, the work performed, the risks taken, and the results achieved.

The pending $2,048,655.00 class settlement with Defendants Matulis and CGA is result of multiple years of litigation by Class Counsel in a novel and complex case against multiple parties. Class Counsel's request for attorneys' fee is supported by existing law, as well as by the work performed, the risks taken, and the results that Class Counsel achieved for the Settlement Class.

A. The appropriate measure for determining Class Counsel's fee is based on a percentage of the benefit conferred to the Settlement Class.

[5] Class Counsel is not seeking recovery of any expenses/costs from this proposed Settlement.

The common fund doctrine is one of the earliest recognized exceptions to the "American Rule" which generally requires that litigants bear their own costs and attorneys' fees. Premised on the equitable powers of the court, the common fund doctrine allows individuals who maintain a suit that results in the creation, preservation or increase of benefits in which others have a common interest, to be reimbursed from a percentage of those benefits. *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116 (1885); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

Nearly all federal circuits that have considered the issue have found that a trial court may use the percentage method and, importantly, in West Virginia a one-third (33.3%) contingency fee is presumptively reasonable. *See Hayseeds, Inc. v. State Farm Fire & Cas.*, 177 W.Va. 323, 352 S.E.2d 73, 80 (1986). *Muhammad*, 2008 U.S. Dist. LEXIS 103534, at *18; *see Goldenberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998); *In re Thirteen Appeals Arising out of San Juan DuPont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995); *In re Wash. Public Power Supply Sys. Litig.*, 19 F.3d at 1291, 1295 (9th Cir. 1994); *Gottlieb v. Barry*, 43 F.3d. 474 (10th Cir. 1994); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993); *Longden v. Sunderman*, 979 F.2d 1095, 1099 (5th Cir. 1992); *see also In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992); *Paul, Johnson, Alston & Hunt v. Graulty,* 886 F.2d 268, 272 (9th Cir. 1989); *Brown v. Phillips Petroleum Co.,* 838 F.2d 451, 454, 456 (10th Cir.), *cert. denied*, 488 U.S. 822 (1988); *Camden I Condo. Ass'n*, 946 F.2d 768, 773-774 (11th Cir. 1991); *Bebchick v. Wash. Met. Area Transit Comm'n*, 805 F.2d 396, 406-7 (D.C. Cir. 1986). In fact, some circuits mandate use of the percentage of fund method. *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993); *Camden I Condo. Ass'n,* 946 F.2d at 774; *see generally* 1 Alba Conte, *Attorney Fee Awards* § 2.02 at 31 (2d ed. 1993); *Court Awarded*

Attorney Fees, Report of the Third Circuit Task Force ("Task Force Report"), 108 F.R.D. 237 (1985) (Prof. Arthur R. Miller, Reporter).

The District Courts within the Fourth Circuit, including West Virginia Federal District Courts, have consistently endorsed the percentage method. "...application of a percentage method to calculate an attorney's fee award is now favored." *Kidrick v. ABC Television & Appliance Rental*, 1999 WL 1027050 *1 (N.D. W. Va. 1999) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)); *see also Teague v. Bakker*, 213 F. Supp. 2d 571, 582 (W.D.N.C. 2002) ("The percentage recovery method is generally favored...."); *Goldenberger v. Marriott PLP Corp.*, 33 F. Supp.2d 434, 437-38 (D. Md. 1998) (applying percentage method, and noting general trend in favor thereof); *Strang v. JHM Mortgage Sec. Ltd. P'ship*, 890 F. Supp. 499, 504-03 (E.D. Va. 1995) (holding that calculating fees based upon percentage "is a more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases"); *Edmonds v. United States*, 658 F. Supp. 1126 (D.S.C. 1987) (finding percentage method preferable). Percentage-based attorney's fees:

> (1) align the interests of claimants and lawyers by rewarding superior performance and punishing failure;
>
> (2) minimize the need to evaluate the reasonableness of attorneys' efforts *ex post*, which is both time consuming and often hard to do; and
>
> (3) transfer the burden of financing lawsuits and other risks from claimants to attorneys who are better able to bear them.

Kirchoff v. Flynn, 786 F.2d 320, 326 (7th Cir. 1986); *see also Muhammad*, 2008 U.S. Dist. LEXIS 103534, at *19-20.

In its 1985 report, the Third Circuit Task Force recommended that a district court "should attempt to establish a percentage fee arrangement." *Task Force Report,* 108 F.R.D. 237, 255

(1985); *see also Muhammad*, 2008 U.S. Dist. LEXIS 103534, at *20. Since that time, the Third Circuit has, on several occasions, "reaffirmed that application of a percentage-of-recovery method is appropriate in common-fund cases." *In re Cendant Corporate PRIDES Litig.*, 243 F.3d 722 (3d Cir. 2001) (collecting cases). In sum, there is a clear legal support among the federal and state courts, that the award of attorneys' fees, such as the requested award in this matter of up to 39%, should be based on a percentage of the recovery. This consensus derives from the recognition that the percentage of benefits approach is a well-reasoned and more equitable method of determining attorneys' fees in such cases.

B. The fee percentage requested by Class Counsel is warranted by the work performed, risks taken, and results achieved.

The benefits conferred by the pending class settlement with Defendants Matulis and CGA are significant. As discussed above, a request for attorneys' fees of one-third (33.3%) is "presumptively fair" for an ordinary case. The instant case is, undeniably, far from the ordinary case. The Court is aware of this fact by virtue of presiding in these matters for many years and ruling upon novel and complicated issues repeatedly. While many other civil actions began and ended, this case continued to be hard-fought. The near half-decade of risk, unknown outcome, complex nature of class actions and claims made pursuant to the MPLA work firmly support the fee request in this case of up to 39%. MPLA claims, without the added complexity of a class action, are complicated and require specialized litigation knowledge. In sum, the fee request is firmly support by the work performed, risk taken, and substantial benefits conferred to the class members.

The settled claims against Defendants Matulis and CGA (as well as certain other claims against Defendant CAMC) were brought by Plaintiffs under the West Virginia Medical

Professional Liability Act ("MPLA"), W.VA. CODE §55-7B-1, *et seq.* brought under MPLA. MPLA claims are generally accepted as more complex than many other types of civil actions brought to remedy personal injuries. MPLA claims, like this one, generally require medical experts, not only to assist counsel in initially assessing a case, but also to testify on both liability and damages. Moreover, and as the Court is aware, MPLA claims have statutory caps on non-economic damages as well as other limitations on damages. For this reason, MPLA cases are commonly undertaken by counsel in West Virginia on 40% contingency due to the increased work, expense, and risk. Thus, Class Counsel's fee request in this case is *below* the customary amount for a routine MPLA action in this jurisdiction.

This Court has already recognized this litigation is complex and required specialized knowledge by Class Counsel. The Court has further already recognized that Class Counsel has zealously litigated this complex matter when the Court approved a contingent fee of 39% for Class Counsel relating to the previous partial settlement with Defendant CAMC. (See, generally, *Order Granting Final Approval of Class Action Settlement of Certain Claims Against Defendant CAMC*, June 7, 2021.)

Unlike most cases brought under MPLA where medical providers' insurance coverage is effectively a "given," the issue of insurance coverage for the Defendants, including Defendants Matulis and CGA, in this litigation has been more complicated due to some of the allegations regarding Defendant Matulis's reported conduct and his criminal charges. Multiple companies that insure various Defendants, including Matulis and CGA, in the consolidated Matulis litigation have filed declaratory judgment actions related the availability and scope of insurance coverage pertaining to Plaintiffs' claims. As a result, Plaintiffs were also named as defendants in multiple lawsuits filed in both federal and West Virginia state court. (See, e.g., *Westfield Insurance*

Company v. Steven R. Matulis, M.D., et al., S.D.W.Va. Civil Action No. 2:17-CV-01269; *West Virginia Mutual Insurance Company v. Steven R. Matulis, et al*, Kanawha County Civil Action No. 17-C-748. Class Counsel had to litigate these declaratory judgment actions simultaneously while litigating this case.

Give the complex nature of this litigation and the existence of such tagalong litigation related to insurance coverage for Plaintiffs' claims, Class Counsel has thousands of hours of work time invested in this litigation over many years. The amount of time the Class Counsel has invested in this case strongly supports Class Counsel's request for attorneys' fees.

The risks that Class Counsel faced in pursuing Plaintiffs' claim, both individually and on behalf of a class, were significant and numerous. As discussed above, there are many risks associated with actions brought under the MPLA, including the risk that the MPLA's cap on damages will ultimately make it impractical to invest substantial time and expenses necessary to pursue a complex case such as time one. As the Court will recall, the Defendants' initial motions to dismiss in this case argued, in part, that the damages sought by Plaintiffs were not recoverable under the MPLA and, as a practical matter, that a class action could not be brought for claims brought under the MPLA. If these arguments were ultimately persuasive, then Plaintiffs' recovery would be significantly, perhaps fatally, limited. Moreover, the nature of Defendant Matulis's alleged misconduct made the availability of applicable insurance a significant issue from the very start of the case. Thus, Class Counsel ran the real risk their investment of substantial time and money in this litigation might all be for naught. The significant risks that Class Counsel undertook in litigating this case strongly supports Class Counsel's request for attorneys' fees.

The pending Matulis and CGA class settlement that was negotiated by Class Counsel is not a "coupon" or "rebate" settlement. This class settlement will provide real and significant

benefits to the Settlement Class. It can, upon final approval by the Court, provide a significant cash payment to more than 2,500 former patients of Defendant CGA and Defendant Matulis (in addition to cash payments previously provided to the same patients because of the diligent work of Class Counsel). This represents a significant benefit to the Settlement Class.

Another substantial benefit of the settlement negotiated by Class Counsel is the that it will permit members of the Settlement Class to receive compensation while remaining anonymous. Unlike the Class Representatives, members of the settlement class **will not have to turn over their medical and mental health records** and **will not have to answer intrusive questions in a deposition about their sexual histories and sexual practices**. The significant benefits that are provided by the Matulis and CGA class settlement strongly supports Class Counsel's request for attorneys' fees.

II. The requested service awards for the two Class Representatives are consistent with public policy and are reasonable given their hard work and significant participation in this litigation.

Class Counsel requests that each Class Representive receive a service award of up to $500.00 from the proposed class settlement (in addition to the receipt of their share of the net settlement money as a member of the proposed Settlement Class). The degree of hard work and significant participation by Plaintiffs Adriana Fleming and A.H. over the lengthy course of this litigation has already been recognized by the Court. (*Order Granting Final Approval of Class Action Settlement of Certain Claims Against Defendant CAMC*, June 7, 2021, at p. 7.) The pending Class Settlement stands to benefit more than 2,500 other female patients of Dr. Matulis (or the estates of such patients). Ms. Fleming and A.H. exemplify the fact that "[s]erving as a class representative is a burdensome task and it is true that without class representatives, the entire class

would receive nothing." *Kay v. Equitable Production Co.,* 749 F. Supp. 2d 455, 472 (S.D.W.Va. 2010).

As the Court is aware, "[i]ncentive awards[6] are fairly typical in class action cases." See *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 William B. Rubenstein et al., *Newberg on Class Actions* § 11:38 (4th ed. 2008). "Numerous courts have authorized incentive awards." *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003) (internal citations omitted). Courts that have approved incentive awards "have stressed that incentive awards are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class." *Hadix*, 322 F.3d at 897. Such awards … are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action." *Rodriguez*, 563 F.3d at 9958.[7]

Service awards to class representatives serve an important public policy. Service awards can encourage people to take on the role of a class representative in important cases – like this one – that enforce the rights of others even though there is a risk that an individual recovery may be

---

[6] Courts have used the term "incentive payment" as well as the term "service award" to refer to those payments awarded to a class representative that are above and beyond his/her pro rata share of a class recovery.

[7] In the interest of full disclosure, Class Counsel advises the Court that the Eleventh Circuit Court of Appeals recently ruled that two obscure U.S. Supreme Court decisions from the 1800s precluded federal courts from granting service awards/incentive payments to class representatives in cases brought under Fed.R.Civ.P. 23. See *Johnson v. NPAS Sols.*, LLC 975 F.3d 1244, 1260 (11th Cir. 2020). However, the Eleventh Circuit's ruling has no precedential value in this action brought under West Virginia law. Moreover, courts in other federal circuits have **uniformly declined to follow** the Eleventh Circuit's ruling in *Johnson,* and the *Johnson* decision remains an anomaly outside of the Eleventh Circuit. See, e.g., *Knox v. John Varvatos Enters.*, 2021 U.S. Dist. LEXIS 29410 (S.D.N.Y. Feb. 17, 2021); *Somogyi v. Freedom Mortg. Corp.*, 2020 U.S. Dist. LEXIS 194035 (D.N.J. Oct. 20, 2020); *Wickens v. ThyssenKrupp Crankshaft Co*, LLC, 2021 U.S. Dist. LEXIS 17884 (N.D. Ill. Jan. 26, 2021); *Grace v. Apple, Inc.*, 2021 U.S. Dist. LEXIS 66294 (N.D. Cal. March 31, 2021); *In re Apple Inc. Device Performance Litig.*, 2021 U.S. Dist. LEXIS 50546 (N.D. Cal. March 17, 2021); *In re Lithium Ion Batteries Antitrust Litig.*, 2020 U.S. Dist. LEXIS 233607 (N.D. Cal. Dec. 10, 2020).

small in relation to the effort required and the risks taken. In short, service awards to class representatives are routinely recognized to "encourage socially beneficial litigation." *Kay*, *supra*, citing *Muhammad v. Nat'l City Mortgage, Inc.*, 2008 U.S. Dist. LEXIS 103534 at *7 (S.D.W.VA. Dec. 19, 2008). Here, the efforts of Ms. Fleming and A.H. helped create a significant settlement fund that will benefit thousands of other female patients of Dr. Matulis. Therefore, their efforts should be rewarded consistent with public policy.

Conclusion

WHEREFORE undersigned Class Counsel respectfully request that the Court approve payment of their requested attorneys' fees and approve payment of service awards to the Class Representatives as detailed herein.

Respectfully submitted,
A.H. and Adriana Fleming, on behalf of herself and on behalf of a class of West Virginia residents similarly situated,
Plaintiffs, By Counsel:

L. Danté DiTrapano (WV Bar No. 6778)
David H. Carriger (WV Bar No. 7140)
CALWELL LUCE DITRAPANO PLLC
Law and Arts Center West
500 Randolph Street
Charleston, West Virginia 25302
304.343.4323 Telephone
304.344.3684 Facsimile
Settlement Class Counsel

and

P. Rodney Jackson (WV Bar No. 1861)

LAW OFFICES OF P. RODNEY JACKSON
401 Fifth-Third Center
700 Virginia Street East, Suite 400
Charleston, WV 25301
Settlement Class Counsel

Ben Salango (WV Bar No. 7790)
Kristy Salango (WV Bar No. 12139)
SALANGO LAW, PLLC
206 Capitol Street
Charleston, WV 25301
Settlement Class Counsel

Marvin W. Masters (WV Bar No. 2359)
THE MASTERS LAW FIRM LC
181 Summers Street
Charleston, WV 25301
Settlement Class Counsel

Robert V. Berthold, Jr. (WV Bar No. 326)
BERTHOLD LAW FIRM PLLC
208 Capitol Street
Post Office Box 3508
Charleston, WV 25301
Settlement Class Counsel

Matthew Stonestreet (WV Bar No. 11398)
THE GIATRAS LAW FIRM, PLLC
118 Capitol Street, #400
Charleston, WV 25301
Settlement Class Counsel

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

A.H. and ADRIANA FLEMING,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TO BE FILED IN: 16-C-497
Honorable Jennifer Bailey
A.H. and Adriana Fleming
v. Matulis, et al. – 18-C-176

STEVEN R. MATULIS, M.D.;
CHARLESTON GASTROENTEROLOGY
ASSOCIATES, P.L.L.C.; and
CHARLESTON AREA MEDICAL CENTER, INC.;

Defendants.

VERIFICATION

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to wit:

Comes now David H. Carriger, Esq, and after first being duly sworn, do hereby certify that the statements contained in the foregoing "*Verified Petition for Award of Attorneys' Fees and Payment of Service Award,*" with respect to Settlement Class Counsel's time and expenses litigating this matter are true and correct.

David H. Carriger, Esq.

Taken, subscribed and sworn to before me, a Notary Public, in and for the county and state aforesaid, this 8th day of October, 2021.

My Commission expires March 1, 2022

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
MELANIE PAUL
Calwell Luce diTrapano PLLC
P.O. Box 113
Charleston, WV 25321
My Commission Expires March 1, 2022

[Seal]

Notary Public

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

A.H. and ADRIANA FLEMING,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TO BE FILED IN: 16-C-497
Honorable Jennifer Bailey
A.H. and Adriana Fleming
v. Matulis, et al. – 18-C-176

STEVEN R. MATULIS, M.D.;
CHARLESTON GASTROENTEROLOGY
ASSOCIATES, P.L.L.C.; and
CHARLESTON AREA MEDICAL CENTER, INC.;

Defendants.

CERTIFICATE OF SERVICE

I, David H. Carriger, Esquire, Counsel for Plaintiffs, do hereby certify that a true and exact copy of the foregoing ***"Verified Petition for Award of Attorneys' Fees and Payment of Service Awards"*** was served upon the following parties was served upon the following parties by electronic and US Mail this 8th day of October, 2021:

P. Rodney Jackson, Esq.
LAW OFFICE OF P. RODNEY JACKSON
106 Capitol Street
Charleston, WV 25301
(304) 345-7330
(304) 344-9566 Facsimile
Settlement Class Counsel

Lee Murray Hall, Esq.
Charlotte A. Hoffman Norris, Esq.
Sarah A. Walling, Esq.
Jenkins Fenstermaker, PLLC
P.O. Box 2688
Huntington, WV 25726-2688
(304) 523-2100
(304) 523-2347 Facsimile

Counsel for Charleston Area Medical Center, Inc.

Perry W. Oxley, Esq.
L.R. Sammons, III, Esq.
David E. Rich, Esq.
Eric D. Salyers, Esq.
Oxley Rich Sammons
517 9th Street, Suite 1000
Huntington, WV 25705
(304) 522-1138
(304) 522-9528 Facsimile
Counsel for Charleston Gastroenterology Associates, P.L.L.C.

Tamela J. White, Esq.
Bernard S. Vallejos, Esq.
FARRELL,WHITE &LEGG, PLLC
914 5th Avenue, PO Box 6457
Huntington, WV 25772-6457
(304) 522-9100
(304) 522-9162 Facsimile
Counsel for Defendant, Steven R. Matulis, M.D.

David L. Shuman, Esq.
Roberta F. Green, Esq.
Caleb B. David, Esq.
SHUMAN, MCCUSKEY & SLICER, PLLC
1411 Virginia Street, East, Suite 200
P.O. Box 3953
Charleston, WV 25339-3953
(304) 345-1400
(304) 343-1826 Facsimile
Counsel for Day Surgery Limited Liability Company d/b/a Day Surgery Center, LLC, and DS Holdings, Inc.

Heather Heiskell Jones, Esq.
Don C.A. Parker, Esq.
Joseph A. Ford, Esq.
Spilman, Thomas & Battle, PLLC
300 Kanawha Blvd., East
Charleston, WV 25301
(304) 340-3800
(304) 340-3801 Facsimile
Counsel for Charleston Area Medical Center, Inc.

Michael W. Carey, Esq.
John A. Kessler, Esq.

David R. Pogue, Esq.
Carey, Scott, Douglas & Kessler, PLLC
Post Office Box 913
Charleston, WV 25323-0913
(304) 345-1234
(304) 342-1105 Facsimile
Counsel for Defendant Charleston Gastroenterology Associates, P.L.L.C.

Issac Forman, Esq.
Hissam Forman Donovan Ritchie, PLLC
707 Virginia Street East, Suite 260
P.O. Box 3983
Charleston, WV 25301
(681) 265-3802
Counsel for Defendant Steven R. Matulis

Ben Salango, Esq.
Preston & Salango, PLLC
P.O. Box 3084
Charleston, WV 25331
(304) 342-0512
(304) 342-0513 Facsimile
Settlement Class Counsel

Marvin W. Masters, Esq.
The Masters Law Firm LC
181 Summers Street
Charleston, WV 25301
(304) 342-3106
(304) 342-3189 Facsimile
Settlement Class Counsel

Robert V. Berthold, Jr., Esq.
Berthold Law Firm PLLC
208 Capitol Street
PO Box 3508
Charleston, WV 25301
(304) 605-2040
(304) 345-5703 Facsimile
Counsel for Plaintiff T.W., A.H., D.C., L.R., and P.W.

Michael J. Del Giudice, Esq.
Ciccarello, Del Giudice & LaFon
1219 Virginia Street East, Suite 100
Charleston, WV 25301
(304) 343-4440
(304) 343-4464 Facsimile

Counsel for B.D., and Estate of T.F.

William M. Tiano, Esq.
Tony O'Dell, Esq.
Cheryl A. Fisher, Esq.
Tiano O'Dell PLLC
P.O. Box 11830
Charleston, WV 25339
(304) 720-6700
(304) 720-5800 Facsimile
Counsel for J.W. and J.W., her husband

Jan Dils, Esq.
Kelly Little Guice, Esq.
Jan Dils, Attorney at Law
963 Market Street
Parkersburg, WV 26101
(877) 526-3457
(304) 428-4500 Facsimile
Counsel for K.H.

Adam Campbell, Esq.
Matthew Smith, Esq.
Campbell & Smith, PLLC
723 Kanawha Blvd., East, Suite 200
Charleston, WV 25301
(304) 345-9888
(304) 345-9890 Facsimile
Counsel for Plaintiff T.W., R.K., and A.H.

Richard D. Lindsay, II, Esq.
Richard D. Lindsay, M.D., J.D.
Tabor Lindsay & Associates
P.O. Box 1269
Charleston, WV 25325
(304) 344-5155
Counsel for Plaintiff D.N.

Matthew Stonestreet (WV Bar No. 11398)
THE GIATRAS LAW FIRM, PLLC
118 Capitol Street, #400
Charleston, WV 25301
Settlement Class Counsel

Tim J. Yianna, Esq.
Lewis, Brisbois, Bisgaard & Smith LLP
707 Virginia Street, East
Suite 1400
Charleston , WV 25301
Counsel for Day Surgery Limited Liability Company d/b/a Day Surgery Center, LLC

Thomas P. Mannion, Esq.
LEWIS BRISBOIS BISGAARD & SMTIH LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Counsel for Day Surgery Limited Liability Company d/b/a Day Surgery Center, LLC

David H. Carriger, Esq. (WV Bar No. 7140)
CALWELL LUCE DITRAPANO PLLC
Counsel for Plaintiff Adriana Fleming