

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

**JENNIFER FORD, ERIC BEARD, and
BRIAN OTTERS**, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

**VETERANS GUARDIAN VA CLAIM
CONSULTING, LLC,**

Defendant.

Case No. 1:23-cv-756-CCE-LPA

CLASS ACTION

**ORDER GRANTING PLAINTIFFS' MOTION FOR
APPROVAL OF VOLUNTARY DISMISSAL OF NCDCA CLAIM
UNDER N.C. GEN. STAT. § 75-54(7)**

The plaintiffs and class representatives have moved for approval of voluntary dismissal of the North Carolina Debt Collection Act claim under N.C. Gen. Stat. § 75-54(7) without prejudice. The defendant does not oppose the motion. Doc. 190 at 8. The Court will approve the voluntary dismissal without prejudice of the portion of the NCDCA claim under § 75-54(7) because it will not prejudice the class.

The Court has certified three classes including an NCDCA class. Doc. 131 at 27. After resolution of dispositive motions, the NCDCA claims remaining for trial include a claim based on N.C. Gen. Stat. § 75-54(7) and a separate claim based on N.C. Gen. Stat. § 75-55(2). Doc. 183 at 2, 24; Doc. 190 at 2. The plaintiffs seek to dismiss the claim based on § 75-54(7) but plan to continue pursuing their NCDCA claim under § 75-55(2). Doc. 190 at 2.

The Court must approve any voluntary dismissal of a certified class action under Fed. R. Civ. P. 23(e) (“The claims, issues, or defenses of a certified class . . . may be . . . voluntarily dismissed . . . only with the court’s approval.”). In determining whether to approve a voluntary dismissal under Rule 23(e), the Court must examine whether the plaintiff class would be prejudiced by the voluntary dismissal. *LaVigne v. First Cmty. Bancshares, Inc.*, No. 15-CV-934, 2021 WL 4477921, at *3 (D.N.M. Sep. 30, 2021). “The district court must ensure that the representative plaintiff fulfills his fiduciary duty toward the absent class members, and therefore must inquire into the terms and circumstances of any dismissal or compromise to ensure that it is not collusive or prejudicial.” *Diaz v. Tr. Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989). District courts “inquire into possible prejudice from (1) class members’ possible reliance on the filing of the action if they are likely to know of it either because of publicity or other circumstances, (2) lack of adequate time for class members to file other actions, because of a rapidly approaching statute of limitations, (3) any settlement or concession of class interests made by the class representative or counsel in order to further their own interests.” *Id.*

The claim to be dismissed is separate and discrete from the remaining claims, and it will be dismissed without prejudice. Therefore, the dismissal will not have any preclusive effect.

The four-year statute of limitations period for Chapter 75 applies to the NCDCA, N.C. Gen. Stat. § 75-16.2, and such claims are tolled for class members from the date the complaint was filed to the date the claims are dismissed without prejudice. *See Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 552–53 (1974) (holding that the timely filing of a

class action tolls the applicable statute of limitations for all persons encompassed by the class complaint); *McCalla v. City of New York*, No. 15-CV-8002, 2017 WL 3601182, at *35–36 (S.D.N.Y. Aug. 14, 2017) (Mag. J. report and recommendation), *adopted*, 2017 WL 4277182 (S.D.N.Y. Sep. 22, 2017) (applying the *American Pipe* tolling to voluntarily withdrawn class allegations). The statute of limitations is relatively long, and while some class members may need to act quickly if they want to bring this claim individually, this is not a situation where the bulk of the class will face immediate statute of limitations pressure. To ameliorate these pressures, the Court will require the notice administrator to post the motion and this Order on the class website so that class members following the litigation will have some notice of this change.¹ The Court will also arrange to post a copy of this Order on the Court website.

There is no indication that this motion has been made to collude with the defendant or to further the interests of class counsel or class representatives. Indeed, the record reflects that this claim is being dismissed because of substantive obstacles to its presentation and to difficulties in managing this claim on a class basis.

Under Rule 23(e)(2), courts may approve a proposal that would “bind” class members only after determining that the proposal is fair, reasonable, and adequate, and after considering certain factors. But Rule 23(e)(2) does not apply here; this is a dismissal without prejudice and class members are free to bring their own § 75-54(7) claim. There is no release. Nothing about this dismissal “binds” class members.

¹ The Court already required the website to be updated with substantive court orders. Doc. 147 at 5.

The class members will not be prejudiced by the voluntary dismissal without prejudice of the NCDCA § 75-54(7) claim. Therefore, the consent motion will be granted.

It is therefore **ORDERED** that:

1. The Consent Motion for approval of voluntary dismissal, Doc. 190, is **GRANTED** and the plaintiffs may take a voluntary dismissal without prejudice of their NCDCA claim under N.C. Gen. Stat. § 75-54(7);
2. The NCDCA claim under N.C. Gen. Stat. § 75-54(7) is dismissed without prejudice;
3. Class counsel **SHALL** immediately provide a copy of this order to the notice administrator American Legal Claim Services LLC.
4. Within five business days, the notice administrator American Legal Claim Services LLC **SHALL** post the motion for voluntary dismissal, Doc. 190, and this Order on the class website;
5. No additional notice to the Class is required.

This 14th day of September, 2026.



CHIEF/SENIOR UNITED STATES DISTRICT JUDGE