

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18-CVS-21073

FILED
2023 FEB 13 A 11:32
MECKLENBURG CO. C.S.C
BY _____

DAEDALUS, LLC, EPCON)
COMMUNITIES CAROLINAS,)
LLC, and NVR, INC., individually)
and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

CITY OF CHARLOTTE,)

Defendant.)

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-6852

DAEDALUS, LLC, individually)
and on behalf of all others)
similarly situated,)

Plaintiff,)

v.)

CITY OF CHARLOTTE,)

Defendant.)

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

THIS MATTER came before the Court on February 10, 2023 upon the Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion") filed by Plaintiff and Class Representatives Daedalus, LLC, Epcon

Communities Carolinas, LLC, and NVR, Inc. (collectively, “Plaintiffs”), on behalf of themselves and the members of the certified Classes (collectively, “Class Members”) pursuant to Rule 23 of the North Carolina Rules of Civil Procedure.

After considering the Motion, the supporting memorandum and other materials filed with the Motion, other appropriate matters in the record, and having heard the arguments of counsel, the Court concludes that good cause exists to grant the Motion, and that the Class Action Settlement Agreement attached to the Motion as “Exhibit A” should be preliminary approved, with notice of the settlement agreement to be issued to Class Members, and that a hearing should be set for consideration of final approval of the settlement agreement.

Background

1. Unless otherwise defined herein, all defined terms shall have the meanings as set forth in the Settlement Agreement attached to the Motion as “Exhibit A” (the “Settlement “Settlement”), which is attached as “Exhibit A” to the Motion.

2. These consolidated cases seek the refund of water and sewer capacity fees (also called System Development Fees) (“Capacity Fees” or “Fees”) charged and collected by Defendant City of Charlotte (“Defendant” or the “City”). The first of these consolidated cases, Mecklenburg County File No. 18-CVS-2107, was commenced on November 5, 2018 (“*Daedalus I*”), and the second case, Mecklenburg County File No. 21-CVS-6852, was commenced on April 26, 2021 (“*Daedalus II*”).

3. Plaintiffs contend in these consolidated actions that the City lacked the proper statutory authority to charge Capacity Fees from November 5, 2015 through

June 30, 2018 (the “Pre-July 1, 2018 Fees”) and that these Fees were unlawful. Plaintiffs also contend that the City’s Capacity Fees charged on and after July 1, 2018 (the “Post-July 1, 2018 Fees”) violate provisions of the “Public Water and Sewer System Development Fee Act,” N.C.G.S. § 162A-201, *et seq.* (the “SDF Act”), and that these Fees are also unlawful. Plaintiffs contend that all Capacity Fees should be refunded, plus interest, pursuant to N.C.G.S. § 160D-106.

4. The City has denied each one of Plaintiffs’ allegations of unlawful conduct and damages and has asserted various legal and other affirmative defenses.

5. The parties have engaged in extensive and protracted discovery in these consolidated actions, including (i) multiple sets of interrogatories, (ii) subpoenas *duces tecum* issued to third-party engineering, planning, and financial consultants contracted by the City, (iii) several rounds of voluminous document production consisting of tens of thousands of pages of documents, (iv) depositions of at least twelve (12) City employees, (v) a Rule 30(b)(6) deposition of the City, (vi) depositions of the City’s two water and sewer rate consultants employed by Raftelis Financial Consultants, Inc., and (vii) the deposition of the Plaintiffs’ expert witness.

6. The parties mediated with the Ret. Hon. J. Douglas McCullough on July 24, 2019. The mediation resulted in an impasse.

7. Plaintiffs filed a Motion for Class Certification pursuant to Rule 23 in *Daedalus I* on December 23, 2019. An Order Granting Plaintiffs’ Motion for Class Certification was entered by the Court on February 19, 2020, which certified the following two Classes:

The Pre-July 1, 2018 Capacity Fee Class

All natural persons, corporations, or other entities who (a) from November 5, 2015 through June 30, 2018 (b) paid Capacity Fees to the City of Charlotte pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte.

The Post-July 1, 2018 Capacity Fee Class

All natural persons, corporations, or other entities who (a) from July 1, 2018 until the present (b) paid Capacity Fees and/or System Development Fees to the City of Charlotte pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte.

8. The Order Granting Class Certification further appoints Plaintiffs and representatives of the Classes, and Plaintiffs' Counsel as Class Counsel.

9. Notice of Class Certification was sent by the Notice Administrator, Settlement Services, Inc., to Capacity Fees payors from November 5, 2015 through February 19, 2020. Six out of 3,152 total payors to whom Notice was sent elected to exclude themselves from the Class after receiving the Notice.

10. The parties filed cross-motions for summary judgment on all issues in *Daedalus I*. On March 18, 2021, the Court entered an Order: (i) granting summary judgment for Plaintiffs and the Class on Plaintiffs' claim that the City lacked lawful authority to charge Capacity Fees prior to July 1, 2018, (ii) ordering that those Pre-July 1, 2018 Capacity Fees be refunded to Plaintiffs and the Class, along with 6% interest per annum from the date of payment; (iii) granting summary judgment for the City on Plaintiffs' alternative claim that the Capacity Fees constituted an unconstitutional taking; and (iv) denying summary judgment for both parties with

respect to Plaintiffs' claims that the Post-July 1, 2018 Capacity Fees violated the SDF Act.

11. The City appealed the summary judgment Order to the North Carolina Court of Appeals on April 14, 2021. On April 26, 2021, Plaintiffs filed a Conditional Notice of Appeal from the part of the Order denying Plaintiffs' Motion as to the alternative Constitutional claims.

12. The Court of Appeals heard oral arguments on January 11, 2022. On April 5, 2022, the Court of Appeals issued a published opinion in *Daedalus, LLC v. City of Charlotte*, 282 N.C. App. 452, 872 S.E.2d 105 (2022), which affirmed the Court's summary judgment Order finding that the City lacked lawful authority to charge the Capacity Fees prior to July 1, 2018. The Court of Appeals did not reach Plaintiffs' cross-appeal regarding the alternative Constitutional claims.

13. The City filed a Petition for Discretionary Review to the North Carolina Supreme Court to review the opinion of the Court of Appeals on May 10, 2022. Plaintiffs filed a Conditional Petition for Discretionary Review as to the alternative Constitutional claims on May 23, 2022. On August 17, 2022, the Supreme Court denied the City's Petition for Discretionary Review and dismissed Plaintiffs' Conditional Petition as moot.

14. While the appeal in *Daedalus I* was pending, Plaintiffs filed a motion to consolidate *Daedalus I* and *Daedalus II*, and for the cases to be jointly designated as exceptional cases pursuant to Rule 2.1 of the North Carolina General Rules of Practice. The Court entered an Order on July 21, 2021 consolidating *Daedalus I* and

Daedalus II, and also ordering that the cases be recommended to the Chief Justice for Rule 2.1 designation. The Chief Justice thereafter entered an Order designating *Daedalus I* and *Daedalus II* as exceptional Rule 2.1 cases and designating the undersigned as the Rule 2.1 Judge.

15. Plaintiffs' filed a Motion to Supplemental and Certify the Post-July 1, 2018 Class in *Daedalus I* and *Daedalus II* on September 22, 2022 for the purpose of including Post-July 1, 2018 Class Members through the present, and providing notice to the same. On October 24, 2022, the Court entered an Order Supplementing the Post-July 1, 2018 Class as follows:

The Post-July 1, 2018 Capacity Fee Class

All natural persons, corporations, or other entities who (a) from July 1, 2018 (b) paid Capacity Fees and/or System Development Fees to the City of Charlotte in Fiscal Years 2019, 2020, 2021, 2022, or 2023 pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte.

16. Notice of the Supplemented Post-July 1, 2018 Class was sent by the Notice Administrator, Settlement Services, Inc., to all Post-July 1, 2018 Capacity Fee payors through October 19, 2022. One party out of the 5,201 total payors elected to exclude herself from the Post-July 1, 2018 Class after receiving the Notice.

17. The parties began engaged in extensive settlement negotiations in late 2022. During these negotiations, based on records produced by the City, the parties jointly verified that the total amount of Pre-July 1, 2018 Capacity Fees charged and collected by the City from November 5, 2015 through June 30, 2018 was \$66,011,212.33, and that a total of \$22,567,808.68 in interest has accrued on that

total from the date of each payment through December 31, 2022 at the rate of 6% per annum. The parties further jointly verified that the total amount of Post-July 1, 2018 Capacity Fees charged and collected by the City from July 1, 2018 through December 31, 2022 was \$168,511,244.12.

18. On January 31, 2023, after over four (4) years of protracted litigation and arms-length settlement negotiations, the Settlement was reached, and the Settlement Agreement was fully executed by the parties and counsel on February 2, 2023.

19. Since the filing of these consolidated actions, and in the light of all of the above considerations, Class Counsel have conducted extensive discussions and arm's-length negotiations with respect to a possible compromise and settlement, with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of the Classes on the terms set forth in the underlying Settlement Agreement. Based upon the investigation of Class Counsel as set forth above, and after considering: (a) the benefits that the Plaintiffs and Class Members will receive from the Settlement; (b) the attendant risks and cost of litigation including future appeals; and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of the Settlement Agreement, the Plaintiffs have agreed to settle all claims pursuant to the terms and provisions of the Settlement Agreement. The Plaintiffs and Class Counsel have carefully considered this Settlement and have concluded and believe that the terms and conditions of the Settlement are fair,

reasonable, and adequate to the Plaintiffs and Settlement Class and that the Settlement is in their best interests.

20. Plaintiffs and the City have agreed to settle all claims related to the City's charge and collection of Capacity Fees from November 5, 2015 through December 31, 2022, in accordance with the Settlement Agreement, the terms of which are summarized below. Plaintiffs entered into the Settlement Agreement on behalf of themselves and settlement classes to be certified for settlement purposes, which mirrors the definition of the Classes previously certified for litigation purposes (the "Settlement Classes"):

The "Pre-July 1, 2018 Class"

All natural persons, corporations, or other entities who (a) at any point between November 5, 2015 and June 30, 2018 paid Water and Sewer Capacity Fees to the City of Charlotte pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte.

The "Post-July 1, 2018 Class"

All natural persons, corporations, or other entities who (a) at any point between July 1, 2018 and December 31, 2022 paid Water and Sewer Capacity Fees to the City of Charlotte pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte.

IT IS HEREBY ORDERED THAT:

Approval of the Notice Plan

21. The Court has reviewed and hereby approves the Notice Plan described in the Settlement Agreement.

22. The Court hereby approves and appoints Settlement Services, Inc. to serve as the Settlement Administrator to administer the Settlement.

23. Responsibilities of the Settlement Administrator include: (i) disseminating the Settlement Notices to Class Plaintiffs; (ii) establishing and maintaining a website for purposes of posting the notices, the Settlement, the complaints and other case pleadings, and related documents; (iii) accepting and maintaining documents sent from Class Plaintiffs, including any exclusion requests, objections, and other documents relating to settlement administration; (iv) processing and delivering checks to Settlement Class members; (v) communicating with Class Counsel and counsel for Defendant concerning settlement administration; and (vi) carrying out any other tasks assigned to the Settlement Administrator by the Settlement.

24. The Notice Plan includes mailing to Class Plaintiffs the Settlement Notices, which, among other things, will inform Class Plaintiffs of the Settlement terms, allow Class Plaintiffs an opportunity to opt out of the Settlement or object to the same, and provide contact information for Class Counsel in the event Class Plaintiffs have questions about the Settlement.

25. The Court hereby orders the Settlement Administrator to implement the events identified in the Settlement pursuant to the following schedule:

EVENT

DEADLINE

Notice Plan to Begin

February 24, 2023

Post-Notice Declaration of Settlement Administrator Attesting to its Compliance with this Order

April 17, 2023 (7 days after the Opt-Out Date)

26. The Court finds that the notice to be provided to the Class Plaintiffs as set forth in the Settlement Agreement to be the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the Settlement to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of North Carolina Rule of Civil Procedure 23 and due process.

Approval of Procedure for Opt-Outs and Objections

27. Any Class Plaintiffs who desire to opt-out of the Settlement or object to the same shall file a written objection or exclusion request with the Court, with a written copy delivered to the Settlement Administrator, Class Counsel, Defendant's Counsel, and the Mecklenburg County Clerk of Court by the deadline set forth below ("Opt-Out Date").

Deadline for Opt-Outs and Objections

April 10, 2023 (45 days from the beginning of the Notice Plan)

28. Any written objection must: (a) contain a caption or title that identifies it as "Objection to Class Settlement in *Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc. v. City of Charlotte*, Mecklenburg County Case No. 18-CVS-21073, and *Daedalus, LLC v. City of Charlotte*, Mecklenburg County Case No. 21-CVS-6852;" (b) identify whether the objection is to the Settlement Class; (c) set forth the specific reason(s), if any, for each objection, including all legal support the Settlement Class Member wishes to bring to the Court's attention and all factual evidence the Settlement Class Member wishes to offer in support of the objection; (d)

include the name and address of the Settlement Class Member; (e) be personally signed by the Settlement Class Member; (f) include an identification, by case style and number, of any other class settlements in which the objector or the objector's attorney(s) have asserted an objection; (g) include an identification of all attorneys having a financial interest or stake in the objection; and (h) provide three dates within the calendar month they are submitting the objection in which they can be available for a deposition taken by counsel for Plaintiffs and/or the City.

29. Any exclusion request must: (a) be signed the Class Member; (b) contain the name, address and valid telephone number of the Class Member; (c) clearly manifest an intent to be excluded from the Settlement Class, and (d) be submit timely written notice to an address designated by the Settlement Administrator.

30. Any Class Plaintiff who submits a timely request for exclusion that complies with this Order shall not be bound by the Settlement or the Final Order and Judgment.

31. Any Class Plaintiff who does not properly and timely file and serve an exclusion request as set forth herein shall remain in the Class and shall be bound by the terms of the Settlement and Final Order and Judgment if the Settlement is approved, whether or not such Class Plaintiff shall have otherwise objected to the Settlement or sought exclusion.

32. Any Class Plaintiff who submits an exclusion request that complies with the requirements of this Order and also objects to the Settlement shall be deemed to be excluded from the Class and such objections shall not be considered by the Court.

Conditional Settlement Class Certification

33. For purposes of Settlement Class certification, the Court first turns to whether the Settlement Class should be conditionally certified. Rule 23 of the North Carolina Rules of Civil Procedure governs class actions. The basic requirements to establish class certification under Rule 23 are as follows:

[P]arties seeking to employ the class action procedure pursuant to our Rule 23 must establish the existence of a class. A class exists when each of the members has an interest in either the same issue of law or of fact, and that issue predominates over issues affecting only individual class members. The party seeking to bring a class action also bears the burden of demonstrating the existence of other prerequisites: (1) the named representatives must establish that they will fairly and adequately represent the interests of all members of the class; (2) there must be no conflict of interest between the named representatives and members of the class; (3) the named representatives must have a genuine personal interest, not a mere technical interest, in the outcome of the case; (4) class representatives within this jurisdiction will adequately represent members outside the state; (5) class members are so numerous that it is impractical to bring them all before the court; and (6) adequate notice must be given to all members of the class.

Beroth Oil Co. v. N.C. Dep't of Transp., 367 N.C. 333, 336 (2014) (citations omitted).

“When all the prerequisites are met, it is left to the trial court’s discretion whether a class action is superior to other available methods for the adjudication of the controversy.” *Id.*

34. The Court finds that the Settlement Classes meet the prerequisites under Rule 23.

35. The Plaintiffs’ claims are typical of the claims of the respective Settlement Class members. The representatives for the Settlement Classes, Plaintiffs

Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc., each have the same interest in receiving a refund of allegedly unlawful fees exacted from them and their claims are based on the same alleged legal injury, that the City unlawfully charged them Capacity Fees.

36. Here, Plaintiffs' evidence regarding the City's alleged liability is common class-wide evidence. Common questions include but are not limited to: whether the City's Pre-July 1, 2018 Capacity Fees were authorized by North Carolina law (the Pre-July 1, 2018 Fee Settlement Class), and whether the City's Post-July 1, 2018 Capacity violate provisions of the SDF Act (the Post-July 1, 2018 Fee Settlement Class). These two issues are common to all members of the Settlement Classes and make the Settlement Classes sufficiently cohesive. Because these issues predominate over any individual issue or interest of the Settlement Class member, a proper Class exists.

37. The interests of the Plaintiffs fully align with the members of the Settlement Classes and there is no conflict of interest. Plaintiffs are prosecuting the same claims as the Settlement Classes and these claims uniformly arise from the City's practice of charging and collection Capacity Fees. Plaintiffs has also demonstrated their commitment to participate in, monitor, and supervise the prosecution of the case on behalf of the Settlement Class. They have, among other things, reviewed the pleadings, helped with the pre-filing investigation, provided information and documentation for discovery purposes, discussed Settlement

mechanics with Class Counsel, and maintained regular communications with Class Counsel.

38. In addition, Plaintiffs have a genuine personal interest in the outcome of this action. Plaintiffs have collectively been required to pay numerous Capacity Fees to the City. Therefore, Plaintiffs has fairly and adequately represented all of the Settlement Class members.

39. The Settlement Class consists of thousands of individuals, businesses, and other entities such that the numerosity requirement is easily met.

40. Set forth in the Settlement Agreement is a settlement notice plan that is consistent with Rule 23 of the North Carolina Rules of Civil procedure to provide notice and due process to prospective settlement class members (“Notice Plan.”). The Notice Plan will be properly administered and followed by a third-party administrator, Settlement Services, Inc. The form and manner of the Settlement Notices attached to the Motion as “Exhibit B” (Pre-July 1, 2018 Class) and “Exhibit C” (Post-July 1, 2018 Class) will be the best notice practicable under the circumstances and will be given in full compliance with the requirements of North Carolina Rule of Civil Procedure 23, due process, and applicable law.

41. After a thorough and careful review of the Motion and the record in this action, that Conditional Settlement Class certification is proper in this matter.

42. Therefore, based on the record in this action, the Court conditionally finds, pursuant to North Carolina Rule of Civil Procedure 23, as follows:

- a. Classes exists and they are the Settlement Classes as set forth in this Order.
- b. The Plaintiffs/Class Representatives and Class Counsel have fairly and adequately represented all Class Members within and outside this state.
- c. There is no conflict of interest between the Class Representatives and the Settlement Class members.
- d. The Settlement Class members are so numerous that it is impractical to bring them all before this Court.
- e. Adequate notice of Class Certification has been given to all Settlement Class members.
- f. Adequate notice of the Settlement will be given to all Settlement Class members as set forth above.
- g. All requirements of North Carolina Rule of Civil Procedure 23 have been satisfied.

43. Thus, pursuant to North Carolina Rule of Civil Procedure 23, Plaintiffs Daedalus, LLC, Epcon Communities Charlotte, LLC, and NVR, Inc. are conditionally certified as the Settlement Class Representatives. Daniel K. Bryson, James R. DeMay, and J. Hunter Bryson of Milberg Coleman Bryson Phillips Grossman, PLLC; James E. Scarbrough, John F. Scarbrough, and Madeline J. Trilling, Scarbrough, Scarbrough & Trilling, PLLC; and William G. Wright and Gary K. Shipman, Shipman & Wright, LLP are conditionally certified as Settlement Class Counsel.

44. In addition, pursuant to North Carolina Rule of Civil Procedure 23, this action is conditionally certified for settlement purposes, and the following Settlement Classes are hereby conditionally certified:

The “Pre-July 1, 2018 Class”

All natural persons, corporations, or other entities who (a) at any point between November 5, 2015 and June 30, 2018 paid Water and Sewer Capacity Fees to the City of Charlotte pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte.

The “Post-July 1, 2018 Class”

All natural persons, corporations, or other entities who (a) at any point between July 1, 2018 and December 31, 2022 paid Water and Sewer Capacity Fees to the City of Charlotte pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte.

Conditional Approval of Settlement

45. The Settlement calls a common settlement fund of \$106,000,000.00 (“Settlement Fund”) in exchange for a general release of the City from claims relating to the City’s charge and collection of Capacity Fees from November 5, 2015 through December 31, 2022. Of the \$106,000,000.00, the sum of \$89,148,755.88 is allocated for the Pre-July 1, 2018 Class, and the sum of \$16,851,244.12 is allocated for the Post-July 1, 2018 Class. The City will fund the Settlement Fund as follows: \$90,000,000.00 paid on or before July 15, 2023, and \$16,000,000.00 paid on or before July 15, 2024.

46. To effectuate the Settlement and the provisions of the Notice Plan, the Settlement Administrator shall be responsible for the receipt of all notices of exclusion. The Settlement Administrator shall preserve all notices of exclusion and any and all other documents received from members of the Class Plaintiffs in

response to the notices for a period of three (3) years, or pursuant to further order of the Court. All written communications received by the Settlement Administrator from members of the Settlement Class relating to the Settlement shall be available at all reasonable times for inspection and copying by Class Counsel and the City's Counsel.

47. To participate in the Settlement, Settlement Class members are not required to take any action. Direct checks will be mailed to all Settlement Class members at the addresses maintained in the City's records.

48. Settlement Class members who do not exclude themselves from the Settlement will receive direct checks from the Settlement Administrator on a *pro rata* basis for the Capacity Fees they paid within each respective Settlement Class, less settlement administration costs, Class Counsel attorneys' fees and expenses, and Class Representative service awards. Any checks from the Pre-July 1, 2018 portion of the Settlement Fund that are not cashed or deposited within 180 days of issuance will revert to the City for the provision of water and sewer service to residents. Any checks from the Post-July 1, 2018 portion of the Settlement Fund that are not cashed or deposited within 180 days of issuance will revert to the Settlement Fund and will be redistributed *pro rata* to Post-July 1, 2018 Settlement Class members that did cash or deposit checks.

49. Even after the deduction for the costs of the Settlement Administrator, Class Counsel attorneys' fees and expenses, and the service awards to the Class Representative, Class Counsel estimates that the Settlement will result in each of

the Pre-July 1, 2018 Settlement Class members receiving a net refund of approximately 93.67%-109.67% of their Capacity Fee payments made to the City from November 5, 2015 through June 30, 2018, and each of the Post-July 1, 2018 Settlement Class members who do cash or deposit checks a net refund of approximately 7.67%-8% of their Capacity Fees payments made to the City from July 1, 2018 through December 31, 2022.

50. The Court finds that the Settlement was entered into after extensive litigation and arm's length negotiation by experienced counsel for the parties and exceeds the standard for preliminary approval of a class action settlement.

51. The Court further finds that notice of the Settlement should be given as provided in this Order, and the Court preliminarily approves the Settlement subject to final approval at the Final Approval Hearing.

Final Approval Hearing

52. Any Class Plaintiff who properly files and serves a written objection as described in this Order may appear at the Final Approval Hearing in person or through counsel hired at the Class Plaintiff's own expense. However, any Class Plaintiff who intends to appear at the Final Approval Hearing must include a statement to that effect in the objection. If a Class Plaintiff hires his or her own personal attorney to represent him or her in connection with an objection, and if the attorney wishes to appear at the Final Approval Hearing, the attorney must do the following by the Opt-Out Date: (a) file a notice of appearance with the Clerk of Court

in this action; and (b) serve a copy of the notice of appearance on Class Counsel and Defendant's Counsel.

53. Any Class Plaintiff who fails to strictly comply with the deadlines in this Order shall waive and forfeit all rights to appear and to object and will be deemed to have consented to the jurisdiction of the Court, to be part of the Settlement Class, and to be bound by all subsequent proceedings, orders, and judgments in this action, including, but not limited to, the Settlement.

54. Any Class Plaintiff who objects to the Settlement but does not file an exclusion request shall, unless he or she is subsequently excluded by Order of the Court, remain a Class Plaintiff and therefore be entitled to all of the benefits, obligations, and terms of the Settlement if the same receives final approval.

55. The deadline for the Motion for Final Approval and the date of the Final Approval Hearing shall be as follows:

Motion for Final Settlement Approval to be Filed by Class Counsel April 17, 2023

Final Approval Hearing date April 24, 2023

56. The Final Approval Hearing date shall be set forth in the Settlement Notice but shall be subject to continuance by the Court without further notice other than that posted at the Court, on the Court's website, and/or the website to be established by the Settlement Administrator.

57. Upon the entry of the Final Order and Judgment, each and every term and provision of the Settlement Agreement shall be deemed incorporated into the

Final Order and Judgment as if expressly set forth therein and the same shall have the full force and effect of an Order and Judgment of the Court.

Status of Settlement and this Action

58. All proceedings and deadlines in this action are hereby stayed and suspended, pending the Final Approval Hearing, except for proceedings and deadlines provided for in this Order or the Settlement, or which may be necessary to implement the Settlement or this Order.

59. Pending Final Approval, no Class Plaintiff, either directly, representatively, or in any other capacity (other than a Class Plaintiff who validly and timely elects to be excluded from the Settlement Class), shall commence, continue, or prosecute in any court any of the released claims against any of the released parties, with the same being subject to final settlement approval by this Court, and such Class Plaintiffs are hereby enjoined from so proceeding.

60. Upon entry of the Final Order and Judgment, all Class Plaintiffs who do not file and serve a timely notice of exclusion shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Settlement, and any such Class Plaintiff shall be deemed to have forever released the released parties from the released claims pursuant to the Settlement.

61. In the event the Settlement is terminated in accordance with its provisions, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided in the Settlement, and without prejudice to the *status quo ante* rights of Class Plaintiffs and the City.

62. Neither this Order nor the Settlement nor any filings in support thereof shall constitute any evidence or admission of liability by the City, or an admission regarding the propriety of the certification of a settlement class, nor shall they be offered in evidence in this or any other proceeding except to consummate or enforce the Settlement or the terms of this Order, or by any released party in connection with any action asserting released claims.

Filing and Service of Documents

63. When this Order directs that pleadings, briefs, objections, exclusion requests or opt-outs, notices, and other documents be served upon Class Counsel and the Town's Counsel, service shall be made to the attorneys listed below by United States Mail, first class, addressed as set forth below and filing shall be made with the Clerk of Court at the following address:

Class Counsel

Daniel K. Bryson
James R. DeMay
J. Hunter Bryson
Milberg, Coleman, Bryson, Phillips, Grossman, PLLC
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Raleigh, NC 27603

William G. Wright
Gary K. Shipman
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575 Military Cutoff Road, Suite 106
Wilmington, NC 28405

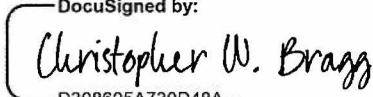
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Clerk of Court
Clerk of Superior Court
Mecklenburg County Superior Court
P.O. Box 37971
Charlotte, NC 28273-7971

IT SO ORDERED this the 10th day of February, 2023.

DocuSigned by:

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HON. CHRISTOPHER W. BRAGG
SUPERIOR COURT JUDGE