STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF MECKLENBURG	18-CVS-21073
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	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF MECKLENBURG	21-CVS-6852
DAEDALUS, LLC, individually and on behalf of all others similarly situated, Plaintiff, v. CITY OF CHARLOTTE, Defendant.	)

ORDER AND FINAL JUDGMENT GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS' FEES AND EXPENSES, AND SERVICE AWARDS

THIS MATTER came before the Court on April 24, 2023 upon Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Expenses, and Service Awards (the "Motion") filed by Plaintiffs and Class

Representatives Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc. (collectively, "Plaintiffs"), on behalf of themselves and the members of the Settlement Class (collectively, "Class Members" or "Settlement Class Members") pursuant to Rule 23 of the North Carolina Rules of Civil Procedure. The Motion is unopposed by Defendant City of Charlotte ("Defendant" or "City"). After appropriate notice to Class Members was provided as required by the Court's February 13, 2023 Order Granting Preliminary Approval of Settlement (the "Preliminary Approval Order"), there were no objections to the terms of the settlement agreement (the "Settlement"). Two Class Members opted-out of the Settlement.

After hearing oral argument and considering the Motion, the supporting Memorandum, the materials filed with the Motion, and other appropriate matters in the record, the Court is satisfied with the fairness, reasonableness, and adequacy of the Settlement, including the requested attorney's fees and expenses and service awards. As such, the Court concludes that good cause exists to grant the Motion. Therefore, the Court GRANTS the Motion, CERTIFIES the class as defined below for settlement purposes only, APPROVES the Settlement, attorneys' fees and expenses, and services awards, as set forth herein.

Background

1. Unless otherwise defined herein, all terms shall have the meanings as set forth in the Settlement Agreement, which is part of the record in this action.

2. These consolidated cases seek the refund of water and sewer capacity fees (also called system development fees) (herein "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 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 therefore unlawful. Plaintiffs also contend that the 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 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, and 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 February 19, 2020 Order Granting Class Certification further appointed Plaintiffs as representatives of the Classes, and Plaintiffs' Counsel as Class Counsel.

9. Pursuant to the February 19, 2020 Order, Notice of Class Certification was sent by the Notice Administrator, Settlement Services, Inc. (herein "SSI"), to Class Members who paid Capacity Fees from November 5, 2015 through February 19, 2020.

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 to 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. On May 10, 2022, the City filed a Petition for Discretionary Review to the North Carolina Supreme Court to review the decision of the Court of Appeals. 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. On September 22, 2022, Plaintiffs filed a Motion to Supplement and Certify the Post-July 1, 2018 Class in *Daedalus I* and *Daedalus II* 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, SSI, to all Post-July 1, 2018 Class Members who paid Capacity Fees through October 19, 2022.

17. The parties resumed settlement negotiations in late 2022. In the course of these negotiations, the parties jointly verified that the total amount of Capacity Fees charged to Pre-July 1, 2018 Class Members was $66,011,212.33. The parties also verified that interest in the amount of $22,567,808.68 had accrued on that total from the date of each payment through December 31, 2022. The parties further 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 years of protracted litigation and arms-length settlement negotiations, the Settlement was reached. The Settlement Agreement was fully executed by the parties and their counsel on February 2, 2023.

19. On February 6, 2023, Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement

20. On February 13, 2023, following a hearing on said motion, this Court entered its Order Granting Preliminary Approval of Settlement, Certifying Class for Purpose of Settlement, Directing Notice to the Class, and Scheduling Final Approval Hearing ("Preliminary Approval").

21. On April 17, 2023, Plaintiffs filed the instant Motion, and this Court held a hearing on the same on April 24, 2023.

22. In evaluating whether to finally approve a class action settlement, courts follow a two-step process that first examines whether the proposed class

satisfies North Carolina Rule of Civil Procedure 23, and second whether the settlement is "fair, reasonable, and adequate."

Class Certification

23. The Court first turns to whether the Settlement Classes should be finally 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.*

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

25. Parties seeking to employ the class action procedure pursuant to Rule 23 must establish the existence of a class. *Neil v. Kuester Real Estate Servs.*, 237 N.C. App. 132, 141, 764 S.E.2d 498, 505 (2014). 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. *Id.*

26. The Settlement Classes Representatives' claims are typical of the claims of the respective Settlement Classes members. The representatives for the Settlement Class, Plaintiffs Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc., have the same interests in receiving a refund of allegedly unlawful Capacity Fees exacted from them and their claims are based on the same alleged legal injury—that Defendant unlawfully charged them Capacity Fees.

27. The interests of the Class Representatives fully align with the members of the Settlement Classes and there is no conflict of interest. The Class Representatives have also demonstrated their commitment to monitor and supervise the prosecution of the case on behalf of the Settlement Class.

28. In addition, the Class Representatives have a genuine personal interest in the outcome of this action. The Class Representatives paid numerous Capacity Fees.

29. The Settlement Classes consists of 5,328 individuals and entities such that the numerosity requirement is easily met.

30. As for notice, the Preliminary Approval Order set forth a plan 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 was administered by third-party administrator SSI.

31. As set forth in the Notice Declaration of Aisha Lange, on February 24, 2023 and March 15, 2023, SSI mailed Settlement Notices by first-class mail, postage prepaid, from Tallahassee, Florida, to the five thousand three hundred twenty-eight (5,328) Class Members. Out of the 5,328 mailings, 360 were returned to SSI by the USPS as undeliverable without forwarding address information. SSI conducted a locator trace and determined possible new addresses for 261 of these Class Members and promptly re-mailed the Notice to the new address. SSI hosted a website (www.charlottecapacityfeesettlement.com) where Class Members could obtain a copy of the Settlement Agreement and other documents related to the Settlement.

32. The Notices given to Class Members accurately informed the Class Members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon; was the best notice practicable under the circumstances; was valid, timely, and sufficient notice to all Class Members; and complied fully with Rule 23 of the North Carolina Rules of Civil Procedure and applicable case law, the North Carolina and United States Constitutions, due process and other applicable law. The Notices fairly and adequately described the Settlement and provided Class Members adequate instructions and means to obtain additional information. The Notices have been duly given to the Settlement Class in substantial conformity with the manner directed by the Preliminary Approval Order, proof of the mailing of the Notices has been filed with the Court and full opportunity to be heard

has been offered to all parties to this action and the Settlement Class. A full and timely opportunity has been afforded to the Class Members to participate in this hearing, and all Class Members and other persons wishing to be heard have had an ample opportunity to have been heard.

33. As of the date of this Order and Final Judgment, no objections have been received to the Settlement from Class Members, timely or otherwise; and a total of two opt-outs to the Settlement have been received from Class Members, timely or otherwise.

34. Accordingly, the Court determines that all Class Members who did not timely and properly opt-out of the Class are bound by this Order and Final Judgment.[1]

35. Because Plaintiffs have satisfied all class action prerequisites, this Court has the discretion to determine whether a class action is superior to all other methods for adjudication of this controversy. After a thorough and careful review of the Motion, the affidavits and evidence provided in support of the Motion, the Court concludes, in its discretion, that Settlement Classes certification is proper in this matter.

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

a. Two classes exist and they are the Settlement Classes as set forth in this Order and Final Judgment.

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[1] The two opt-outs are Karen Hammett and Judy Luong.

b. The Class Representatives and Class Counsel have fairly and adequately represented all Members of both Classes within and outside this state.

c. There is no conflict of interest between the Class Representatives and the members of the Settlement Classes.

d. The members of both Settlement Classes are so numerous that it is impractical to bring them all before this Court.

e. Adequate notice has been given to all members of both Settlement Classes.

f. All requirements of North Carolina Rule of Civil Procedure 23 have been satisfied.

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

38. In addition, pursuant to North Carolina Rule of Civil Procedure 23, this action is finally certified as a class action, and the following Settlement Classes are hereby 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.

Final Approval of Settlement

39. The Court next looks at the Settlement to determine whether the Settlement is "fair, reasonable, and adequate." The burden of showing that the Settlement satisfies this standard rests on the plaintiffs. The determination of whether the plaintiffs have satisfied this burden rests in the Court's sound discretion.

40. While there are a variety of factors used to evaluate a settlement, the Court of Appeals has identified two key factors in determining whether to approve a proposed settlement of a class action: "the first is the likelihood the class will prevail should litigation go forward and the potential spoils of victory, balanced against benefits to the class offered in the settlement." *Id.* at 74. The second factor "is the class's reaction to the settlement." *Id.*

41. As to the first factor, this Court notes that the summary judgment ruling in favor of Plaintiffs and Class Members that was affirmed on appeal for the Pre-July 1, 2018 Class, and that Plaintiffs have zealously pursued claims on behalf of the Post-July 1, 2018 Class. However, there is no certainty in litigation.

42. As to the adequacy of the settlement benefits, the Court notes that the Settlement was negotiated by adverse parties engaged in litigation for almost four and one-half (4½) years, and the Settlement was the product of arms-length negotiating and compromise. Nothing in the record indicates that the Settlement involved any type of collusion by the parties or was somehow not a result of arms-length negotiating and bargaining. Defendant still contends all of the Capacity Fees were legally collected and used within its statutory authority.

43. Considering all relevant factors, the $106,000,000 amount of the Settlement is significant in that it represents 100% of all principal and accrued interest in question for the Pre-July 1, 2018 Class and 10% of all principal in question for the Post-July 1, 2018 Class.

44. In addition, the City will pay $90,000,000 into the Common Fund on or before July 15, 2023 and the remaining $16,000,000 on or before July 15, 2024, while such payments would likely not occur until much later if this matter was to proceed forward with a trial and another appeal. As such, the Court finds that this first factor weighs in favor of approving the Settlement.

45. Concerning the second factor, the Settlement Class has reacted favorably to the Settlement. Following sending the settlement notice to the class, the Settlement received no objections and two opt outs from out of the 5,328 Members of both Classes. Additionally, ten Class Members, some of which have among the largest claims in the Class, have submitted Declarations in support of the Settlement. "[T]he reaction of the class to the settlement is perhaps the most significant factor to

be weighed in considering its adequacy." *Ehrenhaus v. Baker*, 216 N.C. App. 59, 74, 717 S.E.2d 9, 20 (2011) (quoting *Sala v. Nat'l R.R. Passenger Corp.*, 721 F. Supp. 80, 83 (E.D. Pa. 1989); *see Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 25 I (D.N.J. 2005) (where only 0.06% of class members opted out, this weighed in favor of approval); *Bell Atlantic Corp., v. Bolger*, 2 F.3d 1304, 1313- 14 (3rd Cir. 1993) (where "[l]ess than 30 of approximately 1.1 million shareholders objected," the "small proportion of objectors does not favor derailing settlement"); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 527 (E.D. Mich. 2003) ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.").

46. Ultimately, after thorough consideration of the relevant factors, this Court in its discretion, finds and concludes that the Settlement is fair, reasonable, and should be approved.

Attorneys' Fees and Expenses and Service Awards

47. Class Counsel seeks an award of attorneys' fees and expenses in an amount equal to one-third (1/3) of the Settlement Fund. Additionally, Class Counsel requests that each of the Class Representatives receive an incentive award of $15,000 from the Settlement Fund. The attorneys' fees and expenses and service awards are not opposed by Defendant.

48. North Carolina recognizes the "common-fund doctrine," which allows a court to award attorneys' fees from the amount recovered when the litigant "brings

into court a fund which others may share with him." *Faulkenbury v. Teachers' & State Employees' Ret. Sys. of N. Carolina,* 345 N.C. 683, 696-97, 483 S.E.2d 422, 430 (1997).

49. While a court may not modify a contractual attorneys' fee arrangement reached in a settlement of a Rule 23 class action, it nevertheless must review the fees sought for reasonableness and must approve the fees paid by way of the settlement. *Ehrenhaus v. Baker,* 216 N.C. App. 59, 96, 717 S.E.2d 9, 33 (2011). Accordingly, the issue before the Court is whether Class Counsel's request for attorneys' fees and expenses in the amount of 33.33% of the Common Fund, or $35,333,333, is reasonable.

50. The Court analyzes the reasonableness of the attorneys' fees under the percentage-of-recovery method, which is the preferred approach for attorneys' fees in a common fund class action settlement. The percentage-of-recovery method aligns the interests of lawyers and class members, rewards exceptional success, and penalizes failure.

51. Factors that the Court considers with respect to the reasonableness of attorneys' fees under the percentage-of-recovery method in a common fund class action settlement include the results obtained for the class; the quality, skill, and efficiency of the attorneys involved; the risk of nonpayment; objections by members of the class to the settlement terms and/or fees requested by counsel; awards in similar cases; the complexity and duration of the case; and public policy. *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 261 (E.D. Va. 2009) (citing, *inter alia, In re Cendant Corp. Litig.*, 243 F.3d 722, 733 (3d Cir. 2001)).

52. Additionally, the Court the considers the factors under Rule 1.5 of the North Carolina Rules of Professional Conduct, including the time and labor required; the novelty and difficulty of the questions involved; and the skill requisite to perform the legal service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the lawyers performing the services; and that the fee is contingent.

53. Consideration of all of the above factors supports the reasonableness of an attorneys' fee and expense award to Class Counsel of 33.33% of the Common Fund in this case:

a. Class Counsel has obtained a highly favorable result for the Settlement Classes by providing significant cash benefits that will be paid directly to the Settlement Class members. Even after deduction of attorneys' fees and other costs of the Settlement, Pre-July 1, 2018 Class Members will receive a net payment of approximately 85%-95% of their Capacity Fees, and Post-July 1, 2018 Class Members will likely receive a net payment of approximately 7%-7.5% of their Capacity Fees (depending upon how many checks are not deposited by Settlement Class Members

from this portion of the fund). This is an outstanding recovery for the Settlement Class Members;

b. No objections to the Settlement have been received from any of the 5,328 total Class Members, many of whom are business entities, including large sophisticated corporations;

c. These cases involved litigation of complex legal and factual issues over the course of approximately four and half years, including, among other things, the filing of two actions and multiple complaints and amended complaints, substantial discovery including written discovery and numerous depositions concerning the complex issues involved in this case, expert depositions, two class certifications, cross-summary judgment motions, and an appeal, which required substantial time and labor from the lawyers and law firms involved;

d. The factual and legal issues in these cases were highly complex and technical, and Class Counsel advanced novel legal theories in these cases;

e. Class Counsel are highly skilled and experienced attorneys in development impact fee cases and class action litigation, and have devoted years to advancing the issues that ultimately resulted in the recovery for the Settlement Classes;

f. Fee awards of 33.33% of the common fund have been awarded in other similar North Carolina development impact fee refund cases, and is a

percentage that reflects a real-world arm's length transaction between Class Members and Class Counsel;

g. Class Counsel took on this action on a contingent fee basis with no guarantee of payment for their substantial time and resources spent on these cases, and Class Counsel had fee arrangements with the Class Representatives for a one-third (1/3) contingency fee. Class Counsel was also precluded from other employment opportunities by their work in these cases; and

h. Public policy is served by rewarding and incentivizing attorneys to take on complex class action litigation on a contingent fee basis and thereby obtain benefits for Settlement Class Members who may otherwise not pursue their individual claims.

54. The requested attorneys' fee of 33.33% is consistent with recognized North Carolina contingency fees percentages that are customarily charged in this State. *Byers v. Carpenter*, 1998 WL 34031740, *9 (Wake Co. Super. Ct. Jan. 30, 1998) ("Typical fee arrangements provide that the attorney is paid 25% if the case is settled prior to filing the civil action, 33-1/3% after the filing of the civil action and 40% after the case is appealed to an appellate court.").

55. Under North Carolina law, Class Counsel's attorneys' fee request is reasonable, and, after carefully reviewing this matter, the Court finds, in its discretion, that an award of attorneys' fees and expenses equal to 33.33% of the Common Fund amount is reasonable.

56. Accordingly, the Court concludes that Class Counsel should be and are hereby awarded $35,333,333 from the Common Fund for attorneys' fees and reimbursement of expenses.

57. The Court concludes that the Class Representatives should be and are hereby awarded $15,000 each from the Common Fund as a reasonable service award for their time and dedication to this action. The Class Representatives each provided valuable service to the Class in obtaining the relief under this Settlement.

58. The notice and settlement administration expenses of SSI, in the amount of $87,600, shall be paid from the Common Fund for the reasonable costs of the notice and settlement administration.

Release of Defendant

59. Upon the City's performance of the Settlement Agreement and this Order and Final Judgment, Plaintiffs and all other members of the Settlement Classes (except as to the two opt-outs), on behalf of themselves and on behalf of their heirs, guardians, executors, administrators, predecessors, successors and assigns, as well as any person accepting benefits under the Agreement, have, by virtue of the Agreement and by virtue of this Order and Final Judgment, are deemed to have fully, finally and forever released, remised, relinquished, acquitted, and forever discharged Defendant of and from, and shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of the Settlement Class or on behalf of any other person or entity, any claims, actions, causes of action, suits, rights, debts, obligations, reckonings, contracts, agreements, executions, promises, damages, liens, judgments

and demands of whatever kind, type or nature whatsoever, both at law and in equity, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, whether based on federal, state or local law, statute, ordinance, regulation, code (including but not limited to building code), contract, common law, or any other source, or any claim that Plaintiffs or Settlement Class members had, or may have had against Defendant that were or reasonably could have been alleged by them or on their behalf in this action or in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising out of or relating to the charge of Capacity Fees collected by Defendant from November 5, 2015 through December 31, 2022, or any other issues with their fees that were or reasonably could have been discovered and/or alleged in this action, including, but without in any way limiting the generality of the foregoing, the claims alleged in this action, and any claims for breach of contract, breach of express or implied warranty, tort, or statutory violations arising from, or directly or indirectly, or in any way whatsoever, pertaining to or relating to the charge or collection of Capacity Fees on or between November 5, 2015 through December 31, 2022 which were at issue in the action.

60. This Order and Final Judgment releasing Defendant covers by example and without limitation, any and all claims for damages, equitable relief, attorneys' fees, costs, expenses, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, expenses and/or disbursements incurred by Class Counsel, or

by Class Representatives or by the Settlement Class members regarding the Released Claims, for which any of the Released Parties might otherwise be claimed liable.

61. All persons and entities who did not timely and validly exclude themselves from the certified class in this action or the Settlement Class shall be permanently barred and enjoined from hereafter instituting, participating in, prosecuting or maintaining, either directly or indirectly, on their own behalf, or on behalf of the Settlement Class or any other Settlement Class member, person or entity, any action or proceeding of any kind asserting any of the Released Claims.

62. The release set forth herein will be and may be raised as a complete defense to and will preclude any action or proceeding based on the Released Claims.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

A. The Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class, and is hereby approved in all respects pursuant to North Carolina Rule of Civil Procedure 23.

B. Defendant, Plaintiffs, and all other members of the Settlement Classes (except as to the two opt-outs) are bound by the Settlement Agreement and this Order and Final Judgment.

C. Except for the terms and provisions that have already been fully performed, the parties shall consummate and honor the Settlement Agreement in accordance with each of its terms and provisions.

D. The Settlement Fund in the amount of $106,000,000 is the full amount that the City of Charlotte is obligated to pay under the terms of the Settlement

Agreement and this Order and Final Judgment, and all attorneys' fees and expenses, notice costs, service awards, and benefits to Plaintiffs and the members of the Settlement Classes contemplated by the Settlement Agreement and approved in this Order and Final Judgment shall be paid from the Settlement Fund.

E. This Order and Final Judgment shall not constitute any evidence or admission by any of the parties.

F. Without affecting the finality of this Order and Final Judgment, jurisdiction is hereby retained by this Court for the purpose of protecting and implementing the Settlement Agreement and this Order and Final Judgment, including the resolution of any disputes arising out of the Settlement Agreement, and for the entry of such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement and this Order and Final Judgment.

63. The Mecklenburg County Clerk of Court is directed to enter and docket this Order and Final Judgment in this action.

IT SO ORDERED this 24 day of April, 2023.

HON. CHRISTOPHER W. BRAGG
SUPERIOR COURT JUDGE