STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

Dennis Shoner and Barbara Potocki,
individually, and as representatives of
a class of similarly-situated persons and entities,

Plaintiffs,

Case No. 16-29165-CZ
Hon. Michael P. Hatty

v.

Charter Township of Brighton,
a municipal corporation,

Defendant.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW CONCERNING THE COURT'S FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT AND FINAL JUDGMENT AND ORDER APPROVING CLASS SETTLEMENT

WHEREAS, Plaintiffs and Defendant in this action have moved this Court pursuant to MCR 3.501(E), for an order approving the settlement of this class action in accordance with the terms set forth in the Class Action Settlement Agreement ("Agreement") executed by counsel for the parties; and

WHEREAS, this Court having held a hearing, as noticed, on July 12, 2018 pursuant to the Third Amended Stipulated Order Regarding Preliminary Approval of Class Action Settlement, Notice

and Scheduling, dated June 11, 2018 (the "Third Amended Order") ¶ 6, to determine the fairness, adequacy and reasonableness of a proposed settlement of the Class Action; and due and adequate notice (the "Notice") having been made by mailing in a manner consistent with the First Amended Stipulated Order Regarding Preliminary Approval of Class Action Settlement, Notice and Scheduling dated January 30, 2017 (the "First Amended Order"); the Second Amended Stipulated Order Regarding Preliminary Approval of Class Action Settlement, Notice and Scheduling dated April 20, 2018 (the "Second Amended Order"); and the Third Amended Order; and all such persons (excluding those who previously requested exclusion from the applicable Class) having been given an opportunity to object to or participate in the settlement; and the Court having heard and considered the matter, including all papers filed in connection therewith and the oral presentations of counsel at said hearing; and good cause appearing therefore; and

WHEREAS, upon final approval of the Settlement Agreement, Defendant will fund the settlement by an electronic transfer in the amount of One Million Five Hundred Thousand Dollars ($1,500,000), which will be deposited into the Kickham Hanley PLLC Client Trust Account, and which will be disbursed in accordance with the Agreement; and

WHEREAS the Court being otherwise informed on the premises, the Court adopts the following findings of fact and conclusions of law:

1. On June 20, 2016, Plaintiffs commenced an action in the U.S. District Court for the Eastern District of Michigan, Case No. 16-12267 (the "Federal Action"). In response, the Defendant Charter Township of Brighton ("Township") filed a Motion to Dismiss. The Federal Action was eventually dismissed, without prejudice, by stipulation and refiled as the above captioned lawsuit (the "Lawsuit") in Livingston County Circuit Court challenging an initial assessment of $12,400 per Residential Equivalent Unit ("REU") (the "Assessment Charge"), a debt service charge (the "Capital Charge") and an operations and maintenance Charge (the "O&M Charge") imposed by the Township

on users of the Township's sanitary sewer collection and treatment system (the "Sewer System"). Plaintiffs allege that the inclusion of such charges in the Township's sewer rates (the "Rates") are motivated by a revenue-raising and not a regulatory purpose, that they are disproportionate to the Township's actual costs of providing sanitary sewage disposal services, and that (1) the Charges are therefore unlawful under the Headlee Amendment to the Michigan Constitution and (2) by collecting the Charges the Township has been unjustly enriched.

2. On May 16, 2017, the Named Plaintiffs filed a First Amended Complaint in this Court which removed the claims based upon the Assessment Charge, but continued to assert claims based upon the O&M Charge and the Capital Charge (collectively referred to hereafter as the "Charges").

3. With respect to the O&M Charge, Plaintiffs claim that the Township has set its Sewer Rates at a level far in excess of the rates that are necessary to pay the actual costs of providing sewage disposal services to the System Users. Plaintiffs claim that the O&M Charge was established in contravention of established sewer rate-setting methodologies, and resulted in the System Users bearing an unreasonable and disproportionate allocation of the costs associated with the operation and maintenance of the Township's Sewer System. The Township denies Plaintiffs' claims based upon the O&M Charge.

4. With respect to the Capital Charge, Plaintiffs claim the Township has unlawfully included in its Sewer Rates an additional capital service charge that it charges the System Users to cover the "principal, interest, and administrative costs of retiring the debt incurred for the construction of the Sewer System." Plaintiff claims that the Capital Charge is wholly unlawful as to the System Users because they have already been assessed and paid or are paying their assessed portion ($12,400) of the capital cost to construct the Sewer System. The Township denies Plaintiffs' claims based upon the Capital Charge.

5. Plaintiffs further claim that the Township has improperly included in the O&M Charges amounts intended to reimburse the Township for attorneys' fees and other expenses it has incurred and/or paid in connection with this Lawsuit (the "Lawsuit Expenses").

6. The Amended Complaint alleges that the Lawsuit should be maintained as a class action on behalf of a class consisting of persons or entities who or which have paid or incurred the Charges during the permitted time periods preceding the filing of this Lawsuit and/or at any time during the pendency of this action.

7. The Township denies that the Charges are improper; denies that it has intentionally or negligently committed any unlawful, wrongful or tortious acts or omissions, violated any constitutional provision or statute, or breached any duties of any kind whatsoever; denies that it is in any way liable to any member of the Class; and states that the claims asserted in the Lawsuit have no substance in fact or law, and the Township has meritorious defenses to such claims; but, nevertheless, has agreed to enter into a Settlement Agreement to avoid further expense, inconvenience, and distraction and risks of burdensome and protracted litigation, and to obtain total and final peace, satisfaction and protection from the claims asserted in the Lawsuit.

8. The parties acknowledge the O&M Charges were increased by $10.50 per REU by the Township Board in February 2017, effective April 1, 2017. The Class Members have alleged the increase was to pay the ongoing Lawsuit Expenses, *infra,* of this litigation. The Township disputes that allegation and would show the Lawsuit Expenses were one of many factors that was considered in raising the rates. The Township has represented that even with the $10.50 rate increase, and without considering Lawsuit Expenses, the Sewer O&M Fund has been operating with an equity balance that is exceptionally low making cash flow difficult to manage (i.e. paying bills on a timely basis).

9. There is a subset of the Class that consists of the owners of vacant parcels who have paid, or are paying, the Assessment Charge and Capital Charge for their respective parcels that are set

forth in Exhibit B to the Settlement Agreement (collectively referred to hereafter as the "Vacant Parcels"). The Township believes there is a dispute, not raised in Plaintiffs' pleadings, as to whether, once a structure is constructed on each of the Vacant Parcels, it is the responsibility of the Township or the owner of each respective Vacant Parcels to (a) pay for the costs associated with providing a grinder pump on the Vacant Parcel, and/or (b) pay for the costs associated with connecting the structures on each of the Vacant Parcels to the Sewer System ((a) and (b) are collectively referred hereafter as the "Sewer Connection Expense").

10. Some of the owners of the Vacant Parcels allege it is the responsibility of the Township to pay for the Sewer Connection Expense, and the Township alleges it is the responsibility of the owners of each of the Vacant Parcels to pay for the Sewer Connection Expense.

11. The Plaintiffs in the Lawsuit and Class Counsel have been provided with far-reaching discovery and have conducted extensive investigations into the facts of the Lawsuit, have made a thorough study of the legal principles applicable to the claims in the Lawsuit, have engaged in several arms-length mediation sessions, conducted by Paula Manis, a Court-appointed Mediator, and have concluded that a class settlement with the Township in the amount and on the terms hereinafter set forth (the "Settlement") is fair, reasonable, and adequate, and is in the best interest of the Class.

12. The parties ultimately reached a settlement on January 22, 2018, the terms of which are set forth in the Settlement Agreement (Exhibit 1 to the January 30, 2018 Amended Preliminary Approval Order).

13. For settlement purposes, the parties have agreed that the Class includes all persons or entities that are or were the owners or occupiers of the "Originally Assessed Properties" (as defined below) and who/which paid the Township, or incurred fees, for service from the Sewer System at any time between June 20, 2010 and January 31, 2018 (the "Class"). The "Originally Assessed Properties" shall be those properties that comprise the Residential Equivalent Units ("REUs") that were included in

the Special Assessment District described in Plaintiffs' First Amended Complaint. The Parties have further stipulated to certification of a subclass, consisting of members of the Class who are the owners of the Vacant Parcels (the "Subclass"). The Class does not include the Township itself or any owner or occupiers of any properties other than the Originally Assessed Properties who/which paid the Township, or incurred fees, for service from the Sewer System. The settlement in this matter is intended to settle all of the claims of the members of the Class ("Class Members") relating to (i) the Assessment Charges, (ii) the Capital Charges, (iii) the O&M Charges, and (iv) the Lawsuit Expenses. The settlement also settles the claims of the Subclass regarding any disputes related to the Sewer Connection Expenses.

14. The principal terms of the Settlement Agreement are described in the following paragraphs.

15. For the purposes of the proposed Settlement, the Township expressly denies any and all allegations that it acted improperly, but, to avoid litigation costs, the Township has agreed to create a settlement fund in the aggregate amount of One Million Five Hundred Thousand Dollars **($1,500,000)** for the benefit of the Class ("Settlement Amount"). The Settlement Amount will be utilized, with Court approval, to provide payments to the Class, and to pay Class Counsel an award of attorneys' fees, the total amount of which shall not exceed 33% of the Settlement Amount, and expenses for the conduct of the litigation.

16. The "Net Settlement Fund" is the Settlement Amount less the combined total of: (a) the attorneys' fees awarded to Class Counsel by the Court; (b) expenses reimbursed pursuant to the terms of the Settlement; (c) out-of-pocket expenses of the Claims-Escrow Administrator, and (d) any incentive awards made by the Court to the class representatives in an amount not to exceed $10,000 per representative.

17. The Net Settlement Fund shall be used to pay Class Members as described below.

18. All Class Members may participate in the settlement of this case by receiving from the Net Settlement Fund a cash distribution payment. To qualify to receive a distribution of cash via check (a "Payment") from the Net Settlement Fund, Class Members are required to submit sworn claims (the "Claims") which identify their names, addresses, and the periods of time in which they paid the Charges in order to participate in the Settlement. Class Members who submit Claims will hereafter be referred to as the "Claiming Class Members."

19. The Claims-Escrow Administrator shall calculate each Claiming Class Member's pro rata share of the Net Settlement Fund (the "Pro Rata Share"). Only those Class Members who paid for sewer service during the Class Period and submit a timely Claim are entitled to distribution of a Pro Rata Share of the Net Settlement Fund. The size of each Claiming Class Member's Pro Rata Share shall be determined by (1) calculating the total amount of O&M Charges and Capital Charges the Claiming Class Member paid during the Class Period and then (2) dividing that number by the total amount of O&M Charges and Capital Charges paid during the Class Period by all Claiming Class Members and then (3) multiplying that fraction by the amount of the Net Settlement Fund.

20. In addition to the payments described above, the parties have agreed that effective February 1, 2018, the Township shall cap the Capital Charge at $3,459 per REU, which in effect ceases charging the Class the Capital Charges as to their originally assessed REU, and shall not impose upon the Class any further Capital Charges or any other charge to recover, in full or in part, the principal, interest, and administrative costs of retiring the debt incurred for the construction of the Sewer System.

21. The Township has also agreed that its General Fund shall reimburse the Sewer Fund for attorney fees in the amount of $300,000.

22. The parties also agreed that the Township shall issue a one-time credit in the amount of $3,800 to the owners of each of the Vacant Parcels that are required in the future to connect a new structure on their Vacant Parcel to the Sewer System. This credit will be issued at such time as a permit

is issued to each of the owners of the Vacant Parcels to connect their Vacant Parcels to the Sewer System and will be applied to the Sewer Connection Expense.

23. The parties agreed that the Township otherwise retains its discretion to adjust rates and charges for all users of the Sewer System in accordance with Michigan law. The Township may not levy a tax or other assessment against property owners or sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval), nor may the Township include as a recoverable cost in the setting of the Rates, any amounts that the Township's General Fund has contributed to the Settlement Fund.

24. The Settlement Fund shall be financed solely from the Township's General Fund as follows and the Township has agreed to make the $1,500,000 payment to the Settlement Fund from the General Fund for the following reasons:

i. The Township represents that it has previously loaned the Sewer System $2,385,832 from the Township's General Fund to assist the Sewer System in paying its outstanding sewer bond obligations, its O&M expenses, and Capital Reserve Fund contributions (the "Township Loan").

ii. There are at least 401 REUs for the Sewer System that have not been allocated to new users, and the current fee for each new REU is $10,260.

iii. The Township Board is willing to have the Township's General Fund contribute cash to the Township's Sewer Fund in exchange for the Township's General Fund obtaining the right to receive the REU charges (currently $10,260 per REU) for 401 of the REUs to be allocated in the future to new users.

iv. The flow of funds in connection with the transfer of the right to receive payment for the 401 REUs is set forth below.

v. As part of the transfers described herein, the Township Loan to the Sewer Fund and all accrued interest are being paid in full.

23. The flow of funds for the $1,500,000 payment to the Settlement Fund shall be as follows:

i. The Township's General Fund shall purchase from the Sewer Fund 401 REUs of excess capacity at the cost of $10,260 per REU for a total purchase price of $4,114,260.

ii. The outstanding balance of the Township Loan of $2,385,832 shall be deducted from the $4,114,260 purchase price identified above, leaving a net payment to the Sewer Fund of $1,728,428, and resulting in the Township Loan being paid in full.

iii. $1,500,000 of the $1,728,428 net payment to the Sewer Fund shall be paid to the Settlement Fund, and the balance of $228,428 shall remain in the Sewer Fund.

24. All payments for the REUs purchased by Sewer System customers of the 401 REUs described above shall be paid to the General Fund to reimburse the General Fund for the full $4,114,260 transferred pursuant to the above, and thereafter proceeds from the sale of any additional REUs for the Sewer System shall be deposited into the Sewer Fund.

25. The Claiming Class Members shall release the Township as provided below.

26. As of June 29, 2018–the cutoff date for the submission of claims under the June 11, 2018 Third Amended Preliminary Approval Order—the Claims-Escrow Administrator has received a total of 878 claims from Class Members.

27. Assuming the Net Settlement Fund is One Million Dollars ($1,000,000) and further assuming each claimant had only one REU, the "average" Class Member will receive a refund of $1,138.95, which is approximately 50% of the Capital Charges paid by the Class Member during the Class Period.

28. The benefit to the Class of the prospective relief – i.e., the cessation of the Capital Charge going forward -- is $80.50 per quarter per REU. Class counsel estimates that the total benefit to the Class during the prospective relief period is approximately $1.2 million.

29. On January 30, 2018, the Court reviewed and entered an amended stipulated order for preliminary approval of the parties' settlement. As part of the January 30, 2018 amended preliminary approval order, the Court directed that notice be sent out to members of the Class and required that all claim forms be returned to the Claims Administrator by March 22, 2018.

30. On April 20, 2018, at the stipulation of the parties, the Court reviewed and entered a second amended stipulated order for preliminary approval of the parties' settlement. As part of the April 20, 2018 amended preliminary approval order, the Court directed that notice be sent out to Additional Class Members (as defined in that Order) and required that the Additional Class Members' claim forms be returned to the Claims Administrator by May 17, 2018

31. On June 11, 2018, at the stipulation of the parties, the Court reviewed and entered a third amended stipulated order for preliminary approval of the parties' settlement. As part of the June 11, 2018 amended preliminary approval order, the Court directed that notice be sent out to a second set of Additional Class Members (as defined in that Order) and required that these Additional Class Members' claim forms be returned to the Claims Administrator by June 29, 2018

32. In the June 11, 2018 third amended stipulated preliminary approval order the Court scheduled a hearing for July 12, 2018 to consider any objections prior to deciding whether to grant final approval to the settlement.

33. In accordance with each of the Court's Preliminary Approval Orders, notice was timely mailed to the Class Members advising them of the terms of the settlement. The notice contained instructions on how to file an objection with the Court if any class member objected to any aspect of the settlement. In a Class consisting of sewer customers with 1029 parcels assessed a total of 1352

REUs, **only 1 putative Class Member, who owns one parcel, opted out of the Class.** The owners of the remaining parcels chose to remain in the Class. Thus, the owners of over 99.9% of the parcels chose to approve and accept the terms of the settlement. Moreover, only 3 Class Members, who collectively own 3 parcels of property, filed and served notices of objection to the proposed final settlement.[1] The three objectors thus own only approximately .29% (i.e., less than 1/3 of 1%) of the total number of parcels that were assessed Charges during the Class Period.

34. The small number of opt-outs and objectors, and their small collective share of the overall Charges imposed on the Class during the Class Period, demonstrate the Class's near-unanimous agreement with this Court's preliminary conclusion that the settlement should be approved, which is

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[1] Counsel received a total of 5 objections to the settlement. Two of these objections, one filed by Bob Potocki and the other filed by John Ewing, are not properly before the Court because neither Bob Potocki nor John Ewing are members of the Class. Here, John Ewing is not a resident of Brighton Township. Moreover, Mr. Ewing admits that he is not part of the Class by acknowledging in ¶ 1 of his objections that as late as 2010 the property he claims to have had an interest in was not hooked up to the sewer system and could not be an Originally Assessed Property. Bob Potocki's objection is improper for a similar reason. He is not a member of the Class because he is not an owner of the property he shares with his wife, named Plaintiff Barbara Potocki. Mr. Potocki is not identified on the property's deed, and is not identified on the sewer account or as a payer of the sewer bill.

Under Fed. R. Civ. P. 23(e)[here MCR 3.501], non-class members are not permitted to assert objections to a class action settlement. *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989); *see also Raines v. State of Florida*, 987 F. Supp. 1416, 1418 (N.D. Fla. 1997)(holding in ADA class action that "only parties to the settlement of a class action (plaintiffs, class members, and the settling defendants) have standing to object to the fairness of the settlement.") As the Gould court explained, allowing non-class members to object would frustrate the "unassailable premise that settlements are to be encouraged":

> The plain language of Rule 23(e) clearly contemplates allowing only class members to object to settlement proposals. Beginning from the unassailable premise that settlements are to be encouraged, it follows that to routinely allow non-class members to inject their concerns via objections at the settlement stage would tend to frustrate this goal ...We hold, therefore, that non-class members have no standing to object, pursuant to a Rule 23(e) notice directed to class members, to a proposed class settlement.

Gould, 883 F.2d at 284; *see also San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 59 F. Supp. 2d 1021, 1032 (N.D. Cal. 1999)("non-class members have no standing to object to the settlement of a class action"); *Kusner v. First Penn Corp.*, 74 F.R.D. 606, 610 n. 3 (E.D. Pa. 1977) (refusing to allow non-class member to intervene for purposes of objecting to settlement), aff'd, 577 F.2d 726 (3d Cir. 1978); *Horton v. Metropolitan Life Ins.* Co., 1994 U.S. Dist. LEXIS 21395 at *34, No. 93-1849- CIV-T-23A (M.D. Fla. 1994).

the key factor the Court must consider when deciding whether to grant final approval of the settlement. *See, e.g., Metropolitan Pittsburgh Crusade for Voters v. City of Pittsburgh,* 686 F. Supp. 97, 101 (W.D. Pa. 1988) ("the reaction of the class to the settlement is perhaps the most important factor to be weighed in considering the adequacy of a proposed class action settlement."); *Stoetzner v. United States Steel Corp.,* 897 F.2d 115, 118-19 (3d Cir. 1990) (fact that only 10% of class objected "strongly favors settlement"); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 527 ("A certain number of opt-outs and objections are to be expected in a class action. . . . 'in litigation involving a large class, it would be "extremely unusual" not to encounter objections.' . . . If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement. . . . That the overwhelming majority of class members have elected to remain in the Settlement Class, without objection, constitutes the 'reaction of the class,' as a whole, and demonstrates that the Settlement is 'fair, reasonable, and adequate.'") (citations omitted).

35. Michigan law is clear that settlements are highly favored. *See Faith Reformed Church v. Thompson,* 248 Mich. App. 487, 497, 639 N.W.2d 831 (2001) ("The law favors settlements"). Moreover, there is an overriding public interest in favor of settlements in class-action lawsuits. *See Kincade v General Tire & Rubber Co,* 635 F.2d 501, 507 (5th Cir. 1981).

36. MCR 3.501(E) provides that Court approval is required for the settlement of a class action.[2] "[T]he acceptance of a settlement in a class-action case is within the trial court's discretion and is reviewed on appeal for an abuse of discretion." *Brenner et. al. v. Marathon Oil Co. et. al,* 222 Mich App 128, 133; 565 NW2d 1 (1997).

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[2] MCR 3.501(E) states: "Dismissal or Compromise. An action certified as a class action may not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to the class in such manner as the court directs."

37. Because the federal and Michigan class action rules are substantially the same, it is appropriate to look to federal law on class action issues in the absence of Michigan law on point, as the Court of Appeals recently did in *Adelman v. Compuware Corp.*, No. 333209 (Mich. App. Dec. 14, 2017). See also *Brenner*, 222 Mich App at 133 ("MCR 3.501(E) has not been the subject of apposite analysis by Michigan courts and, in the absence of available Michigan precedents, we turn to federal cases construing the similar federal rule for guidance"); *Corbett v. Montgomery Ward & Co., Inc.*, 194 Mich App 624, 632; 487 NW2d 825 (1992) ("In the absence of Michigan case law . . . cases interpreting the federal statute are instructive").

38. Factors to be considered by a trial court before approving a settlement include whether the settlement's terms are fair and reasonable, whether the settlement is a product of fraud, overreaching, or collusion, the relative strengths and weaknesses of the plaintiffs' claims, and the stage of the proceedings. *Brenner,* 222 Mich App at 133, (citing *Priddy v Edelman,* 883 F.2d 438, 447 (6th Cir. 1989)); *In re A H Robins Co., Inc,* 880 F.2d 709, 748 (4th Cir 1989). *See also Varacallo v. Massachusetts Mutual Life Ins. Co.,* 226 F.R.D. 207, 234 (D.N.J. 2005) (under federal law, the Court reviews a proposed class action settlement to determine whether it is "fundamentally fair, adequate and reasonable").

39. Specifically, the Court is to determine a settlement's "fundamentally fair, adequate and reasonable" nature by balancing a number of factors including: (1) the complexity, expense and likely duration of further litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action through trial; (7) the ability of the defendant to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best possible recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Varacallo,* 226 F.R.D. at 234; *see also Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (describing relevant factors as "(1) the likelihood of success at trial; (2) the range of

possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved."); *In re Cadizem CD Antitrust Litig.*, 218 F.R.D. 508, 522 (E.D. Mich. 2003) (applying a similar standard); *Olden v. LaFarge Corp.*, 472 F. Supp. 2d 922, 928 (E. D. Mich. 2007) (noting that Sixth Circuit precedent requires a court to consider "the likelihood of success on the merits, the risk associated with and the expense and complexity of litigation, and the objections raised by class members") (quotations omitted). It is however, "the settlement taken as a whole, rather than the individual components parts, that must be examined for overall fairness." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

40. Moreover, "the Court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. **Therefore, the settlement or fairness hearing shall not be turned into a trial or rehearsal for trial on the merits**." Moreover, the fairness hearing should also not be an evidentiary hearing. As the Sixth Circuit has explained, "no court of appeals, to our knowledge, has demanded that district courts invariably conduct a full evidentiary hearing with live testimony and cross-examination before approving a settlement. Our court, and several others, have instead deferred to the district court's traditionally broad discretion over the evidence it considers when reviewing a proposed class action settlement." *UAW v GMC*, 497 F3d 615, 636 (CA 6, 2007); *Officers for Justice v. Civil Service Commission,* 688 F.2d 615, 625 (9th Cir. 1982) (emphasis added); *see also Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) ("In performing this balancing task, the trial court is entitled to rely upon the judgment of experienced counsel for the parties. *Flinn v. FMC Corporation*, 528 F.2d 1169 (4th Cir.

1975). Indeed, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel. *Id.* at 1173.").

39. The settlement here is "entitled to an initial presumption that it is fair because '(1) the settlement negotiations occurred at arms-length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.'" *Varacallo,* 226 F.R.D. at 235 (quotations omitted).

40. "[T]here is a presumption in favor of the settlement when there has been arm's length bargaining among the parties, sufficient discovery has taken place to enable class counsel to evaluate accurately the strengths and weaknesses of the plaintiff's case, only a few members of the class object and their relative interest is small." *Adelman v Compuware Corp*, an unpublished opinion of the Court of Appeals, issued Dec 14, 2017, at *3-4 (Docket No. 333209) (2017 Mich App LEXIS 2036) (citing *Crowhorn v Nationwide Mut Ins Co*, 836 A2d 558, 563 (Del Supr, 2003). "Even if the terms of a settlement agreement are not construed to be 'ideal,' approval should not be withheld if they are 'fair and reasonable.'" *Id.* (citing *Jane Doe 30's Mother v Bradley*, 64 A3d 379, 400 (Del Supr, 2012)).

41. As the U.S. Sixth Circuit Court of Appeals has held: "Our task is not to decide whether one side is right or even whether one side has the better of these arguments. Otherwise we would be compelled to defeat the purpose of a settlement in order to approve a settlement. The question rather is whether the parties are using settlement to resolve a legitimate legal and factual disagreement." *Int'l Union, United Auto, Aerospace, and Implement Workers of America v General Motors Corp*, 477 F3d 615, 632 (6 CA, 2007).

42. "Specifically, 'an evaluation of whether a settlement is fair and reasonable requires balancing the strengths of the claims being compromised against the benefits the settlement provides to the class members. "The propriety of a settlement must be assessed as a function of both (1) the size of the amount relative to the best possible recovery; and (2) the likelihood of non-recovery (or reduced

recovery)." *In re Packaged Ice Antitrust Litig*, 322 FRD at 294. However, courts are "not required to make a definitive evaluation of the case on its merits." *Adelman*, unpub op at *27-30. "To do so would defeat the basic purpose of the settlement of litigation. [R]ather [it] must consider the nature of the claims, possible defenses, the legal and factual circumstances of the case, and then apply [its] own business judgment in deciding whether the settlement is reasonable." *Id.*

43. In assessing the adequacy of the terms of the settlement, the trial court is entitled to and should rely upon the judgment of experienced counsel for the parties. See *Nat'l Rural Telecomms Coop v DIRECTV, Inc*, 221 FRD 523, 528 (CD Cal, 2004) ("Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation") (internal quotations and citations omitted). The basis for such reliance is that "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." *In re Pacific Enters Sec Litig*, 47 F3d 373, 378 (CA 9, 1995). Federal precedents also state that the Court must determine, as part of the final approval process, whether the prerequisites for class certification are satisfied. *See, e.g., In re Cardizem*, 218 F.R.D. 508, 517 (E.D. Mich. 2003).

44. The Court finds that the prerequisites for class certification under MCR 3.501 are satisfied in this case for the reasons set forth in Plaintiffs' Motion for Class Certification and supporting brief, and permanently certifies the Class (which includes the subclass) under MCR 3.501.

45. The Court finds that certification of the Class as defined in the Settlement Agreement and which includes the subclass is appropriate for settlement purposes because (a) the class consisting of the owners and occupiers of over 1,000 properties in the Township is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the members of this Class that predominate over questions affecting only individual members, including whether the Township's method of imposing the Charges is reasonable and whether the Charges constitute "taxes" which are

subject to the Headlee Amendment; (c) the claims or defenses of the representative parties are typical of the claims or defenses of the Class because the representative's claims arise from the same events or practices or course of conduct that gives rise to the claims of the other class members and are based on the same legal theories; (d) the representative parties will fairly and adequately assert and protect the interests of the class because there are no conflicts of interest with the Class, and the Class is represented by experienced, competent counsel; and (e) the maintenance of this action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

46. Each of the relevant factors supports approval of the parties' settlement here and therefore the Court finds that the settlement is fundamentally fair, adequate, and reasonable, and that it should be approved by the Court.

47. The Court specifically finds that (1) the litigation will be complex, expensive, and lengthy; (2) the reaction of the Class supports approval of the settlement; (3) the parties have engaged in substantial discovery and motion practice and are well-informed about the legal and factual issues present in this case; (4) there is a risk that Plaintiffs will not establish liability or the Class's right to a full refund if the case proceeds to trial; (5) there is a risk that Plaintiffs will not be able to maintain a class action through trial due to the Township's arguments about the need for individualized inquiry; (6) the financial position of the Township's Sewer Fund would make it difficult or impossible for the Township to refund 100% of the Charges; and (7) there is a risk that in the event of a monetary judgment the Township will seek to levy the judgment under MCL 600.6093.

Based upon these Findings of Fact and Conclusions of Law, IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The terms of the Settlement Agreement are fair, reasonable and adequate and in the best interests of the members of the Class and are hereby approved.

2. Plaintiffs and Defendant are hereby ordered and directed to perform and consummate the settlement set forth in the Agreement in accordance with the terms and conditions of the Agreement.

3. The notification to the Class members regarding the Settlement is the best notice practicable under the circumstances and is in compliance with MCR 3.501(E) and the requirements of due process of law.

4. This Lawsuit is hereby dismissed with prejudice, and without costs to any party except as provided for in the Agreement. Insofar as this Final Judgment dismisses the Class claims relating to the Charges, the Lawsuit Expenses, and the Sewer Connection Expenses (as those terms are defined in the Settlement Agreement), this portion of this Final Judgment is a judgment on the merits.

5. Kickham Hanley PLLC and The Head Law Firm, PLC, counsel for the Class, are hereby awarded attorneys' fees and costs in the amount of $527,676.50, to be paid as set forth in the Agreement. Plaintiff Dennis Shoner is granted an incentive award of $10,000.00, to be paid as set forth in the Agreement. Plaintiff Barbara Potocki is granted an incentive award of $10,000.00 to be paid as set forth in the Agreement.

6. Without any further action by anyone, Plaintiffs and all members of the Class as certified by the Order dated January 30, 2018, as Amended on April 20, 2018, and as Amended on June 11, 2018, who previously did not submit a timely and valid Request for Exclusion are deemed to have executed the following Release and Covenant not to Sue which is hereby approved by the Court:

> In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the Township, and each of its successors and assigns, present and former agents, elected and appointed officials, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts,

accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which arise from the beginning of time through January 31, 2018 concerning the Township's imposition and collection of the (i) the Assessment Charges, (ii) the Capital Charges, (iii) the O&M Charges, (iv) the Sewer Connection Expenses, and (v) Lawsuit Expenses. This release is intended to include all claims that were asserted or could have been asserted in the Lawsuit concerning the Township's imposition and collection of the (i) the Assessment Charges, (ii) the Capital Charges, (iii) the O&M Charges, (iv) the Sewer Connection Expenses, and (v) Lawsuit Expenses with the exception of claims to enforce the terms of this Settlement Agreement. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the Township on account of any action or cause of action released whereby; (b) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances. The foregoing shall not affect the claims of any Class Member alleging that their individual sewer bills were calculated in error on the basis of facts or circumstances unique to such class member and not based on the claims that were or could have been asserted by the Class in the Lawsuit.

7. The Court hereby permanently enjoins and ~~refrains~~ restrains all Class members who did not duly request exclusion from the Class in the time and manner provided for in the Class Notice from commencing or prosecuting any action, suit, claim or demand against any of the parties released by virtue of the Settlement Agreement arising out of or relating to the Charges, Lawsuit Expenses, and Sewer Connection Expenses.

8. Without affecting the finality of this final judgment in any way, the Court reserves continuing and exclusive jurisdiction over the parties, including all members of the Class, in conjunction with the execution, consummation, administration and enforcement of the terms of the Settlement Agreement.

IT IS SO ORDERED:

Dated: Aug 10, 2018.

Livingston County Circuit Court Judge

We hereby stipulate to the entry of the above order.
Approved as to form and substance:

/s/
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