

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

JUDY KISH and
JOYCE BANNON,
individually, and as representatives
of a class of similarly-situated persons
and entities,

Case No. 2015-149751-CZ
Hon. Leo Bowman

Plaintiffs,

v.

CITY OF OAK PARK,
a Michigan municipal corporation,

Defendant.

Gregory D. Hanley (P51204)
Jamie K. Warrow (P61521)
Edward F. Kickham Jr. (P70332)
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FINAL JUDGMENT AND ORDER APPROVING CLASS SETTLEMENT

At a session of said Court held in the
City of Pontiac, County of Oakland
State of Michigan on 2/13/19
PRESENT: HON. Leo Bowman
Circuit Court Judge

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 February 6, 2019, pursuant to the Order Regarding Preliminary Approval of Settlement, Notice and Scheduling, dated November 2, 2018 (the “Order”), 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 Paragraphs 4 and 6 of the 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 therefor,

For the reasons stated on the record, IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The terms of the 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. Subject to Paragraph 19 of the Settlement Agreement, his Lawsuit is hereby dismissed with prejudice, and without costs to any party except as provided for in the Agreement.

5. Kickham Hanley PLLC, counsel for the Class, is hereby awarded attorneys’ fees and costs in the amount of \$1,103,734.84, to be paid as set forth in the Agreement. Plaintiff Judy Kish is

granted an incentive award of \$10,000, to be paid as set forth in the Agreement. Plaintiff Joyce Bannon is granted an incentive award of \$10,000 to be paid as set forth in the Agreement.

6. The Court takes specific notice of provisions of the Agreement which identify certain alleged overcharges by Oakland County or its agencies for storm water management services provided to Defendant (“Overcharges”). Pursuant to the Agreement, Defendant will assign to the Class members or for their benefit any and all claims for refund of the Overcharges that it has or may have against Oakland County Michigan and its affiliates, political subdivisions, agents, employees or officers including, but not limited to, the Oakland County Water Resources Commissioner, the Southeast Oakland County Sewage Disposal District, the George W. Kuhn Drainage Districts, and any other entity that imposed or imposes the Overcharges. Kickham Hanley PLLC is hereby appointed trustee of a litigation trust hereby established for the benefit of the Class members. As trustee, Kickham Hanley PLLC is authorized to pursue the claim for a refund of the Overcharges by lawsuit against Oakland County or its aforesaid agencies. Kickham Hanley PLLC is approved as counsel to the trust. Any monetary recovery from pursuit of the claim will be distributed, after counsel fees and costs, to the Class members based upon the methodology used for distributing the Settlement Fund. In the event the Oakland County Action is resolved through a settlement, that settlement, and any request by Class Counsel for an award of fees and expenses, will be subject to the same Court approval processes as those applied to the Settlement Fund. In the event that there is a monetary recovery in Oakland County Action by way of a litigated judgment, any request by Class Counsel for an award of fees and expenses will be subject to the same Court approval processes as those applied to the Settlement Fund.

7. In the event of a default by the Defendant, as defined in the Agreement, Class Counsel, on behalf of the Class, may exercise any one of two options, at their discretion: (1) enter the “pocket judgment” described in Paragraph 18 of the Agreement in the amount of \$3,000,000,

less any payments made by the Defendant prior to the default; or (2) reinstate the Lawsuit with Plaintiffs and the Class retaining all rights they had against the Defendant prior to the date of the Court's final approval of this Settlement.

8. In the event of a default which results in entry of the "pocket judgment," Class Counsel, on behalf of the Class, will be entitled to collect the judgment in any manner authorized by law, including garnishment and execution. The provisions of the Judgment Levy Act, MCL 600.6093, will not apply and the Defendant may not impose or attempt to impose a tax to pay the "pocket judgment."

9. Without any further action by anyone, Plaintiffs and all members of the Class as certified by the Order dated October 18, 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 City, 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 the date of this Final Order and Judgment concerning (a) the City's calculation or assessment of Water and Sewer Rates or Charges; (b) the components of costs included in the Water and Sewer Rates; and (c) the City's Water and Sewer Fund balance. This release is intended to include all claims that were asserted or could have been asserted in the Lawsuit concerning the City's Rates and/or Charges. 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 City on account of any action or cause of action released hereby; (b) none of the claims

released under this 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 whose individual water and 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.

8. If the Defendant complies with the prospective relief described in the Agreement for the duration of the “FY 2019-20 Period” and the “Prospective Relief Period,” as defined in the Agreement, the Class Members who do not timely request exclusion from the Class shall be deemed to have released and waived any and all claims that could be brought which (a) arise during the FY 2019-20 Period challenging the inclusion of the Stormwater Charges and the Kuhn Facility Debt Charges in the Rates for the FY 2019-20 Period (the “FY 2019-20 Period Claims”) and (b) arise during the Prospective Relief Period challenging the inclusion of the Stormwater Charges in the City’s Rates during the Prospective Relief Period (the “Prospective Relief Period Claims”).

9. This Court retains continuing jurisdiction to effectuate the provisions of the Agreement and the terms of this Order.

IT IS SO ORDERED:

Dated: 2/12/2019, 2019.

/s/ Leo Bowman

Oakland County Circuit Court Judge

SB

STIPULATED AND AGREED:

KICKHAM HANLEY PLLC

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