

T. SCOTT PERNICI, MICHAEL JONES,
AND MARK DEFATTA, INDIVIDUALLY
AND ON BEHALF OF A CLASS OF
SIMILARLY SITUATED PERSONS

Plaintiffs

SUIT NO.: 599,698-C

VERSUS

FIRST JUDICIAL DISTRICT COURT

CITY OF SHREVEPORT, LOUISIANA

Defendant

CADDO PARISH, LOUISIANA

**ORDER GRANTING FINAL APPROVAL OF
PARTIAL CLASS ACTION SETTLEMENT**

This matter came before the Court on **November 12, 2020**, and on **November 23, 2020** for the Court to render its opinion, as to the Final Approval of the Partial Class Action Settlement in the above captioned matter.

PRESENT: Jerald R. Harper and Anne E. Wilkes, counsel for Plaintiffs; and,
Edwin H. Byrd, III, counsel for Defendant

After considering the record; the facts and evidence including the Settlement Agreement, Plaintiffs' Motion for Partial Class Action Settlement, and Brief in Support of Attorneys' Fees and Costs, and Brief in Support of Final Approval of Partial Class Action Settlement; and, the arguments of counsel, **THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS, and for the reasons stated in open court:**

1. Jurisdiction. The Court has jurisdiction over the subject matter of the Action, the Parties and all persons in the Partial Settlement Class.

2. Scope of Settlement. The Settlement Agreement and accompanying Order Preliminarily Approving Class Action Partial Settlement resolves the "rounding" portion of the claim alleged in Original Class Action Petition, as amended, filed in the First Judicial District Court, Caddo Parish, Louisiana, on or about March 29, 2017. The remaining issues in the Class Action lawsuit—damages arising, in whole or in part, out of the use of too many days, use of the wrong months, and rounding of HCF customer's meter readings—are currently still being litigated and this Partial Settlement has no effect on those parts of the lawsuit. The Court recognizes that the parties have reserved those issues.

3. **Class Certification.** The Court granted certification of the Class on or about September 3, 2019, finding that Plaintiffs had satisfied the requirements of La. C.C.P. arts. 591 and 592. Thereafter, Plaintiffs filed a motion to amend Class Action Certification. This Court granted the motion to amend the class on or about March 2, 2020. The Partial Settlement Class as set forth in the Settlement Agreement and Motion for Preliminary Approval of Partial Class Action Settlement is substantially similar to that which this Court previously certified. For consistency and completeness, this Court hereby confirms and certifies the Partial Settlement Class as defined below:

All persons (natural or juridical) that that have or had a “inside city” and/or “outside city” residential account with the City of Shreveport’s Department of Water and Sewerage that:

- (A) have received and paid a bill(s) from the City of Shreveport’s Department of Water and Sewerage (“DOWAS”) at any time during the period beginning and including **October 1, 2011 through December 31, 2019; and,**
- (B) that have been overcharged for the “Sewer Quantity Charge” on any such bill(s), when the Average Winter Consumption (“AWC”) is applied to a residential customer’s “Sewer Quantity Charge”, which results from DOWAS’ practice of—after “truncating” when reading the meter and only reading the “thousands” of gallons—rounding up to the nearest “whole thousand gallon”—which is accomplished: after eliminating the highest “month” and lowest “month” (of the four “months” used to determine the AWC); adding the remaining two “months” and averaging those two months; rounding up to the next “whole thousand gallon” to determine the residential customer’s AWC; and, applying that “rounded” amount to a residential customer’s “Sewer Quantity Charge” (referred to, from time to time, as the “rounding error”), as more fully described and alleged in paragraph 80 of Plaintiffs’ Original Class Action Petition.

4. **Class Representatives.** The Court’s original certification of the Class approved of T. Scott Pernici, Michael Jones, and Mark Defatta to act as Class Representatives. However, for the sake of completeness and consistency, this Court hereby reaffirms and certifies that the Class Representatives are T. Scott Pernici, Michael Jones, and Mark Defatta. This determination requires no further analysis, and appointment of Mr. Pernici, Mr. Jones, and Mr. Defatta as representatives of the Partial Settlement Class is likewise approved.

5. **Class Counsel.** The Court’s original certification of the Class approved and appointed The Harper Law Firm, APLC, Jerald R. Harper, Anne E. Wilkes; and, Michael H. Wainwright as class

counsel. As this Court has already appointed and approved of same for the Partial Settlement Class, this determination requires no further analysis, and appointment of Plaintiff's counsel, Jerald R. Harper, Anne E. Wilkes, and Michael H. Wainwright as class counsel is likewise approved.

6. **Preliminary Approval of Proposed Settlement Agreement.** The Court conducted a hearing on the Preliminary Approval of the Proposed Settlement Agreement and accompanying proposals, and granted an Order preliminarily approving of same on or about July 1, 2020.

7. **Notice.** The Court hereby finds and concludes that the Class Notice was disseminated to persons in the Settlement Class in accordance with the terms and conditions of the Settlement Agreement and related agreements as detailed in the Order Preliminarily Approving Class Action Partial Settlement (and documents attached to or otherwise referenced therein), and in compliance with the Court's Preliminary Approval Order.

8. The Court hereby finds and concludes that the Class Notice and Claims Administration procedures set forth in the Order Preliminarily Approving Class Action Partial Settlement (and documents attached to or otherwise referenced therein): (a) fully satisfy La. C.C.P. art. 592 and the requirements of due process; (b) were the best notice practicable under the circumstances; (c) provided due and sufficient notice to all persons in the Settlement Class who could be identified through reasonable effort; and, (d) support this Court's jurisdiction over the Settlement Class.

9. **Objections.** The Court hereby finds that there were no objections to the Settlement Agreement and related agreements as detailed in the Order Preliminarily Approving Class Action Partial Settlement (and documents attached to or otherwise referenced therein).

10. **Opt-Outs/Exclusions.** The Court hereby notes that there were two opt-outs timely submitted in accordance with the Court's Preliminary Approval Order, and those persons are excluded from this Order.

11. **Arms-Length.** The Court hereby finds that the Settlement Agreement and related agreements as detailed in the Order Preliminarily Approving Class Action Partial Settlement (and

documents attached to or otherwise referenced therein) is the product of arms-length settlement negotiations between the Parties.

12. Final Approval and Fairness. The Court hereby finds that the Settlement Agreement and related agreements as detailed in the Order Preliminarily Approving Class Action Partial Settlement (and documents attached to or otherwise referenced therein) is fair, adequate and reasonable. Accordingly, the Court hereby finally approves of the Settlement Agreement and related agreements as detailed in the Order Preliminarily Approving Class Action Partial Settlement (and documents attached to or otherwise referenced therein) and is fully in accordance with La. C.C.P. arts. 591-595.

13. Amounts and Distributions to Class Members. The Court has reviewed the parties' agreed-upon proposal for amounts and distributions of payments (in the form of checks or account credits) as detailed in Plaintiffs' Motion for Preliminary Approval and Brief in Support of Final Approval of Partial Class Action Settlement and exhibits thereto, and re-stated in the Brief in Support of Final Approval. The Court hereby approves of the allocation and distribution plan as set forth in the Brief in Support of Final Approval. The Claims Administrator and City of Shreveport (where applicable) is hereby ordered to comply with the terms of the Agreement with respect to the distribution of the Settlement Payment and disposition of any funds remaining thereafter. Such schedule is detailed hereinbelow.

14. Release. The Court hereby finally approves of and confirms the following Release:

Upon the effective date of the Partial Settlement (here, the issuance of this Order Granting Final Approval of Partial Class Action Settlement), the Partial Settlement Class Members who have not opted out of the Partial Class Action Settlement (hereinafter "Released Partial Settlement Class Members") shall release and forever discharge the City of Shreveport from the claims in the Original Class Action Petition and accompanying amendments that evidence, relate or pertain to the "rounding" issue that is the subject of the Partial Class Action Settlement ("the Released Claim").

The Parties expressly reserve all other claims in the Original Class Action Petition and accompanying amendments for damages arising in whole or in part from the computation and application of the Average Winter Consumption relating to the issues of using too many days, using the wrong months, and rounding HCF meters, as alleged. Those matters are still being litigated and are not part of the Partial Settlement Agreement and therefore not included in this Release.

The Partial Release also includes a release of claims for attorney's fees, costs and expenses that may be or have been incurred by any and all Released Partial Settlement Class Members or by the Class Counsel or any other attorney in connection with this Partial Settlement, exclusive of the aforementioned reservation.

Releasing Partial Settlement Class Members understand and agree that the release of the Released Claim is a full and final general release applying to the Release Claim that are currently known, anticipated, or disclosed to Releasing Partial Settlement Class Members and to any claims that are currently unknown or unanticipated or otherwise undisclosed to Releasing Partial Settlement Class Members arising out of the facts and circumstances underlying the Released Claim, exclusive of the aforementioned reservation. Releasing Partial Settlement Class Members acknowledge that the facts could be different than they now know or suspect to be the case but are nonetheless releasing those unknown claims, subject to the aforementioned reservation. In exchange for the good and valuable consideration set forth herein, all Releasing Partial Settlement Class Members further waive any and all rights or benefits that they as individuals or as Releasing Partial Settlement Class Members may now have as a result of the alleged facts, circumstances, and occurrences underlying the Released Claim, exclusive of the aforementioned reservation.

15. Dismissal and Conclusion. Upon completion of the distribution of the Settlement Funds, the Court will enter a final order dismissing the claims contained in the Class Action Petition in connection with the "Settled Portion."

16. Attorneys' Fees and Costs. Class Counsel have moved for an award of attorneys' fees and costs, which is inclusive of costs and expenses. The Court hereby grants the Class Counsels' request for attorney's fees and costs, awarding class counsel the amount of one million four hundred seventy-five thousand dollars (\$1,475,000.00), or twenty-five percent (25%) of the Settlement Amount, and such amount shall be paid to Class Counsel in accordance with the Schedule provided in Paragraph 18, below. This ruling is based on the following reasons:

- a. that the value conferred on the Settlement Class is immediate and readily quantifiable (upon the Effective Date of this Order), and the payments or credits that the Settlement Class members will receive represent a significant portion of the damages that would be available to them were they to prevail in an individual action;
- b. that Class Counsel vigorously and effectively pursued the Settlement Class Members' claims before this Court in this complex case;
- c. that the Partial Settlement was obtained following extensive negotiation between Class Counsel and counsel for the City of Shreveport, and was negotiated in good faith and in the absence of collusion;
- d. that the Settlement Class Members were advised in the Class Notice (long form) approved by this Court that Class Counsel intended to apply for an award of

attorneys' fees in an amount not to exceed twenty-five percent (25%) of the Settlement Amount, inclusive of costs and expenses;

- e. that no Settlement Class member submitted written objections to the award of attorneys' fees
- f. that the City of Shreveport did not file any written objections to Class Counsel's *Brief in Support of Attorneys Fees and Costs*;
- g. that, in consideration of the attorneys' fees awarded to Class Counsel, this Court has considered the factors outlined in *State, Dept. of Transp. and Dev. v. Williamson*, 597 So.2d 439 (La. 1992) and *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974); and, concludes that the award of attorneys' fees as prayed for is appropriate and warranted.

17. Compensation for Class Representatives. Class Counsel have also moved for an award of compensation to the Class Representatives. The Court hereby grants the Class Counsel's request for class representative compensation for their service and efforts, awarding Class Representative, T. Scott Pernici two thousand five hundred dollars (\$2,500.00) and awarding Class Representatives Mark DeFatta and Michal Jones each one thousand dollars (\$1,000.00). Such amount shall be paid to Class Counsel in accordance with the Schedule provided in Paragraph 18, below. The Court finds that such compensation amounts are proper based on consideration of the involvement, effort, work, burden, and time dedicated to the cause, as described in *Burford v. Cargill*, No. 05-0283, 2012 WL 5471985 (W.D. La. Nov. 8, 2012) and *Turner v. Murphy Oil USA, Inc.*, 472 F.Supp.2d 830 (E.D. La. 2007).

18. Schedule for Administration, Allocation and Distribution. As contemplated in Paragraph 13 above, the Court hereby orders the following in connection with the administration, allocation and distribution of the Settlement Funds:

- a. **Within Fifteen (15) Days of this Court's Final Approval Order (December 8, 2020):** The City shall remit to the Claims Administrator (EPIQ) an amount of five million nine hundred thousand dollars (\$5,900,000.00) which will be placed into an IRS qualified trust account (established and managed by EPIQ) with its own tax identification number. The Internal Revenue Service has recognized and endorsed the use of Qualified Settlement Funds pursuant to 26 C.F.R. § 1.468(B)(1), which provides clarity as to the obligations of participants in a class action settlement and for the tax consequences of payments into and out of that fund. EPIQ, which has substantial national class action experience, advises that funds are widely used in such settlements.
- b. **Within Thirty-Seven (37) Days of this Court's Final Approval Order (December 30, 2020):** The Claims Administrator shall disburse to Class Counsel one third of the amount of attorneys' fees and costs, as awarded by this Court herein, to Class Counsel via check (sent by first-class mail) or wire.

- c. **Within Thirty-Seven Days of this Court's Final Approval Order (December 30, 2020):** The Claims Administrator, in collaboration with Class Counsel, will finalize the list of Sub-Class members (with corrected addresses, as described in Exhibit "C" of the Brief in Support of Final Partial Class Action Settlement), to include the amount of the funds to be disbursed to each, based on the allocation method described above—taking into account the amount of attorney's fees and costs awarded to Class Counsel (and to Class Representatives) by this Court—between those Sub-Class members that are to receive "credits" and those Sub-Class members that are to receive checks and disseminate to all counsel.
- d. **Within Seventy-Seven (77) Days of this Court's Final Approval Order (February 8, 2021):** The Claims Administrator shall mail, by first-class mail, a check to each Sub-Class member in accordance with the allocation method described above—taking into account the amount of attorney's fees and costs awarded to Class Counsel (and to Class Representatives) by this Court. The checks will be valid for 120 days from the date on the check.
- i. The Claims Administrator will monitor check disbursement and depositing and maintains deadlines internally to provide reports to all counsel of record regarding "stale dates" for checks at 90, 120 and 180 days.
 - ii. The Claims Administrator will also engage in check reissuing to conclude 180 days from the initial check disbursement.
- e. **Within Seventy-Seven (77) Days of this Court's Final Approval Order (February 8, 2021):** The City of Shreveport shall apply to each Sub-Class Member the amount to which s/he is entitled in accordance with the allocation method described above—taking into account the amount of attorney's fees and costs awarded to Class Counsel (and to Class Representatives) by this Court.
- f. **Within Seventy-Seven (77) Days of this Court's Final Approval Order (February 8, 2021):** The Claims Administrator shall disburse to Class Counsel the remaining amount of attorneys' fees and costs and the full amount of the Class Representatives' Compensation), as awarded by this Court herein, to Class Counsel via check (sent by first-class mail) or wire. Within five (5) business days therefrom, Class Counsel shall disburse the funds awarded to Class Representatives.
- g. **Within Twenty-One (21) Days of the City's Application of Credits:** The City shall submit and file with the Court a certificate, verified and notarized, that reflects that the City has completed the application of the credits to the Sub-Class Members who are to receive credits on his/her water & sewer bill (rather than checks), and certify the amount of money in dollars) of those credits. The City shall provide copies of same contemporaneously with the submission to the Court to Class Counsel and to the Claims Administrator (EPIQ).
- h. **Within Fourteen (14) Days of the City's Filing of Credit Certification:** The Claims Administrator (EPIQ) shall return to the City the amount of funds that were distributed to Sub-Class Members by way of credits on his/her water & sewer bill from the City of Shreveport, as verified in the City's Credit Certification.
- i. **Final Post-Distribution Report:** The Claims Administrator shall file with the Court—on or before August 20, 2021—a brief "post-distribution" accounting, reflecting: the total settlement amount; the amount disbursed to Class Counsel for attorney's fees and costs and in connection with Class Representative Compensation; the number of checks sent (and the amount of same); the number of checks cashed (and the amount of same); the number of checks outstanding (and

the amount of same); the number of checks that were undeliverable or otherwise returned (and the amount of same); and, the amount of funds returned to the City in connection with the Credit Certification described *supra*.


- j. Remaining/Residual Funds:** Any amounts remaining (as a result of uncashed or undeliverable checks) as reported by the Claims Administrator in its Final Post-Distribution Report Any amounts remaining shall be disbursed to the Shreveport Water Assistance Program (“SWAP”)—a practice commonly referred to in class actions as a “cy pres” **on or before September 4, 2021**. Class Counsel shall be responsible for submitting to the Court a verification confirming same and the amount thereof.

19. Retention of Jurisdiction. It is further ordered that this Court shall retain jurisdiction in this matter with reference to the implementation of these Orders.

IT IS SO ORDERED.

THUS DONE AND SIGNED at Shreveport, Caddo Parish, Louisiana on this

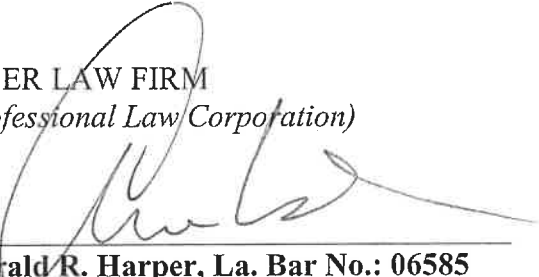
23 day of November, 2020.


HONORABLE MICHAEL A. PITMAN
FIRST JUDICIAL DISTRICT COURT

AGREED:

HARPER LAW FIRM
(A Professional Law Corporation)

BY:


Jerald R. Harper, La. Bar No.: 06585
harper@harperfirm.com
Anne E. Wilkes, La. Bar No.: 36729
anne@harperfirm.com
213 Texas Street
Shreveport, Louisiana 71101
(318) 213-8800 (telephone)
(318) 213-8804 (facsimile)

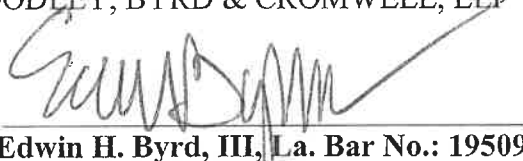
and

Michael H. Wainwright, La. Bar No. 13155
mhwlaw1@gmail.com
97 Country Club Circle
Brevard, North Carolina 28712
(318) 470-9393 (telephone)

COUNSEL FOR PLAINTIFFS

PETTIETTE, ARMAND, DUNKELMAN,
WOODLEY, BYRD & CROMWELL, LLP

BY:


Edwin H. Byrd, III, La. Bar No.: 19509
ebyrd@padwbc.com
Marshall Perkins, La. Bar No.: 36979
mperkins@padwbc.com
400 Texas Street, Suite 400
Shreveport, Louisiana 71101
(318) 221-1800 (telephone)
(318) 226-0390 (facsimile)

COUNSEL FOR DEFENDANT

