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

BY: _____
SUIT NO.: 599,698-C

VERSUS

FIRST JUDICIAL DISTRICT COURT

CITY OF SHREVEPORT, LOUISIANA
Defendant

CADDO PARISH, LOUISIANA

**ORDER PRELIMINARILY APPROVING CLASS ACTION PARTIAL SETTLEMENT;
APPROVING NOTICE PLAN AND SCHEDULE; AND, SETTING FINAL APPROVAL
HEARING**

This matter came before the Court on **June 29, 2020**, on Plaintiffs' Motion for Preliminary Approval of Class Action Partial Settlement.

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, the arguments of counsel, **THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:**

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 has conducted a preliminary evaluation of the Settlement as set for in the Settlement Agreement (Appendix 1-A of Plaintiffs' Motion for Preliminary Approval) and as described and proposed in Plaintiffs' Motion for Preliminary Approval of Partial Class Action Settlement. Based on this preliminary evaluation, the Court finds that the Agreement, as supplemented and further described in Plaintiffs' Motion for Preliminary Approval of Partial Class Action Settlement (a) is fair, reasonable and adequate, and within the range of possible judicial approval; (b) appears to be the product of serious, informed and non-collusive negotiations; (c) appears to be void of obvious deficiencies; and (d) does not appear to provide for improper preferential treatment to Class Representatives or segments of the Partial Settlement Class. With respect to the form(s) of notice of the material terms of the Partial Settlement to persons in the Partial Settlement Class for their consideration (as provided as Appendix 1-C of Plaintiffs' Motion for Preliminary Approval), said Class Notice is appropriate and warranted. Therefore, the Court grants preliminary approval of the Partial Class Action Settlement.

7. **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 exhibits thereto. (See Exhibit "C" of Plaintiffs' Motion for Preliminary Approval). The Court hereby finds that this proposal is appropriate and warranted.

8. **Final Approval Hearing.** On Thursday, November 12, 2020 at 9:30 a.m., this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Settlement Agreement and this accompanying Order Preliminarily Approving Class Action Partial Settlement; and, to determine (a) whether final approval of the Partial Settlement embodied by the Settlement Agreement and this accompanying Order Preliminarily Approving Class Action Partial Settlement should be granted; and, (b) whether Class Counsel's application for attorney's fees and expenses and compensatory/incentive payment to Class Representatives should be granted, and in what amount.

9. **Attorney's Fees, Costs and Related Matters.** No later than **August 3, 2020**, Plaintiff must file papers in support of Class Counsel's application for attorney's fees and costs, as well as for compensatory/incentive award to Class Representatives. Defendant shall file any opposition to the attorneys' fees application by no later than **September 29, 2020**. No later than **October 29, 2020**, which is fifteen (15) days before the Final Approval Hearing, papers in support of final approval of the Settlement and response to any written objections must also be filed.

10. **Partial Settlement Claims Administrator.** The original Settlement Agreement signed by the Parties (Appendix 1-A of Plaintiffs' Motion for Preliminary Approval) included an agreement that the administration of the claims for the Partial Settlement Class would be done by and through the City and/or Heard, McElroy & Vestal. After further consideration and review of the volume of data, number of Settlement Class Members and the logistics and time required for same, Class Counsel proposed that EPIQ serve as the Claims Administrator for Settlement Class. This Court has reviewed EPIQ's qualifications and the reasons for the proposal; and, agrees with Plaintiffs that it would be in the best interest of the Settlement Class and the City of Shreveport for EPIQ to serve as Claims Administrator. As such, this Court hereby certifies that EPIQ will serve as the Claims Administrator. The Claims Administrator shall be responsible for providing the Class Notice as well as services related to the administration of the Partial Settlement as described in Plaintiffs' Motion for Preliminary Approval of Partial Class Action Settlement.

11. **Class Notice.** The Class Administrator (EPIQ) shall provide direct notice via First Class U.S. Mail to the Partial Settlement Class Members for whom it has contact information. Class Notice shall be in the form of a Postcard Notice, which shall include general claim information and shall direct recipients to the Settlement Website (also maintained by the Class Administrator), which will contain the Long Form Notice (*see* Appendix 1-C of Plaintiffs' Motion for Preliminary Approval). Prior to mailing the Postcard Notice, the Claims Administrator shall search for updated addresses via their databases. As noted in Paragraph 6 of this Order, the Court has approved of the notice language. The Court hereby directs the Parties and the Claims Administrator to complete dissemination of the Class Notice by August 3, 2020 ("Notice Deadline").

12. Confirmation of Dissemination of Notice. The Claims Administrator will file with the Court, by **October 29, 2020**, which is fifteen (15) days prior to the Final Approval Hearing, proof that the Class Notice was provided in accordance with the Agreement and this Order.

13. Opt-Out and Objection Deadlines. Persons in the Partial Settlement Class who wish to either object to the Settlement or request Exclusion/Opt-Out from the Partial Settlement Class must do so by **September 29, 2020**. Persons in the Partial Settlement Class may not both object and “opt out”. Partial Settlement Class Members may not submit both a request for Exclusion/ “Opt-Out” and an Objection.

14. Exclusion from the Partial Settlement Class. A Partial Settlement Class Member who wishes to exclude himself/herself from this Partial Settlement, and from the Release pursuant thereto, shall submit a written Exclusion/Opt-Out Request to the Claims Administrator at the address designated in the notices no later than **September 29, 2020**. These requests for Exclusion/Opt-Out must: (a) identify the case name and caption; (b) identify the name, address and telephone number of the Partial Settlement Class Member; (c) identify the DOWAS account number(s) (if known) that are associated with the Partial Settlement Class; (d) be personally signed by the Partial Settlement Class Member; and, (e) contain a statement that indicates a desire to be excluded from the Partial Settlement Class in the litigation, such as “I hereby request that I be excluded from the proposed Partial Settlement Class in *Pernici et al. v. City of Shreveport*, No.: 599,698-C; First Judicial District Court, Caddo Parish.” No request for exclusion/opt-out will be valid unless all of the information described above is included. Class, mass, and group Requests for Exclusion/Opt-Out are prohibited.

15. On or before **October 29, 2020** (which is fifteen (15) days prior to the Final Approval Hearing), the Claims Administrator shall prepare and disseminate to all counsel an initial list that shall identify each Partial Settlement Class Member; the anticipated payment for each Partial Settlement Class Member; the deliverable address for each Partial Settlement Class Member (if known); and, any Partial Settlement Members who have “opted out” of the Partial Settlement.

16. Objections to Partial Settlement. Any Partial Settlement Class Member who wishes to be heard at the Final Approval Hearing, or who wishes for any objection to be considered, must file a written notice of objection with the Court by the objection date contained in the notice(s), which is **September 29, 2020**.

To be valid, a written objection must include: (a) the name of the case, which is *Pernici et al v. City of Shreveport*; No.: 599,698-C; First Judicial District Court, Caddo Parish, Louisiana; (b) full name, address and telephone number; (c) DOWAS account number(s) (if known); (d) an explanation of the basis upon which the objector claims to be a member of the Partial Settlement Class; (e) a statement with specificity of the grounds for the objection, and whether the objection applies to the individual, a specific subset of the Partial Settlement Class, or the entire Settlement Class, accompanied by any legal support for your objection known to the objector and/or his counsel (if the objector has his/her own attorney); (f) the number of times in which the objector has objected to a class action settlement within the last five years and the caption(s) of those cases; and, a copy of any orders related to or ruling upon those prior such objections; (g) the identity of all counsel who represent the objector (if any) related to the objection to the Proposed Partial Settlement; (h) whether the objector wishes to be heard in person at the final approval hearing; (i) the identity of all counsel (if any) representing the objector who will appear at the final approval hearing; (j) a list of all person(s) who will be called to testify at the final approval hearing in support of the objection (if any); (k) a statement confirming whether the objector intends to personally appear, and/or testify at the final approval hearing; and, (l) the objector's personal signature. (An attorneys' signature is not sufficient) Class, mass, and group objections are prohibited.

17. Any Partial Settlement Class Member who fails to object to the Partial Settlement and Preliminary Approval Order in the manner described in the class notice(s) and consistent with this Order shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Partial Settlement (including applications for attorney's fees and expenses, and application for compensatory payment to Class Representatives) at the Final Approval

Hearing, and shall be foreclosed from seeking any review of the Partial Settlement or the terms of same by appeal or other means.

18. For any Objections that are filed, the Clerk of Court is ordered and instructed to redact any social security number, street address, and telephone number in order to protect the objector's privacy. The objector's name, as well as his/her city, state, and zip code, as well as the objection, will not be redacted.

19. **Release of Claims.** The Settlement Agreement (Appendix 1-A of Plaintiffs' Motion for Preliminary Approval) did not include express language discussing the result and effect of the Final Approval of the Partial Class Action Settlement. In their Motion for Preliminary Approval of Partial Class Action Settlement, Plaintiffs provided proposed language for such Release. This Court has reviewed and considered the proposed language and adopts the recommendation of Plaintiffs as to the Release terms. As with any other provision in this Order, such approval is Preliminary and subject to modification and change at the Final Approval Hearing.

20. **Reasonable Procedures to Effectuate the Settlement.** Counsel for the City and Class Counsel are hereby authorized to use all reasonable procedures in connection with the approval and administration of the Settlement that are not materially inconsistent with this Order, or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice(s), exhibits and other related content that they, along with the input of the Claims Administrator, jointly agree are reasonable and necessary. The Court reserves the right to approve the Settlement Agreement and other related agreements with such modifications, if any, as may be agreed to by the Parties without further notice to persons in the Partial Settlement Class so long as such modifications do not limit the rights of the Partial Settlement Class.

21. Schedule of Future Events.

DATE	DESCRIPTION
Monday, August 3, 2020	Deadline for Distribution and Dissemination of Court-Approved Class Notice(s) and Related Materials Deadline for filing Plaintiffs' Motion for Attorneys' Fees
Tuesday, September 29, 2020	Deadline for Defendants to Oppose and/or Present Evidence in Opposition to Plaintiffs' Motion for Attorneys' Fees
Tuesday, September 29, 2020	Deadline for Partial Settlement Class Members to file: <ul style="list-style-type: none"> a. Objection and basis therefor; b. Notice of intent to appear at the fairness hearing, indicating with or without counsel; and/or, c. Request exclusion /opt-out
Thursday, October 29, 2020	Deadline for Parties to File: <ul style="list-style-type: none"> a. List of persons who made timely and proper requests for exclusion/opt-out; b. Proof of Class Notice; and, c. Motion and Memorandum in Support of Final Approval and related matters, including any response to any objection
Thursday, November 12, 2020	Fairness Hearing

IT IS SO ORDERED.

THUS DONE AND SIGNED at Shreveport, Caddo Parish, Louisiana on this 7 day of July, 2020.

JUDGE MICHAEL PITMAN

HONORABLE MICHAEL A. PITMAN
FIRST JUDICIAL DISTRICT COURT

ENDORSED FILED
SANDY ROTHELL, Deputy Clerk

JUL 02 2020

CADDO PARISH DEPUTY CLERK OF COURT