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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

TINA POLK, RICHARD NEWTON, and all
others similarly situated,

Plaintiffs,

Honorable Phyllis C. McMillen

v.

Case No. 2015-147795-NZ

CITY OF OAK PARK, COUNTY OF OAKLAND,
GEORGE W. KUHN DRAINAGE DISTRICT,
and OAKLAND COUNTY WATER RESOURCES
COMMISSIONER JIM NASH,

Defendants.

_____ /

CAROL CHADWELL, JUSTIN DUFF, and all
others similarly situated,

Plaintiffs,

Honorable Phyllis C. McMillen

v.

Case No. 2015-147794-NZ

CITY OF MADISON HEIGHTS, COUNTY OF
OAKLAND, GEORGE W. KUHN DRAINAGE
DISTRICT, and OAKLAND COUNTY WATER
RESOURCES COMMISSIONER JIM NASH,

Defendants.

_____ /

KEVIN HELME,
and all others similarly situated,

Plaintiffs,

Honorable Phyllis C. McMillen

v.

Case No. 2016-152918-NZ

CITY OF CLAWSON, COUNTY OF
OAKLAND, GEORGE W. KUHN DRAINAGE
DISTRICT, and OAKLAND COUNTY WATER
RESOURCES COMMISSIONER JIM NASH,

Defendants.

_____ /

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
APPROVING PROCEDURE AND FORM OF NOTICE AND
SCHEDULING FINAL FAIRNESS HEARING
[CAPTION CONTINUED ON NEXT PAGES]**

JILL KOTSIS, KEVIN GALLATIN,
and all others similarly situated,

Plaintiffs,

v.

CITY OF ROYAL OAK, COUNTY OF
OAKLAND, GEORGE W. KUHN DRAINAGE
DISTRICT, and OAKLAND COUNTY WATER
RESOURCES COMMISSIONER JIM NASH,

Defendants.

Honorable Phyllis C. McMillen

Case No. 2016-152906-NZ

DEANNA DOOT and ROBYN DOHNKE,
and all others similarly situated,

Plaintiffs,

v.

CITY OF BERKLEY, COUNTY OF
OAKLAND, GEORGE W. KUHN DRAINAGE
DISTRICT, and OAKLAND COUNTY WATER
RESOURCES COMMISSIONER JIM NASH,

Defendants.

Honorable Phyllis C. McMillen

Case No. 2017-157459-NZ

TIMOTHY JONES and LUANN JONES,
and all others similarly situated,

Plaintiffs,

v.

CITY OF FERNDALE, COUNTY OF
OAKLAND, GEORGE W. KUHN DRAINAGE
DISTRICT, and OAKLAND COUNTY WATER
RESOURCES COMMISSIONER JIM NASH,

Defendants.

Honorable Phyllis C. McMillen

Case No. 2017-157469-NZ

ERIC BARNWELL, KRISTEN BARNWELL,
and all others similarly situated,

Plaintiffs,

v.

CITY OF TROY, COUNTY OF
OAKLAND, GEORGE W. KUHN DRAINAGE
DISTRICT, and OAKLAND COUNTY WATER
RESOURCES COMMISSIONER JIM NASH,

Defendants.

Honorable Phyllis C. McMillen

Case No. 2017-157537-NZ

RON LAWLER, CINDY LAWLER,
MICHAEL HUERTA, and all others
similarly situated,

Plaintiffs,

v.

CITY OF HAZEL PARK, COUNTY OF
OAKLAND, GEORGE W. KUHN DRAINAGE
DISTRICT, and OAKLAND COUNTY WATER
RESOURCES COMMISSIONER JIM NASH,

Defendants.

Honorable Phyllis C. McMillen

Case No. 2017-157534-NZ

LINDA FINKELBERG AND HARVEY FINKELBERG,
and all others similarly situated,

Plaintiffs,

v.

CITY OF HUNTINGTON WOODS, COUNTY OF
OAKLAND, GEORGE W. KUHN DRAINAGE
DISTRICT, and OAKLAND COUNTY WATER
RESOURCES COMMISSIONER JIM NASH,

Defendants.

Honorable Phyllis C. McMillen

Case No. 2017-157533-NZ

LINDA PHILLIPS, VICTORIA CWYCYSHYN,
and all others similarly situated,

Plaintiffs,

v.

CITY OF PLEASANT RIDGE, COUNTY OF
OAKLAND, GEORGE W. KUHN DRAINAGE
DISTRICT, and OAKLAND COUNTY WATER
RESOURCES COMMISSIONER JIM NASH,

Defendants.

Honorable Phyllis C. McMillen

Case No. 2017-157620-NZ

SHEILA JACOB
and all others similarly situated,

Plaintiffs,

v.

CITY OF BERKLEY,

Defendant.

Honorable Phyllis C. McMillen

Case No. 2019-178474-NZ

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
APPROVING PROCEDURE AND FORM OF NOTICE AND
SCHEDULING FINAL FAIRNESS HEARING**

At a session of said Court held in the County of
Oakland, City of Pontiac, State of Michigan, on
1/21/2021

PRESENT: PHYLLIS C MCMILLEN
Circuit Court Judge

This matter having come before the Court on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Motion”), as set forth in the Settlement Agreement, due and adequate notice having been given, and the Court having fully considered the briefs and being duly advised in the premises and good cause appearing therefore, the Court hereby grants the Motion as set forth in this Order Preliminarily Approving Class Action Settlement, Approving Procedure and Form of Notice and Scheduling Final Fairness Hearing (“Order”). Terms and phrases in this Order shall have the same meaning as in the Settlement Agreement.

IT IS HEREBY ORDERED:

1. The following cases are consolidated for settlement purposes: (1) *Polk, et al. v City of Oak Park, et al.*, Oakland County Circuit Court Case No. 2015-147795-NZ, (2) *Chadwell, et al. v City of Madison Heights, et al.*, Oakland County Circuit Court Case No. 2015-147794-NZ, (3) *Helme v. City of Clawson, et al.*, Oakland County Circuit Court Case No. 2016-152918-NZ, (4) *Kotsis, et al. v City of Royal Oak, et al.*, Oakland County Circuit Court Case No. 2016-152906-NZ, (5) *Doot, et al. v City of Berkley, et al.*, Oakland County Circuit Court Case No. 2017-157459-NZ, (6) *Jones, et al. v City of Ferndale, et al.*, Oakland County Circuit Court Case No. 2017-157469-NZ, (7) *Barnwell, et al. v City of Troy, et al.*, Oakland County Circuit Court Case No. 2017-157537-NZ, (8) *Lawler, et al. v City of Hazel Park, et al.*, Oakland County Circuit Court

Case No. 2017-157534-NZ, (9) *Finkelberg, et al. v City of Huntington Woods, et al.*, Oakland County Circuit Court Case No. 2017-157533-NZ, (10) *Phillips, et al. v City of Pleasant Ridge, et al.*, Oakland County Circuit Court Case No. 2017-157620-NZ (collectively, “2014 Actions”), and (11) *Jacob, et al. v. City of Berkley*, Oakland County Circuit Court Case No. 2019-178474-NZ (“2017 Action”) (hereinafter, 2014 Actions and 2017 Action are referred to as “the Actions”).

2. The Court has jurisdiction over the parties to, and the subject matter of, the Actions.

3. The Court has reviewed the Settlement Agreement, as well as the files, records, and proceedings to date in the Actions. The Court finds that: (a) the Settlement Agreement is within the range of possible final approval as fair, reasonable, and adequate; (b) the Settlement Agreement is the result of arms-length negotiations between experienced attorneys familiar with the legal and factual issues of the Actions; (c) all Class Members appear to have been treated fairly under the Settlement Agreement; and (d) the Settlement Agreement is sufficient to warrant Notice thereof to the Class and the final fairness hearing described below. Accordingly, the Motion is granted.

4. For purposes of settlement only, the Court conditionally certifies the Class pursuant to MCR 3.501. In accord with the Settlement Agreement, the conditionally certified class is defined as any Person including, but not limited to, any Person listed in Exhibit 1, or otherwise disclosed during the course of the 2014 Actions, the Hanover Cases, or the 2017 Action, who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located or who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28,

2017 was served on the City of Berkley.. The Court finds that the Class is so numerous that joinder of all Class Members is impracticable.

5. In accord with the Settlement Agreement, the Court sets forth the following subclasses for settlement purposes only and for no other purpose:

- a. “Subclass A” consists of those Class Members listed on Exhibit 2 to the Settlement Agreement who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located and who had provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.
- b. “Subclass B” consists of any Class Members including, but not limited to, any Class Members listed on Exhibit 3 to the Settlement Agreement, or otherwise disclosed during the course of the 2014 Actions or the Hanover Cases, who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located and who had not provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.
- c. “Subclass C” consists of those Class Members listed on Exhibit 4 to the Settlement Agreement who claim that a Written Notice of Claim regarding the

claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley and who had provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

- d. “Subclass D” consists of any Class Members including, but not limited to, any Class Members listed on Exhibit 5 to the Settlement Agreement, or otherwise disclosed during the course of the 2017 Action, who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley and who had not provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

6. For settlement purposes only, the Court finds that there are questions of law or fact that are common to the Class that predominate over questions affecting only individual Class Members in that the claims in the Actions all relate to alleged design, construction, operation, and/or maintenance of sewer systems which allegedly caused the claimed Sewage Disposal System Event occurring on or about August 11, 2014, and the claimed Sewage Disposal System Event occurring on or about August 28, 2017. Moreover, the Parties have agreed to, among other things, a claims procedure that allows for a monetary distribution to Class Members who submit a timely and valid claim as more fully described in the Settlement Agreement. Thus, all members of the Settlement Class have a shared interest in this matter, and in the approval of this Settlement.

7. For settlement purposes only, the Court finds that the claims of Tina Polk, Richard Newton, Carol Chadwell, Justin Duff, Kevin Helme, Jill Kotsis, Kevin Gallatin, Deanna Doot, Robyn Dohnke, Timothy Jones, Luann Jones, Eric Barnwell, Kristen Barnwell, Ron Lawler, Cindy Lawler, Michael Huerta, Linda Finkelberg, Harvey Finkelberg, Linda Phillips, Victoria Cwycyshyn and Sheila Jacob are typical of the claims of the Class Members and that they will fairly and adequately assert and protect the interests of the Class.

8. For settlement purposes only, the Court finds that Class Counsel are adequate to serve as Class Counsel.

9. For settlement purposes only, certification of the Class is superior to other available methods of adjudication in promoting the convenient administration of justice.

10. Accordingly, Tina Polk, Richard Newton, Carol Chadwell, Justin Duff, Kevin Helme, Jill Kotsis, Kevin Gallatin, Deanna Doot, Robyn Dohnke, Timothy Jones, Luann Jones, Eric Barnwell, Kristen Barnwell, Ron Lawler, Cindy Lawler, Michael Huerta, Linda Finkelberg, Harvey Finkelberg, Linda Phillips, Victoria Cwycyshyn and Sheila Jacob are hereby appointed as Class Representatives; and their counsel of record, David R. Dubin, Liddle & Dubin, P.C. is appointed as counsel for the Class.

11. The Court finds that Class Counsel shall cause to be submitted to Class Members via First Class Mail, the Long Form Notice, in the form attached as Exhibit 12 to the Settlement Agreement without material alteration, and Class Counsel shall cause to be submitted the Email Notice to Class Members who have previously submitted a valid email address to Class Counsel,

in the form attached as Exhibit 13 to the Settlement Agreement without material alteration. Class Counsel shall also cause the Long Form Notice along with copies of the Settlement Agreement, Claim Form-B and Claim Form-D to be posted on the website www.LDClassAction.com. The Court also finds that Class Counsel shall cause the Publication Notice, in the form attached as Exhibit 14 to the Settlement Agreement without alteration, to be submitted for publication in The Oakland Press. The Court finds that the Notice Plan constitutes reasonable and the best practicable notice under the circumstances to members of the Settlement Class, and complies fully with the provisions set forth in MCR 3.501, all substantive and procedural due process rights guaranteed by the United States Constitution, and any other applicable law. The Court also finds that the Notice Plan is, reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Actions, the terms of the Settlement, their rights under the Settlement, including, but not limited to, the right to object to the Settlement, opt out of the Settlement, and/or receive a share of the Settlement Fund, and the procedure for doing so; and the date and location of the Final fairness hearing. Accordingly, the Notice and Notice Plan set forth in the Settlement Agreement are approved.

12. Consistent with the Settlement Agreement including its Exhibit 7, no later than 10 days before the final fairness hearing, Class Counsel shall file with the Court one or more affidavits stating that, in accordance with the terms of this Order, Notice was distributed consistent with the terms and conditions of the Settlement Agreement including, but not limited to, the timing requirements applicable to Notice under the Settlement Agreement.

13. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to Class Counsel at the address provided in the Notice. This request for exclusion must be postmarked no later than 60 days from the entry of this Order. The request to be excluded must be in writing and signed by the Class Member, and must contain the following: the Class Member's full name, address and telephone number and the Claimed Address; and must specifically contain a stated request for exclusion from the prospective Settlement Class and Settlement. They must also provide proof of identification by including a copy of any government-issued photo identification or an equivalent method of identification. Any Class Member's request for exclusion that does not meet these requirements is deemed invalid and ineffective and the Class Member will be considered included within the Settlement Class for purposes of the Settlement. Upon their receipt of any request for exclusion, the Class Counsel shall provide a copy of all such requests for exclusion to Defendants' Counsel in a prompt and contemporaneous manner. Any Class Member who chooses to be excluded from the Settlement as set forth in Section II.B. of the Settlement Agreement shall cease to be a Class Member upon the Court's approval of the Settlement. Any Class Member who chooses to be excluded from the Settlement shall be dismissed without prejudice from the Actions, as applicable, and without costs or attorney's fees to any party.

14. Any Class Member who chooses not to be excluded from the Settlement may register an objection to the Settlement Agreement and/or to the Class Counsel's motion for an award of attorney's fees, costs and expenses. Any Class Members desiring to object must file a notice of objection with the Court and serve a copy on Class Counsel and Defendants' Counsel no later than 60 days from the entry of this Order. Objections must be in writing and signed by the

Class Member and must contain the following: the Class Member's full name, address and telephone number and the Claimed Address; and, must identify with reasonable particularity the basis for the objection and attach all documentation they intend to present to the Court in support of its, his, or her position. The objection must be in the form of a declaration or be in the form of an affidavit duly signed under penalty of perjury before a notary public. If an objection is submitted by someone purporting to represent a Class Member, the objection must have attached sufficient documentation of the person's identity and legal authority to represent the Class Member or the objection is deemed invalid and ineffective. Objections that do not meet the requirements set forth above are deemed invalid and ineffective.

15. To be eligible to participate in the distribution of the Settlement Fund, a Class Member must submit a timely and valid Claim Form to Class Counsel as more fully described in the Settlement Agreement. The Claim Form must be postmarked no later than 90 days from the entry of this Order.

16. Papers in support of final approval of the Agreement and fee award, along with the response to any objections shall be filed with the Court on or before March 22, 2021.

17. A final fairness hearing is set for this matter on April 8, 2021, at 8:30 a.m.

18. Counsel are hereby authorized to use all reasonable procedures in connection with 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 Notice, and other exhibits that the Parties jointly agree are reasonable or necessary.

19. This Court expressly reserves the right to adjourn the final fairness hearing from time to time without further notice and to approve the Settlement Agreement at or after the final fairness hearing.

20. This is not a final order and does not close the Actions.

SO ORDERED:

/s/ Phyllis McMillen

Honorable Phyllis C. McMillen
Oakland County Circuit Court Judge

Dated: January 20, 2021

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