

FILED

JUN 13 2018

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

**THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

OLIVER LATTA, *et al.*,)
)
 Plaintiffs,)
 v.)
 HANNIBAL BOARD OF PUBLIC WORKS,)
 et al.,)
 Defendants.)

Cause No. 16SL-CC01881

Division: 10

**ORDER CERTIFYING SETTLEMENT CLASS, PRELIMINARILY
APPROVING CLASS-ACTION SETTLEMENT, AND APPROVING FORM AND
MANNER OF NOTICE**

Counsel for Plaintiffs and the City of Hannibal (the “City”) and the Hannibal Board of Public Works (“HBPW”) (together “Defendants”) have moved under Missouri Rule 52.08 for an order: (1) certifying two settlement classes; (2) preliminarily approving a class settlement on the terms and conditions set forth in the Class Settlement Agreement (the “Settlement Agreement”); (3) appointing Settlement Class Counsel; (4) appointing a Claims Administrator; and (5) approving forms and the procedures for class notice. Terms capitalized herein and not defined shall have the meanings ascribed to them in the Settlement Agreement. The Court has reviewed and considered all papers filed in connection with the motion, including the Settlement Agreement, and all exhibits attached thereto, and has heard the presentations of counsel appearing with respect thereto. On the basis thereof, and on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. This Court has jurisdiction over the subject matter of this Action and jurisdiction over the Parties.

2. For settlement purposes only, this action may be maintained as a class action under Missouri Rule 52.08 on behalf of the Rate-Payer Class and the Medical-Monitoring Class under the Settlement Agreement (collectively, the “Settlement Classes”), defined as follows:

RATE-PAYER CLASS:

All current residents of the State of Missouri who, at any time between September 1, 2011 and February 28, 2016, were billed and paid for water provided by the City of Hannibal, Missouri public water supply system.

MEDICAL-MONITORING CLASS:

All current residents of the State of Missouri who, for a minimum period of three years, between the dates of September 2011 and February 2016, resided in the City of Hannibal, and drank and/or bathed in water provided by the City of Hannibal, Missouri public water supply system.

3. In light of the agreement to settle the Action and the resulting elimination of individual issues that may otherwise have precluded certification of a litigation class, the prerequisites to class certification under Missouri Rule 52.08 are satisfied, to-wit:

- a. The Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law and fact common to members of the Settlement Classes;
- c. The claims of the Settlement Class Representatives meet the numerosity, commonality, typicality and adequacy requirements of Rule 52.08(a)
- d. The Settlement Class Representatives, represented by counsel experienced in complex litigation, will fairly and adequately protect the interests of the Settlement Classes.

4. In light of the agreement to settle the Action and the resulting elimination of individual issues that Defendants contend preclude certification of a litigation class, the questions of law and fact common to all members of the Settlement Classes predominate over questions affecting only individual members of those Classes, and certification of the Settlement Classes is superior

to other available methods for the fair and efficient resolution of this controversy, satisfying Rule 52.08(b)(3).

5. If the Settlement Agreement is not finally approved by the Court or for any reason does not become effective, the certification of the Settlement Classes shall automatically be vacated, all Parties' rights to litigate all class issues will be restored to the same extent as if the Settlement Agreement had never been entered into, and no Party shall assert that another Party is estopped from taking any position relating to class certification, including that the Hannibal Defendants may fully contest certification of any class as if no Settlement Classes had been certified.

6. Oliver Latta, Vickie Brooks, Crystal Stephens, and Christine Stolte are hereby designated as the Settlement Class Representatives for the Rate-Payer Settlement Class and the Medical-Monitoring Settlement Class.

7. The following counsel is designated and authorized to act as Settlement Class Counsel: Christopher T. Nidel and Jonathan B. Nace of Nidel & Nace, PLLC, Steven J. German and Joel Rubenstein of German Rubenstein LLP, and Daniel T. Ryan of the Ryan Law Firm.

8. Upon the entry of final judgment after the Fairness Hearing, the members of the Settlement Classes who have not exercised their right to exclude themselves from the Settlement Classes agree to release Defendants from any and all manner of claims, demands, judgments, actions, suits, obligations, promises and causes of action, whether individual, class, or otherwise in nature, for damages whenever incurred, and for liabilities of any nature whatsoever, including for penalties, fines, charges, costs, expenses, injunctive relief, declaratory relief, attorneys' fees, claims for contribution or indemnification, or the like, whether known or unknown, suspected or unsuspected, in law or equity, that any Releasing Party ever had or now has arising out of or relating in any way to: (i) any and all claims, demands, obligations, actions, or causes of action

asserted in the Lawsuit; and/or (ii) any and all claims, demands, obligations, actions, or causes of action (including but not limited to, negligence, negligence per se, strict liability, abnormally dangerous activity, willful and wanton misconduct, intentional infliction of emotional distress, negligent infliction of emotional distress, civil conspiracy, declaratory relief, punitive and other damages, injunctive relief of any kind, attorney fees, costs and expenses, or obligations or other matters of whatever nature, whether based on contract, tort, statute, regulation, common law, equity, or other law) arising out of the factual allegations that gave rise to the basis for the claims made for damages asserted in this Lawsuit (“Released Claims”). All past, current or future personal injury claims, property damage claims, and loss of use or enjoyment claims are excluded from the Released Claims.

9. The terms and conditions set forth in the Settlement Agreement place the Settlement Agreement within the range of fair and reasonable settlements, making appropriate further consideration at a hearing held pursuant to notice to the Settlement Classes. The Court therefore preliminarily approves the Settlement Agreement and directs the parties to perform and satisfy the terms and conditions of the Settlement Agreement that are thereby triggered.

10. A hearing (the “Fairness Hearing”) shall be held on 8/24, 2018, 1:30 P.m. before the undersigned in Courtroom No. 10, in the Circuit Court of the County of St. Louis, State of Missouri.

11. The date of the Fairness Hearing will be included in the Notice of Proposed Class Action Settlement. The purpose of the Fairness Hearing will be to (a) determine whether the proposed Settlement Agreement is fair, reasonable, and adequate, and should be finally approved, bringing the litigation of those claims to a conclusion, forever releasing Defendants from all Released Claims, and permanently barring Class Members from bringing any lawsuit or other action based

on the Released Claims; and (b) consider other Settlement-related matters and appropriate attorneys' fees.

12. The Court may adjourn, continue, and reconvene the Fairness Hearing pursuant to oral announcement without further notice to eligible members of the Settlement Classes, and the Court may consider and grant final approval of the Settlement Agreement, with or without minor modification, and without further notice to eligible members of the Settlement Classes.

13. The Court appoints Analytics to serve as Claims Administrator.

14. The Court has reviewed the "Notice of Proposed Class Action Settlement and Your Rights" (the "Notice"), attached to Motion for Preliminary Approval, as Exhibit 1. The Court approves the Notice as to form. The Court also approves the method of directing notice to eligible members of the Settlement Classes, as set forth in paragraph 15 below.

15. Within 30 days of this Order, the Hannibal Defendants shall prepare and cause individual copies of the Notice to be sent by United States First Class Mail to eligible members of the Settlement Classes whose mailing addresses can be determined through reasonable effort. The Claims Administrator also shall mail copies of the Notice to any other potential members of the Settlement Classes that request copies or that otherwise come to its attention.

16. The Court finds that the foregoing plan for notice to eligible members of the Settlement Classes will provide the best notice practicable under the circumstances, and is in compliance with the requirements of Rule 52.08 and applicable standards of due process.

17. Prior to the Fairness Hearing, counsel for Defendants and Settlement Class Counsel shall jointly file with the Court an affidavit from a representative of the Hannibal Defendants confirming that the plan for disseminating the Notice has been accomplished in accordance with the provisions of paragraph 16 above.

sufficient information to confirm the objector is a member of a Settlement Class), and a notice of appearance from any counsel for the Class Member who intends to appear at the Fairness Hearing, provided, however, that counsel is not necessary as the Settlement Class Member may appear and personally object. Any such objection, brief, notice of appearance, or other related document must be mailed to the Court, the Settlement Administrator, and attorneys of record at the following addresses:

Clerk of the Court
St. Louis County Circuit Court
105 S. Central Avenue
Clayton, MO 63105

Plaintiffs

Jonathan B. Nace
Nidel & Nace, PLLC
5335 Wisconsin Ave., NW
Suite 440
Washington, DC 20015

Defendants

Abby L. Risner
Greensfelder, Hemker, & Gale, P.C.
10 South Broadway, Suite 2000
St. Louis, MO 63102

21. Unless otherwise directed by the Court, any Class Member who does not submit a statement of objection in the manner specified above will be deemed to have waived any such objection.

22. During the Court's consideration of the Settlement Agreement and pending further order of the Court, all proceedings in this Action, other than proceedings necessary to carry out the terms and provisions of the Settlement Agreement, or as otherwise directed by the Court, are hereby stayed and suspended.

23. The Court has considered the interests of the Center for Medicare and Medicaid Services (“CMS”) and has determined that Medicare’s conditional payments are under the reporting threshold. Medicare shall not be noticed of any perceived right to reimbursement.

24. The Court reduces the amount of any reimbursement owed to the Missouri Department of Social Services to zero dollars (\$0) pursuant to Section 208.215.11 RSMo. The Court has considered the nature and extent of the injury, economic and noneconomic loss, settlement offers, comparative negligence as it applies to the case at hand, hospital costs, physician costs, and all other appropriate costs and finds that based upon the amount to be disbursed to each claimant, the difficulty in obtaining the type of relief, and the fact that the settlement does not compensate or release any individual claims for past injuries already paid by the Missouri Department of Social Services, no reimbursement to the Department of Social Services is permitted or warranted.

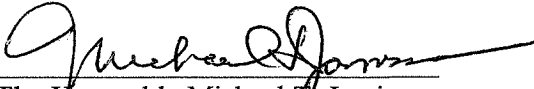
25. If the proposed Settlement Agreement is not approved by the Court or for any reason does not become effective, the Settlement Agreement will be regarded as nullified, certification of the Settlement Classes for settlement purposes will be vacated, and the steps and actions taken in connection with the proposed Settlement (including this Order (except as to this paragraph, paragraph 5, and paragraph 24) and any judgment entered herein) shall become void and have no further force or effect. In such event, the parties and their counsel shall take such steps as may be appropriate to restore the pre-settlement status of the litigation.

26. Neither the Settlement Agreement nor the provisions contained therein, nor any negotiations, statements, or proceedings in connection therewith shall be construed, or deemed to be evidence of, an admission or concession on the part of any of the Plaintiffs, Settlement Class Counsel, Defendant, any Settlement Class Member, or any other person, of any liability or

wrongdoing by any of them, or of any lack of merit in their claims or defenses, or of any position on whether any claims may or may not be certified as part of a class action for litigation purposes.

27. The court retains jurisdiction over this action, the Parties, and all matters relating to the Settlement Agreement.

IT IS SO ORDERED:

Date: 6-13-18 
The Honorable Michael V. Jamison