

COMMONWEALTH OF KENTUCKY
KENTON CIRCUIT COURT
FOURTH DIVISION
CASE NO. 07-CI-01652

THOMAS SCHRAGE

PLAINTIFF

v.

NORTHERN KENTUCKY WATER
DISTRICT, et al

DEFENDANTS

AMENDED ORDER: (1) CONDITIONALLY CERTIFYING SETTLEMENT CLASS; (2) PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT; (3) APPROVING NOTICE PLAN; AND (4) SETTING FINAL APPROVAL HEARING

This matter came before the Court on Plaintiff's Motion for Preliminary Approval of the proposed class action settlement (the "**Settlement**") in the case entitled *Schrage v. Northern Kentucky Water District, et al*, Kenton Circuit Court, Fourth Division, Case No. 07-CI-01652 (the "**Action**"). Thomas Schrage ("**Plaintiff**"), individually and on behalf of all others similarly situated, filed this action on June 6, 2007 against Defendants Northern Kentucky Water District and Sanitation District No. 1 ("**Defendants**" and, together with Plaintiff, the "**Parties**"). Based on this Court's review of the Parties' Settlement Agreement (the "**Agreement**"), Plaintiff's Motion for Preliminary Approval of Settlement, and the arguments of counsel, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. **Settlement Terms.** Unless otherwise defined herein, all terms in this Order shall have the meanings ascribed to them in the Agreement.
2. **Jurisdiction.** The Court has jurisdiction over the subject matter of the Action, the Parties, and all Persons within the Settlement Class.
3. **Scope of Settlement.** The Agreement resolves certain claims (the "**Refunded Claims**") alleged in the Complaint. Specifically, claims for refunds of sales

taxes on retail water sales, sewer services and the storm water fee paid by certain of Defendants' customers between August 1, 2006 and December 31, 2012. All sales tax claims not specifically refunded by the Kentucky Department of Revenue ("KDOR") as part of this Agreement are not settled, are specifically reserved in this Action, and the rights to any future refund(s) and distribution to Plaintiff and others similarly situated, are specifically reserved.

4. Preliminary Approval of Proposed Agreement. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement. Based on this preliminary evaluation, the Court finds that: (a) the terms of the Agreement are fair, reasonable and adequate, and within the range of possible approval; (b) the Agreement has been negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case; and (c) with respect to the forms of notice of the material terms of the Settlement to Persons within the Settlement Class for their consideration, that notice is appropriate and warranted. Therefore, the Court grants preliminary approval of the Settlement.

5. Class Certification for Settlement Purposes Only. The Court, pursuant to Rules 23.01 and 23.02 of the Kentucky Rules of Civil Procedure, conditionally certifies, for purposes of this Settlement only, the following Settlement Class:

All persons residing in Kentucky and all corporate entities existing under Kentucky law which own single family, non-owner occupied residential properties located within the service area of the Northern Kentucky Water District or Sanitation District No. 1 that have been charged Kentucky sales tax on retail water sales, sewer services and the storm water fee dating from August 1, 2006 through December 31, 2012.

6. Preliminary Findings. In connection with this conditional certification, the Court makes the following preliminary findings:

(a) The Settlement Class appears to be so numerous that joinder of all members is impracticable;

(b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether the Settlement should be approved;

(c) Plaintiff's claims appear to be typical of the claims being resolved through the Settlement;

(d) Plaintiff appears to be capable of fairly and adequately protecting the interests of all members of the Settlement Class in connection with the Settlement;

(e) Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

7. Class Representative. The Court appoints Plaintiff to act as class representative of the Settlement Class pursuant to Kentucky Rule of Civil Procedure 23.01.

8. Class Counsel. The Court appoints Strauss Troy Co. LPA, and Edmonson & Associates as Class Counsel pursuant to Kentucky Rule of Civil Procedure 23.07. The Court finds that Class Counsel have, for the years that this matter has been pending, engaged in significant efforts to identify and investigate potential claims in this Action; have significant experience in handling class actions, other complex litigation, and the types of claims asserted in this Action; have substantial knowledge of the applicable law; and, possess the resources necessary to represent the Class.

9. Final Approval Hearing. At 9:00 a.m. on April 26, 2019, the Kenton Circuit Court, 6th Floor, 230 Madison Ave., Covington, Kentucky, or at such other date

and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Agreement and to determine whether: (a) final approval of the Settlement embodied in the Agreement should be granted; and (b) Class Counsel's application for attorneys' fees and expenses, and incentive awards to Plaintiff, should be granted, and in what amount. No later than March 29, 2019, which is twenty-eight (28) days prior to the Final Approval Hearing, papers in support of final approval of the Settlement and response to any written objections must be filed.

10. Settlement Administrator. Plaintiff's Counsel is hereby appointed as the Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator as set forth in the Agreement and this Order. Plaintiff's Counsel may retain a third-party to assist in administration of the Agreement and may coordinate certain forms of notice and distribution to Class members with Defendants.

11. Class Notice. The Court approves the proposed plan for giving notice to the Settlement Class through publication notice and direct first-class mail of notice to customers of Defendants, as more fully described in Plaintiff's Motion and the Agreement ("**Notice Plan**"). The Notice Plan, in form, method and content, complies with the requirements of Kentucky Rule of Civil Procedure 23.04 and all other rules of Court applicable to such Notice, and with due process, and constitutes appropriate notice practicable under the circumstances. However, the Court also finds that it is appropriate to supplement direct mail notice with digitally-based notice, designed in consultation with the Settlement Administrator, which is designed to reach potential class members for whom the last known mailing address is not sufficient. Such supplemental notice should direct those who encounter the notice to the settlement website or other source(s) of information about the Settlement. Subject to such

supplementation, the Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Notice Plan no later than **January 24, 2019** (“**Notice Deadline**”). The Settlement Administrator will file with the Court by no later than ten (10) days prior to the Final Approval Hearing, proof that notice was provided in accordance with the Agreement and this Order.

12. **Objection Deadline.** Persons within the Settlement Class who wish to object to the Settlement must do so by forty-five (45) calendar days after the Notice Deadline.

13. **Objections to the Settlement.** To object to the Settlement, Settlement Class Members must follow the directions below and in the Class Notice and file a written objection with the Court by the Objection Deadline. Settlement Class Members also must mail the objection by the Objection Deadline to Class Counsel – Robert R. Sparks, Strauss Troy Co., LPA, The Federal Reserve Building, 150 East Fourth Street, Cincinnati, Ohio 45202-4018, who shall forward any objections received to other counsel in this Action within a reasonable time after receipt. The written objection must include: (a) a statement of each objection being made; (b) a description of the facts underlying each objection; (c) a statement of whether the objector intends to appear at the Fairness Hearing; and, (e) if the objector intends to appear at the Fairness Hearing, a list of any witnesses whom the objector may call, the facts upon which they will testify, and a list of any exhibits the objector intends to introduce. The Court may not consider an objection unless the objection includes all of the foregoing information. Any Settlement Class Member who fails to comply with this paragraph will not be permitted to object at the Final Approval Hearing, will be foreclosed from seeking any review of the Settlement by appeal or other means, will be deemed to have waived his, her or its

objections, and will be forever barred from making any objections in the Action or any other related action or proceeding. All Settlement Class Members will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Settlement Class.

14. Stay of Other Proceedings. Pending the final determination of whether the Settlement should be approved, all pre-trial proceedings and briefing schedules in the Action related to the Settled Claims are stayed. Further, pending the final determination of whether the Settlement should be approved, Plaintiff and all Persons within the Settlement Class are hereby stayed and enjoined from commencing, pursuing, maintaining, enforcing or prosecuting, either directly or indirectly, any Settled Claims in any judicial, administrative, arbitral or other forum, against either of the Defendants. Such injunction will remain in force until the Court enters the Final Approval Order or until such time as the Parties notify the Court that the Settlement has been terminated. Nothing herein will prevent any Person in the Settlement Class, or any person actually or purportedly acting on behalf of any such person(s), from taking any actions to stay or dismiss any Settled Claims. This injunction is necessary to protect and effectuate the Agreement, this Preliminary Approval Order, and the Court's flexibility and authority to effectuate the Agreement and to enter judgment when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

15. Failure to Finally Approve Settlement. If for any reason whatsoever this Settlement is not finalized or the Settlement as detailed in the Agreement is not finally approved by the Court, the certification of the Settlement Class shall be void and the Parties and the Action will return to the status quo as it existed prior to the Agreement, and no doctrine of waiver, estoppel or preclusion will be asserted in the Action or in any

other proceeding. No agreements, documents or statements made by or entered into by any Party in connection with the Settlement may be used by Plaintiff, any Person in the proposed Settlement Class, Defendants or any other person to establish liability, any defense and/or any of the elements of class certification, whether in the Action or in any other proceeding.

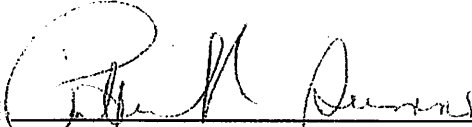
16. No Admission of Liability. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongdoing by Defendants, or the truth of any of the claims. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing or enforcing the terms and conditions of the Agreement, this Order and the Final Approval Order.

17. Reasonable Procedures to Effectuate the Settlement. 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 Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice and Claim Form and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Agreement with such modifications, if any, as may be agreed to by the Parties without

further notice to Persons within the Settlement Class.

IT IS SO ORDERED.

Dated: Jan 7, 2019



Patricia M. Summe
Judge, Kenton Circuit Court

Wolking, Jenny

From: Nitardy, Michael E. <MNitardy@fbtlaw.com>
Sent: Thursday, January 03, 2019 2:16 PM
To: Jason Reed; Wolking, Jenny; Rob R. Sparks; Alex Edmondson; Jeff Mando
Subject: RE: Preliminary Approval Order: Schrage v. NKWD/SD1
Attachments: AMENDED Preliminary Approval Order FINAL.DOCX

Importance: High

Hello Jenny,

I have attached the order we discussed briefly this morning. I have also copied to this email all of the counsel on this matter.

We have included below an explanation for Judge Summe for the relief we are seeking. We thought it might be helpful and might answer any questions she might have. Of course, we are more than happy to get on the phone with Judge Summe to discuss, or to appear in person in Court as well.

Thank you very much for your help.
Mike

Judge Summe,

Given the entry of the Preliminary Approval Order right before the holidays and additional work that needs to be performed on a small subset of the database of class members and refunds, the parties are requesting that the Court reset the Notice Deadline for January 24, 2019. We are attaching an Amended Preliminary Approval Order that changes the Notice Deadline (See, paragraph 11, pg. 5.) This change will not impact the Final Hearing Date. If the Court enters this Amended Order, the schedule for the remainder of the settlement administration process would be as follows:

Event	Trigger	Date
Preliminary Approval Order	Entered by Clerk	2018-12-20
Notice Deadline	Set by Court	2019-01-24
Objection Deadline	Notice Deadline +45 days	2019-03-10
Final Approval Papers Due	Final Hearing -28 days	2019-03-29
Report by GCG re: Notice	Final Approval Hearing -10 days	2019-04-16
Final Approval Hearing	Set by Court	2019-04-26

Thank you for your consideration. Of Course, if the Court has any questions we are happy to appear in person or by phone.

Michael E. Nitardy
Attorney at Law | Frost Brown Todd LLC

859.817.5914 Direct
859.640.4904 Mobile

mnitardy@fbtlaw.com

From: Jason Reed <jayvincent@yahoo.com>
Sent: Friday, December 14, 2018 1:39 PM
To: Jenny Wolking <jennywolking@kycourts.net>; Rob R. Sparks <rrsparks@strausstroy.com>; Alex Edmondson <aedmondson@edmondsonlaw.com>; Nitardy, Michael E. <MNitardy@fbtlaw.com>; Louis Kelly <lkelly@aswdlaw.com>
Subject: Preliminary Approval Order: Schrage v. NKWD/SD1

Jenny -

Per Judge Summe's request and instruction, please find attached the revised Preliminary Approval Order. It incorporates the changes discussed at today's hearing.

I've taken the liberty of attaching it in Word format, should the Judge wish to make any further changes to formatting.

Thanks for your prompt time and attention, and have a wonderful Christmas season.

Best regards,

/s/ Jason

Jason V. Reed, Esq.
EDMONDSON & ASSOCIATES
28 West Fifth Street
Covington, KY 41011

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