

ENTERED
KENTON CIRCUIT/DISTRICT COURT
SEP 04 2019
BY JOHN C. MIDDLETON
D.C.

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

THOMAS SCHRAGE

PLAINTIFF

v.

NORTHERN KENTUCKY WATER
DISTRICT, et al

DEFENDANTS

FINAL ORDER AND JUDGMENT

This matter came before the Court on the parties' Joint Motion for Final Approval of Class Settlement (the "Settlement"), Certification of the Settlement Class, and for Approval of Attorneys' Fees and Settlement Class Representative's Incentive Award ("Joint Motion") of the proposed class action 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"), the Joint Motion, and the arguments of counsel, and after having conducted a Fairness Hearing on April 26, 2019,

It is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. Unless otherwise defined herein, all terms in this Order shall have the meanings ascribed to them in the Agreement.
2. The Court has jurisdiction over the subject matter of the Action, the Parties, and all Persons within the Settlement Class.

3. The Agreement, including its exhibits, and the definitions contained therein are incorporated by reference. The terms of this Court's Amended Preliminary Approval Order entered January 17, 2019 are also incorporated by reference.

4. 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 as part of this Agreement are not settled, are specifically reserved in and are not adjudicated by this Action, and the rights to any future refund(s) and distribution to Plaintiff and others similarly situated, are specifically reserved.

5. The Court, pursuant to Rules 23.01 and 23.02 of the Kentucky Rules of Civil Procedure, finally 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. The Court finds that no objections to the Agreement were made by any class member.

7. The Court hereby finds and concludes that the Class Notice was properly disseminated to Class Members within the Settlement Class in accordance with the terms set forth in Section IV of the Agreement and this Court's Amended Preliminary Approval Order.

8. The Court hereby finds and concludes that the Class Notice fully satisfies (i) Kentucky Rule of Civil Procedure 23.03, and (ii) the requirements of due process, and that it constitutes the best notice practicable under the circumstances. Such notice is sufficient notice

for all purposes under this Order and in this Action. The Court further finds that the Settlement Class Notice provided adequate individual notice to all Settlement Class Members who could be identified through reasonable effort in the manner set forth in the Agreement and supports the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Agreement and this Order.

9. The Court finds that the Agreement's terms constitute, in all respects, a fair, reasonable, and adequate settlement as to all Class Members and directs its consummation pursuant to its terms and conditions. Accordingly, the Agreement is hereby finally approved in all respects, and the Parties are hereby directed to perform its terms. The Parties and Settlement Class Members are bound by the terms and conditions of the Agreement. Specifically, based upon the entirety of the record presented to the Court in connection with the Joint Motion, including, without limitation, the affidavits or certifications of Alexander Edmonson and Robert Sparks, and the presentation of counsel in connection with the Fairness Hearing (collectively herein, the "Case Record") the Court finds:

(a) The Agreement is the product of arm's-length settlement negotiations between Plaintiff and Class Counsel, on the one hand, and Defendants and Defendants' Counsel, on the other hand.

(b) Through extensive litigation Class Counsel assessed the potential value of the class claims, appropriately taking into account the risks and costs of the litigation.

(c) Continued litigation would be complex, lengthy, and expensive.

(d) There is no evidence of collusion of any kind in the negotiation of the Agreement.

(e) Class Counsel conducted substantial discovery and adequately investigated and assessed the factual and legal strengths and weaknesses of the class claims.

- (f) The amount of the settlement is fair, reasonable, and adequate.
- (g) The proposed plan of distribution of the Agreement is fair and reasonable.
- (h) The lack of any objections by any Class Member is evidence of the Class'

favorable reaction to, and acceptance of, the Agreement.

(i) Class Counsel, who are experienced in class action and consumer litigation, strongly support the Agreement.

(j) Plaintiff, in his role as Class Representative, and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement.

10. The Court specifically approves Class Counsel's application for attorneys' fees in the amount of \$442,969.73, and expenses of \$117,000 which the Court finds to be fair and reasonable and Class Counsel are hereby awarded these amounts to be paid in the manner provided by the terms of the Agreement. Specifically, based upon the Case Record, the Court finds:

(a) The requested fee is reasonable considering the nature of this litigation and the significant time and effort required to resolve this matter.

(b) The attorney fee sought is well within reasonable hourly rates for this type of litigation in this District.

(c) The fee is fair and reasonable in relation to the benefits obtained for the Class.

11. The Court finds the payment of an incentive award to Plaintiff in the amount of \$5,000 to be fair and reasonable and Plaintiff is hereby awarded this amount, to be paid in the manner provided by the terms of the Agreement. Specifically, based upon the Case Record, the Court finds:

(a) Plaintiff has competently and diligently represented the Class throughout this action.

(b) Plaintiff has had significant involvement in this litigation including cooperation with Class Counsel and monitoring of the litigation.

(c) The requested incentive award is reasonable and the relief obtained for Class Members is significant.

12. The Settlement Class described above is hereby finally certified, solely for purposes of effectuating the Agreement and this Order and Final Judgment.

13. The requirements of Kentucky Rules of Civil Procedure 23.01 and 23.02 have been satisfied for settlement purposes, for the reasons set forth herein. The Settlement Class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the Plaintiff are typical of the claims of the Settlement Class; Plaintiff will fairly and adequately protect the interests of the class; prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; and, the party opposing the class has acted or refused to act on grounds generally applicable to the class.

14. The Court hereby approves the plan of distribution for the settlement funds as set forth in the Agreement. The Settlement Administrator is hereby ordered to comply with the terms of the Agreement with respect to distribution of the settlement funds and disposition of any remaining funds thereafter as set forth in the Agreement.

15. Subject to Paragraph 4, each and every Class Member, and any person actually or purportedly acting on behalf of any Class Member(s), is hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, or enforcing any

refund claims included in the Agreement (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral, or other forum. This permanent bar and injunction is necessary to protect and effectuate the Agreement, this Final Judgment and Order of Dismissal, and this Court's authority to effectuate the Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

16. The Agreement (including, without limitation, its exhibits), and any and all negotiations, documents, and discussions associated with it, shall 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, of any liability or wrongdoing, by Defendants, or of the truth of any of the claims asserted by Plaintiff, and evidence relating to the Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in this Action or in any other action or proceeding, except for purposes of enforcing the terms and conditions of the Agreement, the Amended Preliminary Approval Order, and/or this Order.

17. Finding that there is no just reason for delay, the Court orders that this Final Order and Judgment shall constitute a final judgment pursuant to Kentucky Rule of Civil Procedure 54.02. The Court orders that, upon the Effective Date, the Settlement shall be the exclusive remedy for any and all released claims of Plaintiff and each and every Settlement Class Member. The Clerk of the Court is directed to enter this Order on the docket forthwith.

18. If an appeal, writ proceeding or other challenge is filed as to this Final Order and Judgment, and if thereafter the Final Order and Judgment is not ultimately upheld, all orders entered, stipulations made and releases delivered in connection herewith, or in the Settlement or in connection therewith, shall be null and void to the extent provided by and in accordance with the Settlement.

IT IS SO ORDERED.

Dated: June ~~2019~~

September 2, 2019



Patricia M. Summe
Judge, Kenton Circuit Court