

IN THE SUPREME COURT OF OHIO

State of Ohio, *ex rel.*, Steve R. Maddox., *et al.*,
Relators,
v.
Village of Lincoln Heights, Ohio, *et al.*,
Respondents.

Case No.: 14-1267

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Hans A. Nilges (0076017) (Counsel of Record)
Shannon M. Draher (0074304)
NILGES DRAHER LLC
4580 Stephen Circle, NW
Canton, Ohio 44718
TEL: (330) 470-4428
FAX: (330) 754-1430
hans@ohlaborlaw.com
sdraher@ohlaborlaw.com
Attorneys for Relators

Patrick Kasson (0055570) (Counsel of Record)
Melvin Davis (0079224)
Tyler Tarney (0089082)
REMINGER CO. L.P.A.
65 East State Street, 4th Floor
Columbus, Ohio 43215
TEL: (614) 228-1311; FAX: (614) 232-2410
pkasson@reminger.com
mdavis@reminger.com
ttarney@reminger.com
Attorneys for Respondents

Robert E. DeRose (0055214)
James Petroff (00042476)
Robi J. Baishnab (0086195)
**BARKAN MEIZLISH HANDELMAN
GOODIN DEROSE WENTZ, LLP**
250 E. Broad St., 10th Fl.
Columbus, Ohio 43215
TEL: (614) 221-4221
FAX: (614) 744-2300
bderose@barkanmeizlish.com
jpetroff@barkanmeizlish.com
rbaishnab@barkanmeizlish.com
Attorneys for Relators

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**JOINT MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Relators Steve R. Maddox, Antwan L. Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Roger Reynolds, Henry Dawkins, and Moniqua White (collectively “Relators”) and Respondents The Village of Lincoln Heights, Ohio, Mayor Laverne Mitchell, Stephanie Summerow Dumas, Councilwoman Deborah Seay, Councilman Harold Stewart, Councilwoman Sharon Wills, Clerk of Council Ayrica Raglin, Councilman Richard Headon, Councilwoman Jetta-Chiles, Councilwoman Stevenson, and Councilman Willis (collectively “Respondents”) jointly move this Court under Civ. R. 23(E) for preliminary approval of the class action settlement reached by the parties in this case.

The proposed settlement was achieved through two mediations and prolonged, arms-length negotiations, conducted by experienced counsel on both sides. The settlement enabled the parties to bridge significant litigation difficulties and resolve hotly-disputed claims in a manner both sides believe is a fair and reasonable compromise. If approved by the Court, the settlement will make substantial settlement payments available to the Named Relators and other members of a proposed settlement class of current and former employees of the Village of Lincoln

Heights, approximately 150 in number. The parties jointly and respectfully submit that the proposed Settlement is fair, reasonable, and adequate, and satisfies the criteria for approval under Civ. R. 23(E).

The following settlement documents are respectfully submitted for approval or entry by the Court:

- Exhibit 1: Settlement Agreement
- Exhibit 2: Proposed Preliminary Approval Order
- Exhibit 3: Proposed Notice of Class Action Settlement and Fairness Hearing
- Exhibit 4: Proposed Opt-Out Form
- Exhibit 5: Proposed Claim Form and Release

The following sections explain the litigation, the factors affecting the settlement, the terms of the Settlement, and the propriety of preliminary approval.

I. THE LITIGATION AND SETTLEMENT

A. The Litigation

Named Relators Steve Maddox, Antwan Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Roger Reynolds, Henry Dawkins, and Moniqua White filed this mandamus action on July 23, 2014. Relators filed the case as a class action pursuant to Civ. R. 23 on behalf of themselves and other members of a class of current and former employees of the Village of Lincoln Heights, estimated by Respondents to be approximately 150 in number. *See* Settlement Agreement § 1.2 (defining “Rule 23 Settlement Class”). The action asserted claims for employee benefits including alleged Misclassification of employees as independent contractors, as well as claims for Holiday Pay, Sick Pay, Fringe Benefits, and OPERS contributions.

Hotly-contested litigation ensued. Discovery was conducted by both sides, and included extensive document productions. The litigation also included extensive motion practice including multiple dismissal motions and exhaustive briefing by both sides.

Armed with sufficient information to assess the relative strengths and weaknesses of their positions, the parties scheduled and attended two mediations in which possible resolution of the action was discussed and negotiated. The first mediation was unsuccessful in achieving a resolution, due largely to the difficulties discussed in the next section of these Recitals. However, the parties participated in a second, full-day mediation in Columbus on May 20, 2015, involving prolonged, arms-length negotiations. Shortly after the mediation and following additional post-mediation settlement discussions, the parties, with the able assistance of Mediator Stephen A. Watring, were able to reach an agreement of settlement.

B. Factors Affecting the Settlement

Both sides faced significant difficulties that made the litigation complicated and the outcome uncertain. Through the negotiation process, the parties were able to fashion an agreement that bridges those difficulties and serves the interests of both sides.

From Relators' perspective, the case presented difficulties in establishing liability and proving the alleged damages of the Named Relators and approximately 150 unnamed members of the putative class of current and former employees. Many of the unnamed class members no longer work for the Village, and with the passage of time relevant records for all employees, both former and current, were lost or destroyed. In addition, the Village continually asserted that financial difficulties, present and future, would render it unable to pay a substantial judgment. While Relators did not concede that assertion, they faced the added uncertainty of actually collecting any eventual judgment.

From Respondents' perspective, the case presented the potential for a liability verdict and the possibility of substantial damages awards to the Named Relators and class members. The same difficulties Relators faced in the prosecution of the case also affected the defense, and rendered the outcome uncertain.

The agreed-upon settlement enabled the parties to bridge these difficulties and resolve hotly-disputed claims in a manner both sides believe is a fair and reasonable compromise.

C. Terms of the Settlement

The proposed settlement gives all class members the opportunity to obtain valuable settlement payments. In return, the Respondents will obtain the benefit of corresponding releases of claims. The Named Relators and Relators' Counsel are of the opinion that the settlement is fair, adequate, and reasonable and in the best interest of the Named Relators and the Rule 23 Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, Respondents' ability to pay, Respondents' defenses, and other uncertainties.

Class members will be given notice of the settlement by First Class United States mail. They will have the opportunity to opt-out of the settlement or, alternatively, to object to the settlement at a fairness hearing prior to final approval.

Class members who do not opt out will be eligible to participate in the Settlement Fund by submitting Claim Forms. Their respective Settlement Shares will be proportionate to their claimed workweeks during the class period (July 23, 2004 to the present), as shown by their Claim Forms. No further proof or substantiation of their claims will be required.

II. THE PROPRIETY OF APPROVAL

Civ. R. 23(E) provides that “[a] class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” In the present case, the proposed settlement amply qualifies for approval under Civ. R. 23(E), and the proposed procedure for notice to class members is proper and sufficient.

A. The Proposed Settlement Is Fair, Adequate, and Reasonable

Civ. R. 23(E) embodies the principle that “[a] class action cannot be settled unless class members have been afforded notice of the proposed settlement and the trial court has determined, after a hearing on the matter, that the settlement is fair, adequate and reasonable.” *In re Kroger Co. Shareholders Litigation*, 70 Ohio App. 3d 52, 67-68 (1990).

Preliminary approval should be granted where “there is ‘probable cause’ to submit the [proposed settlement] to members of the class and to hold a full-scale hearing on its fairness, at which all interested parties will have an opportunity to be heard and after which a formal finding on the fairness of the proposal will be made.” *Manual For Complex Litigation* § 1.46 at 64-65 (5th ed. 1982). *Accord*, 2 *Newberg On Class Actions* § 11.25 at 422 (at the preliminary approval stage, the question is whether the settlement is “within the range of possible judicial approval”). *See also In re Baldwin-United Corp.*, 105 F.R.D. 475, 482 (S.D.N.Y. 1984).

In the present case, preliminary approval is supported by “weighty justifications, such as the reduction of litigation and related expenses, [underlying] the general policy favoring the settlement of litigation.” *In re Beef Industry Antitrust Litigation*, 609 F.2d 167, 178 (5th Cir. 1979) (quoting 3 *Newberg on Class Actions* [1977] § 5570c at 479-80). Courts have frequently granted preliminary approval of class settlements. *E.g., Weinberger v. Kendrick*, 698 F.2d 61

(2d Cir. 1982); *Plummer v. Chemical Bank*, 668 F.2d 564 (2d Cir. 1982); *In re Beef Industry Antitrust Litigation*, 607 F.2d 167 (5th Cir. 1979); *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975); *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540 (D. Colo. 1989); *Detroit v. Grinnell Corp.*, 356 F. Supp. 130 (S.D.N.Y. 1972), *aff'd*, 495 F.2d 448 (2d Cir. 1974); *In re Four Seasons Sec. Laws Litigation*, 58 F.R.D. 19 (W.D. Okla. 1972); *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 322 F. Supp. 834 (E.D. Pa. 1971).

The proposed settlement resulted from prolonged, arms-length negotiations, with experienced counsel on both sides. The settlement agreement enabled the parties to bridge significant litigation difficulties and resolve hotly-disputed claims in a manner both sides believe is a fair and reasonable compromise. If approved by the Court, the settlement will provide settlement payments to the Named Relators and other members of a proposed settlement class of current and former employees of the Village of Lincoln Heights, approximately 150 in number.

Thus, the proposed settlement amply qualifies as “fair, adequate and reasonable” under Civ. R. 23(E). *In re Kroger Co. Shareholders Litigation*, 70 Ohio App. 3d at 67-68 (1990).

B. The Proposed Settlement Class Qualifies for Rule 23 Certification

Courts recognize that “[t]he benefits of a class action settlement can be realized only through the certification of the settlement class.” *Filby v. Windsor Mold USA, Inc.*, 2015 U.S. Dist. LEXIS 30034 (N.D. Ohio Mar. 11, 2015) (Helmich, J.) (citing *Connectivity Sys. Inc. v. National Nat’l City Bank*, 2011 U.S. Dist. LEXIS 7829 (S.D. Ohio Jan. 26, 2011)). Ohio courts have readily certified settlement classes that satisfied the requirements of Rule 23. *See, e.g., Filby*, 2015 U.S. Dist. LEXIS 30034 (finding that “[f]or purposes of settlement only, the parties agree that the following class meets the requirement for certification under Fed. R. Civ. P. 23”); *Green v. Dressman Benzinger Lavelle, PSC*, 2015 U.S. Dist. LEXIS 6725 (S.D. Ohio Jan. 16,

2015) (Dlott, J.) (finding that “the Lawsuit satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23”). *See also Beder v. Cleveland Browns, Inc.*, 114 Ohio Misc. 2d 26 (Common Pleas 2001) (granting preliminary and final approval of class settlement).

The proposed settlement class in the present case amply qualifies for Rule 23 certification. All class members assert the same legal claims arising from their employment with of the Village of Lincoln Heights, and the rights of all class members can be determined in a single adjudication. What this Court said in *Hamilton v. Ohio Sav. Bank*, 82 Ohio St. 3d 67 (1998), is also true here: “This appears to present the classic case for treatment as a class action, and cases involving similar claims or similar circumstances are routinely certified as such.” *Hamilton*, 82 Ohio St. 3d at 80.

The requirements of Civ. R. 23(A) are plainly satisfied. The members of the class are “identifiable” from Respondents’ records. *Hamilton*, 82 Ohio St. 3d at 71-72 (the class definition must be sufficiently precise that the Court can later determine “whether a particular individual is a member of the class”) (quoting *Planned Parenthood v. Project Jericho*, 52 Ohio St. 3d 57, 63 (1990)). *See Warner v. Waste Management, Inc.*, 36 Ohio St. 3d 91, 96 (1988). The class members are “so numerous that joinder of all members is impracticable.” Civ. R. 23(A)(1). *See Marks v. C. P. Chemical Co.*, 31 Ohio St. 3d 200, 202 (1987) (“courts have not specified numerical limits, but subclasses have been certified with as few as twenty-three members.”); *Warner*, 36 Ohio St. 3d at 97 (“[i]f the class has more than forty people in it, numerosity is satisfied”); *Vinci v. American Can Co.*, 9 Ohio St. 3d 98, 99-100 (1984) (numerosity satisfied in class actions having as few as 68 members). There are “questions of law or fact common to the class.” Civ. R. 23(A)(2); *Hamilton*, 82 Ohio St. 3d at 77; *Warner*, 36 Ohio St. 3d at 97 (to satisfy the “commonality” requirement, there need only be “a common

liability issue”); *Ojalvo v. Board of Trustees of Ohio State University*, 12 Ohio St. 3d 230, 235 (1984) (Civ. R. 23(A)(2) “does not require commonality with respect to damages but merely that the basis for liability is a common factor for all class members”).

The Named Relators’ claims are “typical of the claims . . . of the class,” and they will “fairly and adequately protect the interests of the class.” Civ. R. 23(A)(3) and (4); *Marks*, 31 Ohio St. 3d at 202; *Hamilton*, 82 Ohio St. 3d at 77 (to satisfy “typicality,” the named plaintiffs’ claims “need not be identical” to those of other class members, but there be “no express conflict between the class representative and the class”). The Named Relators will “fairly and adequately protect the interests of the class.” Civ. R. 23(A)(4); *Hamilton*, 82 Ohio St. 3d at 77; *Warner*, 36 Ohio St. 3d at 98 (the named plaintiff “is deemed adequate so long as his or her interest is not antagonistic to that of other class members”).

Civ. R. 23(B)(3) is also satisfied. The common issues “predominate over any questions affecting only individual members.” Civ. R. 23(B)(3); *Schmidt v. AVCO Corp.*, 15 Ohio St. 3d 310, 313 (1984) (“predominance” is satisfied where the issues of law or fact that are common to the class “represent a significant aspect of the case” and are “able to be resolved for all members of the class in a single adjudication”). A class action is “superior to other available methods for the fair and efficient adjudication of the controversy.” Civ. R. 23(B)(3); *Warner*, 36 Ohio St. 3d at 96 (“superiority” is satisfied where “the efficiency and economy of common adjudication [through a class action] outweigh the difficulties and complexity of individual treatment of class members’ claims”); *Marks*, 31 Ohio St. 3d at 204 (class litigation is superior where “[r]epetitious adjudication of liability, utilizing the same evidence over and over, could be avoided”).

Thus, the proposed class satisfies the requirements of Civ. R. 23 and should be certified for settlement purposes only.

C. The Proposed Settlement Payments Are Fair and Reasonable

As a part of the scrutiny it applies to a proposed class settlement, the Court should determine that “the distribution of the settlement proceeds is equitable.” *Crawford v. Lexington-Fayette Urban County Government*, 2008 WL 4724499 (E.D. Ky. Oct. 23, 2008) (citing *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 855 (1999)). Precise equality is not required. In *Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013), the Second Circuit said that “[a]ll class settlements value some claims more highly than others, based on their perceived merits, and strike compromises based on probabilistic assessments.” 731 F.3d at 253-54. The court concluded that “[i]f these types of compromises automatically created subclasses that required separate representation, the class action procedure would become even more cumbersome than it already is, and would create even more transaction costs in the form of legal fees.” *Id.*

In the present case, the proposed distribution of settlement proceeds to class members is eminently reasonable. All class members, including the Named Relators, will be eligible to participate in the Settlement Fund by submitting Claim Forms, and their respective Settlement Shares will be proportionate to their claimed workweeks during the class period.

D. The Proposed Service Awards Are Fair and Reasonable

The proposed settlement properly provides reasonable service awards to the Named Relators in recognition of their service to Relators’ Counsel and their contribution to achieving this Settlement on behalf of all class members. Ohio courts “have not hesitated to grant incentive awards to representative plaintiffs who have been able to effect substantial relief for classes they represent.” *In re Dun & Bradstreet Credit Services Customer Litigation*, 130 F.R.D. 366, 373 (S.D. Ohio 1990) (citing *Wolfson v. Riley*, 94 F.R.D. 243 (N.D. Ohio 1981); *Bogosian v. Gulf Oil Corp.*, 621 F. Supp. 27, 32 (E.D. Pa. 1985); *In re Minolta Camera Products Antitrust*

Litigation, 666 F. Supp. 750, 752 (D. Md. 1987)). See also *Kritzer v. Safelite Solutions, LLC*, 2012 U.S. Dist. LEXIS 74994, at *26 (S.D. Ohio May 30, 2012) (service awards “are common in class action settlement[s] and [are] routinely approved for the simple reason ‘to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation’”) (citing *Rotuna v. West Customer Mgmt. Group, LLC*, No. 4:09cv1608, 2010 WL 2490989, at *7 (N.D. Ohio June 15, 2010)).

Dun & Bradstreet went on to note that “differentiation among class representatives based upon the role each played may be proper in given circumstances.” 130 F.R.D. at 374 (citing *In re Jackson Lockdown/MCO Cases*, 107 F.R.D. 703, 710 (E.D. Mich. 1985)). See also *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250 (S.D. Ohio 1991) (among the factors warranting incentive awards are the “time and effort spent” by the individuals in question and “whether these actions resulted in a substantial benefit to Class Members”).

In the present case, Named Relators Antwan Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Henry Dawkins, and Moniqua White served as class representatives and assisted Relators’ Counsel during the course of the litigation, and will receive service awards of \$1,500 each. Named Relators Steve Maddox and Roger Reynolds provided extensive service to Relators’ Counsel involving substantial expenditures of time during the litigation itself and in relation to the mediations, and will receive service awards of \$3,000 each.

E. The Proposed Attorneys’ Fees and Costs Are Fair and Reasonable

The award of fair and reasonable compensation to class counsel for their services to the class rests on, the “common fund” doctrine, a settled principle of equity. The common fund doctrine has long been regarded as settled law in Ohio. In *Smith v. Kroeger*, 138 Ohio St. 508 (1941), this Court observed that “[i]n [a class action], a court exercising equitable jurisdiction

may allow, in addition to costs between party and party, reasonable attorney fees, technically known as costs between solicitor and client, to be paid out of the fund under the control of the court.” 138 Ohio St. 508 (Syllabus at ¶ 3), *quoted with approval in State ex rel. Montrie Nursing Home, Inc. v. Creasy*, 5 Ohio St. 124, 127 (1983). *Accord*, *City of Seven Hills v. City of Cleveland*, 47 Ohio App. 3d 159, 163 (1988) (under the common fund doctrine, “an attorney who has represented a class in a class action or a taxpayer’s suit may recover his fees from the fund that was created by his efforts”).

The equitable foundation of the doctrine was established in an 1886 case, in which this Court found that individual recipients of a common fund, “sitting by and observing counsel do work which inured as much to their benefit as to that of the plaintiff, [cannot] be heard to say in good faith and fairness [that] they should not contribute to a reasonable recompense.” *Mason v. Alexander*, 44 Ohio St. 318 (1886), *discussed in Rocca v. Wilke*, 53 Ohio App. 2d 8, 18 n.7 (1977). *See also State ex rel. Montrie Nursing Home, Inc. v. Creasy*, 5 Ohio St. 124, 127 (1983) (“where a fund has been created or preserved for the benefit of a class at the expense of one class member or a few class members, all members of the class may be required to share proportionately in the counsel fees incurred thereby”).

In two Ohio class actions—*Frazier v. Gold Bond Building Products Division of National Gypsum Co.*, Sandusky C.P. No. 79-CV-185, and *Clark v. Pfizer, Inc.*, Sandusky C.P. No. 82-CV-888—class counsel were awarded fees equal to 40% of the common funds they had created through their efforts. More recently, a fee of one-third was approved by the trial court and affirmed on appeal. *Wilken v. Wachovia Bank of Delaware, NA*, 2013-Ohio-2132 (App. 2013).

Similar awards have been approved in class-action litigation in the federal courts. Fee awards of one-third of the common fund are common, and awards in excess of 40% are not

uncommon. *See, e.g., In re Ampicillin Antitrust Litig.*, (D.D.C. 1981), 526 F. Supp. 494 (class counsel awarded 45% of \$7,300,000 settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979), 480 F. Supp. 1195 (53% of settlement fund); *Greene v. Emersons, Ltd.* (S.D.N.Y. 1987), [1987] Fed. Sec. L. Rep. (CCH) ¶ 93,253 (46.2% of common fund); *Howes v. Atkins* (E.D. Ky. 1987), 668 F. Supp. 1021 (50% of fund); *Zinman v. Avemko Corp.* (E.D. Pa. 1978), [1978] Fed. Sec. L. Rep. (CCH) ¶ 96,325 (50% of fund); *Borak v. J. I. Case Co.* (W.D. Wisc. 1970), 56 Civ. 247 (56.6% of fund); *Sharp v. Coopers & Lybrand* (E.D. Pa. 1982), Case No. 75-1313 (47.95%).

In the present case, the Settlement Agreement provides that one-third of the common fund will be distributed to Relators' Counsel as and for attorneys' fees and reimbursements of litigation costs. The proposed distribution is fair under the circumstances of this case and well within the range of reasonableness for common fund awards.

F. The Proposed Procedure for Notice to Class Members Is Proper

The procedure for notice is governed by Civ. R. 23(E) as well as due process considerations, and is committed to the sound discretion of the Court. *See McDonald v. Medical Mutual*, 41 Ohio Misc. 158 (C.P. 1974).

Civ. R. 23(C)(2) effectively incorporates due process standards and has more stringent notice requirements than Rule 23(E). *See Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 173-77 (1974). It provides that "individual notice"—normally First Class mail—must be given "to all members who can be identified through reasonable effort." The notice must "advise each member that (a) the court will exclude him from the class if he so requests by a specified date; (b) the judgment, whether favorable or not, will include all members who do not request

exclusion; and (c) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.”

In the present case, the content of the proposed Notice conforms precisely to the content required by Civ. R. 23(C)(2), and the proposed method of distribution (i.e., individual notice to all class members by First Class mail) fully satisfies Civ. R. 23(C)(2) and due process.

III. CONCLUSION

Wherefore, the parties jointly and respectfully request that the Court: (1) grant the Joint Motion for Preliminary Approval of the Class Action Settlement by entering the proposed Preliminary Approval Order (2) authorize the sending of the proposed Notice of Class Action Settlement and Fairness Hearing together with the proposed Opt-Out Form and the proposed Claim Form and Release; and (3) set a fairness hearing at which final approval of the settlement may be determined by the Court.

Respectfully submitted,



Hans A. Nilges (0076017)
(Counsel of Record)
Shannon M. Draher (0074304)
NILGES DRAHER LLC
4580 Stephen Circle, NW
Canton, Ohio 44718
TEL: (330) 470-4428
FAX: (330) 754-1430
hans@ohlaborlaw.com
sdraher@ohlaborlaw.com

Robert E. DeRose (0055214)
James Petroff (00042476)
Robi J. Baishnab (0086195)
**BARKAN MEIZLISH HANDELMAN
GOODIN DEROSE WENTZ, LLP**
250 E. Broad St., 10th Fl.
Columbus, Ohio 43215
TEL: (614) 221-4221

/s/Patrick Kasson (per email authority)
Patrick Kasson (0055570) (Counsel of
Record)
Melvin J. Davis (0079224)
Tyler Tarney (0089082)
REMINGER CO., L.P.A.
Capitol Square Building, 4th Floor
65 E. State Street
Columbus, Ohio 43215
Phone: (614) 232-2418
Fax: (614) 232-2410
pkasson@reminger.com
mdavis@reminger.com
ttarney@reminger.com

Attorneys for Respondents

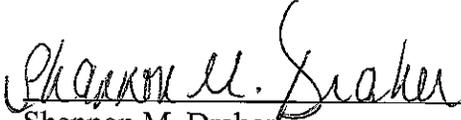
FAX: (614) 744-2300
bdrose@barkanmeizlish.com
jpetroff@barkanmeizlish.com
rbaishnab@barkanmeizlish.com
Attorneys for Relators

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following via email on October 2, 2015:

Patrick Kasson (0055570) (Counsel of Record)
Melvin J. Davis (0079224)
Tyler Tarney (0089082)
REMINGER CO., L.P.A.
Capitol Square Building, 4th Floor
65 E. State Street
Columbus, Ohio 43215
Phone: (614) 232-2418
Fax: (614) 232-2410
pkasson@reminger.com
mdavis@reminger.com
ttarney@reminger.com

Attorneys for Respondents


Shannon M. Draher

IN THE SUPREME COURT OF OHIO

*STATE OF OHIO, ex rel.
STEVE R. MADDOX, et al., for himself and,
others similarly situated,*

Relators,

vs.

THE VILLAGE OF LINCOLN HEIGHTS, OHIO, et al.,

Respondents.

Case No. 14-1267

SETTLEMENT AGREEMENT

This Settlement Agreement and Release of Claims (“the Agreement”) is entered into between Relators Steve Maddox, Antwan Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Roger Reynolds, Henry Dawkins, and Moniqua White (“Named Relators” or “Class Representatives”), all of whom are represented by Hans Nilges and Shannon Draher from Nilges Draher, LLC, and Bob DeRose from Barkan Meizlish Handelman Goodin DeRose Wentz, LLP (“Class Counsel” or “Relators’ Counsel”), and Respondents The Village of Lincoln Heights, Ohio, Mayor Laverne Mitchell, Stephanie Summerow Dumas, Councilwoman Deborah Seay, Councilman Harold Stewart, Councilwoman Sharon Willis, Clerk of Council Ayrica Raglin, Councilman Richard Headon, Councilwoman Jetta-Chiles, Councilwoman Stevenson, and Councilman Willis, all of whom are represented by attorneys Patrick Kasson and Tyler Tamey of Reminger Co., L.P.A.

I. DEFINITIONS

The terms set forth below shall have the meanings defined in this Section wherever used in this Agreement and in any exhibits, including the proposed Notice of Class Action Settlement and Fairness Hearing (Exhibit 3), the proposed Opt-Out Form (Exhibit 4), and the proposed Claim Form and Release (Exhibit 5):

1.1 “The Civil Action” means the above-captioned case, *State of Ohio, ex rel. Steven R. Maddox, et al. v. The Village of Lincoln Heights, Ohio, et al.*, Ohio Supreme Court Case No. 14-1267.

1.2 “Rule 23 Settlement Class” for purposes of this Agreement includes all persons who fall within one or more of the following subclasses:

- Any person who worked for the Village of Lincoln Heights (“the Village”) in any capacity other than a permanent and regular full-time employee, including without limitation any person who worked for the Village as an independent contractor and/or temporary employee between July 23, 2008 to the present (the “Misclassification Subclass”);
- All employees of the Village from July 23, 2008 to the present who were not provided sick leave benefits pursuant to R.C. 124.38 and R.C. 124.39 (the “Sick Leave Subclass”);
- Any person who worked for the Village, as an employee or in any capacity other than a permanent or regular full-time employee, at least 30 hours per week during the period from July 23, 2004 through the present but who were not provided fringe benefits pursuant to the Village’s Ordinances (the “Fringe Benefits Subclass”); and
- Any person who worked for the Village, as an employee or in any capacity other than a permanent or regular full-time employee, from July 23, 2004 to the present who were not provided holiday pay or holiday pay premiums pursuant to the Village’s Ordinances (the “Holiday Pay Subclass”).

1.3 The “Court” means the Supreme Court of Ohio.

1.4 “Class Counsel” or “Relators’ Counsel” means Hans Nilges and Shannon Draher from Nilges Draher, LLC, and Bob DeRose from Barkan Meizlish Handelman Goodin DeRose Wentz, LLP.

1.5 “Effective Date” means in the event of final Court approval of the settlement agreement: (a) if no appeal of the Court’s Order granting final approval of the Settlement Agreement is filed, the day after the deadline for filing any such appeal, or (b) if an appeal is filed, the latest of (i) the date of final affirmance of the Order granting final approval of the Settlement Agreement; (ii) the expiration of the time for a petition for review of the Court’s granting final approval of the Settlement Agreement and, if review is granted, the date of final affirmance of the Court’s final approval following review pursuant to that grant; or (iii) the date of final dismissal of any appeal from the Court’s granting final approval of the Settlement Agreement or the final dismissal of any proceeding on review of the final approval.

1.6 The terms “Class Representatives” and “Named Relators” mean Relators Steve Maddox, Antwan Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Roger Reynolds, Henry Dawkins, and Moniqua White.

1.7 The term “Respondents” means the Village of Lincoln Heights, Ohio, Mayor Laverne Mitchell, Stephanie Summerow Dumas, Councilwoman Deborah Seay, Councilman Harold Stewart, Councilwoman Sharon Willis, Clerk of Council Ayrica Raglin, Councilman Richard Headon, Councilwoman Jetta-Chiles, Councilwoman Stevenson, and Councilman Willis.

1.8 The term “Parties” means Class Representatives and Respondents.

1.9 The term “Preliminary Approval” means the portion of the Order entered by this Court preliminarily approving the terms of this Agreement, certifying the Rule 23 Settlement Class for purposes of this settlement and all claims brought in The Civil Action, approving the payments

of attorneys' fees and litigation costs advanced by attorneys related to the Rule 23 Settlement Class, and any service payment(s) to the Class Representatives as set forth in the Agreement, scheduling a fairness hearing, and directing the mailing to Class Members of the proposed Notice of Class Action Settlement and Fairness Hearing and the proposed Claim Form and Release.

1.10 "Released Claims" has the meaning ascribed to it in Section 5.1 of this Agreement.

1.11 "Released Parties" means all Respondents named in The Civil Action including without limitation the Village of Lincoln Heights, Ohio, Mayor Laverne Mitchell, Stephanie Summerow Dumas, Councilwoman Deborah Seay, Councilman Harold Stewart, Councilwoman Sharon Willis, Clerk of Council Ayrica Raglin, Councilman Richard Headon, Councilwoman Jetta-Chiles, Councilwoman Stevenson, and Councilman Willis, and PEP (Public Entities Pool of Ohio), ARPCO (American Risk Pooling Consultants, Inc.), PERSO (Public Entity Risk Services of Ohio), York Risk Pooling Services, their respective owners, stockholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, insurers, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and/or administrators, and all persons acting by, through, under, or in concert with any of them, including any party that was or could have been named as a Respondent in The Civil Action.

1.12 "Rule 23 Settlement Fund" means the amount of money paid by Respondents to settle the claims of the Rule 23 Settlement Class to be distributed by Relators' Counsel as set forth herein. Respondents agree to pay a total of One Hundred and Twenty-Six Thousand dollars (\$126,000) to the Rule 23 Settlement Fund which shall be used to pay any Court-approved Rule 23 Settlement Class Member's Settlement Share, attorneys' fees, service payments, and any other payments, expenses, or costs described herein.

1.13 “Adjusted Rule 23 Settlement Fund” means the \$126,000 Rule 23 Settlement Fund less court approved distributions of service awards to the Named Relators and attorney fees’ and cost reimbursements to Relators’ Counsel.

1.14 “Settlement Share” means the Rule 23 Settlement Class Members’ respective shares of the Adjusted Rule 23 Settlement Fund, which shall be computed as prescribed herein.

II. ALL RECITALS

A. The Litigation

2.1 On July 23, 2014, Named Relators Steve Maddox, Antwan Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Roger Reynolds, Henry Dawkins, and Moniqua White filed this mandamus action in the Supreme Court of Ohio. The Named Relators filed the case as a class action pursuant to Civ. R. 23 on behalf of themselves and other members of a class of current and former employees of the Village of Lincoln Heights, estimated by Respondents to be approximately 150 in number. *See* Definitions at § 1.2 (defining “Rule 23 Settlement Class”). The action asserted claims for employee benefits including alleged Misclassification of employees as independent contractors, as well as claims for Holiday Pay, Sick Pay, Fringe Benefits, and OPERS contributions. Respondents denied those claims and asserted defenses to them.

2.2 Several months of hotly-contested litigation ensued. The parties engaged in extensive motion practice including multiple dismissal motions and exhaustive briefing by both sides.

2.3 Armed with sufficient information to assess the relative strengths and weaknesses of their positions, the parties scheduled and attended two mediations in which possible resolution of the action was discussed and negotiated. The first mediation was unsuccessful in achieving a resolution, due largely to the difficulties discussed in the next section of these Recitals. However,

the parties participated in a second, full-day mediation in Columbus on May 20, 2015, involving prolonged, arms-length negotiations.

B. Factors Affecting the Settlement

2.4 Both sides faced significant difficulties that made the litigation complicated and the outcome uncertain. Through the negotiation process, the parties were able to fashion an agreement that bridges those difficulties and serves the interests of both sides.

2.5 From Relators' perspective, the case presented difficulties in establishing liability and proving the alleged damages of the Named Relators and approximately 150 unnamed members of the putative class of current and former employees. Many of the unnamed class members no longer work for the Village, and with the passage of time relevant records for all employees, both former and current, were discarded. In addition, the Village has financial difficulties, present and future, that would render it unable to pay a substantial judgment. While Relators do not concede that point, they faced the added the uncertainty of actually collecting any eventual judgment.

2.6 From Respondents' perspective, the case presented the potential for a liability verdict and the possibility of substantial damages awards to the Named Relators and class members. The same difficulties Relators faced in the prosecution of the case also affected the defense, and rendered the outcome uncertain.

2.7 The agreed-upon settlement enabled the parties to bridge these difficulties and resolve hotly-disputed claims in a manner both sides believe is a fair and reasonable compromise.

C. Terms of the Settlement and Counsel's Opinion

2.8 Subject to approval by the Court pursuant to Civ. R. 23(E), the Parties reached the Agreement memorialized in this Settlement Agreement.

2.9 The settlement gives all class members the opportunity to obtain valuable settlement payments, as more fully described below. In return, the Respondents will obtain the benefit of corresponding releases of claims.

2.10 The Named Relators and Relators' Counsel are of the opinion that the settlement is fair, adequate, and reasonable and in the best interest of the Named Relators and the Rule 23 Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, Respondents' ability to pay, Respondents' defenses, and other uncertainties.

2.11 It is the desire of the Parties, as well as the Rule 23 Settlement Class Members, to fully, finally, and forever settle, compromise, and discharge all disputes and claims brought in The Civil Action, or which could have been brought in The Civil Action, including without limitation all disputes and claims related to Misclassification, Holiday Pay, Sick Pay, and Fringe Benefits. This settlement is not intended to release or discharge any claims asserted in *Aaron Smith v. The Village of Lincoln Heights et al.*, S.D. Ohio, Case No. 1:14-cv-00446, *Henry Dawkins v. Village of Lincoln Heights et al.*, S.D. Ohio, Case No. 1:13-cv-00542, or in connection with the Named Relators' pending Applications and Requests for Determination for OPERS Membership. It is the intention of the Parties that this Agreement shall constitute a full and complete settlement and release of all Released Claims against all Released Parties.

2.12 Respondents deny any liability or wrongdoing of any kind associated with the claims alleged in The Civil Action. This Agreement is a compromise and shall not be construed as an admission of liability at any time or for any purpose, by the Parties or the Released Parties. The Parties further acknowledge and agree that neither this Agreement nor the Settlement shall be used to suggest an admission of liability in any dispute the Parties may have now or in the future.

III. COURT APPROVAL AND CLASS NOTICE

3.1 Relators and Respondents will submit this Agreement to the Court, together with a Joint Motion for Preliminary Approval of Class Action Settlement, a proposed Preliminary Approval Order, a proposed Notice of Class Action Settlement and Fairness Hearing (the “Notice”) (Exhibit 3), a proposed Opt-Out Form (Exhibit 4), and a proposed Claim Form and Release (Exhibit 5).

3.2 Within fourteen days of the date of the Court’s entry of the Preliminary Approval Order, Respondents will provide a spreadsheet, from their available records, of all actual or potential Rule 23 Settlement Class Members together with their last known addresses and telephone numbers. Within seven days of providing this spreadsheet, any concerns or discrepancies about the Rule 23 Settlement Class Members (including their contact information) will be raised and resolved by the Parties.

3.3 Within seven calendar days after the Parties agree on the list of Rule 23 Settlement Class Members, Relators’ Counsel shall mail to each Rule 23 Settlement Class Member, by First Class United States mail and at their expense, the Notices, Forms, and documents described in Section 3.1 with a self-addressed stamped envelope using each individual’s last known address.

3.4 Any Rule 23 Settlement Class Member may request exclusion from the settlement by “opting out.” A Rule 23 Settlement Class Member who chooses to do so must submit a written and signed request for exclusion in the form attached as Exhibit 5. To be effective, such Opt-Out Forms must be sent via First Class United States mail and postmarked by the last day of the “Opt-Out Period,” which shall be ninety calendar days after the initial mailing of the Notice and shall be specified on the Notice of Class Action Settlement and Fairness Hearing. Relators’ Counsel shall stamp the date of receipt on Opt-Out Forms as they receive them and provide copies of the

Forms to all counsel at weekly intervals. Within five business days of the end of the Opt-Out Period, Relators' Counsel shall file stamped copies of the Opt-Out Forms with the Clerk of the Ohio Supreme Court, with Social Security Numbers redacted, and send a final list of the Opt-Out Forms to all Counsel by e-mail.

3.5 A Rule 23 Settlement Class Member who does not opt out will be deemed eligible for a settlement payment from the Adjusted Rule 23 Settlement Fund calculated in accordance with Sections 4.1 through 4.3 of this Agreement if and only if he or she timely returns a properly executed and witnessed Claim Form and Release in the form attached as Exhibit 5. The Claim Form and Release must be personally signed by Class Member or someone with a legal right to act on his or her behalf, and must be witnessed. To be effective, a Claim Form and Release must be sent to Relators' Counsel via First Class United States mail and postmarked by the last day of the "Claims Period," which shall be ninety calendar days after the initial mailing of the Notice and shall be specified on the Notice of Class Action Settlement and Fairness Hearing.

3.6 Rule 23 Settlement Class Members who wish to present objections to the proposed settlement at the Fairness Hearing must first do so in writing. To be considered, objections must be sent to Relators' Counsel via First Class United States mail, and postmarked by the last day of the "Objection Period," which shall be thirty calendar days after the initial mailing of the Notice and shall be specified on the Notice of Class Action Settlement and Fairness Hearing. Relators' Counsel shall stamp the date of receipt on objections as they receive them and provide copies of the objections to all counsel at weekly intervals. Within five business days of the end of the Objection Period, Relators' Counsel shall file stamped copies of the objections with the Clerk of the Ohio Supreme Court, with Social Security Numbers redacted, and send a final list of the

objectors to all Counsel by e-mail. The Parties may file with the Court written responses to any filed objections not later than seven calendar days before the Fairness Hearing.

3.7 The Fairness Hearing shall be held at a mutually agreeable date scheduled by the Court, and the date thereof shall be specified on the Notice of Class Action Settlement and Fairness Hearing. Class Members may appear at the Fairness Hearing either in person or through counsel hired by the Class Member.

3.8 At the Fairness Hearing, the Parties will request that the Court issue a Final Order and Judgment Entry containing all of the following:

(a) Certifying the Rule 23 Settlement Class for settlement purposes of the Civil Action only;

(b) Granting final approval of the Settlement Agreement, determining the terms thereof to be fair, reasonable, and adequate, and directing that the settlement be implemented according to the Agreement's terms and provisions; and

(c) Retaining jurisdiction to enforce the terms of the Agreement.

3.9 Within seven days of the expiration of the Claims Period, Relators' Counsel shall provide to all counsel a spreadsheet identifying the individuals who timely returned properly executed and witnessed Claim Forms and Releases, listing the number of workweeks claimed in their respective Claim Forms, and calculating their respective Settlement Shares. Any Claim Forms containing actual or perceived mistakes, discrepancies, or misrepresentations will be resolved by Relators' Counsel in consultation with all other counsel. Respondents agree to cooperate and assist in resolving such issues, including the provision of applicable payroll or employment information as necessary and to the extent available.

3.10 If the Court denies the Joint Motion for Preliminary Approval of Class Action Settlement, then The Civil Action will resume as it existed before the last mediation date of May 20, 2015, including any tolling agreement between the Parties. The case will resume as it existed on March 16, 2015, which was the date of the filing of the Joint Motion for Referral to Mediation and to Stay Proceedings.

IV. SETTLEMENT PAYMENTS AND DISTRIBUTIONS

4.1 The Rule 23 Settlement Fund in the total amount of One Hundred and Twenty-Six Thousand dollars (\$126,000) will be paid by Respondents in accordance with this Agreement and subject to its terms and conditions. Subject to approval by the Court, the Settlement Fund will be distributed to class members, the Named Relators, and the Named Relators' Counsel as provided in this Part IV.

4.2 Class Members' Settlement Shares. The Adjusted Rule 23 Settlement Fund (that is, the Rule 23 Settlement Fund less deductions of service awards to the Named Relators and attorneys' fees and cost reimbursements to Relators' Counsel) will be distributed to Rule 23 Settlement Class Members in individual Settlement Shares as prescribed herein.

4.3 Method of Calculation. The Settlement Shares payable to Rule 23 Settlement Class Members shall be calculated as follows. The Adjusted Rule 23 Settlement Fund will be distributed to all Rule 23 Settlement Class Members who timely return properly executed and witnessed Claim Forms. Their respective Settlement Shares shall be proportionate to their claimed workweeks between July 23, 2004 and the present as shown by their Claim Forms, and subject to any adjustments in accordance with Section 3.9.

4.4 Service Awards. Service awards shall be distributed to the Named Relators in recognition of their service to Relators' Counsel and their contribution to achieving this Settlement

on behalf of all class members. Named Relators Antwan Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Henry Dawkins, and Moniqua White served as class representatives and assisted Relators' Counsel during the course of the litigation, and will receive service awards of \$1,500 each. Named Relators Steve Maddox and Roger Reynolds provided extensive service to Relators' Counsel involving substantial expenditures of time during the litigation itself and in relation to the mediations, and will receive service awards of \$3,000 each. The Named Relators' service awards shall be in addition to their Individual Settlement Shares as prescribed above, and are understood to represent liquidated damages for which Respondents will issue each opt-in a 1099-MISC with box 3 checked.

4.5 Attorneys' Fees and Cost Reimbursements. One third of the Rule 23 Settlement Fund, or \$42,000, will be distributed to Relators' Counsel as and for attorneys' fees and reimbursement of litigation costs. Of that amount sum, the law firm of Nilges Draher, LLC (Tax ID No.: _____) will receive \$34,937.00, and the law firm of Barkan Meizlish Handelman Goodin DeRose Wentz, LLP (Tax ID No.: _____) will receive \$10,795.00. Respondents shall issue forms 1099-MISC to Barkan Meizlish Handelman Goodin DeRose Wentz, LLP and Nilges Draher, LLC reflecting these amounts with box 14 checked.

4.6 Schedule of Payments. Within 14 days of the Effective Date, Respondents will provide \$70,000 to Relators' Counsel to be utilized for payments of the service awards to the Named Relators, the attorneys' fees and cost reimbursements to Relators' Counsel, and the estimated Settlement Shares of the Named Relators. Relators' counsel will provide Respondents with an itemization of the amounts of the estimated Settlement Shares of the Named Relators for purposes of W-2 withholdings. Respondents will provide two additional \$28,000 payments, the first on or before December 1, 2016 and the second on or before July 1, 2017, to Relators' counsel

which represent the Adjusted Rule 23 Settlement Fund, less the estimated Settlement Shares of the Named Relators. On or before November 1, 2016, Relators' counsel will provide Respondents with an itemization of the amounts of the Settlement Shares payable to the Rule 23 Settlement Class Members for purposes of W-2 withholdings. Within 21 days of receiving each of these payments, Relators' Counsel will distribute the the Settlement Shares to the Rule 23 Settlement Class Members who timely returned properly executed and witnessed Claim Forms and Releases.

V. SETTLEMENT ADMINISTRATION

5.1 The Parties and their Counsel agree to cooperate in the settlement administration process and to make all reasonable efforts to control and to minimize the costs and expenses incurred in the administration of this Agreement.

5.2 All settlement payments to the Rule 23 Class Members, including the estimated Settlement Shares of the Named Relators, will be reported as, and are to be withheld upon as, wages for tax purposes. Respondents shall issue and deliver to Relators' Counsel a W-2 in the appropriate amount for each Named Relator and Rule 23 Class Member who receives a payment under this Agreement. Respondents shall withhold from the settlement payments the applicable federal, state, and local taxes and payments due and owing from the settlement payments, including without limitation Medicare taxes, and remit the same to the proper federal, state, and local agencies along with the employer's portion due thereon. Each Named Relator and Rule 23 Class Member will be responsible for all other federal, state, and local taxes or payments due and owing from the settlement payments, including without limitation any payments due and owing to the Ohio Public Employment Retirement System

5.3 Except as provided herein, the Parties shall bear responsibility for their own fees, costs, and expenses incurred by them or arising out of this litigation and will not seek reimbursement thereof from any party to this Agreement or the Released Parties.

5.4 CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY,” AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY

OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

5.5 Respondents shall send all payments identified in this agreement to the law firm of Nilges Draher, LLC, Attention: Shannon Draher, 4580 Stephen Circle, Suite 201, Canton, Ohio 44718 ("N&D").

VI. RELEASE OF CLAIMS

6.1 By operation of the entry of the Judgment and Final Approval, and except as to such rights or claims as may be created by this Agreement, the Class Representatives and each Rule 23 Settlement Class Member who does not timely opt out, on behalf of themselves and their heirs, representatives, attorneys, insurers, successors and assigns, forever and fully release and covenant not to sue Respondents, including without limitation the Village of Lincoln Heights' past, present and future councilmembers, directors, officers, administrators, board members, committee members, commission members, instructors, employees, volunteers, representatives, partners, insurers, contractors, agents, attorneys and any other entity, organization, or individual associated, affiliated or related in any way to the Village of Lincoln Heights, as well as PEP (Public Entities Pool of Ohio), ARPCO (American Risk Pooling Consultants, Inc.), PERSO (Public Entity Risk Services of Ohio), York Risk Pooling Services, their owners, stockholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and/or administrators, and all persons acting by, through, under, or in concert with any of them, and any party that was

or could have been named as a respondent in The Civil Action, from any and all past and present claims, demands, and causes of action alleged in The Civil Action or that could have been alleged, including but not limited to claims for misclassification, holiday pay, sick pay, and fringe benefits.

6.2 This Agreement is not intended to release or discharge any claims asserted in *Aaron Smith v. The Village of Lincoln Heights et al.*, S.D. Ohio, Case No. 1:14-cv-00446, *Henry Dawkins v. Village of Lincoln Heights et al.*, S.D. Ohio, Case No. 1:13-cv-00542, or in connection with the Named Relators' pending Application and Request for Determination for OPERS Membership. Additionally, this Agreement is not intended to release or discharge any rights or claims: (1) that may arise after the Effective Date; (2) that arise under any state's workers' compensation laws; (3) that cannot be released by law; (4) to enforce or to challenge the validity of this Agreement; or (5) to participate in any proceedings before an administrative agency responsible for enforcing labor and/or employment laws, e.g., the Equal Employment Opportunity Commission, except that any right to a monetary award from any such proceedings are hereby waived and released.

6.3 Class Counsel and Class Representatives, on behalf of the Class and each individual Rule 23 Settlement Class Member, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against Respondents, including without limitation the Village of Lincoln Heights' past, present and future councilmembers, directors, officers, administrators, board members, committee members, commission members, instructors, employees, volunteers, representatives, partners, insurers, contractors, agents, attorneys and any other entity, organization, or individual associated, affiliated or related in any way to the Village of Lincoln Heights, for attorneys' fees, expenses, and costs associated with Class Counsel's representation of Relators and the Class. Class Counsel understand and agree that any fee payments approved by the Court will be the full, final, and complete payment of all attorneys'

fees, expenses, and costs associated with Class Counsel's representation of the Class, Rule 23 Settlement Class members, and Relators, regardless of the actual amount of such attorneys' fees, expenses, and costs.

6.4 Class Counsel and Relators, on behalf of the Class and each individual Rule 23 Settlement Class Member, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in The Civil Action, or any related action.

VII. PARTIES' AUTHORITY

7.1 The signatories hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions contained herein.

7.2 All of the Parties acknowledge that they have been represented by competent, experienced counsel throughout all negotiations which preceded the execution of this Agreement, and this Agreement is made with the consent and advice of counsel who have jointly prepared this Agreement.

VIII. MUTUAL FULL COOPERATION

8.1 The Parties agree to use their best efforts and to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement and effectuate the terms of this Agreement.

IX. MODIFICATION

9.1 This Agreement and its attachments may not be changed, altered, or modified, except in writing and signed by the Parties hereto and approved by the Court.

X. COMPLETE AGREEMENT

10.1 No extrinsic, oral or written representations or terms shall modify, vary, or contradict the terms of this Agreement. In the event of any conflict between the Agreement and any other settlement-related document, the Parties intend that this Agreement shall be controlling.

XI. CHOICE OF LAW / JURISDICTION

11.1 This Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the State of Ohio, both in its procedural and substantive aspects, and shall be subject to the continuing exclusive jurisdiction of the Supreme Court of Ohio. This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any party, regardless of who drafted or who was principally responsible for drafting this Agreement or any specific term or condition thereof.

XII. COUNTERPARTS

12.1 This Agreement may be executed in counterparts, and when each party has signed and delivered at least on such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

XIII. MISCELLANEOUS

13.1 The Notice and list of Rule 23 Settlement Class Members to receive the Notice will provide confidential contact information to Class Counsel. The Parties and Class Counsel agree that the Notice shall be the exclusive method of mass communications, and that they will not publish or distribute any information in any mass mailings, including electronic mailings, or publish or post any information on the internet. Class Counsel agrees to use the contact information for Rule 23 Settlement Class Members that is provided solely for the purposes of communicating

regarding this Agreement and implementing this Agreement and for no other purpose, at any time, or for any reason.

13.2 In the event that a potential Rule 23 Settlement Class Member needs additional information about the settlement process, the Notice will direct them to contact Relators' Counsel.

13.3 The Parties agree that neither they nor their attorneys nor representatives have or shall reveal to anyone (other than as may be mutually agreed to in writing or required by law) any of the terms of this Agreement, or any of the amounts, numbers or terms and conditions of any sums payable hereunder except as required for tax preparation purposes, corporate or government purposes, or as required by law. The Parties further agree that there shall be no publication, in any way, of the terms of this Agreement or any of the amounts, numbers or terms and conditions of any sums payable, except as allowed by law. This provision is material inducement for Respondents to enter into this settlement. Notwithstanding the provisions of this Section 13.3, the Parties may respond to questions about The Civil Action by saying "the case is resolved and the parties are not permitted to discuss it any further."

13.4 Except as provided in Section 13.3 or as otherwise specified in this Section, the Named Relators and their counsel agree not to make statements, written or verbal, relating to The Civil Action or the matters alleged therein. In addition, the Named Relators and their counsel agree not to make statements, written or verbal, or cause or encourage others to make such statements, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the Respondents, including without limitation the Village of Lincoln Heights' past, present and future councilmembers, directors, officers, administrators, board members, committee members, commission members, instructors, employees, volunteers, representatives, partners, insurers, contractors, agents, attorneys and any other entity, organization,

or individual associated, affiliated or related in any way to the Village of Lincoln Heights. This prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, investors, potential investors, any board of directors or advisory board or directors, industry analysts, competitors, strategic partners, vendors, employees (past and present), and clients. Notwithstanding this provision: (1) in the event Named Relators are served with a lawful subpoena, they may provide truthful information and testimony in response thereto; (2) Named Relators may cooperate with any governmental investigation; and (3) Named Relators may provide information required by law without violating this settlement. The Village shall also not disparage the Named Relators.

XIV. VOIDING THE AGREEMENT

14.1 In the event this Agreement, or any amended version agreed upon by the Parties, does not obtain judicial approval for any reason, this Agreement shall be null and void in its entirety, unless expressly agreed in writing by all Parties.

14.2 Neither Class Representatives nor Class Counsel shall discourage actual or potential Rule 23 Settlement Class Members from participating in the claims process under this Agreement. Neither Respondents nor their Counsel shall encourage or discourage actual or potential Rule 23 Settlement Class Members from participating in the claims process under this Settlement Agreement.

EXECUTION BY PARTIES AND THEIR COUNSEL

<p>By: _____</p> <p>Hans A. Nilges (0076017) Shannon Draher (0074304) Nilges Draher LLC 4580 Stephen Circle N.W., Suite 201 Canton, Ohio 44718 (330) 354-8967; Fax: (330) 754-1430 hnilges@ohlaborlaw.com sdraher@ohlaborlaw.com</p> <p>Bob DeRose Robi Baishnab BARKAN MEIZLISH HANDELMAN GOODIN DEROSE WENTZ LLP 250 E. Broad Street, 10th Floor Columbus, Ohio 43215 bderose@barkanmeizlish.com rbaishnab@barkanmeizlish.com</p> <p><i>Attorney for Relators</i></p>	<p>By: _____</p> <p>Patrick Kasson (0055570) Tyler Tarney (0089082) REMINGER CO., L.P.A. Capitol Square Building, 4th Floor 65 E. State Street Columbus, Ohio 43215 Phone: (614) 232-2418 Fax: (614) 232-2410 pkasson@reminger.com ttarney@reminger.com</p> <p><i>Attorneys for Respondents</i></p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Dated: _____, 2015

ANTWAN SPARKS

Witness _____

Dated: _____, 2015

STEVE MADDOX

Witness _____

Dated: _____, 2015

HENRY DAWKINS

Witness _____

Dated: _____, 2015

MICHAEL LOWE

Witness _____

Dated: _____, 2015

VERNON JEFFERS

Witness _____

Dated: _____, 2015

ROGER REYNOLDS

Witness _____

Dated: _____, 2015

AARON SMITH

Witness _____

Dated: _____, 2015

MONIQUA WHITE

Witness _____

Dated: _____, 2015

ONAM WILLIAMS

Witness _____

Dated: _____, 2015

THE VILLAGE OF LINCOLN HEIGHTS, OHIO

Its: _____

Witness _____

Dated: _____, 2015

LAVERNE MITCHELL

Witness _____

Dated: _____, 2015

STEPHANIE SUMMEROW-DUMAS

Witness _____

Dated: _____, 2015

DEBORAH SEAY

Witness _____

Dated: _____, 2015

HAROLD STEWART

Witness _____

Dated: _____, 2015

SHARON WILLIS

Witness _____

Dated: _____, 2015

AYRICA RAGLIN

Witness _____

Dated: _____, 2015

RICHARD HEADON

Witness _____

Dated: _____, 2015

COUNCILWOMAN JETTA-CHILES

Witness _____

Dated: _____, 2015

COUNCILWOMAN STEVENSON

Witness _____

Dated: _____, 2015

COUNCILMAN WILLIS

Witness _____

IN THE SUPREME COURT OF OHIO

State of Ohio, <i>ex rel.</i> , Steve R. Maddox., <i>et al.</i> ,	:	
	:	
Relators,	:	Case No.: 14-1267
	:	
v.	:	
	:	
Village of Lincoln Heights, Ohio, <i>et al.</i> ,	:	
	:	
Respondents.	:	

**ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

The parties have filed a Joint Motion for Preliminary Approval of Class Action Settlement pursuant to Civ. R. 23(E), together with a Settlement Agreement (Exhibit 1), a proposed Preliminary Approval Order (Exhibit 2), a proposed Notice of Class Action Settlement and Fairness Hearing (Exhibit 3), a proposed Opt-Out Form (Exhibit 4), and a proposed Claim Form and Release (Exhibit 5). For good cause shown, and upon the whole of the record and proceedings in this litigation, the parties' Joint Motion for Preliminary Approval of Class Action Settlement is granted and the Court finds and orders as follows:

1. This mandamus action was commenced by Named Relators Steve Maddox, Antwan Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Roger Reynolds, Henry Dawkins, and Moniqua White on July 23, 2014. Relators filed the case as a class action pursuant to Civ. R. 23 on behalf of themselves and other members of a class of current and former employees of the Village of Lincoln Heights, estimated by Respondents to be approximately 150 in number. *See* Settlement Agreement § 1.2 (defining "Rule 23 Settlement Class").

2. Relators asserted claims for employee benefits including alleged Misclassification of employees as independent contractors, as well as claims for Holiday Pay, Sick Pay, Fringe Benefits, and OPERS contributions. Respondents denied these claims and asserted defenses to them.

3. Subject to approval by the Court pursuant to Civ. R. 23(E), the parties have agreed to settle the class action upon terms set forth in the Settlement Agreement submitted with their Joint Motion for Preliminary Approval of Class Action Settlement.

4. The parties have informed the Court that the proposed settlement was achieved through two mediations and prolonged, arms-length negotiations, conducted by experienced counsel on both sides. The settlement enabled the parties to bridge significant litigation difficulties and resolve hotly-disputed claims in a manner both sides believe is a fair and reasonable compromise. If approved by the Court, the settlement will make substantial settlement payments available to the Named Relators and approximately 150 class members. The parties jointly submit that the proposed Settlement is fair, reasonable, and adequate, and satisfies the criteria for approval under Civ. R. 23(E).

5. Based on all relevant factors, the Court preliminarily approves the proposed settlement as fair, adequate, and reasonable.

6. To determine whether final approval of the proposed settlement should be granted, the Court will convene a Fairness Hearing at _____ on _____, 2015. The Court directs that Class Members be given notice of the proposed settlement and Fairness Hearing as prescribed below.

7. The Court approves the proposed Notice of Class Action Settlement and Fairness Hearing (“Notice”), the proposed Opt-Out Form, and the proposed Claim Form and Release.

The Court finds that the content of the Notice conforms to the requirements of Civ. R. 23(E) and 23(C)(2).

8. The directs that the Notice, the Opt-Out Form, and the Claim Form and Release be sent to class members by first-class United States mail in the manner described in the Settlement Agreement. The Court finds that this method of distributing the Notice conforms to the requirements of Rule 23(C)(2) and due process.

IT IS SO ORDERED:

IN THE SUPREME COURT OF OHIO

State of Ohio, <i>ex rel.</i> , Steve R. Maddox., <i>et al.</i> ,	:	
	:	
Relators,	:	Case No.: 14-1267
	:	
v.	:	
	:	
Village of Lincoln Heights, Ohio, <i>et al.</i> ,	:	
	:	
Respondents.	:	

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND FAIRNESS HEARING**

To the attention of:

1. Any person who worked for the Village of Lincoln Heights (“the Village”) in any capacity other than a permanent and regular full-time employee, including without limitation any person who worked for the Village as an independent contractor and/or temporary employee between July 23, 2008 to the present (the “Misclassification Subclass”);
2. All employees of the Village from July 23, 2008 to the present who were not provided sick leave benefits pursuant to R.C. 124.38 and R.C. 124.39 (the “Sick Leave Subclass”);
3. Any person who worked for the Village, as an employee or in any capacity other than a permanent or regular full-time employee, at least 30 hours per week during the period from July 23, 2004 through the present but who were not provided fringe benefits pursuant to the Village’s Ordinances (the “Fringe Benefits Subclass”); and
4. Any person who worked for the Village, as an employee or in any capacity other than a permanent or regular full-time employee, from July 23, 2004 to the present who were not provided holiday pay or holiday pay premiums pursuant to the Village’s Ordinances (the “Holiday Pay Subclass”).

Based on information in Respondents’ payroll records, you may be a class member who is entitled to participate in the proposed settlement of claims asserted in the case captioned *State of Ohio, ex rel. Steven R. Maddox, et al. v. The Village of Lincoln Heights, Ohio, et al.*, Ohio Supreme Court Case No. 14-1267 (“the Civil Action”).

Please read this Notice carefully. It contains important information about your rights concerning the class action settlement described below. To participate in the settlement, you

must submit a properly completed Settlement Claim Form and Release of Claims in time for Class Counsel to receive it by [ninety days from the date of mailing]. (See Section 6.c below for a detailed explanation on “How to Participate in the Settlement.”) If you do not turn in a timely Settlement Claim Form and Release of Claims, you will not be entitled to receive any monetary distribution from the settlement. If you do not want to participate in the settlement, and do not want to be bound by the Release described in Section 6.b., you must exclude yourself by mailing the enclosed Opt-Out Form to Class Counsel, postmarked by no later than [DATE].

Unless you “opt-out” of the Civil Action and the settlement by submitting an Opt-Out Statement postmarked by [DATE], you will be bound by the Release in Section 6.b., regardless of whether you submit a Settlement Claim Form and Release of Claims or receive money. *See* Section 9 below, for additional information.

Important Deadlines:

- Deadline for the Settlement Claim Form and Release of Claims: must be mailed in time for Class Counsel to receive it by [ninety days from the date of mailing];
- Deadline for the Opt-Out Form: must be postmarked by [DATE];
- Deadline for objecting to the settlement: must be mailed in time for Class Counsel to receive it by [DATE].

If you have any questions regarding the enclosed Settlement Claim Form and Release of Claims or for assistance with related matters, please contact Class Counsel listed in Section 5 below.

This Notice explains the nature of the Civil Action and the terms of the class action settlement and informs you of your rights and obligations. This Notice should not be understood as an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by the parties or any admission of liability.

This Notice contains information about the following topics:

1. What Is This Civil Action About?
2. What Is A Class Action?
3. What Is The Purpose Of This Notice?
4. Who Is Included In The Civil Action?
5. Who Is Class Counsel?
6. What Are the Benefits and Terms of the Proposed Settlement (including information about how you can participate in the Settlement)?

7. When Is The Fairness Hearing To Approve Settlement?
8. How Can You Object To The Proposed Settlement?
9. How Can You Opt-out Of The Settlement?
10. How Can You Examine Court Records?
11. What If You Have Questions?

1. What Is This Civil Action About?

On July 23, 2014, Relators Steve Maddox, Antwan Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Roger Reynolds, Henry Dawkins, and Moniqua White filed a mandamus class action lawsuit in the Supreme Court of Ohio, captioned above, asserting various claims for employee benefits including claims for Misclassification, Holiday Pay, Sick Pay, Fringe Benefits, and OPERS contributions, on behalf of themselves and others alleged to be similarly situated.

Respondents have denied and continue to deny any wrongdoing and deny any and all liability and damages to anyone. To avoid the burden, expense, inconvenience, and uncertainty of continued Civil Action, however, the parties have collectively concluded that it is in its best interests to resolve and settle the Civil Action by entering into a settlement agreement (the "Settlement").

The Civil Action is presently before the Ohio Supreme Court. The Court has not made any decisions on the merits of Relators' claims. On _____, the Court conditionally certified this matter as a class action for purposes of settlement and granted preliminary approval of the Settlement, subject to a fairness hearing that will take place on _____.

2. What Is A Class Action?

A class action is a civil lawsuit in which the claims and rights of many people are addressed in a single court proceeding. One or more representative Relators, also known as "Class Representatives," file a civil action asserting claims on behalf of an entire class.

3. What Is The Purpose Of This Notice?

The Court has ordered that this Notice be sent to you because you may be a member of the class certified in this Civil Action ("Class Member"), as described in Section 4 below. The purpose of this Notice is to inform you of the proposed settlement and of your rights, including:

- To inform you of your right to "opt-out" of the settlement class, which will thereby exclude you from the Settlement;

- To inform you of your right to file objections to the Settlement; and
- To inform you of the steps you must take to receive any share of the Settlement funds.

4. Who Is Included In The Civil Action?

You are a Rule 23 Settlement Class Member if you fall within one or more of the following four subclasses:

- Any person who worked for the Village of Lincoln Heights (“the Village”) in any capacity other than a permanent and regular full-time employee, including without limitation any person who worked for the Village as an independent contractor and/or temporary employee between July 23, 2008 to the present (the “Misclassification Subclass”);
- All employees of the Village from July 23, 2008 to the present who were not provided sick leave benefits pursuant to R.C. 124.38 and R.C. 124.39 (the “Sick Leave Subclass”);
- Any person who worked for the Village, as an employee or in any capacity other than a permanent or regular full-time employee, at least 30 hours per week during the period from July 23, 2004 through the present but who were not provided fringe benefits pursuant to the Village’s Ordinances (the “Fringe Benefits Subclass”); and
- Any person who worked for the Village, as an employee or in any capacity other than a permanent or regular full-time employee, from July 23, 2004 to the present who were not provided holiday pay or holiday pay premiums pursuant to the Village’s Ordinances (the “Holiday Pay Subclass”).

5. Who Are Class Counsel?

The Court has approved and appointed the following attorneys and two law firms to represent all members of the Class as Class Counsel:

Hans A. Nilges (0076017)
Shannon Draher (0074304)
NILGES DRAHER LLC
4580 Stephen Circle N.W., Suite 201
Canton, Ohio 44718
(330) 354-8967; Fax: (330) 754-1430
hnilges@ohlaborlaw.com
sdraher@ohlaborlaw.com

Bob Derose
Robi Baishnab

BARKAN MEIZLISH HANDELMAN GOODIN DEROSE WENTZ LLP

250 E. Broad Street, 10th Floor

Columbus, Ohio 43215

bderose@barkanmeizlish.com

rbaishnab@barkanmeizlish.com

6. What Are The Benefits And Terms Of The Proposed Settlement?

Relators and Respondents have agreed to the Settlement summarized below. The complete terms and conditions of the proposed Settlement are on file with the Clerk of Court for the Supreme Court as listed below in Section 10. The Parties' obligations under the Settlement Agreement will not become effective unless and until they receive final Court approval, including the exhaustion of any appeals.

a. What are the benefits of the Settlement?

Rule 23 Settlement Class Members who timely and properly complete and return the Settlement Claim Form and Release of Claims, as described in Section 6.c. below, will be eligible to receive a sum of money for workweeks worked for the applicable periods. The amount to be paid per workweek will depend on how many individuals submit a Settlement Claim Form.

b. What is the legal effect of participating in the Settlement?

If the Court grants final approval of the Settlement, the claims asserted in the Civil Action will be dismissed with prejudice and Class Members who do not opt-out will fully release and discharge Respondents and the Released Parties from any and all past and present claims, demands, and causes of action alleged in the Civil Action, including but not limited to claims for misclassification, holiday pay, sick pay, and fringe benefits. When claims are "released," a person covered by it cannot sue for any of the claims that are covered by it. The terms of the Release for this Settlement Agreement are:

By operation of the entry of the Judgment and Final Approval, and except as to such rights or claims as may be created by this Agreement, the Class Representatives and each Rule 23 Settlement Class Member who does not timely opt out, on behalf of themselves and their heirs, representatives, attorneys, insurers, successors and assigns, forever and fully release and covenant not to sue Respondents, including without limitation the Village of Lincoln Heights' past, present and future councilmembers, directors, officers, administrators, board members, committee members, commission members, instructors, employees, volunteers, representatives, partners, insurers, contractors, agents, attorneys and any other entity, organization, or individual associated, affiliated or related in any way to the Village of Lincoln Heights, as well as PEP (Public Entities Pool of Ohio), ARPCO (American Risk Pooling Consultants, Inc.), PERSO (Public Entity Risk Services of Ohio), York Risk Pooling Services, their owners, stockholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and/or administrators, and all persons acting by, through, under, or in concert with any of them,

and any party that was or could have been named as a respondent in The Civil Action, from any and all past and present claims, demands, and causes of action alleged in The Civil Action or that could have been alleged, including but not limited to claims for misclassification, holiday pay, sick pay, and fringe benefits.

This Agreement is not intended to release or discharge any claims asserted in *Aaron Smith v. The Village of Lincoln Heights et al.*, S.D. Ohio, Case No. 1:14-cv-00446, *Henry Dawkins v. Village of Lincoln Heights et al.*, S.D. Ohio, Case No. 1:13-cv-00542, or in connection with the Named Relators' pending Application and Request for Determination for OPERS Membership. Additionally, this Agreement is not intended to release or discharge any rights or claims: (1) that may arise after the Effective Date; (2) that arise under any state's workers' compensation laws; (3) that cannot be released by law; (4) to enforce or to challenge the validity of this Agreement; or (5) to participate in any proceedings before an administrative agency responsible for enforcing labor and/or employment laws, e.g., the Equal Employment Opportunity Commission, except that any right to a monetary award from any such proceedings are hereby waived and released.

c. How can I participate in the Settlement?

If you wish to receive a distribution from the Settlement Fund, you must timely complete and return the enclosed Settlement Claim Form and Release of Claims. The form must be personally signed by the current or former employee who seeks to participate in the Settlement or someone with a legal right to act on his or her behalf.

The Settlement Claim Form and Release of Claims must be properly completed, signed, and mailed to Class Counsel via First Class United States Mail, and received within ninety days from the date of mailing. If you do not properly complete and timely submit the Settlement Claim Form and Release of Claims in order for it to be received within ninety days from the date of mailing, you will not be eligible to receive any monetary distribution. You should NOT complete the Settlement Claim Form and Release of Claims if you complete the Opt-Out Statement. If you submit both the Opt-Out Statement and the Settlement Claim Form and Release of Claims, you will still be bound by the terms of the Settlement.

In summary:

If you wish to receive a distribution from the settlement. Timely complete and return the Settlement Claim Form and Release of Claims *only*.

If you wish to opt out of the settlement. Timely complete and return the Opt-out Form *only*. You will not receive a distribution and will not be bound by the settlement.

If you complete and return both the opt-out form and the the claim form and release of claims. You will be bound by the settlement *and* receive **NO** distribution. That is, you will lose your rights and not receive any payment.

If you do nothing. You will be bound by the settlement *and* receive **NO** distribution. That is, you will lose your rights and not receive any payment.

7. How will my share be calculated?

“Settlement Share” means the Rule 23 Settlement Class Members’ respective shares of the Adjusted Rule 23 Settlement Fund. “Adjusted Rule 23 Settlement Fund” means the \$126,000 Rule 23 Settlement Fund less court approved distributions of service awards to the Named Relators and attorney fees’ and cost reimbursements to Relators’ Counsel. The Adjusted Rule 23 Settlement Fund will be distributed to all Rule 23 Settlement Class Members who timely return properly executed and witnessed Claim Forms. Their respective Settlement Shares shall be proportionate to their claimed workweeks between July 23, 2004 and the present as shown by their Claim Forms, and subject to any adjustments in accordance with Section 3.9 of the Settlement Agreement.

8. When Is The Fairness Hearing To Determine Final Approval of The Settlement?

The Court has granted preliminary approval of the proposed Settlement, concluding preliminarily that the Settlement is fair, adequate, and reasonable and that the proposed distribution of the Settlement amount is fair, adequate, and reasonable. A hearing will be held to determine whether final approval of the Settlement should be granted. At the hearing, the Court will hear objections, if any, and arguments concerning the fairness of the proposed Settlement. The hearing will take place before the Supreme Court of Ohio on _____ at _____. The Court will also consider Class Counsel’s application for fees and costs and the service payments sought by Class Representatives. The time and date of this hearing may be continued or adjourned, so please contact Class Counsel prior to the date of the hearing if you plan to attend.

YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING. YOU MAY ATTEND THE HEARING IF YOU PLAN TO OBJECT TO THE SETTLEMENT. YOU MAY ALSO RETAIN YOUR OWN ATTORNEY TO REPRESENT YOU IN YOUR OBJECTIONS. IF YOU WISH TO ATTEND THE HEARING, YOU MUST SUBMIT A WRITTEN OBJECTION AS DESCRIBED IN THE FOLLOWING SECTION AND MUST STATE IN WRITING YOUR INTENTION TO APPEAR AT THE FAIRNESS HEARING.

9. How Can You Object To The Proposed Settlement?

If you want to object to the Settlement, you may submit a written statement of the objection to Class Counsel at the address below. Your objection will not be heard unless it is mailed to Class Counsel via First Class United State Mail, postage prepaid, and received by Class Counsel no later than _____. The objection need not be in any specific form; a short and simple statement of your objection is sufficient. You do not need to be represented by counsel to object. If you wish to present your objection at the fairness hearing, you must state your intention to do so in your written objection.

10. How Can You Opt-Out Of The Settlement?

You have the right to exclude yourself, and yourself only, from this Civil Action and Settlement. If you choose to exclude yourself, you will not be barred from seeking relief with respect to any legal claims and will be free to pursue an individual claim, if any, against Respondents, but you will not be eligible to receive the benefits of this Settlement. If you intend to exclude yourself, you must complete the enclosed Opt-Out Statement and mail it to Class Counsel at the address below. The Opt-Out Statement must be mailed to Class Counsel via First Class United States Mail, postage prepaid, and postmarked no later than _____. You should NOT complete the Opt-Out Statement if you complete the Settlement Claim Form and Release of Claims. If you do submit both the Opt-Out Statement and the Settlement Claim Form and Release of Claims, you will still be bound by the terms of the Settlement.

11. How Can You Examine Court Records?

The foregoing description of this Civil Action is general and does not cover all of the issues and proceedings thus far, or of the Settlement. In order to see the complete file, including a copy of the Settlement Agreement, you should call and/or visit the Clerk of Court for the Supreme Court of Ohio. The Clerk will make all files relating to this Civil Action available for your inspection and copying at your own expense.

12. What If You Have Questions?

If you have questions about this Notice, or want additional information, contact Class Counsel at the phone numbers and addresses listed in Section 5 above.

This Notice is sent to you by Order of the Supreme Court of Ohio.

IN THE SUPREME COURT OF OHIO

State of Ohio, <i>ex rel.</i> , Steve R. Maddox, <i>et</i>	:	
<i>al.</i> ,	:	
	:	
Relators,	:	Case No.: 14-1267
	:	
v.	:	
	:	
Village of Lincoln Heights, Ohio, <i>et al.</i> ,	:	
	:	
Respondents.	:	

OPT-OUT FORM

SUBMIT THIS FORM ONLY IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS. IF YOU SUBMIT THIS FORM, YOU WILL NOT BE ELIGIBLE TO RECEIVE ANY MONEY FROM THE SETTLEMENT

I wish to opt out of the class settlement. I understand that by opting out I will be excluded from the class settlement and will receive no money from the settlement. I understand that if I opt out, I retain the right to assert an individual claim. I understand that in any separate legal proceeding, it is possible that I may receive nothing or less than I would have received if I had filed a claim under the settlement in this lawsuit. I understand that any separate legal proceeding undertaken by me will be undertaken at my own expense and at my own risk. I understand that Class Counsel will not represent my interests if I opt out.

Print Name

Social Security Number

Signature

Date

Witness

Date

SEND TO:

Nilges Draher, LLC
 Attention: Shannon Draher
 4580 Stephen Circle, Suite 201
 Canton, Ohio 44718

MUST BE MAILED BY UNITED STATES FIRST CLASS MAIL AND POSTMARKED NO LATER THAN _____. PLEASE KEEP A COPY FOR YOUR RECORDS. YOU MAY WISH TO MAIL RETURN RECEIPT REQUESTED.

IN THE SUPREME COURT OF OHIO

State of Ohio, ex rel., Steve R. Maddox., et al.,
Relators,
v.
Village of Lincoln Heights, Ohio, et al.,
Respondents.
Case No.: 14-1267

SETTLEMENT CLAIM FORM AND RELEASE OF CLAIMS

This form must be completed, witnessed and received by Class Counsel no later than [DATE].

[To be pre-inserted by Class Counsel]
Claim Number:
Name:
Address:
City, State, Zip Code:

[To be provided by the employee:]
Name and Address Changes, if any:

Please complete the following inquires to the best of your knowledge. You must give a truthful estimate where applicable.

Part 1

By checking the box below, I swear or affirm that I fall within one or more of the following four subclasses:

- Any person who worked for the Village of Lincoln Heights ("the Village") in any capacity other than a permanent and regular full-time employee, including without limitation any person who worked for the Village as an independent contractor and/or temporary employee between July 23, 2008 to the present (the "Misclassification Subclass");
All employees of the Village from July 23, 2008 to the present who were not provided sick leave benefits pursuant to R.C. 124.38 and R.C. 124.39 (the "Sick Leave Subclass");
Any person who worked for the Village, as an employee or in any capacity other than a permanent or regular full-time employee, at least 30 hours per week during the period from July 23, 2004 through the present but who were not provided fringe benefits pursuant to the Village's Ordinances (the "Fringe Benefits Subclass"); and

- Any person who worked for the Village, as an employee or in any capacity other than a permanent or regular full-time employee, from July 23, 2004 to the present who were not provided holiday pay or holiday pay premiums pursuant to the Village's Ordinances (the "Holiday Pay Subclass").

I swear or affirm that I fall within one or more of the four subclasses described above.

If you checked the box above, move to Part 2. If you did not check the box above, then sign the Claim Form and Release as specified below.

- **Part 2**

If you checked the box for Part 1, then specify the total number of workweeks that you worked for the Village between July 23, 2004 and the present: _____. Afterwards, move to Part 3.

- **Part 3**

By signing below, I freely and voluntarily agree to be forever and fully bound by the release described in the paragraphs below (and memorialized in the Settlement Agreement and further referenced in the Notice of Proposed Settlement of Class Action):

By operation of the entry of the Judgment and Final Approval, and except as to such rights or claims as may be created by this Agreement, the Class Representatives and each Rule 23 Settlement Class Member who does not timely opt out, on behalf of themselves and their heirs, representatives, attorneys, insurers, successors and assigns, forever and fully release and covenant not to sue Respondents, including without limitation the Village of Lincoln Heights' past, present and future councilmembers, directors, officers, administrators, board members, committee members, commission members, instructors, employees, volunteers, representatives, partners, insurers, contractors, agents, attorneys and any other entity, organization, or individual associated, affiliated or related in any way to the Village of Lincoln Heights, as well as PEP (Public Entities Pool of Ohio), ARPCO (American Risk Pooling Consultants, Inc.), PERSO (Public Entity Risk Services of Ohio), York Risk Pooling Services, their owners, stockholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and/or administrators, and all persons acting by, through, under, or in concert with any of them, and any party that was or could have been named as a respondent in The Civil Action, from any and all past and present claims, demands, and causes of action alleged in The Civil Action or that could have been alleged, including but not limited to claims for misclassification, holiday pay, sick pay, and fringe benefits.

This Agreement is not intended to release or discharge any claims asserted in *Aaron Smith v. The Village of Lincoln Heights et al.*, S.D. Ohio, Case No. 1:14-cv-00446, *Henry Dawkins v. Village of Lincoln Heights et al.*, S.D. Ohio, Case No. 1:13-cv-00542, or in connection with the Named Relators' pending Application and Request for Determination for OPERS Membership. Additionally, this Agreement is not intended to release or discharge any rights or claims: (1) that may arise after the Effective Date; (2) that arise under any state's workers' compensation laws; (3) that cannot be released by law; (4) to enforce or to challenge the validity of this Agreement; or (5) to participate in any proceedings before an administrative

agency responsible for enforcing labor and/or employment laws, e.g., the Equal Employment Opportunity Commission, except that any right to a monetary award from any such proceedings are hereby waived and released.

Class Counsel and Class Representatives, on behalf of the Class and each individual Rule 23 Settlement Class Member, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against Respondents, including without limitation the Village of Lincoln Heights' past, present and future councilmembers, directors, officers, administrators, board members, committee members, commission members, instructors, employees, volunteers, representatives, partners, insurers, contractors, agents, attorneys and any other entity, organization, or individual associated, affiliated or related in any way to the Village of Lincoln Heights, for attorneys' fees, expenses, and costs associated with Class Counsel's representation of Relators and the Class. Class Counsel understand and agree that any fee payments approved by the Court will be the full, final, and complete payment of all attorneys' fees, expenses, and costs associated with Class Counsel's representation of the Class, Rule 23 Settlement Class members, and Relators, regardless of the actual amount of such attorneys' fees, expenses, and costs.

I freely and voluntarily agree to be fully and forever bound by the release described in Part 3 above, and I declare under penalty of perjury that the above information in Parts 1 and 2 are correct.

Date

Signature

Date

Witness

To be valid, this Claim Form and Release must be properly completed, signed, witnessed, mailed to Class Counsel at the following address via First Class United States mail, and received by [DATE]:

Nilges Draher, LLC
Attention: Shannon Draher
4580 Stephen Circle, Suite 201
Canton, Ohio 44718

MUST BE MAILED BY UNITED STATES FIRST CLASS MAIL AND POSTMARKED NO LATER THAN _____. PLEASE KEEP A COPY FOR YOUR RECORDS. YOU MAY WISH TO MAIL RETURN RECEIPT REQUESTED.