

NORTH CAROLINA  
MECKLENBURG COUNTY 2: 22

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 4063

ROBERT WRIGHT, MARK  
MICHALEC, and SCOTT  
SHIPMAN, individually and on  
behalf of all others similarly situated,

Plaintiffs

v.

CITY OF CHARLOTTE,

Defendant.

**PLAINTIFFS' RULE 23 MOTION FOR  
CERTIFICATION OF CLASS ACTION,  
APPOINTMENT OF CLASS COUNSEL, AND  
APPOINTMENT OF CLASS  
REPRESENTATIVES.**

NOW COME Plaintiffs Robert Wright, Mark Michalec, and Scott Shipman ("Plaintiffs"), employees or former employees of the City of Charlotte and members or former members of the Charlotte-Mecklenburg Police Department who experienced payroll deductions for the Charlotte Mecklenburg Voluntary Police Pledge Fund ("Pledge Fund") on or after March 16, 2011, individually and on behalf of all other similarly situated participants in the Pledge Fund, and move the Court (a) to Certify this matter as a Class Action, (b) to Appoint Daniel R. Taylor Jr, and E. Winslow Taylor, Taylor & Taylor, Attorneys at Law, PLLC and W. Ellis Boyle, Knott & Boyle, PLLC as Class Counsel, and (c) to Appoint Robert Wright, Mark Michalec, and Scott Shipman as Class Representatives.

In support of their motion, plaintiffs rely on the Affidavit of Named Plaintiffs Robert Wright, Mark Michalec, and Scott Shipman (**Exhibit 1**), the Affidavit of Daniel R. Taylor, Jr., and W. Ellis Boyle (**Exhibit 2**), the Second Affidavit of Daniel R. Taylor, Jr, (**Exhibit 3**) and the

Memorandum of Settlement executed by counsel for the parties (**Exhibit 4**) which was approved by the Charlotte City Council on November 14, 2022.

### **BACKGROUND**

Named plaintiffs, former employees of the City of Charlotte and members or former members of the Charlotte-Mecklenburg Police Department and participants in the Pledge Fund, have brought this action in equity to recover moneys deducted from their weekly pay.

North Carolina Rules of Civil Procedure, Rule 23 entitled “Class Actions” provides: “[i]f persons constituting a class are so numerous as to make it impractical to bring them all before the court, such of them, one or more, as will fairly ensure the adequate representation of all may, on behalf of all, sue or be sued.” To certify a class, North Carolina courts have determined that the class proponents must satisfy the following requirements:<sup>1</sup>

1. The existence of a class;
2. The class members within the jurisdiction of the Court must adequately represent any class member outside the jurisdiction of the Court;
3. The class must be so numerous as to make it impractical to bring each member before the Court;
4. The class members share an interest in a common law or fact and the issue predominates over individual differences in the members’ claims;
5. The party representing the class must fairly insure the representation of all class members;<sup>2</sup>

Plaintiffs address each prerequisite in the following similarly numbered paragraphs.

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<sup>1</sup> G. Gray Wilson, North Carolina Civil Procedure, Ch.23 § 23-1 (Matthew Bender); Crow v. Citicorp Accept. Co., 319 N.C. 274, 354 S.E.2d 459 (1987)

<sup>2</sup> Adequate notice to the class members is often combined with the above five requirements and will be addressed in Plaintiffs Motion For Preliminary Approval of Class Settlement, Appointment of Class Administrator, and Approval of Class Notice Plan to be heard with this Motion.

1. **The Existence of a Class** –As proposed and agreed to in **Exhibit 4** paragraphs 2 & 3, the proposed class consists of

(a) any member of the Charlotte-Mecklenburg Police Department who had a payroll deduction taken from their paycheck to participate in the Charlotte-Mecklenburg Voluntary Police Pledge Fund (“Pledge Fund”) on or after March 16, 2011, and

(b) who did not receive a payout from the Pledge Fund upon a qualifying separating event from the Pledge Fund shall be entitled to a pro rata share of the net settlement proceeds, less attorneys’ fees and expenses, based on all payroll deductions taken for the Pledge Fund, including deductions taken prior to March 16, 2011. The class numbers approximately 1,500 current and former members of the Charlotte Mecklenburg Police Department.<sup>3</sup>

Second Affidavit of Daniel R. Taylor, Jr. (**Exhibit 3**).

So as to properly identify class members so as to allow for proper class distribution, Plaintiffs pray that the Court require for each class member that Defendant City of Charlotte provide to Class Counsel and Class Administrator within seven (7) days after the entry of the Order on Class Certification in electronic form (a) the full name, (b) the employee id number or social security number, (c) the last known mailing address (d) the last known email address (if reasonably available), (e) the total amount of deductions taken from the pay of each class member from January 1, 2001 through termination of the Pledge Fund, and (f) the total amount of deductions

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<sup>3</sup> The statute of limitations for a claim based on ultra-vires action is ten years, this action was commenced on March 16, 2021. Deductions taken prior to March 16, 2011 would be recoverable if the participant also experienced a deduction on or after March 16, 2011 pursuant to the Continuing Tort Doctrine, *Williams v. Blue Cross Blue Shield of North Carolina*, 357 N.C. 170, 581 S.E.2d 415 (2002), or equitable estoppel *Duke University v. Stanback*, 320 N.C. 337, 357 S.E.2d 690 (1987).

taken from the pay of each class member prior to January 1, 2001, if available, or if not available the number of weeks employed prior to January 1, 2001.

2. **Named Plaintiffs Adequately Represent the Class.** As employees or former employees of the Charlotte-Mecklenburg Police Department who participated for varying lengths of time in the Pledge Fund and who fall within the class, Plaintiffs Robert Wright, Mark Michalec, and Scott Shipman are qualified to represent all non-named class members within or outside the jurisdiction of this Court. This is particularly so given that the pro-rata settlement proceeds are to be sent by United States mail to the last known address of each of the Class Members wherever that might be. See Plaintiffs' Joint Affidavit (**Exhibit 1**), and Second Affidavit of Daniel R. Taylor, Jr. (**Exhibit 3**).

3. **Numerosity Exists.** The proposed class consists of approximately 1,500 employees or former employees of the Charlotte-Mecklenburg Police Department who experienced payroll deductions on or after March 16, 2011. The payroll deductions experienced by each proposed class member were relatively small. The deductions varied based on the class members' length of participation in the fund and needs of the fund. The deductions could vary from \$5 for one week's deduction to \$260 for a \$5 deduction taken 52 weeks per year if needed to meet the Fund's obligations. Thus, it would be impractical to expect that claims of these similarly situated individuals could, or would, be pursued separately. The class members, approximately 1,500, are so numerous as to make it impractical to bring each proposed class member before the Court. Second Affidavit of Daniel R. Taylor, Jr. (**Exhibit 3**).

4. **Common Issues Exist and Predominate.** Common issues of law or fact exist as to Charlotte's actions in

- (a) soliciting participation in the Pledge Fund at police department on-boarding sessions using materials prepared by Charlotte employees at Charlotte's expense;
- (b) maintaining Pledge Fund participation records and beneficiary designation records with other Charlotte employee personnel records;
- (c) posting information about the Pledge Fund and providing instructions for changing beneficiary designation on a City of Charlotte sponsored employee website;
- (d) directing that Pledge Fund payroll deductions be taken from Charlotte employee participants when deemed appropriate based on Charlotte's employment records;
- (e) effecting designated Charlotte employee Pledge Fund pay deductions from enrolled participants when instructed by Charlotte employee HR personnel that the payroll deductions were appropriate;
- (f) recording and maintaining weekly and cumulative Pledge Fund deductions on Charlotte employee / participant pay records consistent with other Charlotte employee benefits; and
- (g) effecting the distribution of Pledge Fund payouts to Charlotte employees in accordance with the employee entitlement records maintained by City of Charlotte employees.

And, whether such actions in furtherance of the voluntary employee funded benefits plan for the police department described above were both "ultra-vires" and performed by an employee of the City of Charlotte in the course and scope of his or her employment. Second Affidavit of Daniel R. Taylor, Jr. (**Exhibit 3**).

5. **Adequate Representation.** Counsel representing the class are experienced, able counsel and have and will fairly insure the representation of all class members. Affidavit of Daniel R. Taylor, Jr., and W. Ellis Boyle (**Exhibit 2**); Affidavit of Named Plaintiffs Robert Wright, Mark Michalec, and Scott Shipman (**Exhibit 1**). Additionally, "The City [has admitted], upon

information and belief, that Plaintiffs' counsel is well-credentialed and competent to represent the putative class." Second Affidavit of Daniel R. Taylor, Jr. (**Exhibit 3**). The adequacy of representation is verified by the Memorandum of Settlement in which Named Plaintiffs and putative class members are treated the same, recovering the same percentage of the settlement funds (less attorneys' fees, costs, and expenses) as deductions taken. (**Exhibit 4**)

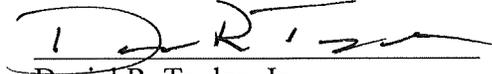
Adequate notice to class members required for the class action to proceed is the subject of Plaintiffs' Motion for Preliminary Approval of Class Settlement, Appointment of Class Administrator, and Class Notice Plan to be filed and heard simultaneously with this motion.

THEREFORE, PLAINTIFFS PRAY THAT THE COURT ENTER AN ORDER AS FOLLOWS:

1. That the Court Certify a Class as described in the attached notice (**Exhibit 3**);
2. That the Court Appoint Daniel R. Taylor Jr, and E. Winslow Taylor of Taylor & Taylor, Attorneys at Law, PLLC and W. Ellis Boyle, Knott & Boyle, PLLC as Class Counsel;
3. That the Court Appoint Robert Wright, Mark Michalec, and Scott Shipman as Class Representatives;
4. That the Court authorize Class Counsel to propose to the Court the Appointment of a Class Administrator and to provide a Class Notice Plan; and
5. That Defendant City of Charlotte provide to Class Counsel and Class Administrator within seven (7) days after the entry of the Order on Class Certification in electronic form for each Class Member (**a**) the full name, (**b**) the employee identification number or social security number, (**c**) the last known mailing address (**d**) the last known email address (if reasonably available), (**e**) the total amount of deductions taken from the pay

from January 1, 2001 through termination of the Pledge Fund, and (f) the total amount of deductions taken from the pay prior to January 1, 2001, if available, or if not available the number of weeks employed prior to January 1, 2001.

This the 15<sup>th</sup> day of November 2022.



Daniel R. Taylor, Jr.  
E. Winslow Taylor  
Attorneys for Plaintiffs  
Taylor & Taylor Attorneys at Law PLLC  
418 N. Marshall St., Suite 204  
Winston-Salem, NC 27101  
Telephone: 336-418-4745



W. Ellis Boyle  
Attorney for Plaintiffs  
Knott & Boyle, PLLC  
4800 Six Forks Road, Suite 100  
Raleigh, NC 27609  
Telephone: 919-783-5900  
Facsimile: 919-783-9650

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on 22<sup>nd</sup> day of November 2022, he served the following:

PLAINTIFFS' RULE 23 MOTION FOR  
CERTIFICATION OF CLASS ACTIONS,  
APPOINTMENT OF CLASS COUNSEL, AND  
APPOINTMENT OF CLASS REPRESENTATIVES

upon counsel for Defendant City of Charlotte by United States Mail addressed to:

Daniel E. Peterson  
Parker Poe  
620 South Tryon Street, Suite 800  
Charlotte, North Carolina 28202

And by email addressed to  
[danielpeterson@parkerpoe.com](mailto:danielpeterson@parkerpoe.com)

This the 22<sup>nd</sup> day of November 2022



Daniel R. Taylor, Jr.  
Taylor & Taylor  
Attorneys at Law, PLLC  
418 N. Marshall St., Suite 204  
Winston-Salem, NC 27101  
Telephone: 336.418.4745

# EXHIBIT 1

NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 4063

ROBERT WRIGHT, MARK  
MICHALEC, and SCOTT SHIPMAN  
individually and on behalf of all others  
similarly situated,

Plaintiffs

v.

CITY OF CHARLOTTE

Defendant.

**JOINT AFFIDAVIT OF ROBERT WRIGHT, MARK  
MICHALEC AND SCOTT SHIPMAN**

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Plaintiffs Robert Wright, Mark Michalec, and Scott Shipman being duly sworn do depose and say as follows:

1. Plaintiff Robert Wright is a citizen and resident of Mecklenburg County, North Carolina. Wright has been a sworn law enforcement officer employed by Charlotte for less than 20 years. Wright has participated in the Pledge Fund and to the best of his recollection has had Five Dollars (\$5.00) deducted from his salary weekly by the City of Charlotte from the time he was first employed on or about May 19, 2008, until salary deductions were ceased subsequent to July 2, 2019. According to Exhibit C of the Receiver's Report in the Graue action prepared by or for City of Charlotte employee Paul Paskoff, in excess of \$2,600 has been deducted from Wright's salary for Pledge Fund purposes.

2. Plaintiff Mark Michalec is a citizen and resident of Cabarrus County, North Carolina. Michalec is a sworn law enforcement officer employed by Charlotte for more than 20 years. Michalec has participated in the Pledge Fund and to the best of his recollection has had Five Dollars (\$5.00) deducted from his salary weekly since first employed on September 24<sup>th</sup> 1994, until City of Charlotte ceased deductions subsequently to July 2, 2019. According to Exhibit C of the Receiver's Report in the Graue action prepared by or for City of Charlotte employee Paul Paskoff, \$6,240.00 has been deducted from Michalec's salary for Pledge Fund purposes.

3. Plaintiff Scott Shipman is a citizen and resident of Union County, North Carolina. Shipman was a sworn law enforcement officer employed by Charlotte. Commencing with his employment on June 21, 1989, Shipman was a Pledge Fund participant and to the best of his recollection had Five Dollars (\$5.00) deducted from his salary weekly until he retired on July 1, 2018. Shipman has not received any payment from the Pledge Fund. According to Exhibit C of the Receiver's Report in the Graue action prepared by or for City of Charlotte employee Paul Paskoff, \$7,800.00 has been deducted from Shipman's salary for Pledge Fund purposes.

4. The employment of Wright, Michalec and Shipman with the City of Charlotte's Police Department did not require a background in finance or investing and none of the plaintiffs had such a background. Nor did their background equip them to understand the authority required to allow the City of Charlotte to deduct moneys from their weekly pay. They each made the decision to participate in the Pledge Fund based on the trust and confidence placed in senior members of the Police Department all of whom were employees of the City of Charlotte, the strong recommendations made to them at the time of their employment by employees of the City of Charlotte, and their desire to be part of the Charlotte police force team which supported

other team members and would support them when needed. The fact that the Pledge Fund was sponsored, approved, and administered by the City of Charlotte definitely influenced their decisions to participate

5. As part of the onboarding employment process, pursuant to which plaintiffs joined the Charlotte Police department, an employee of the City of Charlotte actively encouraged them to join the Pledge Fund at that time or within thirty (30) days of hiring. They were advised by one or more City of Charlotte employee (a) that the Pledge Fund was a good employee benefit which would return to the participant upon vesting more money than had been paid into it, (b) that the Pledge Fund was a vehicle by which they could support more senior police officers and (c) that the Pledge Fund was a vehicle by which they would be supported by subsequent enrollees.

6. At no time during the onboarding process, did the presenters indicate that the Pledge Fund was anything other than a benefit being made available to participants by the City of Charlotte and, in fact, the City of Charlotte listed the Pledge Fund on the voluntary benefits page of its human resources intranet site of the Police Department along with health insurance, 401k, and life insurance benefits.

7. At no point prior to July 2019, were they advised of any possible problems with the financial stability of the Pledge Fund, and, on information and belief, Charlotte was endorsing and actively enrolling newly hired employees to the Pledge Fund well beyond July 2019 when the Graue action was commenced.

8. Wright, Michalec, and Shipman authorized weekly deductions based on their understanding that the Pledge Fund was sponsored, authorized, and administered by the City of Charlotte and that all deductions were properly authorized by the City of Charlotte. Had Wright,

Michalec, or Shipman known that the Charlotte City Council had not authorized any deductions or had only authorized a deduction “when there was a death of a [Pledge Fund] member of the [police] department, with the money going to the beneficiary,” they would have objected to unauthorized deductions. The authorization by the City Council allowing for payroll deductions would have been an indication that the Pledge Fund was financially viable and absent such there was no basis to assume the Pledge Fund was financially viable.

9. Wright, Michalec, and Shipman trusted the City of Charlotte, the city manager, the human resources department, the finance department, and the payroll department to insure that only properly authorized deductions were taken from their salary.

10. Based on Charlotte Mecklenburg’s Officer Down Memorial Page website [www.odmp.org](http://www.odmp.org) eight (8) police officers died in the line of duty during the time that Shipman was a participant in the Pledge Fund, four (4) police officers died in the line of duty during the time that Michalec was a participant in the Pledge Fund, and one (1) police officer died in the line of duty during the time that Wright was a participant on the Pledge Fund. Obviously, if any of those officers were pledge fund participants at the time of death and any other pledge fund participant died when Shipman, Michalec or Wright was a pledge fund participant, a five-dollar deduction would have been appropriate as a death benefit for the deceased Pledge Fund participant if authorized by the Charlotte City Council.

**[Signatures and Notary on following pages 5 – 7]**

Paragraphs 1 and 4 through 10 of the preceding 4-page Joint Affidavit of

Robert Wright, Mark Michalec, and Scott Shipman sworn to

by *Robert Wright*

Robert Wright

This the 10 day of September 2021

North Carolina Mecklenburg County  
I, Shannetta Thompson a Notary Public for  
Said County and State, do hereby certify that Robert Wright  
personally appeared before me this day and acknowledged the  
due execution of the foregoing instrument.

Witness my hand and official seal, this the 10<sup>th</sup> day of September 2021

(Official Seal)



Paragraphs 2 and 4 through 10 of the preceding four-page Joint Affidavit of

Robert Wright, Mark Michalec, and Scott Shipman sworn to

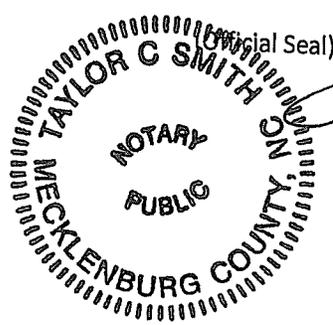
by [Signature]

Mark Michalec

This the 10<sup>th</sup> day of September 2021

North Carolina Mecklenburg County  
I, Taylor C. Smith, a Notary Public for  
Said County and State, do hereby certify that Mark Michalec  
personally appeared before me this day and acknowledged the  
due execution of the foregoing instrument.

Witness my hand and official seal, this the 10<sup>th</sup> day of September 2021



[Signature]

Notary Public

Paragraphs 3 through 10 of the preceding 4-page Joint Affidavit of Robert Wright, Mark Michalec, and Scott Shipman sworn to

by [Signature]

Scott Shipman

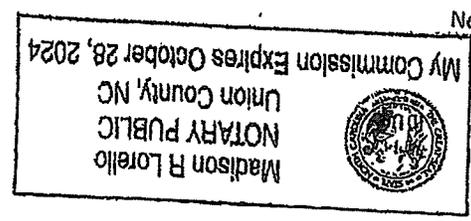
This the 10<sup>th</sup> day of September 2021

North Carolina Union County  
I, Madison Lorella a Notary Public for  
Said County and State, do hereby certify that Scott Shipman  
personally appeared before me this day and acknowledged the  
due execution of the foregoing instrument.

Witness my hand and official seal, this the 10 day of September 2021

(Official Seal) \_\_\_\_\_

Notary Public



# EXHIBIT 2

NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 4063

ROBERT WRIGHT, MARK  
MICHALEC, and SCOTT SHIPMAN  
individually and on behalf of all others  
similarly situated,

Plaintiffs

v.

CITY OF CHARLOTTE

Defendant.

AFFIDAVIT OF DANIEL R. TAYLOR, JR.,  
AND W. ELLIS BOYLE  
IN SUPPORT OF PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION AND APPOINTMENT  
OF CLASS COUNSEL

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Daniel R. Taylor, Jr., of the firm of Taylor & Taylor, Attorneys at Law, PLLC and W. Ellis Boyle of the firm Knott & Boyle, PLLC provide this joint affidavit in support of Plaintiffs' Motion for Certification of Class Action and Appointment of Class Counsel.

I. Daniel R. Taylor, Jr. is a 1968 graduate of the United States Military Academy at West Point, New York, a Vietnam veteran, and former Captain in the United States Army. He graduated *cum laude* from Wake Forest School of Law and is a former law clerk for United States District Court Judge Hiram Ward. Following his clerkship, he joined what is today Kilpatrick Townsend & Stockton where he practiced for approximately forty years, before forming a firm with his son. He has enjoyed a broad civil litigation practice having handled matters throughout North Carolina and the United States. He was named Best Lawyer, Lawyer of the Year for Litigation, Banking and Finance in 2021, 2018 & 2016 (Triad Region North

Carolina); Best Lawyer, Lawyer of the Year for Mass Tort Litigation / Class action Defendants 2019 (Triad Region North Carolina); Best Lawyer, Lawyer of the Litigation – Securities 2012 (Triad Region North Carolina). He has twice recovered over Ten Million Dollars in contested matters as Plaintiffs' counsel and prevailed as lead defense counsel representing R.J. Reynolds Tobacco Company in an ERISA class action that lasted fourteen years including three appeals to the United States Court of Appeals for the Fourth Circuit. He is a Fellow in the Litigation Counsel of America, an invitation only honorary society of less than half percent of the lawyers in America evaluated for effectiveness and accomplishment in litigation and trial work, along with ethical reputation. He also carries an AV Preeminent rating from Martindale-Hubbell, given to attorneys who are ranked at the highest level of professional excellence for their legal expertise, communication skills, and ethical standards by their peers.

2. E. Winslow Taylor is a 2006 graduate of the University of North Carolina at Chapel Hill, and a 2012 graduate of Wake Forest School of Law. Before joining his father in Taylor & Taylor, he worked with a respected North Carolina firm and has handled cases throughout North Carolina and in each of North Carolina's United States District Courts. Winslow Taylor holds an AV Preeminent rating from Martindale-Hubbell.

3. The Taylor & Taylor, Attorney at Law, PLLC has been rated by Best Lawyers of American, Best Law Firms, Tier 1 Litigation Securities (Triad Region of North Carolina) for 2020 and 2021.

4. Daniel R. Taylor, Jr. and E. Winslow Taylor understand that in being appointed class counsel they each have an obligation to and will fairly insure the representation of all class members.

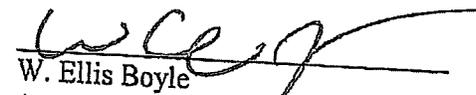
5. W. Ellis Boyle is a partner in Knott & Boyle, PLLC. He is a graduate of Davidson College, a former Captain in the United States Army, a graduate of Wake Forest University School of Law, a law clerk to the Honorable Claude Hilton, United States District Judge for the Eastern District of Virginia, a litigation associate of Womble, Carlyle Sandridge and Rice, a former Assistant United States Attorney for the Eastern District of North Carolina, and General Counsel and Deputy Secretary at the North Carolina Department of Public Safety, before forming the Raleigh NC firm of Knott & Boyle, PLLC. He tried approximately twenty cases as an Assistant United States Attorney and has enjoyed an active trial practice since the formation of Knott and Boyle.

6. W. Ellis Boyle understands that in being appointed class counsel he has an obligation to and will fairly insure the representation of all class members.

This the 10<sup>th</sup> day of May 2021.



Daniel R. Taylor, Jr.  
E. Winslow Taylor  
Attorneys for Plaintiffs  
Taylor & Taylor Attorneys at Law PLLC  
418 N. Marshall St., Suite 204  
Winston-Salem, NC 27101  
Telephone: 336-418-4745



W. Ellis Boyle  
Attorney for Plaintiffs  
Knott & Boyle, PLLC  
4800 Six Forks Road, Suite 100  
Raleigh, NC 27609  
Telephone: 919-783-5900  
Facsimile: 919-783-9650

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

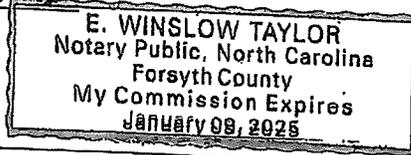
Paragraphs 1, 2, 3 & 4 subscribed, sworn to, and acknowledged before me by Daniel R. Taylor, Jr., this 10<sup>th</sup> day of May 2021.

Notary Public E. Winslow Taylor

Printed Name E. Winslow Taylor

My Commission Expires: 1/9/2025

(SEAL)



STATE OF NORTH CAROLINA

WAKE COUNTY

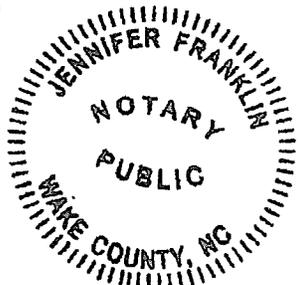
Paragraphs 5 & 6, subscribed, sworn to, and acknowledged before me by W. Ellis Boyle, this 10<sup>th</sup> day of May 2021.

Notary Public Jennifer Franklin

Printed Name Jennifer Franklin

My Commission Expires: 4 July 2024

(SEAL)



**EXHIBIT 3**



2. While the complaint in this action asserts four claims, breach of fiduciary duty (Claim 1), negligent misrepresentation (Claim 2), ultra-vires taking (Claim 3) , and negligence taking (Claim 4), Plaintiffs, after considerable factual (formal and informal) and legal research as to the specific elements of the claims, the statute of limitations, and the moneys recoverable, have abandoned Claims 1, 2 & 4 and settled this case solely on Claim 3.
  
3. The statute of limitations for a claim based on ultra-vires action is ten (10) years *Tommy Davis Construction, Inc. v. Cape Fear Public Utility Authority*, 2014 WL 3345043 affirmed 807 F.3d 62 (2015). The Complaint was filed on March 16, 2021, thus claims arising prior to March 16, 2011, are outside the ten (10) year statute of limitations. Additionally, North Carolina recognizes the “continuing wrong doctrine” which allows a participant who experienced at least one deduction within the statutory period (on or subsequent to March 16, 2011) to recover all deductions taken prior to March 16, 2011. *Williams v. Blue Cross Blue Shield of North Carolina*, 357 N.C. 170, 179, 582 S.E.2d 415, \_\_\_\_ (2003); see also *Babb v. Graham*, 190 N.C. App. 463, 481, 660 S.E.2d 626, 637-638 (2008); *Marzec v. Nye*, 203 N.C. App. 88, 93-97. 690 S.E.2d 542-544 (2010) and *Hamer v. City of Trinidad*, 924 F.3d 1093 (2019).
  
4. The specific ultra-vires actions involve common issues of law and fact as to Charlotte’s actions in
  - (a) soliciting participation in the Pledge Fund at the police department on-boarding sessions using materials prepared by Charlotte employees at Charlotte’s expense;
  
  - (b) maintaining Pledge Fund participation records and beneficiary designation records with other Charlotte employee personnel records;

(c) posting information by Charlotte employees about the Pledge Fund and providing instructions for changing beneficiary designation on a City of Charlotte sponsored employee website;

(d) directing that payroll deductions be taken from Charlotte employee Pledge Fund participants when deemed appropriate based on Charlotte's employment records;

(e) effecting designated Charlotte employee Pledge Fund pay deductions from enrolled participants when instructed by Charlotte HR personnel that Pledge Fund payroll deductions were appropriate;

(f) recording and maintaining weekly and cumulative Pledge Fund deductions on Charlotte employee / participant pay records consistent with other Charlotte employee benefits; and

(g) effecting the distribution of Pledge Fund payouts to Charlotte employees in accordance with the employee entitlement records maintained by City of Charlotte employees.

And, whether the actions in furtherance of the voluntary employee funded benefits plan for the police department from 1966 or at least since March 16, 2011, through June 2019 described above, were both "ultra-vires" and performed by an employee of the City of Charlotte in the course and scope of his or her employment one of the multitude of defenses raised by Defendant.

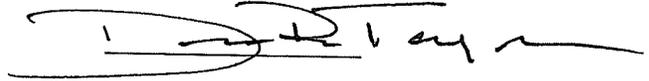
5. Because the Pledge Fund documents allowed participants to withdraw at any time, and thus there was not a promise or guaranty that a retirement payment would be received, we concluded that the maximum recovery available was the return of the deductions taken and thus the principal damages for an ultra-vires claim. Additionally, while there is considerable law regarding ultra-vires taking, this case was unique because we are

unable to find a case where the party engaged in the ultra-vires taking no longer had the funds or had the benefit of the funds to be returned.

6. Each class member shares the common question of law as to whether the taking was ultra-vires and likewise a common interest in the return of the funds taken from his or her pay, but there is no conflict of interest between the interests of the class members because the settlement proceeds, after being reduced by attorneys' fees, costs and expenses, will be distributed to class members based on their percentage of deductions (i.e. if a class member experienced 1% of the total deductions taken, his or her award will be 1% of the settlement proceeds after being reduced by attorneys' fees, costs, and expenses).
7. Additionally, given (a) the relatively simple nature of the claim (ultra-vires deductions taken), (b) the individual recovery being the class members pro-rata percentage of the settlement proceeds (after attorneys' fees, costs, and expenses), and (a) the settlement proceeds will be distributed by United States Mail wherever the participants might now be residing, there is no reason to doubt that any class member who was not a resident of North Carolina could be treated unfairly.
8. In paragraph 9 of its Answer filed June 10, 2021, Defendant admitted that Plaintiffs' counsel is well-credentialed and competent to represent the alleged putative class.
9. In paragraphs 1, 2 & 3 of its Answer filed June 10, 2021, Defendant admitted that Robert Wright, Mark Michalec, and Scott Shipman were participants in the Pledge Fund and had deductions taken from their pay as required for Pledge Fund participation.
10. Since engaged, Plaintiffs' counsel has worked with Robert Wright, Mark Michalec, and Scott Shipman in pursuing their claims. Each has been readily available to confer to discuss claims and strategy when called upon, has rearranged their schedules to discuss relative matters, has participated in the mediation process, and was fully engaged in the

prosecution of the case as was required, and no substantive decision in the case was taken without consultation and agreement of the named plaintiffs.

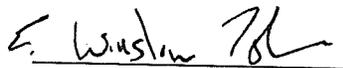
This the 15<sup>th</sup> day of November 2022



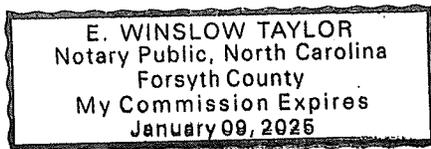
Daniel R. Taylor, Jr.

I, Winslow Taylor, a Notary Public for Forsyth County North Carolina, do hereby certify that Daniel R. Taylor, Jr. personally appeared before me this day and acknowledged due execution of the foregoing instrument.

Witness my hand and official seal, this the 15<sup>th</sup> day of November 2022  
[Official Seal]



Notary Public



# EXHIBIT 4

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21-CVS-4063

ROBERT WRIGHT, MARK MICHALEC,  
and SCOTT SHIPMAN, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

CITY OF CHARLOTTE,

Defendant.

**MEMORANDUM OF SETTLEMENT**

The parties to this action participated in a mediated settlement conference on September 7, 2022 and at that settlement conference resolved in principle all disputes between the putative class and the Defendant by agreement as follows:

1. This is a putative class action related to payroll deductions for the Charlotte-Mecklenburg Voluntary Police Pledge Fund. The parties agree, for the sake of resolving disputed claims, that for this settlement to take effect, the Court must certify the class and approve such settlement.
2. The parties agree, for purposes of resolving these disputed claims in this disputed class, that the class to be certified shall be specified by mutual agreement of counsel at a later date, but that for purposes of this Memorandum of Settlement, the general class qualifications are thus:
  - a. Any Charlotte-Mecklenburg Police Department employee who had a payroll deduction from their paycheck to participate in the Charlotte-Mecklenburg Voluntary Police Pledge Fund ("Pledge Fund") on or after March 16, 2011; and
  - b. Who did not receive a payout from the Pledge Fund upon a qualifying separating event from the Pledge Fund.

3. Any individual who meets the class qualifications shall be entitled to a *pro rata* share of the net settlement proceeds, less attorneys' fees and expenses, based on all payroll deductions to the Pledge Fund, including any taken prior to March 16, 2011.
4. The parties contemplate that the class, if certified by the Court, shall be an "opt-out" class such to provide certainty in the finality of resolving these and related disputed claims.
5. Counsel for Defendant shall recommend to the Defendant's City Council a payment to establish a settlement fund for the putative class in the sum of one million nine-hundred ninety-nine thousand and 00/100 dollars (1,999,000.00). For the sake of clarity, the Defendant's City Council must approve this settlement before it binds the Defendant in any way.
6. If the City Council approves the settlement amount for the settlement fund called for in Paragraph 5, the Defendant agrees to cooperate with the third-party administrator to be appointed to administer the putative class payments from the settlement fund, including identifying for the administrator contact information for individuals who meet the class qualifications described in this Memorandum of Settlement.
7. The net settlement fund agreed herein includes funds to be paid to the class members, as well as attorneys' fees and expenses, and class administrative costs. For the sake of clarity, subject to the City Council's approval, Defendant shall not in any circumstances be obligated to pay any more than the net settlement fund identified in Paragraph 5 of this Memorandum of Settlement.
8. The Defendant makes no claim to the funds in the account maintained by the receiver, Lane Williamson, and the Defendant shall not oppose the Plaintiffs and Class Members seeking disbursement of said funds in this action.
9. The parties, through their attorneys, shall negotiate a mutually acceptable Settlement Agreement which will bring into effect the above-negotiated terms and any terms which, within reason, effectuate the purposes of this Memorandum of Settlement, including but not limited to a full and final release of all claims related

to the Charlotte-Mecklenburg Police Pledge Fund by class plaintiffs and class members.

10. None of the parties shall be bound by this Memorandum of Settlement in the event that (i) the Charlotte City Council does not approve the settlement fund for the amount identified herein; and (ii) the Court declines to approve the settlement of this class action lawsuit. In either event, this Memorandum of Settlement shall be of no force or effect, shall be without prejudice to the rights of any party hereto, shall not be deemed or construed to be an admission by any party of any fact or matter and shall not be used in any way in this action or in any other action or proceeding.
11. This Memorandum of Settlement has been negotiated and entered into for settlement purposes only and does not constitute any evidence against or admission of liability by the Defendant with respect to any claim that has been or could have been asserted against the Defendant.
12. All parties have entered into this Memorandum of Settlement in good faith and with a desire to bring the dispute underlying this action to finality. Each attorney represents that he has the authority, subject to the limitations described herein, to enter into this Memorandum of Settlement.

This, the 7<sup>th</sup> day of September, 2022.

FOR THE PLAINTIFFS AND  
PUTATIVE CLASS MEMBERS:



Daniel R. Taylor, Jr.



FOR THE DEFENDANT:



Daniel E. Peterson