STATE OF NORTH CAROLINA
In The General Court Of Justice

MECKLENBURG County

CERTIFICATE OF TRUE COPY

Office of the Clerk of the Superior Court

As Clerk of the Superior Court of this County, State of North Carolina, I certify that the attached copies of the documents described below are true and accurate copies of the originals now on file in this office.

Number And Description Of Attached Documents:

ROBERT WRIGHT, ET AL

V.

CITY OF CHARLOTTE

21 CVS 4063

ORDER

ET AL

Witness my hand and the seal of the Superior Court

Date	04-04-2023
Clerk Of Superior Court	ELISA CHINN-GARY
Signature	

☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

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.

ORDER

ON PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND CLASS ADMINISTRATOR'S FEE.

THIS MATTER, designated an exceptional case by the July 29, 2021 Order of the Chief Justice of the Supreme Court of North Carolina, pursuant to Rule 2.1 of the General Rules of Practice for Superior and District Courts, and assigned to the undersigned, now comes before the court on Plaintiffs' Motion for Final Approval of Class Settlement and Plaintiffs' Motion for Approval of Attorneys' Fees, Costs and Expenses and Administrator's Fee.

The Court heard the motions on Monday, April 3, 2023, at the Watauga County Courthouse, Courtroom No. 1, 842 W. King Street, Boone, North Carolina. At the hearing, Daniel R. Taylor, Jr., Taylor & Taylor, Attorneys at Law, PLLC and W. Ellis Boyle, Knott & Boyles, PLLC were present on behalf of the Class and the Class Representatives. Defendant was represented at the hearing by Daniel E. Peterson, Parker Poe Adams & Bernstein, LLP,. Class Members were provided an opportunity to request to appear and address the Court at the hearing, but no Class Members submitted such a request.

After reviewing all pending motions, hearing the arguments of counsel, considering all material previously submitted as well as all prior rulings of this Court and the applicable law, and the Court, having determined that because of the interrelated nature of these motions they are most efficiently heard and ruled upon with a single combined Order, makes the following Findings of Fact and Conclusions of Law.

BACKGROUND

On March 16, 2021, plaintiffs Robert Wright, Mark Michalec, and Scott Shipman commenced this putative class action against the City of Charlotte alleging claims based on payroll deductions taken in furtherance of the Charlotte-Mecklenburg Voluntary Police Pledge Fund ("Pledge Fund.").

The Pledge Fund had its genesis at the January 17, 1966 meeting of the Charlotte City Council when members of the Charlotte Police Department requested and the Charlotte City Council "[approved] the use of payroll deductions for the Voluntary Police Pledge Fund, subject to the details being worked out satisfactorily." The Pledge Fund was supposed to provide retiring Pledge Fund participants and each Pledge Fund participant who died in the line of duty with a one-time payment in the amount of $10 times the number of the then Pledge Fund participants.

The retirement or death benefit was to be funded by two deductions of $5 from the weekly pay of the then Pledge Fund participants. The opportunity to participate in the Pledge Fund was made available, if not actively encouraged, at the initial session of the on-boarding process when new recruits joined the police department. The Pledge Fund was presented as an opportunity for the newest members of the Police Department to support the more senior Pledge Fund participants and the Pledge Fund participant was assured that his or her contributions would ultimately result in more money at retirement than the totality of his or her deductions experienced.

However, a Pledge Fund participant could withdraw the authorization given to the City to deduct from his or her salary to fund the retirement or death benefit obligation. Additionally, a weekly deduction of $5 would only support retirement payments to 26 retirees per year. As larger recruit classes with a large number of Pledge Fund participants began to retire, the Pledge

Fund fell behind more than two years in funding the supposed retirement benefit. Ultimately, an investigation of the Pledge Fund was conducted, and the Pledge Fund was found to be both insolvent and unsustainable. Subsequently, in response to an action commenced by Police Department leadership, the Court enjoined further deductions.

The Pledge Fund Plaintiffs initially asserted two claims – breach of fiduciary duty and negligent misrepresentation - based on the superior relationship of the presenters of the Pledge Fund opportunity to the impressionable new recruits at the Police Academy and actual representations of benefits to be received made during the onboarding process.

On June 19, 2021, Defendant answered Plaintiffs' Complaint denying all substantive allegations and raising 17 additional defenses. The Affirmative Defenses put in issue a myriad of substantive issues – at a minimum jury issues - at the heart of the case including questions of (a) whether statements and actions giving rise to potential liability were made by Charlotte employees assigned to the Police Department in the course and scope of their employment, which, if not, would only give rise to a claim or claims against the speaker, but not a claim against the City of Charlotte; (b) whether plaintiffs' written instruction for the deductions to be taken precluded any claim based on the taking of the deductions for the requested reasons, and (c) whether the Pledge Fund participants were guilty of laches (or similar equitable defenses) for failing to appreciate the shortcomings of the Pledge Fund.

Thereafter, plaintiffs amended their complaint and for all practical purposes proceeded solely on their third claim contending that Charlotte's actions in taking payroll deductions for and administrating the Pledge Fund were ultra-vires and as a result plaintiffs were in equity entitled to the return of all deductions taken. The premise of the ultra-vires claim was the proposition that Charlotte, as a subdivision of the General Assembly, only possessed the powers granted to it by the General Assembly, and that the General Assembly never granted to Charlotte the authority or power to authorize, take deductions for, and administer the Charlotte-Mecklenburg Voluntary Police Pledge Fund.

The ultra-vires claim in essence asserts (a) that notwithstanding that each Class Member requested that the City take payroll deductions for the benefit of other Pledge Fund participants who had died or retired, and (b) notwithstanding that there is no evidence that the money deducted was used by the City for any purpose other than as intended by the Pledge Fund

participants, the actions of Charlotte were ultra vires and all deductions taken should be repaid by Charlotte.

While the record seems to support Plaintiffs' contention – that Charlotte never had authority in 1966 or thereafter to approve and administer the Pledge Fund – a position about which Charlotte does not agree, Charlotte contends that the payroll deductions taken at the request of Pledge Fund members and directed to the Charlotte-Mecklenburg Voluntary Police Pledge Fund as requested by the Class Members was a simple act, similar to taking deductions for the United Way, and to the extent that Chalotte employees were acting to advance their individual interest or the interest of the Pledge Fund, their actions were not within the course and scope of their employment with the City of Charlotte.

After initiating substantial formal discovery, informal discovery, interviewing Pledge Fund participants, obtaining detailed payroll information about Pledge Fund participants from January 2, 2001 through termination of the deductions in June of 2019, and obtaining affidavits from numerous Pledge Fund participants, the parties engaged in three mediation sessions over nine months before former Chief Business Court Judge James L. Gale – December 16, 2022, May 13, 2022, and September 7, 2022 – with the last mediation session ending with a Memorandum of Settlement.

The Memorandum of Settlement provided that Charlotte would pay $1,999,000 to an agreed upon class as follows:

> [a]ny Charlotte-Mecklenburg Police Department employee who had a payroll deduction from their paycheck to participate in the Charlotte-Mecklenburg Voluntary Police Pledge Fund on or after March 16, 2011 and who did not receive a payout from the Pledge Fund upon a qualifying separating event from the Pledge Fund, which individuals shall be entitled to a prorated share of the net settlement proceeds, less attorneys' fees, costs, and expenses, based on all payroll deductions for the Pledge Fund, including any taken prior to March 16, 2011.

The settlement was predicated on (a) the application of the 10 year statute of limitations generally applied to ultra-vires actions, *Tommy Davis Contr. Inc. v. Cape Fear Pub. Util. Auth.*, No. 7:13:CV-2-H, 2014 WL 3345043 (E.D.N.C. July 8, 2014) (b) the application of the "continuing tort" doctrine which allowed Class Members who experienced deductions on or after March 16, 2011 to have considered for pro-rata distribution all deductions prior to March 16,

2011, *Williams v. Blue Cross Blue Shield of North Carolina,* 357 N.C. 170, 581 S.E.2d 415 (2003) and (c) the opportunity for Plaintiffs to pursue $174,173.03 held in the Graue action for distribution to Class Members pursuant to the pro-rata distribution plan provided for in the Memorandum of Settlement.[1] The Memorandum of Settlement was approved by the Charlotte City Council on November 14, 2022, and preliminarily approved by this Court on January 6, 2023.[2]

FINAL APPROVAL OF CLASS SETTLEMENT

The Court has considered each of the factors identified in *Ehrenhaus v. Baker*, 216 N.C.App. 59, 74, 717 S.E.2d 9, 20 (2011), related to whether a Proposed Settlement should receive final approval, with a particular focus on "the likelihood that the class will prevail should litigation go forward and the potential spoils of victory, balanced against the benefits to the class offered in the settlement," and "the class's reaction to the settlement." *See also In re Progress Energy S'holder Litig.*, 2011 WL 5967183, *7, 2011 NCBC 44, p 38 (NC Super Ct. Nov. 29 2011) (discussing factors to consider when evaluating a class settlement under *Ehrenhaus*). The Court concurs with, and adopts, Plaintiffs' contentions as set forth in the Final Approval Motion, which is unopposed, with respect to the *Ehrenhaus* factors, and finds that the Proposed Settlement satisfies each of those factors.

As plaintiffs' counsel has opined, this is a novel and problematic case with a single liability issue. Plaintiffs seek to recover for deductions experienced at their request, which deductions were to be used for a purpose they specifically requested or at least agreed to, and which deductions were to be used for a program without any reasonable legal basis for believing

[1] *Graue et. al. v. The Charlotte-Mecklenburg Voluntary Pledge Fund*, 19-CVS-13137 (Mecklenburg County) was commended on July 2, 2019, to enjoin pledge fund deductions being taken by Charlotte and to seek the appropriate disposition of $174,173.03 held by Wells Fargo in the name of the Mecklenburg Voluntary Police Pledge Fund. The named plaintiffs in the Graue action are all class members in this case.

[2] As noted, the settlement is based on the allegedly ultra-vires deductions. The court confirms plaintiffs' analysis that the breach of fiduciary duty claim, and the negligent misrepresentation claim (both with three year statute of limitations) contained multiple issues as to liability, class certification, and damages, and it was a well-reasoned decision to pursue the matter solely on the equity based ultra-vires claim and not spending time, money, and energy on more difficult claims of significantly less value.

they would ever benefit from the program. Thus facing the strong possibility that they would have received nothing possibly years later, plaintiffs through Class Counsel had obtained a Memorandum of Settlement through mediation on September 7, 2022 in the amount of $1,999.000 with the possibility of adding to that amount an additional $174,173.02, the recovery of which has been confirmed, for a total recovery of $2,173,173.03.[3]

The gross amount (before attorneys' fees, costs, and expenses) of the settlement distribution $2,173,173.03 is approximately 55.4% of the $3,920,834 deductions believed to have been experienced by the Class. After projected attorneys' fees, costs, and expenses, it is estimated that $1,531,173 will be available for distribution with an average distribution of $1,216.18 for the 1,259 class members. This results in 253 class members projected to receive between $2,000 and $2,826.11 in settlement funds, and 396 class members receiving between $1,000 and $1,999 in settlement funds. The range of individual recoveries runs from $2,826.11 to $1.95 (the latter presumably arising from a single $5 deduction) in settlement payments for class members, with the Class Member who is projected to receive $2,826.11 having experienced $7,236.75 in total deductions which is 39.05% of his or her total deductions experienced after attorneys' fees, costs, and expenses.

Having reviewed the facts and the law presented and undertaken an independent examination of the claim, the Court is of the opinion that the claim asserted is indeed problematic and that the Settlement offers a modest but reasonable return of the deductions experienced as well as finality. Thus, the Court believes the settlement is "fair, reasonable and adequate" and that "the likelihood the class will prevail should litigation go forward and the potential spoils of victory" do not outweigh "the benefits to the class offered in the settlement." *Ehrenhaus v Baker* 216 N.C. App at 74, 717 S.E. 2d at 20.[4]

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[3] After intervening in and obtaining a stay of Graue Action, Plaintiffs in this action moved to lift the stay and moved to Transfer Funds Held by Wells Fargo (account no. 2070480764790) to Class Administrator in this action, which unopposed motions were granted pursuant to an Unopposed Consent Order on February 9, 2023.

[4] There is a strong public policy interest in settling complex litigation such as class actions that can linger for years and usurp an extraordinary amount of judicial and private resources. *See generally, Autin v. Pennsylvania Dep't of Corrections,* 876 F. Supp. 1437, 1455 (E.D. Pa. 1995)(noting policy of federal law to encourage settlements); *Penn Dixie Lines v. Grannick,* 238 N.C. 552 (1953).

OTHER EHRENHAUS FACTORS

Class Counsel: As found in its previous Order appointing Class Counsel, the Court has found that the Class was represented by talented and experienced counsel which fact is further confirmed by the method and manner in which they guided this difficult case to conclusion without wasting time and money engaging in inconsequential litigation scrimmages adding little value to the final resolution. Class Counsel are experienced in a wide variety of litigation, including class action litigation, and are well-informed with respect to the legal and factual issues of this case. Class Counsel, on behalf of Plaintiffs, have fully developed the liability issues in this case through interviews, affidavits and research and fully developed the damages issue through information made available pursuant to the Freedom of Information Act. Accordingly, the Court gives "considerable weight" to the endorsement of the Proposed Settlement by Class Counsel. *Ehrenhaus*, 216 N.C.App.at 93, 717 S.E.2d at 31.

No Collusion: The Court has scrutinized the record and finds no evidence to suggest any collusion or a "sweetheart deal" between Plaintiffs and the Defendant. The lawyers involved have excellent reputations, two of whom representing the plaintiffs holding Martindale-Hubbell's AV Preeminent rating reflecting the highest degree of professional competence and professional ethics as determined by their peers. Counsel for the Defendant has substantial experience in municipal litigation across federal and state courts on sundry municipal law issues, including specifically and primarily on behalf of the City of Charlotte. In short, both parties' counsel benefitted from robust and knowledgeable legal services to guide this to a fair resolution. The matter was mediated on three occasions over nine months by a very respected retired North Carolina Business Court Judge who challenged the parties on their various positions and helped the parties reach resolution of a matter on that appears to be an excellent result for both parties. As an aside, the Court commends both parties for their thoughtful approach to this dispute and for not allowing themselves to become engaged in counter-productive litigation tactics when it appears that the liability aspect of this matter is controlled by a single central legal issue, not easily influenced by extraneous facts, and very definable damages.

Notice to Class Members: Notice has been given to the Class pursuant to and in the manner directed by the Preliminary Approval Order, proof of mailing of the Notice has been

filed with the Court, and a full opportunity to be heard (including by written comment / objection, or by appearing at the final approval hearing) and to opt-out has been offered to all parties, to class members. The form and manner of the Notice is hereby determined to have been the best notice practical under the circumstances given that most of the Class Members are current employees of the Defendant and those that are not current employees were employed by Defendant within the last five years. Thus the Notice given was in full compliance with the requirements of Rule 23 of the North Carolina Rules of Civil Procedure and due process, and it is further determined that all members of the Class are bound by this Order.

No Opt-Out nor Objections: The Court has been advised by Class Counsel and Class Administrator that it has received no requests to opt-out of the Class, nor has it received any written objections or comments with respect to the Proposed Settlement. The Court finds in these circumstances that "silence may be construed as assent," and that because there has been adequate notice of the terms of the Proposed Settlement and the procedure for submitting objections, the "dearth of objections" can be construed to "indicate [the Proposed Settlement] is fair. *Ehrenhaus*, 216 N.C.App.at 92,717 S.E.2d at 31.

The Settlement Plan: The Proposed Settlement incorporates a plan for allocating the settlement proceeds, which has been adopted by the Class Administrator, and which the Court finds to be in the best interest of the Class Members. There is no better way to allocate the settlement proceeds than to distribute the net settlement proceeds in proportion to the payroll deductions experienced within the class period which is consistent with the statute of limitations and the continuing tort doctrine.

Finality: The Proposed Settlement provides the Class with finality and eliminates the possibility that an unsuccessful result in a problematic case where the Class Members requested or at least authorized the taking of the deductions for purposes they specifically designated. Additionally, the Proposed Settlement eliminates further delay in reimbursing the Class for a meaningful portion of the deductions taken.

For all of the above reasons, the Court finds, as a fact and as a matter of law, that the Settlement is "fair, reasonable and adequate," is in the best interest of the class, and fulfills the requirements for Final Approval set out in *Ehrenhaus v Baker* 216 N.C. App at 74, 717 S.E. 2d at 20.

ATTORNEYS' FEES

Class Counsel, through their efforts, have created a common fund from which they request their attorneys' fees be paid. Under the common-fund doctrine, the court through the exercise of its equitable powers, has the authority to distribute attorneys' fees from a fund created through the efforts of Class Counsel for the benefit of the class. See Manual of Complex Litigation sec. 14.12 (4th ed. 2007); *e.g. Bailey v. State*, 348 N.C. 130, 159-61 (1998)(approving attorney's fee in class action out of common fund recovery).

The Class consists of 1,259 members, who will receive approximately $1.95 to approximately $2,826.11 which can be traced with some precision and awarded pro-rata to the deductions experienced. The Settlement therefore creates a common fund in the amount of $2,173,173.03. See, e.g., *Bailey v. State*, 348 N.C. 130, 161-62, 500 S.W.2d 54, 72-73 (1998); *In re Synergy, Inc.* 1999 WL 33563728, *5, 1999 NCBC 7, p. 17 (N.C. Super. Ct. July 14, 1999) (holding that class action settlement resulting in creating of common fund under North Carolina Law).

Under the common-fund doctrine, the Court has the authority to award attorneys' fees and costs out of a common fund to prevent the unjust enrichment of the benefiting, but otherwise non-participating, members of a class. *Id.* The Court finds that it is equitable and appropriate to award the Plaintiffs' and Class Counsel their attorneys' fees and costs out of the Common Fund.[5]

Plaintiffs' counsel requests an attorneys' fee award of $600,000: Plaintiffs' counsel seeks an attorney fee award in the amount of $600,000 which amount is justified in multiple

[5] The Court takes judicial notice that Plaintiffs have already obtained a Court Order in the Graue Action allowing for the $174,173.03 currently held by Wells Fargo subject to the control of the *Court in Graue et. al. v. Charlotte-Mecklenburg Volunteer Pledge Fund*, 19-CVS-13137 (Mecklenburg County), to be transferred to the Class Administrator in this action to be included with the Settlement proceeds for distribution to Class Members.

ways based on (a) a Lodestar analysis, (b) recognized contingency fee awards and (c) analysis of Rule 1.5 North Carolina Rules of Professional Conduct.

Lodestar: Plaintiffs' Counsel has expended time records and evidence of the appropriateness of the rates used reflecting in excess of $796,723 in time value through March 17, 2021 for the services rendered. While the rates record might seem high, the Court is unprepared to find that they are not fair and reasonable given the services rendered and the results obtained. Moreover, when the amount requested – two thirds of the recorded rate – is analyzed the rate is effectively $407 an hour, well within the range of reasonableness. As an aside, generally where the rate requested is significantly less than the lodestar rate, it is an indication that the attorneys' fees requested are fair and reasonable.

The hourly billing rates of Dan Taylor and hours billed ($600 x 933.5 hours), Ellis Boyle ($500 x 319.25 hours), and Winslow Taylor ($350 x 220 hours) yielding a lodestar of $796,725 are fair and reasonable standing alone.[6] The requested fee of $600,000 is clearly fair and reasonable.

Contingency fee: Name Plaintiffs executed an engagement letter on October 13, 2020 providing for a 33.3% contingent fee which supports the requested $600,000 award, as 1/3 of $2,173,173.03 is $724,390. Strong authority exists for the proposition that an award of one-third (1/3) of the Common Fund is recognized as standard for attorneys' fees in Common Fund class action settlements. See, e.g., Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. of Empirical Legal Studies 27, 31, 33 (2004) (a comprehensive study of attorneys' fees in class action cases notes "a remarkable uniformity in awards between roughly 30% to 33% of the settlement amount.")

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[6] The most recent comparison found is In *Miriam Equities, LLC v. LB-UBS 2007-C2 Millstream Road, LLC,* 2022 NCBC 54 (2022) where the Court, in ruling on a request for attorneys' fees in a relatively complex matter, found the hourly rates of Kilpatrick Townsend & Stockton partner James Pulliam at $675 an hour and Kilpatrick Townsend Senior Associate Elizabeth Winters at $475 an hour to be "fair and reasonable." The Court noted Pulliam, a partner in Kilpatrick Townsend, had practiced law for 32 years, and Elizabeth Winters had practiced law for 9 years. Dan Taylor practiced law with Kilpatrick Townsend for almost 40 years prior to leaving Kilpatrick Townsend about four years prior to the Court's ruling and his hourly rate in 2017 was $915, and Winslow Taylor was a Wake Forest School of Law classmate of Elizabeth Winters. The rates of Pulliam and Winters, and corresponding experience support a rate of $500 an hour for Mr. Boyle, a former law clerk to a United States District Court Judge, former Womble Bond Dickinson associate, and former Assistant United States Attorney with substantial trial experience.

> It is customary in the state of North Carolina for plaintiff's counsel to be compensated in cases involving civil tort claims by a contingency fee. Traditionally, if the attorney is successful in recovering money for the client, a percentage is applied to the gross amount recovered for the client. The percentages to be applied vary based on the stage of the process at which the case is resolved. Typical fee arrangements provide that the attorney is paid 25% if the case is settled prior to filing the civil action, 33-1/3% after the filing of a civil action and 40% after the case is appealed to the appellate court. The percentage fee is paid in addition to any expenses that the attorney has incurred on behalf of the client.

Byers v. Carpenter, 1998 WL 34031740, *9 (Wake Co. Super. Ct. Jan. 30, 1998).

Applying the agreed upon contingency fee of 33.3% to the recovery of $2,173,173.03 results in a fee award of $724,390.29. However, plaintiffs' counsel has committed to and is requesting the lesser amount of $600,000 which is 27.6% of the settlement amount of $2,173,173.03. Under this analysis, the requested fee of $600,000 is very fair and reasonable.

Based on the above, the Court finds as a fact the requested fee of $600,000 which computes to a blended rate of $400 an hour to be more than fair and reasonable for the services rendered and results obtained.

Rule 1.5 NC Rules of Professional Conduct: Plaintiffs' request of $600,000 in attorneys' fees complies with Rule 1.5 of the North Carolina Rules of Professional Conduct as illustrated by the discussion of the guidelines of rule 1.5.

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly:

The time and labor required is discussed in prior paragraphs. While the fiduciary duty and negligent misrepresentation issues are not particularly novel, the "ultra- vires" question presented novel, problematic and difficult issues given the unusual facts of the case and the Court's inherent, but undefined equitable powers in the context of this case.. It seems unlikely that a program or process started over fifty (50) years ago and payroll deductions administered by city employees continuously during that time for a subgroup of city employees, would have been ultra-vires or raise sufficient concerns of being ultra-vires, such that the city would

willingly pay more than 50% of the deductions taken. As the Court referenced *supra*, the fact that a pathway to settlement was developed speaks to the skill and resourcefulness of all counsel involved, including as relevant here, Plaintiffs' counsel.

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer:

By the very nature of the unfortunate events that gave rise to the losses sustained, and the nature and amount of time expended (1,500 total time expected in approximately two years), it should have been obvious that the matter would preclude and did preclude other engagements.

(3) the fee customarily charged in the locality for similar legal services:

The rates projected in the engagement letter were on the high end of acceptable rates. When the fee is reduced to $600,000, however, resulting in an average effective rate of $407 an hour, without question the fee amount requested is reasonable and well below the rates and fees normally charged in metropolitan North Carolina for complex litigation matters.

(4) the amount involved, and the results obtained:

The principal amount involved was unknown but was believed to be over $4,000,000 (exclusive of interest and attorneys' fees) prior to the matter being settled, and the class certified. However, the final employment / deduction information was determined to be about $3,920,833.98. The settlement recovery of $2,173,173.03 represents approximately 55.46% of the gross recovery for a very problematic case.

(5) the time limitations imposed by the client or the circumstances:

While there were no specific time limits imposed, the clients were very frustrated by, in their view, Charlotte's handling of the Pledge Fund. And as with other problematic cases, an early win or loss is generally better than a delayed victory or defeat, so counsel felt an urgency to

"call the question," as evidenced by their pursuit of the ultra-vires claim as expeditiously as possible.

(6) *the nature and length of the professional relationship with the client:* There was no prior business or professional relationship with the named plaintiffs nor with the class except for Winslow Taylor knowing a class member when they were both undergraduates at the University of North Carolina. Clearly an attorneys' fee award of $600,000 for Class Counsel is more than fair and reasonable for the service rendered and the results obtained for the Class Members in a problematic case and, is consistent with the requirements of Rule 1.5 of the Rules of Professional Conduct.

(7) *the experience, reputation and ability of the lawyer or lawyers performing the services:*

The experience, reputation and ability of the lawyer or lawyers performing the services was previously recognized in the Order of Preliminary Approval.

(8) *whether the fee is fixed or contingent*:

At previously noted, this case was handled on a contingent fee basis and Class Counsel's recovery of any compensation for services rendered was based entirely on the success obtained.

Based on all of the above, the court finds that the attorneys' fees requested in the amount of $600,000 are fair and reasonable for the risk taken and services provided by Class Counsel.

CLASS COUNSEL EXPENSES

Class Counsel are entitled to recover reasonable litigation expenses from the common fund which their efforts created. *In re Ikon.*, F.R.D. at 192. Class Counsel has expenses in excess of $18,000 but has agreed to limit their expenses to $18,000; however, $10,000 was advanced as a nonrefundable expense retainer and as such Class Counsel's actual out of pocket expenditure is $8,000. The court has reviewed the expenses incurred and finds the total expenses incurred as well as the lesser amount requested of $8,000 are more than reasonable.

CLASS ADMINISTRATOR'S FEE

The Court has reviewed the affidavit of Paul Mulholland, President of Strategic Claims Services Class Administrator which reflects that SCS fee is based on the hourly rate of the individual service provider and has also reviewed the rate schedule provided by Mr. Mulholland to Class Counsel provided at the April 3, 2023 hearing. The Court further notes that the fees and expense of SCS to this point is $18,917.78, that based on its experience having administered over 500 other class actions, SCS projects it will require an additional $15,000 and that SCS will limit its total fees and expense to $34,000. Noting that SCS has already received $10,000 from Charlotte, the Court believes that an award of an additional $24,000 is fair and reasonable for the services rendered and to be rendered to bring this matter to conclusion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That Plaintiffs' Unopposed Motion for Final Approval of Class Settlement be and the same hereby is GRANTED.

2. That Defendant City of Charlotte is hereby Ordered to transfer the sum of $1,989,000 ($1,999,000 minus $10,000 previously advanced) to the Class Administrator, Strategic Claims Service, Attn: Margaret Henry, 600 N. Jackson Street, Suite 205, Media, PA 19063 within the next fifteen calendar days;

3. That Plaintiffs shall forthwith present a certified copy of this Final Approval Order to Wells Fargo, N.A. by delivery to Graham Claybrook, Lead Counsel, Wells Fargo Legal Department, 401 S. Tryon Street, MAC D1050-320, Charlotte, NC 28202-1675 consistent with the Unopposed Consent Order on Intervenors' Motions to Lift Stay and to Transfer Funds held by Wells Fargo (account no. 2070480764790) to Class Administrator in *Wright et. al. v. The City of Charlotte,* No 21 CVS 4063 (Mecklenburg County) requiring transfer of $174,173.03 to Strategic Claims Service, Attn: Margaret Henry, 600 N. Jackson Street, Suite 205, Media, PA 19063;

3. That Plaintiffs' Motion for an Award of Attorneys' Fees, Expenses and Class Administrator's Fee be and the same hereby is GRANTED as provided below.

(a) that an attorneys' fee award of $600,000 be approved and payment directed from the Common Fund by the Class Administrator to Taylor & Taylor, Attorneys at Law, PLLC per the below paragraph (g);

(b) that an award of $8,000 in expenses be approved and payment directed from the Common Fund to Taylor & Taylor, Attorneys at law, PLLC per the below paragraph (g);

(c) that administrative fees and expenses in the amount of $34,000 be approved for payment to the Class Administrator, and payment directed from the Common Fund to Strategic Claims Services per the below paragraph (g);

(d) that upon receipt by the Class Administrator of $1,989,000 from Charlotte ($1,999,000 - $10,000 previously advanced and $174,173.03 from Wells Fargo), Taylor & Taylor shall have five days for good cause shown to request an addition to the expense award previously made, which, if granted, will increase the expense amount to be distributed.

(e) that following the expiration of five days if no expense increase is requested by Class Counsel or the within five days after the court approves or denies any request as may be made, Strategic Claims Services by United States Postal Service shall distribute forthwith by First Class Mail to each Class Member his or her pro-rata share of the net settlement funds ($2,173,173.03 less the funds awarded in paragraphs (a), (b), & (c) as increased if any by (d);

(f) that Class Administrator following the mailing of settlement checks to each Class Member, shall notify the Court through Class Counsel of completion of such mailing;

(g) that upon Class Counsel's notification of the mailing of settlement checks to Class Members per paragraph (e) above, the Class Administrator shall (1) transfer to the escrow account of Taylor & Taylor, the approved attorneys' fees of $600,000 and the approved

expenses of $8,000 expenses as may be increased by paragraph (d), and (2) shall pay to the Class Administrator $24,000, representing the Class Administrator's fees and expenses of $34,000 less the $10,000 previously advanced by Charlotte;

(h) If any funds remain in the net settlement fund by reason of uncashed checks or otherwise, then, after the Class Administrator has made reasonable and diligent efforts to have Class Members cash their distribution checks, any balance remaining in the net settlement fund six (6) months after the distribution of such funds shall be used: (i) first, to pay any amounts mistakenly omitted from the distribution to Class Members; (ii) second, to pay any additional Administrative Costs incurred in administering the Settlement including efforts to have Class Members cash their distribution checks; and (iii) finally, to make a contribution to the Charlotte Mecklenburg Lodge # 9, F.O.P. Foundation Inc., 1201 Hawthorne Ln. Charlotte, NC 28205, a non-profit 501(c)(3) Foundation (EIN (Tax ID:32-00333550));

(i) that the Class Counsel shall monitor the distribution of the settlement funds per the above and advise the court when all possible distributions have been made and provide the Court with a proposed Order dismissing with prejudice all claims of Class Members arising from their involvement in the Charlotte-Mecklenburg Voluntary Police Pledge Fund.

SO ORDERED, this the 3 day of April 2023

Honorable R. Gregory Horne
Superior Court Judge Presiding