

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

RON RUTHERFORD, MELISSA STEMPLER,
MIKE LOYNES, DANIEL CRAMER, JAMES B.
RACE, JOYCE A. WILSON, and THE
UNITED RETIRED GOVERNMENTAL
EMPLOYEES (URGE), INDIVIDUAL AND
AS REPRESENTATIVES OF A CLASS,

Case No. 03-76113-NZ

Judge Richard B. Yuille

Plaintiffs,

v

CITY OF FLINT and EDWARD KURTZ, EMERGENCY
FINANCIAL MANAGER FOR THE CITY OF FLINT,

Defendants.

A TRUE COPY
Genesee County Clerk

Gregory T. Gibbs (P26440)
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Attorneys for Plaintiffs

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**ORDER ON MOTION TO ENFORCE COURT ORDER FORBIDDING PAYMENT OF
INTEREST ON PENSION OVERPAYMENT REPAYMENTS**

At a session of said Court held in Courthouse
on the 5th day of April, 2018

PRESENT: HON. RICHARD B. YUILLE, CIRCUIT COURT JUDGE

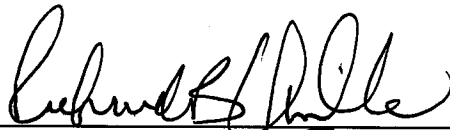
Plaintiffs in this class action lawsuit filed a Motion to Enforce Court Order Forbidding Payment of Interest on Pension Overpayment Repayments, entered May 31, 2006. A Notice of Proposed Settlement Agreement was served on the Plaintiff class members by publication and certified mail, as provided in MCR 3.501, and the court's

Order of 2/20/18. The Court finds that adequate and proper notice of the proposed Settlement Agreement has been given to all interested persons. The Motion having come on for hearing, and the Court being advised in the premises, NOW THEREFORE

IT IS ORDERED that a Settlement Agreement, a copy of which is attached as Exhibit A, is Approved; and

IT IS FURTHER ORDERED that the Motion to Enforce Court Order Forbidding Payment of Interest on Pension Overpayment Repayments is dismissed, with prejudice and without costs or attorney fees awarded to any party, subject to the terms of the Settlement Agreement; and

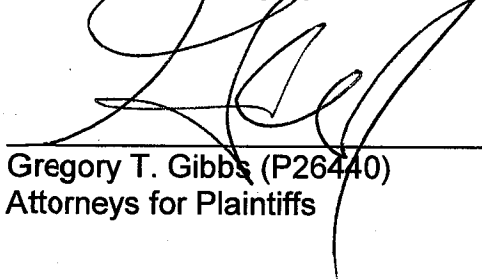
IT IS FURTHER ORDERED that any interested person may file a Motion to enforce the Settlement Agreement; subject to this right, this Order resolves the last pending claim and closes this case.



Hon. Richard B. Yulle, Circuit Judge


Date: April 5, 2018

Law Office of Gregory T. Gibbs



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Attorneys for City of Flint

Prepared by: L. David Lawson, Esq., WINEGARDEN, HALEY, LINDHOLM &
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SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the City of Flint, a Michigan municipal corporation ("City"); and the Plaintiff class members, beneficiaries of deceased Plaintiff class members who are entitled to receive benefits of deceased Plaintiffs, and their successors, in the action of *Ron Rutherford, et al v City of Flint, et al*, Genesee County, Michigan, Circuit Court Case No. 03-76113-NZ (collectively, the "Plaintiffs").

RECITALS

A. The action of *Ron Rutherford, et al v City of Flint, et al*, Genesee County, Michigan, Circuit Court Case No. 03-76113-NZ (the "Lawsuit"), was commenced by Plaintiffs who were retirees of the City of Flint, who sought relief in 2003 from actions of the City in adjusting their pensions to recover overpayments that retirees received as a result of the retirees' use of one or more annual periods including 27-pay dates, for use in determining their Final Average Compensation and the calculation of their pension with the City.

B. The Lawsuit was certified as a class action of all former employees of the City who retired under the City of Flint Employees Retirement System and, with respect to the formula for determining the retirees' pension benefit amount, whose Final Average Compensation (FAC) was calculated using at least one (1) self-selected 27-pay period the City's then-serving Emergency Financial Manager, Edward Kurtz.

C. In the Lawsuit, the Court entered an "Order Granting Defendant City of Flint's Motion for Summary Disposition, Denying Plaintiffs' Motion for Summary Disposition, and Dismissing Case in its Entirety, with Prejudice", on May 31, 2006, which provided, inter alia, that the City was not entitled to unilaterally assess interest in recouping benefits from retirees who had their retirement benefits recalculated as a result of a prior Opinion of the Court, and that any interest paid as part of the recoupment of benefit(s) shall be refunded to them.

D. The City's position is that it was at that time required to calculate pension reductions to recover overpaid pension benefits actuarially over the retiree's life expectancy; and it utilized actuarial calculations that included as factors mortality tables and an interest rate.

E. The Plaintiffs filed a "Motion to Enforce Court Order Forbidding Payment of Interest on Pension Overpayment Repayments" dated June 8, 2017 (the "Motion to Enforce"), in the Lawsuit, alleging that the City had violated the May 31, 2006, Order by utilizing interest in actuarial calculations made to adjust the Plaintiffs' pensions to recover overpayments.

F. The Municipal Employee's Retirement System of Michigan, a Michigan public corporation ("MERS") is the Administrator of the City's pension system and the entity that makes pension payments for the City's retirees, and their beneficiaries.

G. The City and the Plaintiffs, through their respective counsel, have thoroughly reviewed the facts and information concerning the issues raised in the Motion to Enforce, and the relative merits of Plaintiffs' claims, and the City's defenses to the Motion to Enforce; and have engaged in serious settlement negotiations in an attempt to resolve all claims raised in the Motion to Enforce or that are presently pending under the Lawsuit, and have successfully reached a resolution of all those issues and controversies, subject to obtaining the approvals as set forth herein.

H. The City and the Plaintiffs are entering into this Settlement Agreement for the purpose of evidencing their settlement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained in this Settlement Agreement, the City and the Plaintiffs agree as follows:

1. A spreadsheet titled "Rutherford v City of Flint/Overpayment Letters," attached as **Exhibit A**, is represented by the City of Flint to contain an accurate analysis of the pension payments to the Plaintiffs, the amounts that pension payments have previously been reduced to recover overpayments, and the amounts by which pension reductions have exceeded the principal amount of overpayments to be recovered. These are the calculations the City asserts should be utilized in resolution of issues raised by the Plaintiffs in the Motion to Enforce. These calculations will finally resolve the claims of a Plaintiff class member presented in the Motion to Enforce unless a class member opts out or disputes their calculation by way of written objection or at the fairness hearing to be conducted in this matter and the Court changes the calculation as a result of the dispute. Exhibit A categorizes the Plaintiffs in five classes, labelled Sections I-V on Exhibit A, based on the circumstances relating to their respective pensions and repayments.

2. Disputed issues under the Motion to Enforce concerning the Plaintiffs described in Exhibit A, Section I, pages 1-5, and the rights and obligations with respect to those persons, are resolved on the following terms:

- a. Those Plaintiffs who have notified the Court they are opting out of this settlement shall be stricken from the Plaintiffs described in Exhibit A, Section I, pages 1-5 and shall not partake in any distribution of proceeds under this settlement agreement.
- b. Those Plaintiffs who have disputed the City's calculation by way of written objection or fairness hearing and whose calculations

have been changed as a result of their dispute shall be removed from Exhibit A and added to an addendum to Exhibit A Section I which contains the change in calculations.

- c. The City shall take such action as reasonably necessary to have MERS adjust the respective retirees' pensions to the amount set forth for each such Plaintiff in the column titled "New MERS Monthly Pension Amt"; and state that this adjusted pension amount has begun to be paid to these Plaintiffs, who were then receiving pensions, on November 1, 2017. Those Plaintiffs who have been added to an addendum to Exhibit A Section 1 shall have their New MERS Monthly Pension Amount in a manner consistent with the change in calculations. Those Plaintiffs on Exhibit A, pages 1-5, who do not have an amount listed in the "New MERS Monthly Pension Amt" column are retirees who are deceased, and for whom there is no monthly pension payment being made or required to be made to any beneficiary of that Plaintiff.
- d. The City shall take such action as reasonably necessary to cause MERS to issue to each of the Plaintiffs listed on Exhibit A, Section I, pages 1-5, and the addendum to Exhibit A Section I or their successors, a payment in the amount shown in the column titled "Total Over-Deduction", subject to any otherwise applicable payroll taxes or deductions, which payment shall be issued by MERS as an additional pension payment, to be made within sixty (60) days of approval of this Settlement Agreement as provided herein; subject to identification of the proper payee of any deceased Plaintiff entitled to such payment, as provided under par. 2, c.
- e. Counsel for the Plaintiffs shall have the obligation to identify, and inform the City and MERS, of the name and address of the person or entity that is the successor to any deceased Plaintiff listed in Exhibit A, Section I, pages 1-5, that is entitled to receive payment of the amount shown as Total Over-Deduction. The City shall reasonably cooperate in providing such information as is available to it as to the last known address of a deceased Plaintiff. If the City, MERS, a Plaintiff, or a person claiming a right to receive the overpayment to be made to a Plaintiff, disputes the identity of the person or entity to whom the payment should be made, the dispute shall be decided under the contested case rules of the MERS Plan Document. Any amount of an Over-Deduction for which a qualified payee cannot be identified shall be held by the City or MERS, subject to the unclaimed property laws of the State of Michigan.

3. The City represents that the Plaintiffs whose pensions are described in Exhibit A, Sec. II, were determined in 2003 to have been underpaid in their pension, and the City at that time adjusted their pension by adding to their pension the amount shown in the Column, "Monthly Addition", for a monthly pension described in the column "Current MERS Pension Amt". The City represents those Plaintiffs have received additional payments that exceed the principal amount of their underpayment, in the amount described in the column, "Total Underpayment Still Owed" (the negative figure in the spreadsheet representing the amount overpaid). Disputed issues under the Motion to Enforce concerning the Plaintiffs described in Exhibit A, Section II, page 6, under the heading "Overpaid Underpayment" and the rights and obligations with respect to those persons, are resolved on the following terms:

- a. Those Plaintiffs who have notified the Court they are opting out of this settlement shall be stricken from the Plaintiffs described in Exhibit A, Section II and shall not partake in any distribution of proceeds under this settlement agreement.
- b. Those Plaintiffs who have disputed the City's calculation by way of written objection or fairness hearing and whose calculations have been changed as a result of their dispute shall be removed from Exhibit A Section II and added to an addendum to Exhibit A Section II which contains the change in calculations.
- c. The Plaintiff shall be obligated to repay to the City the amount shown in the Exhibit A, Sec. II, or the addendum to Exhibit A, Sec. II column, "Total Underpayment Still Owed," (the negative number representing the amount to be repaid by the Plaintiff), plus an amount equal to the amount shown in the column, "Monthly Addition", multiplied by the number of months from November, 2017, through the first month after effective date that this Settlement Agreement is approved.
- d. Beginning on the first pension payment that is payable after the effective date of the Order approving this Settlement Agreement, the monthly pension to be paid to such Plaintiff shall be the amount shown in the column of Exhibit A, Sec. II, or the addendum to Exhibit A, Sec. II "New MERS Monthly Pension Amt", reduced by the amount determined under Par. 3, a. This reduction shall continue until the principal amount of the amount to be repaid, as determined under Par. 3, a, is paid in full. At that time, the Plaintiff shall begin to receive the monthly pension payment described in the column, "New MERS Monthly Pension Amt".

4. The City represents that the Plaintiffs whose pensions are described in Exhibit A, Sec. III, page 6, "Overpayments Not Paid Back", are spouses of deceased

retirees, who have been entitled to receive survivor pension benefits on the death of their spouse. The City represents that the retiree had their pension reduced beginning in 2003 to recoup overpayments that had been received; but on the retiree's death the pension payment for the surviving spouse was increased back to the pension payment made prior to the pension reduction in 2003, without continuing the reduction previously made to recover prior overpayments. The City states as a result, the Plaintiffs in Exhibit A, Sec. III, have not repaid in full the amount of prior overpayments, the amount remaining owing being described in the column, "Total Bal Due" (the negative number in the spreadsheet representing the amount remaining to be repaid), The pensions for the Plaintiffs who are listed on Exhibit A, Sec. III, page 6, under the heading, "Overpayments not paid back" shall be treated as follows:

- a. Those Plaintiffs who have notified the Court they are opting out of this settlement shall be stricken from the Plaintiffs described in Exhibit A, Section III, page 6 and shall not partake in any distribution of proceeds under this settlement agreement.
- b. Those Plaintiffs who have disputed the City's calculation by way of written objection or fairness hearing and whose calculations have been changed as a result of their dispute shall be removed from Exhibit A Section III, page 6 and added to an addendum to Exhibit A Section III, page 6 which contains the change in calculations.
- c. The Plaintiff is obligated to repay to the City the amount shown under the column, "Total Bal. Due" (the negative number representing the amount to be repaid by the Plaintiff) found in Exhibit A, Section III, page 6, or the addendum to Exhibit A Section III, page 6 which contains the change in calculations..
- d. The repayment shall be made by the Plaintiff receiving, beginning with the first pension payment that is payable after the effective date of the Order approving this Settlement Agreement, the monthly pension amount described in the column, "New MERS Monthly Pension Amt". The overpayment amount due from the Plaintiff shall be reduced by the amount shown in the column, "Monthly Reduction" each month, until monthly reductions equal in amount the total amount to be repaid by the Plaintiff; at which time the monthly pension shall be increased to the amount set forth in the column "MERS Monthly Pension Amt". The amounts to be utilized for the surviving spouse of retiree Thomas C. Grimes, which are set forth on two separate lines of Exhibit A as a result of the payment option that he chose, shall be based on the second line entry for Thomas C. Grimes.

5. No adjustments shall be made to the pensions of the Plaintiffs listed on Exhibit A, Sec. IV, at page 6, as, "Revised due to Judge Yuille - no overpayment of FAC - no reduction". Provided however, that if a Plaintiff listed on Exhibit A, Sec. IV, at page 6 files written objections or attends the fairness hearing to dispute his or her placement in this section and the Court finds in favor of the Plaintiff disputing this placement, the Plaintiff shall be placed in an appropriate addendum to Exhibit A and treated in the manner dictated by the findings of the Court.

6. The Plaintiffs described on Exhibit A, Sec. V, at page 6, under the heading, "Deceased before paying back money", are retirees whose repayment of prior overpayments were not paid in full, as a result of their death, and resulting termination of pension payments before full repayment was made. No provisions for repayment of these amounts are included in this Settlement Agreement. The City shall have the right to seek recovery of such amounts through other means, to the extent otherwise legally permissible.

7. This Settlement Agreement is subject to the approval of the Flint City Council; upon approval by the Flint City Council, to the approval of the Retirement Transition Advisory Board (to the extent that the Retirement Transition Advisory Board continues to have authority over settlement of litigation involving the City); and thereafter to approval by the Court in the Lawsuit, following notice to members of the Plaintiff class as required by the Michigan Court Rules, and any prior Orders of the Court. Unless otherwise agreed by counsel for the City and the Plaintiffs, or as required by the Court, the form of notice shall be as set forth on Exhibit B.

8. The City shall reimburse Plaintiffs' counsel for the cost for publication in the Flint-Genesee Legal News of the required notice to the Plaintiff class members of the Motion to approve this Settlement Agreement; and the cost to send notice by certified mail to the Plaintiff class members, to the extent certified mailing is required.

9. Under applicable provisions of the Flint City Code, collective bargaining agreements, or other agreements, retirees can elect optional forms of payment of their pensions, including payment of survivor benefits on their death, adjustment of pension payments on reaching age 65, and other options. Some of these options would result in an adjustment in monthly pension amounts on reaching a certain age, on death, or otherwise. The terms of this Settlement Agreement are not intended to and do not supercede any rights of a Plaintiff, or of the City or MERS, to enforce the terms of otherwise applicable provisions relating to the options for payment of pension benefits.

10. Nothing in this Settlement Agreement shall be construed as an admission of wrongdoing or liability (except to the extent expressly set forth herein) by the City or any Plaintiff, or anyone acting on their behalf. Rather, the Parties agree that they have entered into this Settlement Agreement to resolve their differences and to avoid further

litigation expenses and court costs relating to the Motion to Enforce. The terms of this Settlement Agreement shall not be construed against any party as the drafter of the Settlement Agreement.

11. Subject to any right of a Plaintiff to opt out of the class of Plaintiffs in the Lawsuit, and the Settlement Agreement, the parties each agree that they shall take all reasonable action, and execute appropriate documents upon reasonable request, to effectuate the terms of this Settlement Agreement. Each party to this Settlement Agreement further agrees that they will take no action (including, but not limited to, an appeal or institution of a separate lawsuit) inconsistent with this Settlement Agreement, or which seeks to challenge any provisions of this Settlement Agreement or any document provided for herein.

12. The parties agree that this Settlement Agreement contains the complete understanding of the parties concerning its subject matter, and that no representations, inducements, promises, agreements, arrangements or undertakings related to the matter set forth herein, whether oral or written, express or implied, between the parties not set forth herein concerning its subject matter shall have any force or effect. No modifications or amendments hereto may be made except by a writing signed by authorized representatives of both of the parties, including, for the City, its Chief Legal Officer, or Acting Chief Legal Officer. This Settlement Agreement may be executed in counterparts, which together shall form one contract.

13. This Settlement Agreement shall be executed by counsel acting on behalf of and representing the City in the Lawsuit; and by a designated plaintiff, and counsel for the Plaintiffs in the Lawsuit, subject to the provisions set forth herein as to required approval of this Settlement Agreement.

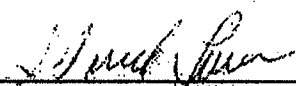
14. This Settlement Agreement, upon obtaining all approvals as set forth herein, shall be binding on, and shall inure to the benefit of, the parties to this Settlement Agreement, and their respective heirs, personal representatives, successors and assigns; and may be specifically enforced by any party to the Settlement Agreement. Provided however, that in the event a Plaintiff who falls within the class of persons defined in this class action establishes that he or she was not on the list of those Plaintiffs named in Exhibit A and/or was not notified of this settlement as required by the Court, such Plaintiff shall have the same rights as those Plaintiffs given notice under this agreement to enforce this agreement.

15. Upon approval of this Settlement Agreement by the Court in the Lawsuit an Order, in the form attached as Exhibit C, shall be submitted to the Court for entry, except as the terms of any such Order may be otherwise modified by the Court, or by written agreement of the attorneys for the City and the Plaintiffs in the Lawsuit.

SIGNATURES ON FOLLOWING PAGE

WINEGARDEN HALEY LINDHOLM
TUCKER & HIMELHOCH, PLC

Dated 2-17-18

By 
L. David Lawson (P32998)
Attorneys for the City of Flint

Dated: _____

Plaintiff


LAW OFFICES OF GREGORY T. GIBBS

Dated: 2-18-18

By _____
Gregory T. Gibbs (P26440)
Attorney for Plaintiffs