

**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS  
CIVIL DIVISION – SECOND DIVISION**

**RICHARD SHUMATE, JR. and  
DAMON REED, on behalf of themselves  
and all other similarly situated persons and entities**

**PLAINTIFFS**

v.

**CASE NO. CV 2012-855**

**CITY OF CONWAY, an Arkansas Municipality**

**DEFENDANT**

**CLASS SETTLEMENT PRELIMINARY APPROVAL ORDER**

On April 22, 2019, Plaintiffs Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities, Class Counsel, and Defendant City of Conway, an Arkansas Municipality (collectively, the “Parties”), executed a proposed Settlement Agreement (the “Settlement Agreement” or “Agreement”). Pursuant to the Agreement, the Parties have jointly moved for entry of an order granting preliminary approval to the Settlement provided for in the Settlement Agreement (the “Settlement”). Having reviewed the Settlement Agreement and the Parties’ submissions in support of preliminary approval of the Settlement, the Court now FINDS, CONCLUDES, AND ORDERS as follows:

**I. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT**

A. Defendant has at all times disputed, and continues to dispute, Plaintiffs’ allegations in the lawsuit and maintained, and continues to maintain, that it has defenses to the claims asserted. Nonetheless, to avoid the burdens and costs of protracted litigation and to provide timely relief to the Class, the Parties have agreed to a settlement providing financial recovery to each Eligible Class Member, defined as a Class Member employed as a Conway Police Officer or Firefighter at any time between December 1, 2001 and January 31, 2011, and who suffered lost wages as a result of Defendant’s failure to make salary “step” increases in 2010, 2011, and/or 2012.

B. On a preliminary basis, and taking into account that (1) the Settlement Agreement

provides immediate relief to the Class; (2) the defenses that have been asserted by Defendant; (3) the risks to members of the Class that Defendant would successfully defend the claims asserted by Plaintiffs; and (4) the length of time that would be required by the Plaintiffs and the Class to obtain a final judgment through one or more trials and additional appeals, the Settlement appears to be fair, reasonable, and adequate. Moreover, the Parties have reached the settlement after extended, arm's length negotiations, which have included multiple formal and informal sessions with Jim Tilley, a skilled and qualified mediator appointed by the Court. For all these reasons, the Settlement falls within the appropriate range of reasonableness for preliminary approval and does not appear in any way to be the product of collusion.

C. Accordingly, it is ORDERED and ADJUDGED that the Settlement Agreement and corresponding Settlement are hereby preliminarily APPROVED.

## **II. APPROVAL OF THE CLASS ACTION SETTLEMENT NOTICE**

As provided for in the Settlement Agreement, Plaintiffs have submitted a proposed Class Action Settlement Notice (the "Settlement Notice"), consisting of both direct mail notice to Class Members and publication notice to occur in the *Conway Log Cabin Democrat*. Copies of the direct mail notice and publication notice are attached to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and Approval of Notice to Settlement Class Members as collective Exhibit D. The Court finds that the Settlement Notice fairly, accurately, and reasonably provides members of the Class with (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding this matter and the Settlement Agreement; and (3) appropriate information about how to challenge or exclude themselves from the Settlement, if they wish to do so. The Settlement Notice also fairly, accurately, and reasonably informs members of the Class

that failure to comply with the provisions contained therein could constitute a waiver of their right to challenge or object to the Settlement, at the Fairness Hearing or otherwise, or to appeal from any order or judgment entered by this Court in connection with the Settlement.

B. The Court also finds that the proposed plan for direct mail notice to Class Members, combined with publication notice in the *Conway Log Cabin Democrat*, is the best notice that is practicable in the circumstances and is reasonably calculated to reach the members of the Class and to apprise them of the Action, the terms and conditions of the Settlement Agreement, their right to opt-out and be excluded from the Class, to object to the Settlement Agreement, and to appear at the Fairness Hearing. The Notice Plan satisfies the requirements of Arkansas Rules of Civil Procedure 23 and due process.

C. Accordingly, the Court hereby ORDERS as follows:

1. The form and content of the proposed Settlement Notice is hereby approved.
2. Promptly following the entry of this Order, Plaintiffs shall prepare final versions of the Settlement Notice, incorporating into the Settlement Notice the Fairness Hearing dates and deadlines set forth in Section III of this Order.
3. By June 1, 2019, Plaintiffs shall have completed the distribution and publication of notice as described in the Notice Plan. A copy of the Settlement Notice also will be posted on Class Counsel's websites.
4. By June 20, 2019, Plaintiffs shall file with this Court a declaration of compliance with the Notice Plan, confirming that Settlement Notice was distributed in the manner directed by the Court, including a description of the manner in which publication notice occurred;
5. Plaintiffs' reasonable costs in administering the Settlement are to be paid

from the Settlement Fund. Plaintiffs bear the costs of administering the Settlement unless and until Payment of the Settlement Funds is made, at which time Plaintiffs will be reimbursed from that Fund.

7. Class Counsel shall report in writing to the Court, no less than ten (10) days before the Fairness Hearing, the following:

- a. The names of all Class Members who sought to be excluded, the date each such Class Member sought to be excluded, and whether the Class Member's request for exclusion was timely and properly made; and
- b. A copy of all documentation concerning each request for exclusion received by Plaintiffs.

### **III. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

#### **A. Fairness Hearing**

1. The Court hereby schedules a final fairness hearing at ~~1:00~~ <sup>P</sup> ~~a.m.~~ on September 5, 2019, at the Faulkner County Circuit Court, Division 2, 510 South German Lane, Conway, Arkansas 72034 (the "Fairness Hearing"), to determine whether the Settlement Agreement and the Settlement should receive final approval.

2. The Parties will have up to and including 10 (ten) days prior to the date of the Fairness Hearing to file their motion or motions for final approval of the Settlement and any briefs in support of the motion(s).

3. The Court stays all further proceedings in this Action as between Plaintiffs and Defendant pending the Fairness Hearing and final determination of whether the Settlement should be approved.

4. The Court enjoins the members of the Class, pending the Fairness Hearing and final determination of whether the Settlement Agreement should be approved, from

challenging in any action or proceeding any matter covered by this Settlement Agreement or its release, except for proceedings in this case related to effectuating and complying with the Settlement Agreement.

**B. Deadline for Members of the Class to Request Exclusion from the Settlement**

1. Any member of the Class who does not wish to participate in the Settlement shall have until August 15, 2019 to submit a request for exclusion from the Class.

2. A member of the Class may effect such exclusion by sending a written request to Class Counsel. The written request must be signed by the Class Member seeking exclusion, or an authorized representative of that person, and provide all of the following information:

- a. The name of this lawsuit, *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Case No. CV 2012-855;
- b. A statement of the Class Member's full name, address, and telephone number;
- c. A statement that the Class Member desires to be excluded from the Class; and
- d. For authorized representatives; a statement of the basis for the signing person's authority to sign on behalf of the Class Member requesting exclusion.

**C. Deadline for Filing Objections to Matters to be Heard at the Fairness Hearing and for Filing Requests to Appear and Present Argument or Evidence**

1. All objections to the Settlement and/or the Settlement Agreement shall be made in writing and, no later than August 15, 2019, filed with this Court and mailed to Class Counsel and Defendant's counsel, by first-class United States Mail, at the addresses listed in the Settlement Notice.

2. Any written objection must include all of the following:
  - a. The name of this lawsuit, *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Case No. CV 2012-855;
  - b. The objector's full name, address, telephone number, and e-mail address;
  - c. A written statement of all grounds for the objection, accompanied by any legal support for the objection;
  - d. The identity of all counsel representing the objector;
  - e. The identity of all counsel representing the objector who will appear at the Fairness Hearing;
  - f. The objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and
  - g. Disclosure of all other objections filed by the objector and/or objector's counsel to any other class action settlement.

3. All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to any aspect of the Settlement or the Settlement Agreement must file with the Court and serve on Class Counsel and Defendant's counsel, no later than ten (10) days prior to the Fairness Hearing, a notice of their intention to appear. The notice shall set forth the basis of their objections, summarize the nature and source of any evidence they intend to present at the Fairness Hearing, and identify the name, position, address, and telephone number of each person who intends to appear at the Fairness Hearing on behalf of the objector.

4. At least ten (10) days before the Fairness Hearing, Class Counsel will file and serve on Defendant's counsel all supporting papers seeking the Court's final approval of the Settlement Agreement.

**D. Approval of Attorneys' Fee Awards, Expense Reimbursements, and Incentive Awards**

1. The Court will also at the Fairness Hearing consider any request that may be made by Class Counsel for an award of attorneys' fees and costs to Class Counsel and for a service award to Plaintiffs, all in accord with the Settlement Agreement.

2. Any award of attorneys' fees shall be paid from the Settlement Fund. Defendant shall not be responsible for the payment of attorneys' fees in any circumstances, other than as awarded by the Court to be paid from the Settlement Fund.

3. Class Counsel will have up to and including July 15, 2019 to file their motion for approval of fees and expenses and a service award to Plaintiffs, with any brief in support.

4. All objections to Class Counsel's Request for fee and service awards, and reimbursement of expenses, shall be made in writing and, no later than August 15, 2019, filed with this Court and mailed to Class Counsel and Defendant's counsel, by first-class United States Mail, at the addresses listed in the Settlement Notice.

5. Any written objection filed pursuant to the preceding paragraph must include all of the following:

- a. The name of this lawsuit, *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Case No. CV 2012-855;
- b. The objector's full name, address, telephone number, and e-mail address;
- c. A written statement of all grounds for the objection, accompanied by any legal support for the objection;
- d. The identity of all counsel representing the objector;

- e. The identity of all counsel representing the objector who will appear at the Fairness Hearing;
- f. The objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation) and
- g. Disclosure of all other objections filed by the objector and/or objector's counsel to any other class action settlement.

6. All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to Class Counsel's request for fee and service awards and reimbursement of expenses must file with the Court and serve on Class Counsel and Defendant's counsel, no later than ten (10) days prior to the date of the Fairness Hearing, a notice of their intention to appear. The notice shall set forth the basis of their objections, summarize the nature and source of any evidence they intend to present at the Fairness Hearing, and identify the name, position, address, and telephone number of each person who intends to appear at the Fairness Hearing on behalf of the objector.

#### **IV. ABSENCE OF ANY ADMISSION OF LIABILITY; DENIAL OF ANY WRONGFUL ACT OR OMISSION AND OF ANY LIABILITY**

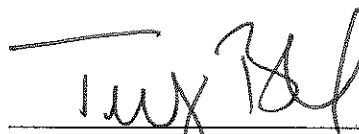
The Parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Nothing contained in this Order, the Settlement Agreement, the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation and Agreement of Settlement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons, or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In entering this Order with this provision and other limiting provisions, this Court



specifically refers to and invoked the Full Faith and Credit Clause of the United States Constitution and the doctrine of comity, and requests that any court in any other jurisdiction reviewing, construing, or applying this Order implement and enforce such limiting provision.

IT IS SO ORDERED.

DATED:

A handwritten signature in black ink, appearing to read "Troy Braswell", written over a horizontal line.

HONORABLE TROY BRASWELL  
FAULKNER COUNTY CIRCUIT JUDGE