

IN THE CIRCUIT COURT OF PRAIRIE COUNTY, ARKANSAS  
CIVIL DIVISION

PAUL BETZNER, et al.

PLAINTIFFS

v.

CASE NO. 59SCV-17-38

C.J. MAHAN CONSTRUCTION CO., LLC, et al.

DEFENDANTS

**ORDER GRANTING PRELIMINARY APPROVAL  
TO PROPOSED CLASS ACTION SETTLEMENT**

Class Representatives Paul Betzner; Rhonda Betzner; The Calvin Fred Betzner Revocable Trust; James Alberson; Tiffani Alberson, individually and as parent and next friend of MJ, a minor; Kelley Kelly; Tony Patterson; and the City of Fredonia a/k/a the City of Biscoe ("Plaintiffs") and defendants C.J. Mahan Construction Company, LLC; Parsons Construction Group, Inc.; and Parsons-Mahan Joint Venture ("Defendants") have reached a proposed settlement and compromise of the disputes between them in this action. That settlement is embodied in a Stipulation and Agreement of Settlement (the "Settlement Agreement") filed with the Court.

The Parties have applied to the Court for preliminary approval of the Settlement Agreement. The Court, having read and considered the Settlement Agreement and accompanying documents, and the parties to the Settlement

Agreement having stipulated to the entry of this Order, IT IS HEREBY ORDERED AS FOLLOWS:

1. The capitalized terms used in this Preliminary Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

2. Subject to further consideration by the Court at the time of the Final Approval Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the Settlement Class Members, as falling within the range of possible final approval, and as meriting submission to the Settlement Class Members for their consideration. The Court bases this finding on the evidence presented at five days of trial in this action before settlement and the Affidavit of John Neihouse, who compiled the damage model for trial. Mr. Neihouse has opined that after payment of costs, attorneys' fees, payment of \$1000.00 per household for exposure claims, and other proper deductions from the settlement amount, that property owners will receive 90% of the individual damages that were received into evidence at trial.

3. The Settlement Class shall be defined using the following class definition that this Court adopted in its April 8, 2020, Amended and Substituted Class Certification Order ("Certification Order"):

(1) The Biscoe Water System ("BWS") and the East Prairie County Water System ("EPCWS").

(2) The BWS and EPCWS customers in customer lists provided with the motion for class certification, and those

natural persons residing in the dwellings or structures that those accounts service.

(3) The property owners during September 1–September 6, 2017, as shown by the records of the Recorder for Prairie County and which were serviced by the 329 accounts listed in the BWS and EPCWS customer lists.

4. The Certification Order found that the requirements of Arkansas Rule of Civil Procedure 23(a) have been satisfied: (1) members of the Settlement Class are too numerous to be joined individually; (2) there are questions of law or fact common to the Settlement Class; (3) the claims or defenses of the Class Representatives are typical of the claims or defenses of the Settlement Class; and (4) the Class Representatives will fairly and adequately protect the interests of the Settlement Class. The Court incorporates by reference those findings from the Certification Order into this Preliminary Approval Order.

5. The Certification Order also found that the requirements of Arkansas Rule of Civil Procedure 23(b) have been satisfied: (1) questions of law or fact common to members of the Settlement Class predominate over any questions affecting only individual members; and (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Court incorporates by reference those findings from the Certification Order into this Preliminary Approval Order.

6. The Certification Order appointed Plaintiffs as Class Representatives and Hall & Taylor Law Partners and Lovell Nalley & Nalley as Class Counsel based on a finding that the Class Representatives and Class Counsels have fairly and



adequately represented and protected the interests of the absent members of the Settlement Class in accordance with Arkansas Rule of Civil Procedure 23. The Court incorporates by reference those findings from the Certification Order into this Preliminary Approval Order.

7. The Settlement Administrator will be John Neihouse of Reece Moore Pendergraft, LLP. The Settlement Administrator shall be responsible for administering the Settlement according to the terms of the Settlement Agreement.

8. A Final Approval Hearing shall be held before this Court at 9:00 a.m./p.m. on Jan 12, 2022 in Des Arc (De Valla to address: (a) whether the proposed Settlement Brett should be finally approved as fair, reasonable, and adequate; (b) whether a final et al Order and Judgment should be entered; (c) whether Class Counsel's application for is torn up attorneys' fees and expenses should be approved; (d) whether the payment of incentive awards, as set forth in the Settlement Agreement, should be approved; (e) whether the claims submitted shall be paid and in what amounts; and (f) any other matters that the Court deems appropriate.

9. With the exception of such proceedings as are necessary to implement, effectuate, and grant final approval to the terms of the Settlement Agreement, all proceedings are stayed in this Action and all Settlement Class Members are enjoined from commencing or continuing any action or proceeding in any court or tribunal asserting any claims encompassed by the Settlement Agreement unless the Settlement Class Member files a valid and timely request for exclusion.

10. The Court approves as to form and content the Notice and Claim Form attached as exhibits to the Settlement Agreement. Within ten (10) business days of the date of this Order, the Settlement Administrator shall cause the Notice and Claim Form to be sent via first class mail to all Settlement Class Members for whom mailing addresses are reasonably available.

11. The Court finds that the Parties' plan for providing notice to the settlement Class Members (the "Notice Plan") described in Section VIII of the Settlement Agreement constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class Members of the pendency of the Action, preliminary certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Approval Hearing, and complies fully with the requirements of the Arkansas Rules of Civil Procedure, the Arkansas Constitution, the United States Constitution, and any other applicable law.

12. The Court further finds that the Notice Plan described in Section VIII of the Settlement Agreement will adequately inform the Settlement Class Members of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement. Any Settlement Class Member who desires to be excluded from the Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must mail to the Settlement Administrator, pursuant to the instructions set forth in the Notice, a timely and valid written

request for exclusion bearing a United States postmark within 60 days of Notice being mailed.

13. In order to be valid, a request for exclusion must: (1) be signed by the member of the Settlement Class or his or her authorized representative; (2) be timely mailed to the Settlement Administrator; (3) clearly request exclusion from the Settlement Class; and (4) contain the Settlement Class Member's name, address, and telephone number. Any Settlement Class Member who elects to be excluded shall not be entitled to receive any of the benefits of the Settlement, shall not be bound by the release of any claims pursuant to the Settlement Agreement, and shall not be entitled to object to the Settlement or appear at the Final Approval Hearing. The names and addresses of all persons timely submitting valid requests for exclusion shall be provided to the Court and counsel for Defendants at or before the Final Approval Hearing.

14. Any Settlement Class Member who timely submits a valid request for exclusion may not object to the Settlement Agreement, to Class Counsel's application for attorneys' fees and expenses, to the payment of Class Representative's incentive award, or to the proposed Final Approval Order/Final Judgment and Order of Dismissal with Prejudice.

15. The Court further finds that the Notice Plan described in Section VIII of the Settlement Agreement will adequately inform the Settlement Class Members of their right to object to the Settlement Agreement. Any Settlement Class Member who desires to object to the Settlement must mail to the Settlement Administrator



and counsel for the parties, pursuant to the instructions set forth in the Notice, a timely and valid written objection bearing a United States postmark within 60 days of Notice being mailed.

16. In order to be valid, any Settlement Class Members making objections must provide: (1) the objector's name, address, and telephone number; (2) a sentence certifying that to the best of his or her knowledge he or she is a Settlement Class Member; (3) the factual basis and legal grounds for the objection to the Settlement; (4) the identity of witnesses whom the objector may call to testify at the Final Fairness Hearing; and (5) copies of exhibits the objector may seek to offer into evidence at the Final Fairness Hearing.

17. Service of all papers relating to an objection shall be made on counsel for the Parties as follows:

Class Counsel:

Randy Hall and Mattie Taylor  
Hall & Taylor Law Partners  
415 N. McKinley St. #1000  
Little Rock, AR 72205

Doyle Nalley and Chance Nalley  
501 North Main Street  
Benton, AR 72015

Counsel for Defendants:

Gary D. Marts, Jr.  
Wright, Lindsey & Jennings LLP  
200 West Capitol Avenue, Suite 2300  
Little Rock, AR 72201

18. Settlement Class Members who fail to file and serve timely written objections in the manner specified above, or who fail to appear at the Final

Approval Hearing, shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

19. Any Settlement Class Member that files and serves a proper and timely objection shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Settlement Class Member's own expense.

20. Any Settlement Class Member who does not make an objection in the time and manner provided in the Settlement Agreement shall be deemed to have waived such objection and shall be forever foreclosed from making any objection to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees and expenses, the payment of class representative's payment, or the Final Approval Order/Final Judgment and Order of Dismissal with Prejudice.

21. Not later than 10 days before the Final Approval Hearing, the Settlement Administrator and Defendants shall cause to be filed with the Court declarations attesting to compliance with the notice requirements set forth above.


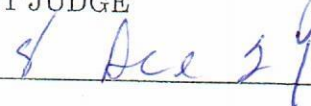
22. Not later than 10 days before the Final Approval Hearing, the Parties shall file a Joint Motion in support of Final Approval of the Settlement, and in response to any objections. On or before the same date, Class Counsel and the Class Representatives may file applications for an award of attorneys' fees and/or class representative payment.



23. In the event that the proposed Settlement does not become Final, or in the event that the Settlement Agreement becomes null and void under its terms, this Preliminary Approval Order and all documents filed and orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this civil action or in any other case or controversy; in such event, the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date of the Settlement Agreement.

24. The Court may, for good cause, extend any of the deadlines set forth in this Preliminary Approval Order without further notice to the Settlement Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class, be continued by order of the Court.

IT IS SO ORDERED.

  
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CIRCUIT JUDGE  
  
\_\_\_\_\_  
Date

Prepared by:

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