

DISTRICT COURT, SIXTH JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF BANNOCK

RICKY G. & LOGAN D ROBINSON
HILL-VIEW MOBILE HOME PARKS, on
behalf of itself and all others similarly
situated,

Plaintiffs,
vs.

CITY OF POCA TELLO, an Idaho
municipality,

Defendant.

Case No.: CV-2014-1520-OC

STIPULATION AND SETTLEMENT
AGREEMENT

This Settlement Agreement (Settlement) is made and entered into on this 21 day of
June, 2019, by and between:

1. The Defendant, City of Pocatello; and,
2. The Plaintiffs, individually and on behalf of the Certified Class (consistent with the
Court's order certifying the class of User Fee Payers, dated May 18, 2018, and
granting partial summary judgment, dated November 19, 2018.

WHEREAS, the Plaintiffs are prosecuting the above-captioned matter against the
Defendants in District Court, Sixth Judicial District, State of Idaho for the County of
Bannock (the Litigation);

WHEREAS the Plaintiffs allege that the City of Pocatello unlawfully charged users
additional charges for the water and sewer systems to "cover the costs of operation,
maintenance, replacement and depreciation, including creating and maintaining reserves for
such expenses, and also instituted a policy called Payment In Lieu of Taxes (hereafter
PILOT) and that such charges and fees were unlawful under federal and state law;

WHEREAS the Plaintiffs have conducted extensive discovery into the facts and the law regarding the Litigation and have concluded that a settlement with the Defendant according to the terms set forth below is fair, reasonable, adequate and beneficial to and in the best interests of the Plaintiffs and the Class;

WHEREAS, the Defendant desires to settle the Litigation to avoid the expense, risk, exposure, inconvenience and distraction of continued litigation, or any action or proceeding relating to the matters being fully settled and finally put to rest in this Settlement;

WHEREAS, Class Counsel and Defendant's Counsel have engaged in extensive arm's-length settlement negotiations, and this Settlement has been reached as a result of these negotiations;

WHEREAS, the Defendant has filed a Motion for Reconsideration concerning the Court's order granting partial summary judgment, dated November 19, 2018, and the parties, after due consideration of the motion and the probabilities that the motion will be granted, have stipulated and agreed that the Certified Class be revised to include individual fee payers who paid user fees including the PILOT component from April 14, 2012 to April 14, 2014;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and for other good and valuable consideration, it is agreed by and among the undersigned that, subject to the approval by the Court, all claims shall be finally, fully and forever settled, compromised and released on the following terms and conditions:

A. Definitions

1. "Class Counsel" refers to:

- a. Beard St. Clair Gaffney PA, 2105 Coronado Street, Idaho Falls, Idaho 83404, and,
- b. Peterson Moss Hall & Olsen, 485 “E” Street, Idaho Falls, Idaho 83402.

2. “Class Member” means each member of the Settled Class, as defined in Paragraph 15 of this Settlement, who does not timely elect to be excluded from the Class, and includes, but is not limited to Plaintiffs.

3. “Counsel” means both Class Counsel and Defendants’ Counsel, as defined herein.

4. “Defendant” means the party listed as Defendant, the City of Pocatello, an Idaho municipality.

5. “Defendant’s Counsel” refers to:

- a. Hall Angel & Associates, LLP, 1075 S. Utah Avenue, Suite 150, Idaho Falls, Idaho 83402.

6. “Execution Date” means the date the Settlement is signed by all Settling Parties.

7. “Final Approval” means the definition given to that phrase in Paragraph 23, herein.

8. “Opt-Outs” means those potential Settlement Class Members that have exercised their right to request exclusion from the Class prior to the Opt-Out Deadline.

9. “Opt-Out Deadline” means the deadline established by the Court and set forth in the Class Notice by which potential Class Members must request exclusion from the Settlement Classes per the Court’s instructions for requesting exclusion.

10. "Plaintiffs" refers to Ricky G. & Logan D. Robinson Hill-View Mobile Home Parks, on behalf of itself and all others similarly situated.

11. "Settlement Amount" refers to an entry of judgment of four million and five hundred thousand United States dollars (\$4,500,000.00).

12. "Settlement Class Period" means the period beginning April 14, 2012 and concluding on April 14, 2014.

13. "Settlement Fund" refers to the Settlement Amount, paid in United States dollars.

14. "Settling Parties" means the Plaintiffs and Defendants, through their respective counsel.

B. Certified Class

15. The Certified Class is more particularly described as:

- a. All persons and entities who, between April 14, 2012 and April 14, 2014, paid user fees to the City of Pocatello that contained a PILOT component.

C. Approval of this Settlement and Entry of Judgment

16. Plaintiffs and Defendant shall recommend approval of this Settlement by the District Court of the Sixth Judicial District for the State of Idaho, County of Bannock. The Plaintiffs and Defendant shall use their best efforts to effect this Settlement, including cooperating in promptly seeking Court approval of this Settlement and securing the Court's approval for the establishment of procedures (including the giving of class notice under Idaho Rule of Civil Procedure 77(c) and (e)), to secure prompt, complete, and final resolution of the Litigation.

17 Within a reasonable time after the Execution Date, Plaintiffs shall file with the Court a motion (the "Motion"), which Defendant shall not oppose, for: (a) entry of an order preliminarily approving the Settlement ("Preliminary Approval"); and (b) authorization to disseminate notice of Class certification and the Settlement. The Motion shall include: (a) a proposed form of, plan for, and date of dissemination of notice to the class of the Settlement ("Class Notice"); (b) a proposed schedule for the filing of Plaintiffs' Motion for Fees and Expenses, the filing of a Motion to approve finally the Settlement, the date by which any Settlement Class Member must seek exclusion from the Settlement Class and/or object to the Settlement or to Plaintiffs' Motion for Fees and Expenses, and a final Fairness Hearing; and (c) a proposed form of order preliminarily approving the Settlement. The Motion shall recite and ask the Court to find that the proposed forms and methods for dissemination of Class Notice are valid, due and sufficient notice of the Classes, constitute the best notice practicable under the circumstances and comply fully with the requirements of the Rule 77 of the Idaho Rules of Civil Procedure.

18. Class Counsel shall, prior to filing the Motion with the Court, share with Defendant a draft of the Motion and supporting papers, and, prior to filing shall consider, in good faith, any comments Defendant may have; provided, however, that Defendant shall submit to Class Counsel one set of comments to the Motion and supporting papers within three (3) calendar days of receipt from Class Counsel. If the Court sets a deadline by which Class Counsel must file the Motion, Class Counsel shall share with Defendant a draft of the Motion and supporting papers five (5) calendar days prior to the filing deadline, and Defendant shall submit to Class Counsel one set of comments on such papers three (3)

calendar days after receipt of from Class Counsel, which Class Counsel shall consider in good faith.

19. After Preliminary Approval, and subject to approval by the Court of the means for dissemination of notice, individual notice of the Settlement shall, to the extent possible, be mailed to persons and entities who are located in the United States and who between April 14, 2012 and April 14, 2014, paid user fees to the City of Pocatello that contained a PILOT component and who currently receive utilities from the City of Pocatello: (a) are identified by Defendant; and (b) are identified by Plaintiffs and Class Counsel. In addition, after Preliminary Approval, and subject to Court approval of the means for dissemination of notice, Counsel shall also cause Class Notice of the Settlement to be published in print and/or online publication of the *The Idaho State Journal*, as proposed by Class Counsel and ordered by the Court, to provide notice to Class Members who may not be capable of being identified for purposes of individual notice.

20. Defendant shall also provide Class Counsel a list of all Class Members who do not presently pay utility fees and therefore no longer receive user fee invoices.

21. Within twenty (20) days after expiration of the Opt-Out Deadline, Plaintiffs shall provide Defendant, through Defendants' Counsel, notice of all Opt-Outs by providing a written list of the same ("Opt-Out Notice").

22. Plaintiffs and Defendant shall, in accordance with the above, jointly seek entry of a Judgment for four million and five hundred thousand United States dollars to be entered against the Defendant. Such judgment shall be inclusive of all attorney fees and costs.

23. This Settlement shall become final upon the occurrence of all of the following: (a) the Court has entered an order finally approving this Settlement under Rule 77 of the Idaho Rules of Civil Procedure; (b) the Court has entered final judgment.

24. The parties hereby knowingly waive any and all rights to appeal the judgment entered in this Litigation.

D. Settlement Consideration

24. The Defendant shall pay or cause to be paid the Settlement Amount in settlement of the Litigation.

25. The Plaintiffs and Defendant will stipulate and agree for entry of a judgment against the Defendant in the Settlement Amount.

26. No interest shall accrue on the judgment identified in paragraph 25.

27. Within thirty (30) days of Final Approval, the Settlement Amount shall be established and funded by the Defendant in a separate, dedicated account. Plaintiff's Counsel shall have the right and authority to audit said account at any time upon reasonable notice. Any awards of attorney fees and costs to the Plaintiffs' will be paid out of the Settlement Amount first after the Final Approval of the Settlement.

28. Within ninety (90) days of Final Approval and any order relating to attorney fees and costs, the Defendant shall issue to each Class Member who, at the time of Final Approval, currently receives utility services from the Defendant, the Class Member's respective pro rata share of the remainder of the Settlement Fund.

29. Class Members who do not presently receive utility services (and therefore will not have written notice) shall have twelve (12) months from Final

Approval in which to claim their pro-rata portion of the Settlement Fund and such payments will be processed by the Defendant within thirty (30) to sixty (60) days of a claim being submitted.

30. Each Class Member shall look solely to the Settlement Amount for settlement and satisfaction, as provided herein, of all claims pursuant to this Settlement. Any Class Member who Opts-Out of the Settlement shall not be subject to this paragraph's restrictions.

31. In accordance with the applicable representation agreement, Class Counsel may petition the Court for an award of attorneys' fees and costs. Defendant agrees to take no position with regard to the Court's approval of Class Counsel's petition for attorneys fees and costs.

32. After the approved attorneys fees and costs are paid out of the Settlement Fund, the remainder of the fund shall be paid to the Class Members based on the Class Members' pro rata percentage of the PILOT fees paid by Class Members from April 14, 2012 through April 14, 2014, pursuant to the terms of this Agreement.

E. Notice of Settlement to Class Members

33. Class Counsel shall take all necessary and appropriate steps to ensure that Class Notice and the date of the hearing scheduled by the Court to consider the fairness, adequacy, and reasonableness of this Settlement is provided in accordance with the Idaho Rules of Civil Procedure and any Court orders. Class Notice will be issued after Preliminary Approval by the Court and subject to any Court orders regarding the means of dissemination of notice.

34. Subject to Court approval, disbursements for any payments and expenses

incurred in connection with the costs of Class Notice and administration of the Settlement shall be borne by the Defendant and shall be incurred against the Settlement Amount.

35. After the expiration Opt-Out Deadline as provided on the Notice of Settlement to Class Members, non-excluded Class Members who presently receive utility services (and have been therefore been mailed a notice) will have their pro-rata share of the Settlement Fund issued within ninety (90) days of Final Approval of the Settlement as set forth in Paragraphs 27 & 28, above. Class Members who do not presently receive utility services (and therefore will not have written notice) shall have twelve (12) months from the date of Final Approval in which to claim their pro-rata portion of the Settlement Fund as set forth in Paragraphs 27 & 29, above.

36. Any amounts remaining in the Settlement Fund after the twelve (12) month period immediately following Final Approval of the Settlement and entry of judgment shall be transferred to the Defendant's general fund.

F. Miscellaneous

35. Subject to Court approval, the District Court of the Sixth Judicial District, State of Idaho, for the County of Bannock shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Settlement or the applicability of this Settlement that cannot be resolved by negotiation and agreement by Plaintiffs and Defendant. This Settlement shall be governed by and interpreted according to the substantive laws of the State of Idaho without regard to its choice of law or conflict of laws principles.

36. This Settlement constitutes the entire agreement among Plaintiffs and Defendant pertaining to the settlement of the Action against Defendant, and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Defendant in connection therewith. In entering into this Settlement, Plaintiffs and Defendant have not relied upon any representation or promise made by Plaintiffs or Defendant not contained in this Settlement. This Settlement may be modified or amended only by a writing executed by Plaintiffs and Defendant and approved by the Court.

37. This Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties. Without limiting the generality of the foregoing: (a) each and every covenant and agreement made herein by Plaintiffs, Class Counsel, or Plaintiffs' Counsel shall be binding upon all Class Members; and (b) each and every covenant and agreement made herein by Defendant shall be binding upon it, subject to the Court's approval.

38. This Settlement may be executed in counterparts by Class Counsel and Defendants' Counsel, and an electronically-scanned (in either .pdf or .tiff format) signature will be considered an original signature for purposes of execution of this Settlement.

39. The headings in this Settlement are included for convenience only and shall not be deemed to constitute part of this Settlement or to affect its construction.

40. In the event this Settlement is not approved or is terminated, or in the event that the order and final judgment approving the Settlement is entered but is substantially reversed, modified, or vacated, the pre-settlement status of the litigation shall be restored, and the Settlement shall have no effect on the rights of Defendant or

Plaintiffs to prosecute or defend the pending Litigation in any respect.

41. Nothing expressed or implied in this Settlement is intended to or shall be construed to confer upon or give any person or entity other than Class Members and Defendant any right or remedy under or by reason of this Settlement.

42. Where this Settlement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail, receipt confirmed, or overnight delivery to:

Michael D. Gaffney
John M. Avondet
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For the Plaintiffs Class

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For the Plaintiffs Class

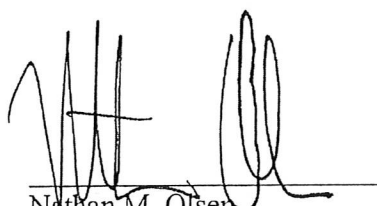
Blake G. Hall
Hall Angel & Associates, LLP
1075 S. Utah Avenue, Suite 150
Idaho Falls, Idaho 83402
bgh@hsaattorneys.com
For the Defendant

43. Each of the undersigned attorneys represents that he is fully authorized on behalf of the parties he or she represents in this Action to enter into the terms and conditions of, and to execute, this Settlement, subject to Court approval.

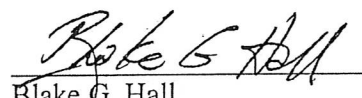
DATED: June 21, 2019



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CERTIFICATE OF SERVICE

I certify that I am an attorney licensed in the State of Idaho and on June 27, 2019, I served a true and correct copy of the *Stipulation and Settlement Agreement* upon the following as indicated below:

Blake G. Hall
Sam L. Angell
Hall Angell & Associates
bgh@hasattorneys.com
sla@hasattorneys.com

☒ iCourt Services

/s/ Michael D. Gaffney
Michael D. Gaffney
Of Beard St. Clair Gaffney PA
Attorneys for the Plaintiffs