

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

NICK SUNYAK, <i>et al.</i> ,	:	Case Nos.: 1:11-cv-445 and
	:	1:12-cv-329
vs.	:	
	:	Judge Michael R. Barrett
CITY OF CINCINNATI, <i>et al.</i> ,	:	
(City of Cincinnati Pension Litigation)	:	<b>[PROPOSED]</b>
	:	<b>ORDER GRANTING</b>
	:	<b>FINAL APPROVAL OF CLASS</b>
	:	<b>ACTION SETTLEMENT</b>

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WHEREAS, this Court granted Preliminary Approval of the Class Action Settlement (“Settlement”) of these Actions on \_\_\_\_\_, 2015 (Doc. #\_\_).

WHEREAS, the Current Employees Plaintiffs (Nick Sunyak, Jeffery Harmon, Jill Allgeyer, Kim Kappel, Waleia Jackson, Richard Ganulin, and Finley Jones), the Retiree Plaintiffs (Thomas A. Gamel, Sr., Paul Smith, Mark K. Jones, Dennis Davis, Ely Ryder, and Ann DeGroot), the American Federation of State and Municipal Employees Ohio Council No. 8 (“AFSCME”), and the Defendants (The City of Cincinnati, Mayor John Cranley, City Manager Harry Black, Vice-Mayor David Mann, Cincinnati City Council Members, the Cincinnati Retirement System, and the Board of Trustees of the Cincinnati Retirement System, (collectively, the “Parties”) have filed a motion seeking final approval of this Settlement (“Motion”) (Doc. #\_\_);

WHEREAS, the Parties appeared with their attorneys of record at a Fairness Hearing on \_\_\_\_\_, 2015 after all members of the Classes were given an opportunity to be heard in accordance with the Court’s Preliminary Approval Order, and the Court has given due consideration to the Parties’ Collaborative Settlement Agreement, including all attached exhibits and related materials, the Parties’ Motion for Final Approval, including the attached

Memorandum and all other papers filed in support, all objections to the Settlement, the complete record in this litigation, the information and arguments presented at the \_\_\_\_\_, 2015 Fairness Hearing, and all other materials relevant to this matter including the Declaration of the Settlement Administrator on Implementation and Adequacy of Settlement Notice Program as well as the Declaration of \_\_\_\_\_ (insert name of actuarial expert) concerning the impact and benefits of this Settlement on the Cincinnati Retirement System (“CRS”) and the members of the Classes;

WHEREAS, the Court recognizes that the Parties have litigated complex questions about the management of the CRS – and the respective rights of plan participants – for nearly five years, including issues related to benefits levels, eligibility requirements, healthcare packages, and funding mechanisms, and that while some of these lawsuits have been subject to conclusive appellate rulings, many pertinent legal and factual questions remain; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Collaborative Settlement Agreement and related Consent Decree were the result of good faith, arm’s length settlement negotiations between competent and experienced counsel for the Current Employees Plaintiffs, the Current Employees Class, the Retiree Plaintiffs, the Retirees Class, and Defendants;

NOW, THEREFORE, IT IS ORDERED THAT:

1. This Order approves, adopts, and incorporates by reference in their entirety the Collaborative Settlement Agreement and the Consent Decree which are attached hereto as Exhibits 1 and 2 respectively. The Collaborative Settlement Agreement and the Consent Decree are made part of this Order as if set out in full herein and shall be fully enforceable by this Court. Accordingly, the Parties are ordered to implement and comply with all the terms of the

Collaborative Settlement Agreement and the Consent Decree.

2. For purposes of this litigation, the Court has subject matter and personal jurisdiction over the Parties, including all Class Members, and has the power and authority to approve the Collaborative Settlement Agreement and Consent Decree, including all Exhibits thereto.

3. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), and 23(b)(2), the Court confirms its previous certification, and for purposes of effectuating the Settlement, grants final approval to the following two Classes:

Current Employees Class: All individuals (and/or their Dependents or Surviving Beneficiaries) who participated in the Cincinnati Retirement System with at least five years of creditable service and who were actively employed or otherwise qualified for benefits on July 1, 2011, and who are Members of “Group C,” “Group D,” “Group E,” or “Group F” as these terms are defined by Cincinnati Municipal Code § 203-1-MI (b), (c), (d), and (e).<sup>1</sup>

Retirees Class: All individuals (and/or their Dependents or Surviving Beneficiaries) formerly employed by the City of Cincinnati, the University of Cincinnati, the University Hospital f/k/a General Hospital and Hamilton County, who retired on or before July 1, 2011 and have received retirement benefits from the City of Cincinnati and their Dependents and/or their Surviving Beneficiaries who are entitled to those benefits.

4. Pursuant to Federal Rule of Civil Procedure 23(a), (b)(1), and (b)(2), and for purposes of settlement only, the Court makes the following findings of fact and conclusions of law:

a. The Current Employees Class and the Retirees Class are sufficiently definite and identifiable;

b. The Current Employees Class and the Retirees Class are so numerous that joinder of all members is impracticable;

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<sup>1</sup> The Current Employees Class also includes City of Cincinnati employees who had at least five years of creditable service prior to July 1, 2011 and who retired after July 1, 2011, as well as veterans who purchase service credit sufficient to satisfy the five years of service requirement prior to July 1, 2011.

c. There are questions of law and/or fact common within the Current Employees Class including but not limited to: (1) whether the members of the Current Employees Class were fully vested in their CRS benefits on July 1, 2011; (2) whether Defendants improperly revoked and/ or impaired Current Employees Class Members' vested CRS benefits when they enforced Ordinance No. 84-2011; (3) whether Defendants impaired contractual rights of the Current Employees Class when they enforced Ordinance No. 84-2011; (4) whether Defendants are estopped from enforcing Ordinance No. 84-2011 so as to revoke and/or impair the employment agreement with Current Employees Class Members; and (5) whether Defendants' enforcement of Ordinance No. 84-2011 operated as an unconstitutional taking of the vested property interest of Current Employees Class Members;

d. There are questions of law and/or fact common within the Retirees Class including but not limited to: (1) whether Defendants' offer of retirement benefits to the Retirees Class Members created a fundamental property right, giving each of them a vested right in those retirement benefits which cannot be reduced, impaired, revoked, or eliminated; (2) whether Defendants' actions as explained in the Retirees Class Complaint constitute an unlawful taking of the Retirees Class Members' property rights in violation of the United States Constitution and/or the Ohio Constitution; (3) whether the Defendants have a contractual obligation to provide the Retirees Class Members with certain retirement benefits, which cannot now or afterwards be reduced, impaired, revoked, or eliminated; (4) whether the unilateral reduction, impairment, revocation, and/or elimination of the Retirees Class Members' retirement benefits constitutes a breach of the Defendants' fiduciary duty; and (5) whether the Defendants are estopped

from reducing, impairing, revoking, or eliminating the retirement benefits owed to the Retirees Class;

e. The Current Employees Plaintiffs' claims are typical of the claims of the Members of the Current Employees Class as all subgroups were represented and no conflict exists between or among the subgroups, and the Retirees Plaintiffs' claims are typical of the claims of the Members of the Retirees Class;

f. Current Employees Plaintiffs and the Current Employees Class Counsel have and will fairly and adequately represent and protect the interests of the Current Employees Class, and the Retiree Plaintiffs and the Retirees Class Counsel have and will fairly and adequately represent and protect the interests of the Retirees Class;

g. Current Employees Plaintiffs' interests do not conflict with the interests of the Current Employees Class in the maintenance of this action and this Settlement, and the Retiree Plaintiffs' interests do not conflict with the interests of the Retirees Class in the maintenance of this action and this Settlement;

h. Certification of the Current Employees Class and the Retirees Class is appropriate because prosecuting separate actions by individual members of these Classes would create a risk of inconsistent and varying adjudications with respect to individual members of the Classes that would establish incompatible standards of conduct for the Defendants;

i. Certification of the Current Employees Class and the Retirees Class is appropriate because adjudications with respect to individual members of the Classes, as a practical matter, would be dispositive of the interests of the other Members not parties thereto and would substantially impair or impede their ability to protect their interests;

and

j. Certification of the Current Employees Class and the Retirees Class is appropriate because the Defendants have acted or refused to act on grounds that apply generally to the Classes, so that final injunctive relief or corresponding declaratory relief as agreed to by the Parties is appropriate respecting the Classes as a whole.

5. The Collaborative Settlement Agreement, the Consent Decree, and the terms contained therein are hereby finally approved as fair, reasonable, adequate, in the best interests of the Current Employees Class and the Retirees Class, and in compliance with all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law.

6. Pursuant to Rule 23(g), the following are hereby finally designated and approved as Current Employees Class Counsel: (1) Christian A. Jenkins, Esq., Minnillo & Jenkins, Co. LPA, 2712 Observatory Avenue, Cincinnati, Ohio 45208; (2) Marc D. Mezibov, Esq., Law Office of Marc Mezibov, 401 E. Court Street, Suite 600, Cincinnati, OH 45202; (3) Jeffrey S. Goldenberg, Esq., Goldenberg Schneider, LPA, One West Fourth Street, 18th Floor, Cincinnati, Ohio 45202; and (4) Robert D. Klausner, Esq., Klausner, Kaufman, Jensen & Levinson, 10059 Northwest 1st Court, Plantation, FL 33324. The Court's designation and approval of Current Employees Class Counsel is based upon: (1) the work they have done to identify and investigate the claims in this litigation; (2) their experience handling class actions and other complex litigation, including employee benefits litigation; (3) their knowledge of the applicable law and their familiarity with the complexities of this type of pension benefits litigation; and (4) the resources they committed and are willing to continue to commit to this litigation and the

implementation of the Consent Decree going forward.

7. Robert A. Pitcairn, Esq., James F. McCarthy, III, Esq., and Peter O'Shea, Esq. of the law firm of Katz Teller Brant & Hild, 255 East Fifth Street, Suite 2400, Cincinnati, Ohio, 45202 are hereby finally designated and approved as Retirees Class Counsel pursuant to Rule 23(g). The Court's designation and approval of Retirees Class Counsel is based upon: (1) the work performed to identify and investigate the claims in this litigation; (2) their experience handling class actions and other complex litigation, including employee benefits litigation; (3) their knowledge of the applicable law and their familiarity with the complexities of this type of pension benefits litigation; and (4) the resources they committed and are willing to continue to commit to this litigation and the implementation of the Consent Decree going forward.

8. Nick Sunyak, Jeffery Harmon, Jill Allgeyer, Kim Kappel, Waleia Jackson, Richard Ganulin, and Finley Jones are designated and granted final approval as the Current Employees Class Representatives. Jill Allgeyer is designated and granted final approval as the Sub-Class C representative. Kim Kappel, Waleia Jackson, and Richard Ganulin are designated and granted final approval as the Sub-Class D representatives. Finley Jones is designated and granted final approval as the Sub-Class E representative. Jeffrey Harmon and Nick Sunyak are designated and granted final approval as the Sub-Class F representatives.

9. Thomas A. Gamel, Sr., Paul Smith, Mark K. Jones, Dennis Davis, Ely Ryder, and Ann DeGroot are finally designated and approved as the Retirees Class Representatives.

10. The Parties have provided direct mail notice to the Classes in a manner consistent with the Order Granting Motion for Preliminary Approval of Class Action Settlement. The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the

circumstances, to apprise Class Members of the terms of the proposed Settlement, their right to object or exclude themselves from the proposed Settlement, and their right to appear at the Fairness Hearing. Further, the notice was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice. Also, Defendants, through Class Action Administration, Inc., notified the appropriate federal official (the Attorney General of the United States) and the appropriate State of Ohio officials (the Auditor of the State of Ohio and the Attorney General of the State of Ohio) pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. Accordingly, the Defendants’ notification complies fully with its obligations under CAFA, and the notice met all applicable requirements under the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable rule or law.

11. Class Action Administration, Inc. (“Settlement Administrator”) was retained to disseminate the Notice Plan in accordance with the terms of the Collaborative Settlement Agreement and the Court’s Order Granting Motion for Preliminary Approval of Class Action Settlement. It is apparent from the Declaration of \_\_\_\_\_ that the Notice Plan was properly implemented and was effective.

12. The Court has determined that notice and full opportunity has been given to the Classes to object to the terms of the Settlement. The Court also has determined that notice and full opportunity has been given to the Classes to object to Current Employees Class Counsel’s and Retirees Class Counsel’s request for attorneys’ fees and expenses. The Court has considered all of the objections to the Settlement that were submitted by members of the Classes as well as Class Counsel and Defendants’ responses to those objections, and has determined as follows:

- a. the Current Employees Plaintiffs, the Retiree Plaintiffs, the Current



Employees Class, and the Retirees Class face significant risks if this litigation were to proceed, including the real possibility of losing this litigation;

b. the possibility of a greater ultimate recovery is highly speculative and any such recovery would only occur after considerable delay, if at all;

c. the terms of the Collaborative Settlement Agreement and Consent Decree provide substantial and meaningful benefits to the Classes;

d. the Collaborative Settlement Agreement and Consent Decree are the product of vigorous, highly-contested litigation that included meaningful investigation into the facts and the law underlying the claims at issue;

e. the Settlement occurred after the litigation was substantially developed, including the exchange of voluminous actuarial data and other information during the mediation process and due diligence following the execution of the Memorandum of Understanding on December 31, 2014;

f. the Settlement negotiations were extensive, arms-length, and under the direction of the Court through a collaborative and agreed-to process that occurred without any collusion;

g. the reaction by the Classes has been overwhelmingly in favor of the Settlement; and

h. experienced Class Counsel support the Settlement.

13. Accordingly, having considered the foregoing, the costs and risks and delays of continued litigation versus the benefits provided by the Settlement, and based on this Court's knowledge of the Actions, the Court finds and concludes that the Settlement is in the best interests of the Classes and is fair, reasonable, and adequate to all members of the Classes.

14. This Settlement, including the terms of the Collaborative Settlement Agreement and Consent Decree, is accordingly granted final approval and is confirmed as fair, reasonable, adequate, and binding upon all members of the Classes.

15. The Parties are hereby directed to proceed with and complete the implementation of the Settlement. Therefore, the Court hereby orders and directs the Parties and their counsel to proceed with and complete the implementation and consummation of this Collaborative Settlement Agreement and Consent Decree according to its terms and provisions.

16. The Court enters judgment in accordance with the Collaborative Settlement Agreement and further declares the Collaborative Settlement Agreement binding on all the Parties.

17. Except as provided in the Collaborative Settlement Agreement and Consent Decree, all Parties are barred, estopped, and enjoined from asserting claims or interests arising under or out of, in connection with, or in any way relating to the claims set forth in the Litigation as defined in the Collaborative Settlement Agreement (“Barred Claims”).

18. AFSCME warrants and acknowledges that it will dismiss with prejudice *State ex rel. Council 8 AFSCME, et al. v. City of Cincinnati, et al.*, Case No. A 1 104791, within 10 days of Finality as defined in the Collaborative Settlement Agreement pursuant, and to the terms of the separate settlement agreement entered into between AFSCME and the Defendants.

19. All Parties are bound by this Order Granting Final Approval, the Collaborative Settlement Agreement, and the Consent Decree. The Court declares that the Collaborative Settlement Agreement and related Consent Decree are incorporated into this Order Granting Final Approval, each of which shall be binding on all Parties. Further, the Collaborative Settlement Agreement, the Consent Decree, and this Order shall be preclusive for the 30 years

following the Effective Date, as defined in the Collaborative Settlement Agreement, in all other pending and future lawsuits or other proceedings relating to the Barred Claims in these Actions.

20. Consistent with the above paragraph, the Court also orders that the Barred Claims are fully and finally resolved as of the date of Finality, as defined in the Collaborative Settlement Agreement, and that the City, CRS and related City Defendants are forever discharged and released from the Barred Claims and that the Current Employees Plaintiffs, the Retiree Plaintiffs, and the members of the Classes are permanently barred and enjoined from filing, commencing, prosecuting, intervening in, participating in (as Class Members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory, or other proceeding or order in any jurisdiction based on the Barred Claims, except as set forth in the Re-Opener provisions in the Collaborative Settlement Agreement and Consent Decree.

21. The Court, having considered the request of Current Employees Class Counsel for an award of attorneys' fees and reimbursement of expenses, hereby grants the request and awards Current Employees Class Counsel attorneys' fees in the sum of \$\_\_\_\_\_ which amount the Court concludes is fair and reasonable in light of the estimated \$\_\_\_\_\_ valuation of the benefits to the Current Employees Class resulting from this Settlement. The Court also approves and grants Current Employees Class Counsels' request for expense reimbursement in the amount of \$\_\_\_\_\_ for their reasonable expenses incurred in prosecuting this action and in implementing this Settlement. The fees shall be paid be paid by \_\_\_\_\_.

22. The Court, having considered the request of Retirees Class Counsel for an award of attorneys' fees and reimbursement of expenses, hereby grants the request and awards Retirees Class Counsel attorney's fees in the sum of \$\_\_\_\_\_ which amount the Court concludes is

fair and reasonable. The Court also approves and grants Retirees Class Counsels' request for expense reimbursement in the amount of \$\_\_\_\_\_ for their reasonable expenses incurred in prosecuting this action and in implementing this Settlement. The fees shall be paid by \_\_\_\_\_.

23. Without affecting the finality of this Final Order for purposes of appeal, if any, the Court retains continuing and exclusive jurisdiction over the Parties for thirty years following the Effective Date as to all matters relating to the administration, consummation, enforcement, and interpretation of the Collaborative Settlement Agreement, the Consent Decree, and this Order Granting Final Approval, and for any other necessary purpose related thereto, including the entry of any additional orders as may be necessary and appropriate.

IT IS SO ORDERED.

DATED: \_\_\_\_\_, 2015

\_\_\_\_\_  
The Honorable Michael R. Barrett  
United States District Judge

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KTBH: 4829-0350-1603, v. 2