

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MANUEL BARRIOS, et al.,

Plaintiffs,

v.

THE CITY OF CHICAGO,

Defendant.

No. 1:15-cv-02648

Honorable Joan B. Gottschall

PRELIMINARY APPROVAL ORDER

Plaintiffs Manuel Barrios (“Barrios”), Brandon Fuller (“Fuller”), Savannah Washington (“Washington”), (collectively, “Plaintiffs”), having filed an amended Motion for Preliminary Approval of Class Action Settlement (the “Motion”), seeking an order: (1) granting preliminary approval of the proposed settlement of the Litigation (the “Settlement”), in accordance with the Stipulation and Agreement of Settlement (the “Stipulation”) entered into by the Parties and as proposed on June 5, 2020 (ECF No. 165); (2) the conditional certification of a settlement class; (3) approval of the proposed notice plan and Claims Administrator; (4) the appointment of the named Plaintiffs as representatives of the proposed settlement class; and (5) the appointment of Settlement Class Counsel;

The Court being fully advised;

After review and consideration of the Stipulation and the Motion filed with the Court and the Exhibits annexed thereto, and after due deliberation, IT IS HEREBY ORDERED that:

1. The Court, for purposes of this order (the “Preliminary Approval Order”), adopts all defined terms as set forth in the Stipulation.

2. The Court hereby conditionally certifies, solely for purposes of effectuating the Settlement, a Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) (“Rule 23”)

consisting of owners of 356 vehicles (estimated) that were impounded by the City of Chicago under Chicago Municipal Code § 7-24-225 for a State of Illinois drug related offense where the seizure did not result in forfeiture of the vehicle and the City of Chicago initiated contact with the lienholder of the vehicle and demanded that the lienholder take possession of the vehicle, during the period of March 28, 2013 through August 1, 2015, and as a result: (1) the vehicle owner was permanently deprived of his or her vehicle due to the lienholder taking possession of the vehicle, or (2) the vehicle owner was temporarily deprived of the use and possession of his or her vehicle (the “Settlement Class”).

3. Pursuant to Rule 23(b)(3) and for purposes of settlement only, Barrios, Washington, and Fuller are appointed as Settlement Class Representatives.

4. With respect to the Settlement Class, this Court expressly finds and concludes provisionally and for settlement purposes only that the requirements of Rule 23(b)(3) are satisfied as: (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class members in the Litigation is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Settlement Class Representatives are typical of the claims of the Class; (d) the Settlement Class Representatives and their counsel have fairly and adequately represented and protected the interests of all the Settlement Class members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the members of the Settlement Class in individually controlling the prosecution of the separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the Settlement Class; (iii) the desirability or undesirability of

continuing the litigation of these claims in this particular forum; and (iv) the difficulties likely to be encountered in the management of the Litigation.

5. Edward R. Moor of Moor Law Offices, P.C. and Paul J. Lytle of Lytle & Milan, LLC are appointed as Settlement Class Counsel and are authorized to act on behalf of the Settlement Class with respect to all acts required by, or which may be given pursuant to, the Stipulation or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.

6. This Court approves the Settlement as set forth in the Stipulation as appearing to be within the range of fairness, reasonableness, and adequacy. This preliminary approval is subject to the right of any Settlement Class Member to challenge the fairness, reasonableness, and adequacy of the Stipulation, or the fairness and adequacy of their representation by Settlement Class Counsel, and to show cause, if any exists, why a final judgment dismissing the Litigation based on the Stipulation should not be ordered herein after due and adequate notice to the Settlement Class has been given in conformity with this Order.

7. A hearing (the “Final Hearing”) pursuant to Rule 23(e) is hereby scheduled to be held before the Court on December 11th at 9:30 a.m. for the following purposes:

- a. to determine whether the Settlement should be approved by the Court as fair, reasonable, adequate, and in the best interests of the Settlement Class;
- b. to determine whether judgment should be entered pursuant to the Stipulation, *inter alia*, dismissing the Litigation with prejudice and extinguishing and releasing all Settled Claims (as defined in the Stipulation);
- c. to determine whether the Settlement Class should be certified;
- d. to approve Plaintiffs as the class representatives of the Settlement Class;
- e. to rule on Settlement Class Counsel’s request for an award of Attorneys’ Fees;

- f. to determine whether a Final Order approving the Settlement and Stipulation, and entry of a Final Judgment, dismissing the Litigation as provided in the Stipulation, should be entered; and
- g. to rule on such other matters as the Court may deem appropriate.

8. The Court reserves the right to continue or adjourn the Final Hearing or any part thereof, including the consideration of the application for attorneys' fees and reimbursement of expenses, without further notice of any kind to Settlement Class Members.

9. The Court reserves the right to approve the Settlement at or after the Final Hearing with such modification as may be consented to by the Parties to the Stipulation and without further notice to the Settlement Class.

10. The City has provided the information from its files required by the Claims Administrator to send Notice consistent with the provisions of the Stipulation to the persons who can be identified through those same records. The Claims Administrator is directed to provide written Notice to all members of the Settlement Class within forty-two (42) days of the entry of this order and subsequent City Council approval, substantially in the form agreed to by the Parties, and attached to the Stipulation as Exhibit B. All Notices shall be accompanied by a Proof of Claim, in the form attached as Exhibit D to the Stipulation, and postage pre-paid return envelope. The Claims Administrator is directed to conduct address checks and resend any Notices that are returned to the Claims Administrator as "undeliverable" in accordance with Section 8.3 (e) of the Stipulation. The Claims Administrator is directed to issue a Second Notice, Proof of Claim Form, and postage pre-paid envelope in accordance with Section 8.3(f) of the Stipulation to any Settlement Class Member who fails to submit a Proof of Claim.

11. The Claims Administrator shall publish the Summary Notice, in the form attached to the Stipulation as Exhibit C, within forty-two (42) days after entry of the Preliminary Approval Order and subsequent City Council approval.

12. Settlement Class Counsel and/or the Claims Administrator shall file with the Court, no later than fourteen (14) days prior to the Final Approval Hearing, affidavits or declarations describing the efforts taken to comply with this Order and stating that the mailing of the Notice and publication of the Summary Notice have been completed in accordance with the terms of this Order.

13. The Court approves the form and method of Notice specified herein and in Section 9.1 of the Stipulation, and finds that the Notice defined herein is the best notice practicable and shall constitute due and sufficient notice to all persons and entities entitled to receive such notice and fully satisfies the requirements of due process and of Rule 23(b)(3).

14. The Court further approves the Publication of the Summary Notice pursuant to Section 9.2 of the Stipulation, and finds that the Summary Notice constitutes the best and most practical notice, and shall constitute due and sufficient notice to all persons and entities entitled to receive such notice and fully satisfies the requirements of due process and of Rule 23(b)(3).

15. The Court approves the Proof of Claim Form attached to the Stipulation as Exhibit D.

16. Any member of the Settlement Class who objects to the Settlement, the representation of the Settlement Class by Settlement Class Counsel, and/or the request by Settlement Class Counsel for Attorneys' Fees, or who otherwise wishes to be heard, may appear in person, by telephone and/or teleconferencing by his or her attorney at the Final Hearing and present evidence or argument that may be proper or relevant; provided, however, that no person or entity other than the Parties and their counsel shall be heard, and no papers, briefs, pleadings, or other documents submitted by any person or entity shall be considered by the Court, unless not later than one hundred and nineteen (119) days after entry of this Order and subsequent City

Council approval, such person or entity files with the Court and serves upon counsel listed below: (i) a written notice of intention to appear; (ii) a statement of such person's or entity's objections to any matters before the Court; and (iii) the grounds therefor or the reasons that such person or entity desires to appear be heard, as well as all documents or writings such person or entity desires the Court to consider and the names of any and all witnesses, along with their testimony that such person or entity desires the Court to consider. Such filings shall be served upon the Court and the following Counsel:

Edward R. Moor
Moor Law Office, P.C.
One North LaSalle Street, Suite 600
Chicago, Illinois 60602

Paul J. Lytle
Lytle & Milan, LLC
1142 W. Madison St., Suite 306
Chicago, Illinois 60607

Counsel for Plaintiffs and Settlement Class Members

and

Allan T. Slagel
Jonathan B. Amarilio
Anne L. Yonover
Taft Stettinius & Hollister LLP.
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601

Counsel for Defendant

17. Any person or entity falling within the definition of the Settlement Class may, upon request, be excluded from the Settlement and the Settlement Class. Any such person or entity must submit to the Claims Administrator a request for exclusion ("Request for Exclusion") and which must be received by the Claims Administrator within one hundred and nineteen (119) days after entry of this Order and subsequent City Council approval. A Request for Exclusion must state: (i) the name, address, and telephone number of the person or entity requesting

exclusion; and (ii) that the person or entity wishes to be excluded from the Settlement Class. All persons or entities who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation and shall not share in the distribution of the Settlement proceeds. All persons or entities who submit valid and timely Requests for Exclusion may not comment on or object to the proposed Settlement.

18. Any Settlement Class Member who wishes to participate in the Settlement Fund must submit a valid Proof of Claim to the Claims Administrator, at the location indicated in the Notice, received not later than one hundred and nineteen (119) days after entry of this Order and subsequent City Council approval. To be valid, a Proof of Claim must: (i) be completed in a manner that permits the Claims Administrator to determine the eligibility of the Person submitting the Claim to participate in the Settlement; (ii) include the release by the Claimant of all Defendant Releasees as set forth in the Stipulation; and (iii) be signed with an affirmation that the information is true and correct. Any Settlement Class Member who does not submit a valid and timely Proof of Claim shall be forever barred from receiving any payments from the Settlement Fund, but shall in all other respects be subject to and bound by the provisions of the Stipulation and the Order and Final Judgment, if entered.

19. If this Settlement is not approved by the Court or shall not become effective for any reason whatsoever, the Settlement (including any modification thereof) made with the consent of the Parties as provided for in the Stipulation, any class certification herein, and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein): (i) shall be without prejudice, and none of the terms shall be effective or enforceable; (ii) the Settlement Consideration plus any accrued interest, less fifty percent (50%) of the costs of Administrative Expenses that have been incurred or expended pursuant to the

terms of the Stipulation, shall be returned to the City of Chicago within twenty-one (21) days following non-approval of the Settlement; (iii) the Parties shall revert to their Litigation positions immediately prior to the execution of the Stipulation; and (iv) the facts and terms of the Stipulation and this Settlement shall not be admissible in any trial of this Litigation.

20. All proceedings in the Litigation, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination whether the Settlement should be approved.

21. Pending final determination of whether the Settlement should be approved, neither Plaintiffs nor any Settlement Class Member either directly, in a representative capacity, a derivative capacity, or in any other capacity, shall commence, maintain, or prosecute any other action or proceeding in any court or tribunal against any of the Released Parties asserting any of the Settled Claims or claims that could have been brought in this Litigation.

22. Neither this Order, the Motion, the Stipulation, any provisions contained in the Stipulation, any negotiations, statements, or proceedings in connection therewith, nor any action undertaken pursuant thereto shall be construed as, or deemed to be evidence of, an admission or concession on the part of the City or any other person of any liability or wrongdoing by them, or any of them, and shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that Plaintiffs, any member of the Settlement Class, or any other person, has suffered any damage.

23. Any Party making submissions to the Court in support of approval of the Settlement or in support of Settlement Class Counsel's request for Attorneys' Fees shall do so prior to the Final Approval Hearing.

24. The passage of title and ownership of the Settlement Consideration to the Settlement Escrow Account in accordance with the terms of the Stipulation is approved. The City is authorized and directed to fund the Settlement Escrow Account in accordance with the terms of the Stipulation.

25. No person or entity that is not a Claimant, Settlement Class Representatives, Settlement Class Counsel, or persons or entities involved in the Claims Administration Process in this Litigation shall have any right to any portion of, or in the distribution of, the Settlement Consideration unless otherwise ordered by the Court or otherwise provided in the Stipulation.

26. The Court may, for good cause, extend any of the deadlines set forth in this Order without further Notice to Settlement Class Members.

Dated: June 9, 2020

/s/
Joan B. Gottschall
United States District Judge

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