

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAWRENCE M. GARNER, CHRISTOPHER
GARNER, AND WILLIAM KAUPUS,

CLASS ACTION

Plaintiffs,
v

Case Nos. 16-cv-10760
16-cv-10986
Hon. Victoria A. Roberts

CITY OF ROSEVILLE, GLENN SEXTON,
RODNEY BROWNING,

Defendants.
and

CORDIA MICHIGAN, LLC, RUDALEV I,
LLC, and GARNER PROPERTIES &
MANAGEMENT, LLC

Plaintiffs,
v

CITY OF ROSEVILLE, GLENN SEXTON,
RODNEY BROWNING,

Defendants.

THE LAW OFFICES OF
AARON D. COX, PLLC
By: Aaron D. Cox (P69346)
Co-Counsel for Plaintiffs'
23380 Goddard Rd.
Taylor, MI 48180
(734) 287-3664

JOHNSON, ROSATI, SCHULTZ
& JOPPICH, PC
By: CARLITO H. YOUNG (P61863)
STEPHANIE S. MORITA (P53864)
Attorneys for Defendants
27555 Executive Dr., Suite 250
Farmington Hills, MI 48331
(248) 489-1726

MARK K. WASVARY, P.C.
By: MARK K. WASVARY P51575
Co-Counsel for Plaintiffs
2401 W. Big Beaver Rd., Suite 100
Troy, Michigan 48084
(248) 649-5667

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into on the date of execution between LAWRENCE M. GARNER, CHRISTOPHER GARNER, WILLIAM KAUPUS, CORDIA MICHIGAN, LLC, RUDALEV I, LLC and GARNER PROPERTIES & MANAGEMENT, LLC (“Plaintiffs”) on behalf of themselves and a class of similarly-situated persons and entities (identified and defined below as the “Settlement Class”), CITY OF ROSEVILLE, GLENN SEXTON and RODNEY BROWNING (“Defendants”). Plaintiffs, the Settlement Class, and Defendants re collectively referred to as the “Parties.”

WHEREAS, on behalf of themselves and a putative class of similarly-situated persons and entities, Plaintiffs filed two civil actions against Defendants that are pending in the United States District Court of the Eastern Division of Michigan, entitled *Lawrence Garner, et al, v. City of Roseville, et al*, Case No. 16-cv-10760; and *Cordia Michigan, LLC, et al v City of Roseville, et al*, Case No. 16-cv-10986 (the “Lawsuits”); and

WHEREAS, the parties agree to consolidate case nos. 16-cv-10760 and 16-

cv-10986 for purpose of this settlement; and

WHEREAS, Plaintiffs have filed class action allegations that Defendants violated state and federal law due to its improper administration of the City's Non-Owner-Occupied Housing Ordinance including, but not limited to the First, Fourth, and Fourteenth Amendment, violations of due process under the International Property Maintenance Code and defamation per se; and

WHEREAS, without admitting or conceding fault or liability or the validity of Plaintiffs' claims, point of law or point of fact, or that Plaintiffs or any proposed Class Member are entitled to any relief as a result of Defendants' conduct, Defendants have agreed to settle all disputes regarding misdemeanor tickets issued to the Settlement Class, including but not limited to all claims of the Settlement Class which were made or could have been made in the Lawsuit; and

WHEREAS, without admitting or conceding fault or liability, Defendants have agreed to settle the claims against them by making a total of \$150,000.00 available to fund this settlement; and

WHEREAS, Class Counsel (identified below), after evaluating the merits have concluded that the terms and conditions of the Agreement provided herein are fair, reasonable, and adequate, and in the best interests of the Settlement Class as a means of resolving all disputes between and among the Parties; and

WHEREAS, the Settlement Class includes persons and entities to who or

which Defendant City of Roseville issued approximately 840 misdemeanor tickets as disclosed under FRCP 26(a); and

WHEREAS, the Parties each acknowledge that they have not admitted liability to any other Party and enter into this Agreement solely to avoid the expense, uncertainty, and inconvenience of litigation; and

WHEREFORE, the Parties stipulate and agree that the claims of the Settlement Class should be and are hereby compromised and settled, subject to the Court's approval, upon the following terms and conditions:

1. Recitals. The above described recitals are incorporated herein and made a part hereof.
2. For Settlement Only. This Agreement is entered into for purposes of resolving all disputes between Defendants and Plaintiffs and the Settlement Class. Assertions, statements, and representations herein are for settlement purposes only. If this Agreement or a modified version thereof that is acceptable to all Parties is not finally approved by the Court, then the Parties expressly agree that this Agreement is null and void and may not be used by any party for any reason.
3. Certification of the Settlement Class. The Parties hereby stipulate, for purposes of settlement only, to certification of a Class and Sub-Class, also collectively referred to as "Settlement Class" defined as follows:

Class: All persons and entities who currently own or at one time owned any non-owner occupied residential structures located within the City of Roseville

who or which has been issued a misdemeanor ticket for failure to obtain a Certificate of Compliance under the City's Non-Owner-Occupied Housing Ordinance, and subsequently paid a fine at any time since January 1, 2010 through December 15, 2016.

Sub-Class: All persons and entities who were not owners of non-owner occupied residential structures located within the City of Roseville, yet were issued a misdemeanor ticket for failure to obtain a Certificate of Compliance under the City's Non-Owner-Occupied Housing Ordinance from January 1, 2010 through December 15, 2016.

Excluded from the Settlement Class are Defendants, including any of their parents, subsidiaries, affiliates or controlled persons, as well as their officers, directors, agents, servants, and employees, and the immediate family members of such persons. Also excluded is Class counsel. In the event the settlement contemplated under this Agreement does not receive final approval from the Court, the fact that the Parties stipulated to a settlement class shall not be used by any Party either in support or opposition of class certification in the Lawsuit.

4. Representation of the Settlement Class. Plaintiffs will be appointed as the "Class Representatives" and attorneys Aaron D. Cox of The Law Offices Aaron D. Cox, PLLC and Mark K. Wasvary of Mark K. Wasvary, P.C. will be appointed as "Class Counsel."

5. Preliminary Approval. The Parties will jointly move the Court for the entry of an order preliminarily approving this settlement. A proposed "Order Preliminarily Approving Class Action Settlement" (the "Preliminary Approval Order") is attached as Exhibit 1. If the Court does not enter a preliminary approval

order substantially in the form of Exhibit 1 or a modified version thereof which is acceptable to all Parties, then this Agreement shall be null and void.

6. CAFA Notices. Within ten (10) days of filing this Settlement Agreement with the Court, Defendants' counsel will cause the notice of the settlement required by the Class Action Fairness Act, 28 U.S.C. 1717(b), to be issued to the Attorney General for the United States, as well as the Michigan Attorney General.

7. The Settlement Fund. Defendants agree to make available a common fund of \$150,000.00 (the "Settlement Fund") to pay valid Class Member claims, to pay an incentive payment to the Class Representatives to pay attorney's fees and reasonable litigation expenses, not limited to costs, to Class Counsel, and to pay for the costs and expenses associated with Claims Administration, as approved by the Court.

8. Notice. The Parties will request that the Court approve a "Notice of Class Action and Proposed Settlement with Attached Claim Form" in the form attached hereto as Exhibit 2 (the "Notice"), and request approval to send notice to the Settlement Class by either postcard or first class mailing to all Class Members for whom Defendants have mailing addresses. Defendants shall cooperate in providing such mailing addresses to Class Counsel and the Claims Administrator. After preliminary approval of the settlement, the Claims Administrator will cause

the Notice to be sent within 14 calendar days of the entry of the preliminary approval order. Within 21 calendar days of entry of the preliminary approval order, the Claims Administrator will cause an abbreviated version of the Notice to be placed in a weekend edition of the Macomb Daily. The Settlement Agreement, Notice and Claim Form will also be available at a website maintained by the Class Counsel.

9. Claim Forms. Settlement Class Members must submit fully completed and executed claim forms to receive their shares of the Settlement Fund. Claim Forms will be due within 90 days after the Notice is mailed to the Settlement Class (the "Claims Due Date"). Class Members may make a claim for all fines paid for each misdemeanor ticket issued for failure to obtain a Certificate of Compliance under the City's Non-Owner-Occupied Housing Ordinance. Valid claims of the Class will be paid at the Class Members' *pro rata* share of the Settlement Fund minus payments made for attorney's fees and costs as approved by the Court, the payments to the Sub-Class (\$350.00 multiplied by the number of claims, see below), the costs of Claims Administration and the payment made to the Class Representatives.¹ Class Counsel will be authorized to request and receive docket records from the 39th District Court for the State of Michigan to verify claims of Class Members. Each valid claim of a member of the Sub-Class shall be entitled to payment of \$350.00

¹ Class Member will be paid 100% of a valid claim, unless the amount of valid claims exceeds the amount available from the Settlement Fund.

per misdemeanor ticket, regardless of whether or not that member paid a fine. This accounts for Plaintiffs' *defamation per se* allegation. Sub-Class members may also make a claim for any fines paid in the same manner as any other Class Member (i.e. on a *pro rata* basis). Any member of the Settlement Class and Sub-Class who does not submit a Claim Form by the Claims Due Date, as shown by postmark or other identifiable date of transmission, shall receive no monetary payment from the Settlement Fund.

10. Incentive Award, Attorneys' Fees, and Out of Pocket Expenses. Subject to the Court's approval, Defendants will pay named Plaintiffs \$2,500.00 each from the Settlement Fund for representing the Settlement Class as the Class Representatives. Subject to the Court's approval, Defendants will pay attorney's fees to Class Counsel in an amount equal to one-third of the Settlement Fund before any other deduction (\$50,000.00), plus reasonable out-of-pocket expenses, all payable from the Settlement Fund. Defendants will not object to or oppose any of these payments. The awards will be set forth in the Final Approval Order and paid exclusively from the Settlement Fund as provided herein.

11. Final Approval. At the conclusion of, or as soon as practicable after, the close of the hearing on the fairness, reasonableness and adequacy of this Agreement, Plaintiffs and Plaintiffs' counsel shall request that the Court enter an order finally approving the settlement and all its terms in the form attached hereto as Exhibit 3

(the “Final Approval Order”). The fact that the Court may require non-substantive changes in the Final Approval Order will not invalidate this Agreement or the settlement. If the Court does not enter a final approval order substantially in the form of Exhibit 3 or a modified version thereof which is acceptable to all Parties, which becomes a final and non-appealable order, then this Agreement shall be null and void.

12. Equitable Relief. The City of Roseville and its agents shall not issue misdemeanor tickets under the City of Roseville Non-Owner-Occupied Housing Code. The City of Roseville shall amend its ordinance and application process related to obtaining a Certificate of Compliance, and renewals of same, for non-owner occupied residential structures which allows the City of Roseville to inspect the property based on consent set forth in the application.

If inspections are required by the City of Roseville under its Property Maintenance Code and an inspection of the property is refused, the City of Roseville shall seek an administrative warrant for such inspection.

The City of Roseville may further amend its Non-Owner-Occupied Housing Code such that a violation is subject to a civil infraction. Any such amendment shall define those persons or entities which may be issued a civil infraction, which may be a person/entity other than the owner of the property, such as a properly registered responsible local agent or a person/entity causing the property to be in violation.

Such ordinance shall be written with such specificity to put a person of reasonable intelligence on notice of their requirement to comply with the City's ordinance.

As it pertains to the City's Property Maintenance Code, the City of Roseville shall comply with all proper notice requirements set forth in its Property Maintenance Code, including, but not limited to notice of the right to appeal a violation to an impartial Board of Appeals.

13. Effective Date. This Agreement shall not be effective until the Effective Date. "Effective Date" means the calendar date five days after the later of (a) the Court enters the Final Approval Order, substantially in the form of Exhibit 3 to this Agreement, or in a form agreed to by the Parties, dismissing with prejudice the claims of all Settlement Class Members (including Plaintiffs) who do not properly exclude themselves as provided in the Notice or (b) if any Settlement Class Member objected to the settlement, the date on which the date for filing an appeal has expired or, if there are appeals, the date on which the settlement and judgment has been affirmed in all material respects by the appellate court of last resort to which such appeals have been taken and such affirmances are no longer subject to further appeal or review.

14. Claims Administrator. Class-Settlement.com shall be the Claims Administrator who will issue the class notice, receive the claim forms, assist Class Members in completing and submitting forms, and provide a list of accepted and

rejected claims to counsel for the parties. The decision of the Claims Administrator regarding the validity of claims shall be final and binding.

15. Claims Processing and Payment. Upon entry of the Final Approval Order, Defendants shall deliver funds to the Claims Administrator to pay the claims. Checks issued to the Settlement Class members will be void 181 days after issuance and shall state that fact on their face. Any Settlement Class Member who does not negotiate the settlement payment check issued to the Settlement Class Member within 181 days of the date of the settlement check, agrees to forfeit and waive any right for compensation under the settlement. Within thirty (30) days after expiration of the 181-day period, all unclaimed money in the Settlement Fund shall revert to Defendants.

16. Payment of Incentive Award, Fees, and Expenses. On the Effective Date, the Claims Administrator shall pay from the Settlement Fund the attorney's fees, expenses, and incentive award approved by the Court in the Final Approval Order. Payment of the incentive award, attorney's fees, and expenses shall be made by wire transfer to the "Law Offices of Aaron D. Cox, PLLC Client Trust Account"

17. Releases. Subject to and effective upon entry of the Final Approval Order, all Settlement Class Members who are not validly excluded from the Settlement Class as determined by the Court, for and in consideration of the terms and undertakings herein, the sufficiency and fairness of which are acknowledged,

release and forever discharge Defendants and their directors, officers, shareholders, employees, agents, insurers, re-insurers, affiliates, departments, and other associated entities and their successors and heirs (the “Releasees”) from liability for any and all claims, demands, debts, liabilities, actions, causes of action of every kind and nature, obligations, damages, losses, and costs, which Plaintiffs and the Settlement Class Members have, had or may have against the Releasees, whether known or unknown, actual or potential, suspected or unsuspected, direct or indirect, contingent or fixed, or which have been, could have been, or in the future might be asserted against Releasees, that arise out of or relate to the misdemeanor tickets issued by Defendants for failure to obtain a Certificate of Compliance under the Non-Owner-Occupied Housing Code during the Class Period (the “Released Claims”). This Agreement and the Settlement Class will not release claims regarding any claims outside the Class Period.

18. Class Enjoined. On the Effective Date, all members of the Settlement Class who did not exclude themselves as required by the Notice (and any person or entity claiming by or through him, her, or it, as heir, administrator, devisee, predecessor, successor, attorney, representative of any kind, shareholder, partner, director or owner of any kind, affiliate, subrogee, assignee, or insurer) will be forever barred and permanently enjoined from directly, indirectly, representatively or in any other capacity, filing, commencing, prosecuting, continuing, litigating, intervening

in, participating in as Class Members or otherwise, or receiving any benefits or other relief from any other lawsuit, any other arbitration, or any other administrative, regulatory, or other proceeding against Defendants about the Released Claims; and all persons and entities shall be forever barred and permanently enjoined from filing, commencing, or prosecuting any other lawsuit as a class action against Defendants (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members who have not timely excluded themselves from the Settlement Class if such other lawsuit is based on or arises from the Released Claims.

19. Cooperation. Plaintiffs and Defendants agree to cooperate fully with one another to effect the consummation of this Agreement and to achieve the settlement provided for herein.

20. Agreement Contingent Upon Entry of Final Approval Order. This Agreement is contingent upon the Court's entry of an order substantially in the form of Exhibit 3 or in some other form which is acceptable to all the Parties, containing a judgment giving final approval to the terms of this Agreement, which becomes a final and non-appealable order. If the Court refuses to grant final approval of the terms of the settlement set forth herein, or if the Court's Final Approval Order is reversed or substantially modified on appeal in a manner which is not acceptable to all Parties, then this Agreement shall be null and void and no stipulation,

representation, or assertion of fact made in this Agreement may be used against any Party. No Party to this Agreement, absent any substantive change by the Court, shall appeal the approval of this Settlement Agreement by the Court.

21. Notices. Requests for exclusion, objections to the Agreement or settlement, and notices to Plaintiffs and the Settlement Class shall be sent to:

Mark K. Wasvary
Mark K. Wasvary, P.C.
2401 W. Big Beaver Rd., Suite 100
Troy, MI 48084

Requests for exclusion and objections shall be copied to, and notices to Defendant shall be sent to its counsel addressed as follows:

Carlito H. Young
Johnson, Rosati, Schultz & Joppich, P.C.
27555 Executive Dr., Suite 250
Farmington Hills, MI 48331

22. Court Submission. Class Counsel and Defendants' counsel will submit this Agreement and the exhibits hereto, along with such other supporting papers as may be appropriate, to the Court for preliminary approval. If the Court declines to grant preliminary approval to the settlement and to order notice of hearing for final approval with respect to the proposed Settlement Class, or if the Court declines to grant final approval to the foregoing after such notice and hearing, this Agreement will terminate as soon as the Court enters an order unconditionally and finally adjudicating that this Agreement and settlement will not be approved.

23. Integration Clause. This Agreement contains the full, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and supersedes any prior writings or agreements (written or oral) between or among the Parties, which prior agreements may no longer be relied upon for any purpose. This Agreement shall not be orally modified in any respect and can be modified only by the written agreement of the Parties supported by adequate consideration as confirmed in writing.

24. Headings. Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

25. Binding and Benefiting Others. This Agreement shall be binding upon and inure to the benefit of the Parties, and to their respective agents, employees, representatives, trustees, officers, directors, shareholders, divisions, parent corporations, subsidiaries, affiliates, heirs, assigns, and successors in interest.

26. Warranties. The Parties each further represent, warrant, and agree that, in executing this Agreement, they do so with full knowledge of any and all rights that they may have with respect to the claims released in this Agreement and that they have received independent legal counsel from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts. Each of the individuals executing this Agreement

warrants that he or she has the authority to enter into this Agreement and to legally bind the party(ies) for which he or she is signing.

27. Governing Law. The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of Michigan, without regard to its conflict of laws or choice of laws provisions.

28. Mutual Interpretation. The Parties agree and stipulate that the settlement was negotiated on an “arm’s-length” basis between parties of equal bargaining power. This Agreement is not one of adhesion, is mutually created and no ambiguity shall be construed in favor of or against any of the Parties. The Settlement Class acknowledges, but does not concede to or agree with, statements by Defendants regarding the merits of the claims or class certification and Defendants acknowledge, but do not concede to or agree with, the Settlement Class’s statements regarding the merits of the claims or class certification.

29. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. Signatures transmitted by facsimile or e-mail are acceptable for the execution of this Agreement and shall be treated as if original signatures.

30. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in

any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Parties and their counsel mutually elect by written stipulation to be filed with the Court within twenty (20) days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Agreement.

31. Continuing Jurisdiction. Without affecting the finality of the final judgment, the parties will ask the Court to retain continuing jurisdiction over the Litigation and the Parties, including all members of the Settlement Class, the administration and enforcement of this Agreement and the settlement, and the benefits to the Settlement Class hereunder, regarding the implementation, enforcement, construction, and interpretation of this Agreement, the order preliminarily approving the settlement, and the Final Approval Order and final judgment. Any dispute or controversies arising with respect to the interpretation, enforcement, or implementation of the Agreement shall be presented by motion to the Court.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date set forth underneath their respective signatures.

CITY OF ROSEVILLE

By: 

Robert Taylor

Its: Mayor

Dated: May 23, 2017

CITY OF ROSEVILLE


By: 

Scott Adkins

Its: City Manager

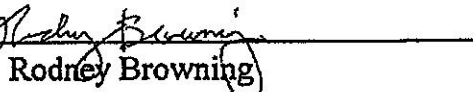
Dated: 5-19-17

GLENN SEXTON

By: 
Glenn Sexton

Dated: 5-22-17

RODNEY BROWNING

By: 
Rodney Browning

Dated: 5-22-2017

LAWRENCE M. GARNER

By: _____
Lawrence M. Garner

Dated: _____

CHRISTOPHER GARNER

By: _____
Christopher Garner

Dated: _____

WILLIAM KAUPUS

By: _____
William Kaupus

Dated: _____

**CORDIA MICHIGAN, LLC,
RUDALEV I, LLC, and GARNER PROPERTIES &
MANAGEMENT, LLC**

By: _____
Aaron D. Cox, Class Counsel

Dated: _____

By: _____

Its: _____

Dated: _____

GLENN SEXTON

By: _____
Glenn Sexton

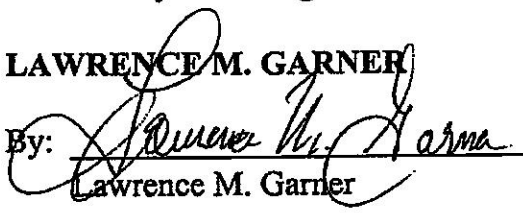
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RODNEY BROWNING

By: _____
Rodney Browning

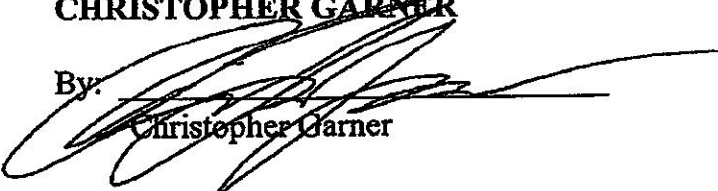
Dated: _____

LAWRENCE M. GARNER

By: 
Lawrence M. Garner

Dated: 5/01/17

CHRISTOPHER GARNER

By: 
Christopher Garner

Dated: 5/1/17

WILLIAM KAUPUS

By: _____
William Kaupus

Dated: _____

**CORDIA MICHIGAN, LLC,
RUDALEV I, LLC, and GARNER PROPERTIES &
MANAGEMENT, INC.**

Dated: _____

GLENN SEXTON

By: _____
Glenn Sexton

Dated: _____

RODNEY BROWNING

By: _____
Rodney Browning

Dated: _____

LAWRENCE M. GARNER

By: _____
Lawrence M. Garner

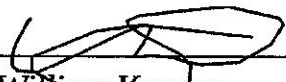
Dated: _____

CHRISTOPHER GARNER

By: _____
Christopher Garner

Dated: _____

WILLIAM KAUPUS

By:  _____
William Kaupus

Dated: 5/20/2017

**CORDIA MICHIGAN, LLC,
RUDALEV I, LLC, and GARNER PROPERTIES &
MANAGEMENT, INC.**

By: _____

Dated: _____