

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

SHANTA MILES, JACQUELINE TURNER,	)
KATHY ALLEN, JOSEPH ALLEN,	)
CENQUETTA HARRIS, and CORA HAYES,	)
	)
Plaintiffs,	)
	)
v.	)
	)
RICHMOND REDEVELOPMENT &	)
HOUSING AUTHORITY,	)
	)
Defendant.	)

Case No. 3:17-cv-00160-JAG

**PRELIMINARY ORDER**  
**FOR CLASS CERTIFICATION AND SETTLEMENT**

This case is presently before the Court on the joint motion of Plaintiffs Shanta Miles, Jacqueline Turner, Kathy Allen, Joseph Allen, Cenquetta Harris, and Cora Hayes (collectively, "Plaintiffs"), individually and on behalf of a class of persons (the "Settlement Class"), and Defendant Richmond Redevelopment and Housing Authority ("Defendant"), for preliminary certification of a settlement class and preliminary approval of a settlement reached between the parties. Having considered the motion, the supporting memorandum and declarations, the terms of the Settlement Agreement dated January 31, 2018, (the "Settlement Agreement"), and the arguments presented in open court,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the court preliminarily finds, for settlement purposes only, that the prerequisites to class certification have been met as to the "Settlement Class" defined below, in that: (a) the Settlement Class is so numerous that joinder of all members is impracticable, (b) there are questions of law or fact

common to the Settlement Class, (c) the claims of the named plaintiffs are typical of the claims of the Settlement Class, (d) the named plaintiffs will fairly and adequately represent the interests of the Settlement Class, (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members, and (f) a class action is superior to other available methods for fair and efficient adjudication of the controversy. Accordingly, the Court grants the joint motion for preliminary certification, and provisionally approves, for settlement purposes only, the following Settlement Class:

All current and former Richmond public housing residents since November 1, 2012, through October 31, 2016, who were subject to RRHA's procedures regarding utility allowances and late fees.

2. The Court also preliminarily finds that the terms of the Settlement Agreement are (a) fair, reasonable, and adequate in light of the relevant factual, legal, practical, and procedural considerations of the action; (b) free of collusion to the detriment of members of the Settlement Class; and (c) within the range of possible final judicial approval, subject to further consideration at the Fairness Hearing described in paragraphs 46 through 49 of this Order. Accordingly, the Court grants the joint motion for preliminary approval of the Settlement Agreement.

3. The Court preliminarily appoints plaintiffs Shanta Miles, Jacqueline Turner, Kathy Allen, Joseph Allen, Cenquetta Harris, and Cora Hayes as Class Representatives for the Settlement Class.

4. The Court conditionally appoints the following law firm and attorneys as Class Counsel for the Settlement Class:

Sylvia Cosby Jones, VSB # 35870  
Email: [sylvia@justice4all.org](mailto:sylvia@justice4all.org)

Brenda Castañeda, VSB # 72809  
Email: [brenda@justice4all.org](mailto:brenda@justice4all.org)

Mary DeVries, VSB # 88186  
Email: [maryd@justice4all.org](mailto:maryd@justice4all.org)

Marcellinus L.M.B. Slag, VSB # 29833  
Email: [marcel@justice4all.org](mailto:marcel@justice4all.org)

LEGAL AID JUSTICE CENTER  
123 East Broad Street  
Richmond, VA 23219  
(804) 643-1086  
(804) 643-2059 Facsimile

Thomas D. Domonoske, VSB # 35434  
CONSUMER LITIGATION ASSOCIATES, P.C.  
763 J. Clyde Morris Blvd.  
Newport News, VA 23601  
(540) 442-7706  
(757) 930-3662 Facsimile  
Email: [tom@clalegal.com](mailto:tom@clalegal.com)

5. If, for any reason, the Settlement is not finally approved or does not become effective, this provisional approval and class certification Order shall be null and void, and shall not be used or referred to for any purpose in this action or any other action or proceeding.

**Prospective Relief for Tenants**

6. If no appeal is filed from a final order in this case, then thirty days after entry of a final judgment approving this class settlement, the terms of this prospective relief shall take effect.

7. Utility allowances shall be based on the historical consumption study conducted by The Nelrod Company in 2016, as set forth in Attachment 1, retroactive to November 1, 2016.

8. RRHA, having voluntarily implemented utility allowances based on the 2016 study beginning January 2017, and as a result of its retroactive implementation, current and certain former tenants shall be entitled to a total of \$79,590.00 in credits and payments for electricity use during the months of November and December 2016.

9. The RRHA utility allowances will be implemented retroactively to November 1, 2016 and continue for a period of three (3) years, subject to any HUD-mandated methodology to the contrary.

10. RRHA shall implement revised individual relief policies and procedures for tenants who are elderly, disabled, or otherwise have special needs for usage of electricity beyond their control.

11. RRHA shall further notify tenants of the right to request relief upon their admission into the public housing program, at their initial lease execution and at their annual recertification appointments. This notification shall be in writing and will state the right to challenge the denial of any request for relief in accordance with the RRHA's grievance procedure. RRHA shall notify tenants about the relief procedures and the contact staff person by posting the information in the management office, publishing it in the Admissions and Continued Occupancy Policy ("ACOP") and by providing a notification at each lease reading or renewal.

12. RRHA shall modify its utility bills so that tenants are given specific information about the dates and readings of the submeters at the beginning and at the end of the period for which the bill is rendered, the amount of their kilowatt hour allowance, usage, overage, and the surcharge, in an agreed-upon format.

13. RRHA shall amend its lease to accurately inform tenants how they will be charged for excess utility usage, shall include in the lease the tenant's utility allowance, and shall amend its lease to ensure that late fees and other non-rent charges are not treated as rent.

14. RRHA shall determine whether it is possible to shorten the amount of time between receipt of the Dominion bill and notice to tenants of the amount of any surcharge. If

billing timeframes are shortened by up to one month, the first bill thereafter will reflect 2 months of utility charges.

15. RRHA will cover the customer charge from Dominion that is currently billed only to tenants paying surcharges, so long as HUD will reimburse RRHA for these charges at the same rate it reimburses RRHA for other operating costs (currently at 85%). RRHA shall notify Class Counsel if HUD no longer reimburses RRHA for these costs.

16. RRHA shall ensure that staff are trained regarding utility billing procedures, tenant requests for relief from surcharges, and grievance procedures for contesting charges. RRHA shall provide Class Counsel with a training plan and agenda that will be used to train staff.

**Retrospective Relief and Distribution to Former and Current Tenants**

17. If no appeal is filed from a final order in this case, then 45 days after entry of a final judgment approving this class settlement, the terms of this retroactive relief shall take effect.

18. The Class shall receive a gross recovery of \$951,835.45, to be allocated as follows:

- a. \$595,000.00 in retroactive relief to the accounts of the current and former tenants who were charged excess utility surcharges for usage between November 1, 2012, and October 31, 2016, with surcharge due dates from February 1, 2013, to January 1, 2017;
- b. \$110,000.00 in retroactive relief to the accounts of current and former tenants who were charged late fees that were triggered by unpaid excess utility charges from February 1, 2013 to November 1, 2016; and

- c. \$241,835.45 in retroactive relief to the accounts of current and former tenants who were overbilled due to billing errors for their electricity consumption from October 1, 2014, through November 1, 2016.

19. RRHA shall not bill any tenants for the net excess utility underbilling due to billing errors from October 1, 2014 through November 1, 2016, in the amount of \$35,834.68.

20. The \$600,000.00 and the interest that accrues on it is to be distributed as follows:

- a. \$5,000.00 for incentive awards of \$1,000.00 to each of the class representative households for pursuing the claims, for the expenses incurred attending meetings, mediations and hearings as well as personal time spent advancing the litigation, and the personal risk taken while speaking up for their rights; and
- b. The amount remaining, \$595,000.00, on a pro rata basis to class members based on the amount of excess utility charges assessed to the tenant's account for usage between November 1, 2012, and October 31, 2016, with surcharge due dates from February 1, 2013, to January 1, 2017.
- c. For current tenants, the amount of their credit will be applied as a specific credit to his/her account for any past due amount; to the extent the credit exceeds any past due amount it will be carried forward as a credit to be used for future non-rent charges;
- d. If a current tenant moves out before the credit on their account has been used, that tenant shall be entitled to a refund check in the amount of any unused portion of the credit, minus any outstanding balance at the time of move-out;

- e. For former tenants, the amount of this credit will be applied against any debits (or money owed) by that tenant as reflected in RRHA's local accounting system;
- f. For those former tenants where after applying this credit to any debits (or money owed), there exists a credit on that tenant's account, a refund will be sent to that tenant's best available address; and
- g. For checks to former tenants, if the refund check sent has not been cashed within 90 days of the check issue date, RRHA shall keep that credit in their accounting system as a positive balance for seven (7) years to be available to be claimed by the former tenant if the tenant contacts RRHA; after seven (7) years, any unclaimed funds are to be placed into a separate energy efficiency fund administered by RRHA for the benefit of existing RRHA public housing residents who need assistance maintaining energy efficient homes.

21. The \$110,000.00 in retroactive relief to the accounts of the current and former tenants who were charged late fees from February 1, 2013, to November 1, 2016, that were triggered by unpaid excess utility charges will be distributed on a pro rata basis to class members based on the population of tenants who were assessed a late fee during that time as follows:

- a. For current tenants, the amount of their credit will be applied as a specific credit to his/her account for any past due amount; to the extent the credit exceeds any past due amount it will be carried forward as a credit to be used for future non-rent charges;
- b. For former tenants, the amount of this credit will be applied against any debits (or money owed) by that tenant;

- c. For those former tenants where after applying this credit to any debits (or money owed), there exists a credit on that tenant's account, a refund will be sent to that tenant's best available address; and
- d. For checks to former tenants, if the refund check sent has not been cashed within 90 days of the check issue date, RRHA shall keep that credit on their accounting system as a positive balance for seven (7) years to be available to be claimed by the former tenant if the tenant contacts RRHA; after seven (7) years, any unclaimed funds are to be placed into a separate energy efficiency fund administered by RRHA for the benefit of existing RRHA public housing residents who need assistance maintaining energy efficient homes.

22. The \$241,835.45 shall be distributed on a pro rata basis to class members based on the amount of net excess utility overbilling due to billing errors assessed to the tenant's account from October 1, 2014 through November 1, 2016 as follows:

- a. For current tenants, the amount of their credit will be applied as a specific credit to his/her account for any past due amount; to the extent the credit exceeds any past due amount it will be carried forward as a credit to be used for future non-rent charges;
- b. For former tenants, the amount of this credit will be applied against any debits (or money owed) by that tenant;
- c. For those former tenants where after applying this credit to any debits (or money owed), there exists a credit on that tenant's account, a refund will be sent to that tenant's best available address; and

- d. For checks to former tenants, if the refund check sent has not been cashed within 90 days of the check issue date, then RRHA shall keep that credit on their accounting systems as a positive balance for seven years to be available to be claimed by the former tenant if the tenant contacts RRHA to apply for public housing at a future date; after seven years, any unclaimed funds are to be placed into a separate energy efficiency fund administered by RRHA for the benefit of existing RRHA public housing residents who need assistance maintaining energy efficient homes.

23. For current tenants, if after applying all available credits to that tenant's account, there remains a debit (amount owed) for excess utilities on their account, the tenant will be offered a payment arrangement based upon the following requirements:

- a. The tenant will be required to make down payment of 5% of their remaining excess utility balance;
- b. If the remaining excess utility balance is equal or less than \$1,200.00 (before applying the down payment), the tenant will be permitted to pay the balance over a 12-month period, in equal installments;
- c. If the remaining excess utility balance is greater than \$1,200.00 (before applying the down payment), the tenant will be permitted to pay the balance over a 24-month period, in equal installments.
- d. All other terms of the payment arrangement will be consistent with the relevant provisions contained in Chapter 19 of RRHA's ACOP.

24. Within 60 days after final approval of this settlement agreement, RRHA shall disburse \$100,000.00 for attorneys' fees and costs in a check made payable to the Legal Aid Justice Center.

25. RRHA has identified 6,442 current and former RRHA tenants who were assessed excess utility surcharges between November 1, 2012, to November 1, 2016.

26. Current and former RRHA tenants eligible for reimbursement payments are identified by numbers in Attachment 2 along with the amounts they are entitled to receive.

27. All current and former tenants will receive an amount equivalent to at least 22% of the excess utility surcharges charged to them between November 1, 2012, to November 1, 2016.

#### **Settlement Administration**

28. RRHA shall be responsible for providing notice to all members of the Settlement Class and distributing the settlement proceeds.

#### **Notice of Right to Reimbursement**

29. Within 5 days of preliminary approval by the Court of this Settlement and Notice, RRHA shall identify the class and send a Class List (including name, address, and amounts for notice) to Class Counsel for approval.

30. Within (20) days of preliminary approval by the Court of this Settlement and Notice, RRHA shall mail the attached Notice of Class Action Settlement ("Notice") (Attachment 3) to each of the Class Members. The Notice of Class Action Settlement describes: the nature of this action; the definition of the class certified; the class claims and issues raised; the proposed amounts to be distributed for reimbursement; the percentage of excess utility fees that Class Members will be reimbursed; that Class Members have the right to hire an attorney; the fact that

the Court will exclude any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on Class Members. This Notice also advises Class Members that they may contact Class Counsel if they would like further information.

31. For current tenants, RRHA shall mail the Notice to each tenant's address.

32. For former tenants, RRHA shall send the Notice to the best available address for that tenant. RRHA shall use a third-party service to determine the best available address for those former tenants entitled to a refund. If the former tenant left within one year of the mailing, RRHA shall try to identify a forwarding address by contacting the United States Postal Service. For those notices returned as undeliverable, RRHA, or the selected class notice mailing service/vendor, shall scrub the addresses used and attempt to find a second address to resend the mailing.

33. RRHA shall disclose necessary personally identifying information, including names of Class Members, addresses, ledger or account information, and social security numbers, to the selected mailing service/vendor and/or Class Counsel as needed to comply with the terms of the Order and/or for the purpose of administrating the Settlement. Said disclosure shall not constitute a violation of any federal or state laws otherwise prohibiting disclosure.

34. RRHA shall supply Class Counsel with the results of the initial mailings, specifically identifying which mailings were returned as undelivered and what addresses were used to attempt the initial mailing.

35. RRHA shall file a notice with the Court upon completion of the mailing.

36. Class Counsel shall be responsible for establishing procedures for providing further information and responding to Class Members' questions, including providing a website

with details about the case. Class Counsel shall post the Notice of Class Action Settlement and other information, including the Complaint and Settlement Agreement, on a dedicated page on the Legal Aid Justice Center's website.

37. RRHA shall post the Notice of Class Action Settlement in a prominent location at the management office for each of the public housing communities which are subjects of this lawsuit and provide a link to it on its website.

38. If the Notice of Class Action Settlement sent to any current or former tenant is returned because the intended recipient is deceased, then notice shall be mailed to the executor, administrator or personal representative of the decedent's estate if Class Counsel has been provided valid third-party documentation confirming that such individual has been qualified to serve in this capacity.

**Objection, Intervention, or Opt-Out**

39. If a Class Member or Class Counsel disagrees with the determination as to the member's eligibility for reimbursement or the amount of the reimbursement, the individual Class Member, Class Counsel, and the RRHA shall jointly review the Class Member's payment ledger, and any other documentation to determine if a discrepancy exists. If the RRHA, Class Counsel, and the Class Member are unable to reach an agreement as to the member's entitlement to relief, the Class Member may file an enforcement action in this court.

40. Any payment or form of other consideration provided to any intervenor or objector must first be presented to the Court for approval by motion. The motion that is made on behalf of any objector or intervenor must separately identify the consideration to be provided to the objector or intervenor, any attorney's fees that are to be paid, and the benefit that the objector or intervenor conferred upon the class.

41. Any Class Member who wishes to be excluded from the Settlement Class and not be bound by the Settlement Agreement must mail a request for exclusion ("Opt-Out") to Class Counsel postmarked no later than 5/1, 2018. For a Class Member's Opt-Out to be valid, it must state the Class Member's intent to be excluded from the Settlement Class, to not to participate in the Settlement distribution, or to waive all rights to the benefits of the Settlement. Any Class Member who does not submit a timely and valid Opt-Out, shall be bound by the Settlement Agreement and any Final Judgment entered in the action. Further, any Class Member who submits a timely and valid Opt-Out will be deemed to have waived any rights or benefits under the Settlement, and will not have standing to object to the Settlement or to seek to intervene in the action. Class Counsel shall file any requests to opt out with the federal district court within 10 days of receiving the requests.

**Disposition of Unclaimed Funds (Cy Pres)**

42. For checks to former tenants, if the refund check sent has not been cashed within 90 days of the check issue date, RRHA shall keep that credit in their accounting system as a positive balance for seven (7) years to be available to be claimed by the former tenant if the tenant contacts RRHA. After seven (7) years, any unclaimed funds are to be placed into a separate energy efficiency fund administered by RRHA for the benefit of existing RRHA public housing tenants who need assistance maintaining energy efficient homes.

**Attorneys' Fees and Costs**

43. This Settlement includes \$100,000.00 in attorneys' fees, payable to Legal Aid Justice Center and represents only a portion of the total hours spent by Plaintiffs' attorneys on this case multiplied by the lodestar rates of those attorneys representing reasonable rates for attorneys of comparable experience in the same market area.

**Notice Pursuant to the Class Action Fairness Act**

44. Within 10 days of the parties' <sup>entry of this Order,</sup> ~~filing this Settlement Agreement with the Court,~~

Defendants shall, pursuant to the Class Action Fairness Act ("CAFA"), mail the notice and documents required by CAFA to the Attorney General of the United States and the Attorney General of the Commonwealth of Virginia.

45. Defendants shall file a Notice with the Court upon completion of the required CAFA mailings.

**Fairness Hearing**

46. A hearing (the Fairness Hearing) shall be held before this Court on 7/10 at 10:00, to hear objections and determine: (a) whether the proposed settlement and compromise of this action as set forth in the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; (b) whether Final Judgment should be entered approving the Settlement; (c) whether to approve the request of Class Counsel for payment of attorneys' fees and costs; and (d) whether to approve the request of Class Representatives for incentive awards.

47. Any interested person may appear at the Fairness Hearing to show cause why the proposed Settlement should or should not be approved as fair, reasonable, adequate, and in good faith and/or why the request of Class Counsel for approval of attorneys' fees and costs should or should not be approved as fair and reasonable. However, no person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or the fees and costs requested by Class Counsel, unless that person (i) has sent or delivered written objections and copies of any supporting papers and briefs so that they are received no later than 6/1, to Class Counsel at the addresses provided in paragraph 4 of

this Proposed Preliminary Order, and to counsel for RRHA at: James M. Bowling, St. John, Bowling, Lawrence and Quagliana, LLP, 416 Park Street, Charlottesville, VA 22902, and (ii) has filed objections, papers and briefs, showing proof of service upon said counsel, with the Clerk of the United States District Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, VA 23219, on or before the same date. Any Class Member who does not submit an objection as provided above shall be deemed to have waived any objection to the Settlement and shall forever be forbidden from making any objection to class certification, to the fairness, adequacy, or reasonableness of the Settlement, and to the reimbursements or any attorneys' fees approved.

48. All memoranda, affidavits, declarations, and other evidence in support of the request for final approval of the Settlement, Class Counsel's request for approval of attorneys' fees and costs, and Class Representatives' request for approval of incentive awards payments shall be filed on or before 6/15.

49. The Court may adjourn the Fairness Hearing from time to time without further notice other than to counsel of record and may approve the proposed Settlement and request for approval of attorneys' fees and costs, and request for approval of Class Representative incentive awards at or after the originally scheduled Fairness Hearing.

**Continuing Jurisdiction**

50. The Court shall have continuing jurisdiction, during the term of this Agreement, to enforce this Settlement Agreement's terms, and to enforce the Final Judgment.

ENTER: This 7 day of March 2018.

Is/  
John A. Gibney, Jr.  
United States District Judge