



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**

<b>MNP HOLDINGS, LLC, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No.</b>
	)	<b>2007-900669</b>
<b>J. T. SMALLWOOD in his official</b>	)	
<b>capacity as Tax Collector of</b>	)	
<b>Jefferson County, Alabama, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into as of the 17<sup>th</sup> day of December, 2007, by counsel for the Plaintiffs, Ruth Evans and MNP Holdings, LLC, on behalf of the Plaintiffs and the MNP Class, as defined herein, and the Defendants, J.T. Smallwood as Tax Collector of Jefferson County and Barry Stephenson as Treasurer of Jefferson County (the “Defendants”).

**BACKGROUND OF LITIGATION**

1. Plaintiffs Ruth Evans and MNP Holdings, LLC brought action CV-2007-900669 on behalf of similarly situated taxpayers (the *MNP* Class). This case was consolidated with a case brought against these same Defendants, on behalf of other Jefferson County taxpayers, with the understanding that if the Plaintiffs’ motions for class certification were granted, two separate classes of taxpayers would be certified, the *MNP* Class and the *Winston* Class.

2. The Plaintiffs in the above-styled action seek a judicial determination of their rights, and the rights of Jefferson County taxpayers, with respect to Excess Funds, together with interest thereon, held by the Jefferson County Treasurer in the Redemption Fund.

3. Each year, the Tax Collector conducts tax sales to collect delinquent ad valorem taxes. The tax sales often result in Overbids by purchasers at the tax sales who pay amounts in excess of the amount of ad valorem property taxes due, plus any interest, and penalties on that delinquent tax, and the expenses of the tax sale. Ownership of the Excess Funds is governed by Alabama Code § 40-10-28, which provides, in substance, that excess funds may be held by the Treasurer and paid to the “owner” of said funds. The statute also provides that if the “owner” fails to “call for” the Excess Funds within three years, the County may take steps to have the funds transferred to the County’s general fund. Funds transferred to the County become County property if not paid out to the owner within ten (10) years as provided by the statute.

4. During each year that Overbids have been paid during tax sales conducted by Defendant J. T. Smallwood, the resulting Excess Funds have been deposited into the Redemption Fund maintained by Defendant Barry Stephenson and invested at interest. When taxpayers redeem their property, the Excess Funds (plus 12% interest paid by the taxpayer) have been paid to the tax sale purchaser who paid the Overbid. The interest earned on the redeeming taxpayers’ Excess Funds has remained in the Redemption Fund.

6. In this litigation, the Plaintiffs have contended that the legal maxim that “interest follows principal” is applicable to the interest on the Excess Funds that is being held in the Redemption Fund. *See, e.g., Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003), *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 165 (1998) and *HRSS, Inc. v. Wayne County Treasurer*, 279 F. Supp. 2d 846 (S.D. Mich. 2003). Moreover, Plaintiffs MNP Holdings, LLC and Ruth Evans contend that they, along with other redeeming taxpayers, are entitled to their *pro rata* share of the interest in the Redemption Fund attributable to the redeeming taxpayer’s Excess Funds.

6. Defendants Barry Stephenson and J.T. Smallwood have agreed to pay the Plaintiffs and similarly-situated redeeming taxpayers their *pro rata* shares of the interest earned on their Excess Funds. Moreover, the Defendants have agreed that, subject to any material changes in the governing law, they will pay accrued interest to taxpayers who redeem in the future, as provided herein.

Accordingly, the undersigned Parties agree to enter into this Agreement to resolve the claims asserted in CV-2007-900669 without further expense or delay. Counsel for the undersigned Plaintiffs are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and in the best interests of the MNP Holdings Class.

## **STATEMENT OF AGREEMENT**

### **I. DEFINITIONS**

“Agreement” means this Settlement Agreement.

“Class” shall refer to the “*MNP Class*” defined herein.

“Court” means the Circuit Court for Jefferson County, Alabama.

“Defendants” mean Jefferson County Tax Collector J. T. Smallwood, Jefferson County Treasurer Barry Stephenson, and Jefferson County, a political subdivision of the State of Alabama.

“Defendants’ Counsel” means Attorney Charles S. Wagner.

“Excess Funds” means any amounts paid by the purchaser at a tax sale in excess of the *valorem* property taxes due, any interest and penalties on that delinquent tax, and the costs of the tax sale. Stated differently, Excess Funds are the funds in the Redemption Fund resulting from Overbids paid by purchasers at tax sales. Excess Funds are held by the Treasurer in the Redemption Fund. *See* § 40-10-28, Alabama Code.

“Fairness Hearing” means the hearing where the parties request that the Court enter final approval of this settlement.

“Final Judgment” means the Order granting Final Approval of this Settlement.

“Final Approval” of this settlement and this Agreement means the last day by which all of the following have occurred:

- (a) the settlement order and judgment is entered; and
- (b) the Court has made its final order awarding attorneys fees and costs, if any.

“Future Redeeming Taxpayers” means those Jefferson County taxpayers whose properties are sold at tax sales resulting in Overbids and who redeem their properties at any time after the date of final judgment in this case.

“Jefferson County Treasurer” or “Treasurer” shall refer to Defendant Barry Stephenson in his official capacity.

“*MNP* Class Counsel” refers to David R. Donaldson and Tammy M. Stokes of the law firm Donaldson & Guin, LLC and to W. Lewis Garrison of the law firm Heninger, Garrison & Davis.

“*MNP* Class Member” means a person included within the *MNP* Class as defined above.

“*MNP* Settlement Fund” refers to the accrued interest in the Redemption Fund attributable to Excess Funds from tax sales of *MNP* Class Members’ properties.

“Net Distribution” means each *MNP* Class Member’s *pro rata* share of the *MNP* Settlement Fund after payment of *MNP* Class Counsel’s fees, incentive payments to Ruth Evans and *MNP* Holdings, LLC, administrative fees of the *MNP* Class settlement, including mailing and publication costs, expert expenses and litigation costs.

“Overbid” means the amount paid by a purchaser at a tax sale in excess of the amount of ad valorem property taxes due, plus any interest, and penalties on that delinquent tax, and the expenses of the tax sale. (*See Excess Funds above*).

“Parties” refers to the named Plaintiffs and the Defendants in CV-2007-900669.

“Plaintiffs” refers to Ruth Evans and MNP Holdings, LLC.

“Preliminary Approval” of the Agreement means that the Court has entered an order preliminarily approving the terms and conditions of the Agreement, without material modification unless same is consented to by the Parties.

“Representative Plaintiffs” means MNP Holdings, LLC and Ruth J. Evans.

“Redemption Fund” refers to the special redemption account established and maintained by the Jefferson County Treasurer into which Excess Funds have been deposited.

“Settlement Order and Judgment” means a final order and judgment issued by the Court approving this Settlement Agreement without material modification, except as agreed in writing by the signatories hereto, as binding upon the Parties.

“Settling Parties” shall include all of the Parties as defined above, other than Defendant Jefferson County, Alabama.

“Treasurer” or “Jefferson County Treasurer” shall refer to Defendant Barry Stephenson in his official capacity.

## II. CLASS CERTIFICATION

A. **Class Definition.** The parties hereby stipulate to the certification, pursuant to Alabama Rules of Civil Procedure 23(b)(1)(A) and 23(b)(2) of the *MNP* Class, consisting of the following persons:

All Jefferson County taxpayers whose property was sold within the 13 years before the filing of this action, or since that time, at a tax sale for delinquent ad valorem taxes owed by such owners, and which sale produced an excess over the taxes, interest, penalties and costs due, and who have redeemed said properties before a Final Judgment in this case, or other date determined by the Court.

This class shall not include claims based upon tax sales for the years between 1994 and 1998 by persons or entities who participated in *Maples v. Williams*, CV 98-05330.

B. **Claims Certified.** The complaint contains five counts. Count 1 seeks a declaration that Jefferson County taxpayers who redeem their properties sold at tax sales for Overbids are the rightful owners of their *pro rata* share of the interest on excess funds held in the “Redemption Fund.” Count 2 seeks damages under 42 U.S.C. § 1983. Count 3 claims unjust enrichment with respect to money held by the Treasurer. Count 4, for Declaratory Judgment, seeks a declaration that the Excess Funds Statute, Alabama Code § 40-10-28, is unconstitutional. Count 5 seeks injunctive relief requiring, *inter alia*, that the Defendants pay the Plaintiff Class the money that they allege is being wrongfully retained by the Defendants. The parties hereby agree to seek class certification pursuant to Ala. R. Civ. P. 23(b)(1)(A) and 23(b)(2) of the Plaintiffs’ claims in Counts 1 and 5. The Plaintiffs agree to withdraw their request to certify the claims set out in Counts 2, 3 and 4 of their complaint. Upon final approval of the settlement, the parties agree to jointly move to dismiss Counts 2, 3 and 4.

### III. SETTLEMENT BENEFITS

#### A. Benefits for taxpayers who redeem on or before the date of final approval.

The Defendants hereby agree to pay to each *MNP* Class Member whose tax sale resulted in an excess funds on which interest is being held in the Redemption Fund an amount equal to the Class Member's *pro rata* share of the interest in the Redemption Fund, net of attorney fees, litigation costs, settlement costs, incentive payments to the class representatives and expert fees (the "Net Distributions"). All settlement benefits paid to the *MNP* Class Members shall be paid exclusively from the *MNP* Settlement Fund. The settlement benefits shall be paid exclusively from the accrued interest in the Redemption Fund. Throughout the term of this settlement, and the implementation thereof, the Jefferson County Treasurer shall continue to invest the sums which comprise the Redemption Fund. The balance of the *MNP* Settlement Fund as of the date of this agreement is approximately \$4 million and it is expected that the *MNP* Settlement Fund will continue to grow up to the date of the Fairness Hearing.

#### B. Benefits for taxpayers who redeem on or after the date of final settlement.

The Defendants agree that they will not interpret Code of Alabama, § 40-10-28 in a contrary fashion to this Agreement, unless and until said Code Section is altered or amended by the Alabama Legislature or by Court Order, in which case the Defendants' interpretation will be consistent with applicable law. Unless and until there is some material change in the applicable law governing the parties' rights with respect to Excess Funds, the Defendants hereby agree that Future Redeeming Taxpayers shall be entitled to a *pro rata* share of the interest earned on the Excess Funds attributable to their tax sales, net of attorneys' fees and expenses awarded by the Court in the Order of Final Approval. Said payments to Future Redeeming Taxpayers and to Class Counsel are to be made by the Treasurer within 30 days following redemption. All

payments to Future Redeeming Taxpayers and to Class Counsel shall be calculated based on the interest earned on Excess Funds during the time that said Excess Funds are held in the Redemption Fund. Accrual of interest payable to Future Redeeming Taxpayers and to Class Counsel shall end on the earlier of the following dates: either (a) the date when the Excess Funds attributable to the redeeming taxpayer's tax sale were disbursed from the Redemption Fund by the Jefferson County Treasurer; or (b) the redemption date. Nothing shall be owed under the terms of this Settlement Agreement to any Future Redeeming Taxpayers or to Class Counsel based on interest accruing subsequent to either disbursement of Excess Funds or to redemption.

#### **IV. CLASS SETTLEMENT PROCEDURES**

**A. Payment of the Net Distribution to the Class.** Checks for Net Distributions will automatically be sent approximately 90 days after final approval of the settlement to those Class Members who can be identified through the records of the Tax Collector, unless some dispute exists regarding a putative class member's right to share in the settlement funds. All disputes over who is entitled to a Net Distribution will be submitted to the Judge for resolution. (*See Article IV., Paragraph E. below*).

**B. Unclaimed Funds.** Checks not negotiated within six (6) months shall be considered unclaimed funds. *MNP* Class Members whose funds are unclaimed may obtain their Net Distribution by filing a claim with the Tax Collector at any time prior to entry of an order paying said funds to the General Fund of Jefferson County as provided in § 40-10-28.

**C. Attorneys' Fees and Costs.** *MNP* Class Counsel shall make application to the Court for a common fund fee award of one-third (1/3) of the *MNP* Settlement Fund, plus out-of-pocket litigation costs and expenses. The Defendants will not oppose or object to an award sought by Class Counsel in said amount. In the absence of objections to the Settlement by any

*MNP* Class Member, the fees, awards and expenses shall be paid by the Treasurer to Class Counsel within ten (10) days following entry of a final judgment awarding said fees. In the event of objections to the Settlement, the Treasurer may hold that portion of the fees that is in dispute until forty-two (42) days after entry of a final judgment. In the event that an objecting Class Member files a timely appeal, the Treasurer may hold that portion of the fees that is in dispute pending adjudication by an appellate court.

**D. Incentive Awards.** For their services as class representatives, MNP Holdings, LLC and Ruth Evans shall each be paid \$1,000 in addition to their respective Net Distributions. Said payments will be made from the *MNP* Class's share of the Redemption Fund and shall be treated as a litigation expense.

**E. Disputed Claims and Joint Ownership.**

(1) The persons entitled to participate in this settlement shall be: (a) property owners who redeemed; or (b) persons granted the right to redeem pursuant by Alabama Code § 40-10-120 who redeemed and who bore the cost of the redemption. For example, if a mortgagee redeemed, added the cost of redemption to the mortgage loan balance, and was ultimately reimbursed for the cost of redemption by repayment of the loan in full or by sale for a price that included the cost of redemption, the mortgagee would not be entitled to the Net Distribution. Conversely, if a mortgagee redeemed and was unable to recover the cost of the redemption from the mortgagor or some other party, the mortgagee would be entitled to share in the settlement funds.

(2) The Tax Collector's records reflecting the names of the persons who redeemed the properties shall constitute *prima facie* evidence of membership in the *MNP* Class. Provided, however, that any person not listed in the Tax Collector's records who is entitled to participate in

the settlement shall be entitled to file a claim requesting to participate in the settlement within 60 days following final approval of the settlement. Net Distributions subject to timely claims or other disputes will not be distributed until the dispute is resolved. In such event, the Court will determine who is entitled to share in the settlement benefits.

(3) The following language shall be placed on the back of the Class Administrator's Excess Funds payment checks to Class Members, as applicable:

The undersigned acknowledges payment in full of my claims against the MNP Settlement Fund, the Class Administrator, Class Counsel, the Defendants, J. T. Smallwood, the Tax Collector of Jefferson County, and Barry Stephenson, the Treasurer of Jefferson County, with respect to all matters that were resolved in MNP v. Jefferson County, in the Circuit Court of Jefferson County, Alabama, Civil Action No. CV-2007-9000669. I also represent and warrant that I redeemed the property that was the subject of the above-styled lawsuit and that I have not been repaid by anyone for the cost of said redemption. My claims that are discharged and released hereby have not been encumbered, assigned, pledged or otherwise conveyed by me to any other entity.

## V. SETTLEMENT APPROVAL

A. **Involvement of the Parties.** The parties shall jointly move, or any party with the support of the other parties, shall file a motion for preliminary approval requesting that the Court preliminarily approve this Agreement, find the same to be fair and adequate for the Class, approve the methods and form of notice to the Class, and set a fairness hearing to consider final approval of the settlement.

B. **Class Notices.** Following preliminary approval of this settlement, a Class Notice shall be mailed to each MNP Holdings Class Member whose identity is reflected in the records of the Tax Collector. Summary Class Notices shall also be published for two consecutive weeks in The Birmingham News as provided in the Order of Preliminary Approval. Class Counsel shall also provide copies of the class notice, the settlement agreement and such other appropriate information as Class Counsel deems to be appropriate on the Internet. The Class Notices shall

also inform the Class Members that (1) their property was sold for taxes; (2) an excess over and above the taxes and costs owed was collected (an “Overbid”); (3) the Excess Funds are or were previously on deposit in the County Treasury; and, (4) under the terms of the Settlement, Class Members are entitled to payment of the interest attributable to each Class Member’s Overbid, net of attorney fees and litigation costs and expenses. The Class Notices will give Class Members an address and telephone number where they can obtain additional information (such as the amount of their proposed Net Distribution), and they will advise the Class Members of the amount of attorneys’ fee being claimed by Class Counsel and that Class Members have a right to be heard at the Final Approval hearing either in support of or in opposition to the proposed Settlement.

**C. Fairness Hearing.** At or before the Fairness Hearing, the parties shall submit a joint proposed Settlement Order and Judgment, granting final approval of this settlement, as well as finding that the Agreement is fair, reasonable, adequate and binding on all MNP Class Members, together with an award of attorneys’ fees and costs. MNP Class Counsel shall submit their petition for the award of representative fees, class counsel fees and expenses before the fairness hearing.

**D. No Admissions.** The parties agree that this Agreement, the Settlement provided for herein, and any proceedings in connection herewith or therewith, are not, and shall not be construed or invoked by anyone as, an admission of liability or wrongdoing on the part of Defendant. Neither this Agreement nor any orders or other documents contemplated herein or related hereto nor any of the terms hereof or thereof shall be offered or received in evidence as an admission of liability or wrongdoing on the part of Defendant. Defendant expressly disclaims and denies any wrongdoing whatsoever and states that it has entered into this Agreement solely

to avoid the inconvenience and expense of protracted and costly litigation.

## **VI. DISCHARGE AND RELEASE**

A. The Order granting final approval of this Settlement shall constitute a final adjudication of the claims set out in Counts 1 and 5 of the *MNP* Complaint. Said Order will provide that the named *MNP* Plaintiffs, and the *MNP* Class Members shall forever release and discharge the claims asserted in Count 1 and 5 of the *MNP* Complaint, including all claims pertaining to the accrued interest in the Redemption Fund that is the subject of this agreement.

B. The *MNP* Class's money damages claims, including those claims asserted in Counts 2, 3 and 4 of the complaint filed in this case, are not being certified or released in connection with this settlement. The Final Order approving this settlement will not bar the Plaintiffs or absent class members from asserting any money damages claims they wish to assert, including the Constitutional claims set out in the original complaint in this case.

C. The Court has granted class certification in another case brought by other Jefferson County Taxpayers filed after this case, *Winston, et al., v. Jefferson County, Alabama*, CV 07-2297. This settlement is not intended to affect the rights of any *Winston* parties or class members. This agreement shall not be construed to impair or otherwise adversely impact any defenses available to the Defendants in *Winston*. Nor shall this agreement be deemed to impair or otherwise adversely impact any claims asserted by the Plaintiffs in *Winston*.

D. This Agreement reflects, among other things, the compromise and settlement of disputed claims, and neither the Agreement nor the Release given herein, nor any consideration therefore, nor any actions taken to carry out this Agreement, are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, of the validity of any claim, or any point of fact or law, on the part of any party. Defendants deny the allegations of the

Complaint in the above case and in *Winston*.

## **VII. MISCELLANEOUS PROVISIONS**

A. The parties and counsel shall use their best efforts to cause the Court to give preliminary approval to this Agreement as promptly as possible, and to take all steps contemplated by this Agreement to effectuate the Settlement on the terms and conditions imposed herein.

B. In the event the Court disapproves this Settlement Agreement or any material portion of the Agreement for any reason, or holds that it will not enter a final order embodying the terms of the Settlement or overturns or modifies the final order in any material way, then:

1. If the parties to this Agreement do not agree jointly to appeal such ruling, this Settlement Agreement shall become null and void, the litigation shall continue and the parties hereby agree to jointly move the Court to vacate any and all orders entered pursuant to this Settlement Agreement; or

2. If the parties to this Agreement do agree to jointly appeal such ruling and if such appeal is not successful and the provisions of this Settlement Agreement are materially affected by the outcome of such an appeal so that they cannot be put into effect, this Settlement Agreement shall become null and void, the litigation shall continue and the parties will jointly move the Court to vacate any and all orders entered pursuant to this Settlement Agreement.

C. The parties shall cooperate fully with each other in implementing the letter, spirit and intent of this Agreement and shall execute any and all documents necessary for the implementation of this Agreement.

D. The waiver by one party of any provision or breach of this Agreement shall not be

deemed a waiver of any other provision or other breach of this Agreement.

E. This Agreement shall become effective upon its execution by all of the undersigned. The parties may execute this Agreement in counterparts and execution of counterparts shall have the same force and effect as if all parties had signed the same instrument.

F. The Court will retain jurisdiction of this action for the purposes of issuing any and all orders or decrees as may be necessary to effectuate, clarify, modify or enforce the purpose, intent and terms of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Settlement Agreement on the date first above written.

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