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20 Attorneys for Plaintiffs

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **COUNTY OF ORANGE**

23 KAMAL ALI, an individual; and ZAINAB  
24 ALI, an individual; JOHN TORPHY, an  
25 individual, and ELIZABETH TORPHY, an  
26 individual (as Trustees of the JOHN C.  
27 TORPHY AND ELIZABETH M. TORPHY  
28 TRUST DATED 5/5/2004); on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

WARMINGTON RESIDENTIAL  
CALIFORNIA, INC., a Corporation;  
REBCO COMMUNITIES, INC. f/k/a  
WARMINGTON HOMES CALIFORNIA,  
INC., a Corporation; PLUMBING  
CONCEPTS, INC., a Corporation;  
MUELLER INDUSTRIES, INC., a  
Corporation; and DOES 1-100,

Defendants.

AND RELATED CROSS-ACTION.

CASE NO. 30-2013-00689593-CU-CD-CXC  
Assigned for all purposes to:  
Judge Peter Wilson  
Dept. CX-101

**NOTICE OF CONTINUED HEARING  
ON PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

**New Hearing Date: March 30, 2023**  
**Time: 2:00 p.m.**  
**Dept.: CX-101**

Complaint Filed: 11/21/13

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**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that at the March 2, 2023 hearing on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, the Court adopted its tentative ruling (with one exception noted below, regarding the continued hearing date). A copy of the tentative ruling is attached hereto as **Exhibit “A”**.

Additionally, the Court continued the hearing on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement to **March 30, 2023, at 2:00 p.m.**, in Department CX-101 of the above-entitled Court.

The Court further ordered that the deadline to submit redlines of corrected documents consistent with the attached tentative ruling is **March 20, 2023**.

Plaintiffs were ordered to give notice.

Dated: March 6, 2023

KABATECK LLP  
BRIDGFORD, GLEASON & ARTINIAN  
McNICHOLAS & McNICHOLAS LLP

By:/s/ Richard L. Kellner & Michael H. Artinian  
Richard L. Kellner & Michael H. Artinian  
*Attorneys for the Certified Class*

# **EXHIBIT A**

**TENTATIVE RULINGS****Judge Peter J. Wilson  
Dept. CX101****657-622-5301****March 2, 2023**

These are the Court's tentative rulings. They may become orders if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4<sup>th</sup> 436, 442, fn. 1.)

If the parties agree to submit on the Court's tentative ruling, please call the Court Clerk to inform the Court that **all parties** submit on the Court's tentative ruling.

Appearances, whether remote or in person, must be in compliance with Code of Civil Procedure §367.75, Rule 3.672 of the California Rules of Court, and Superior Court of California, County of Orange, Appearance Procedure and Information, Civil Unlimited and Complex, located at [https://www.occourts.org/media-relations/covid/Civil Unlimited and Complex Appearance Procedure and Information.pdf](https://www.occourts.org/media-relations/covid/Civil%20Unlimited%20and%20Complex%20Appearance%20Procedure%20and%20Information.pdf).

Information, instructions and procedures to appear remotely are also available at <https://www.occourts.org/media-relations/aci.html>.

Unless the court orders otherwise, remote appearances will be conducted via Zoom through the court's online check-in process, available at <https://www.occourts.org/media-relations/aci.html>. Once online check-in is completed, counsel and self-represented parties will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room while the clerk provides access to the video hearing.

The public may attend hearings by coming to court or via remote access as described above.

Parties preferring to be heard in person, instead of remotely, should provide notice of their intent to appear in person to the court and to all other parties at least five days before the hearing.

Requests for fee waivers may be submitted to [CivilSRL@occourts.org](mailto:CivilSRL@occourts.org) or the drop box outside the Central Justice Center courthouse.

**COURT REPORTERS:** Official court reporters (i.e. court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- [Civil Court Reporter Pooling](#); and
- For additional information, please see the court's website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

**Note: Procedural Guidelines for Class Action and PAGA Settlement appear after the Tentative Rulings.**

#	Case Name	Tentative Ruling
1.	<p>Alhashlamoun vs. Blue Box Marketing, LLC</p> <p>30-2020-01152950</p>	<p>The motion to be relieved as counsel of record for Defendants Blue Box Marketing LLC and Nuri Alraizti aka Nuri Riaziti (Alraizti) is GRANTED and will be effective upon the filing of the proof of service of the signed Order on Defendants. Moving counsel has complied with CRC Rule 3.1362.</p> <p>Moving counsel is ordered to submit a revised proposed Order that includes Defendant Alraizti's email addresses in paragraph 6 within 3 court days.</p> <p>Moving counsel to ordered to give notice.</p> <p>The status conference remains on calendar.</p>
2.	<p>Ali vs. Warmington Residential California, Inc.</p> <p>30-2013-00689593</p>	<p>The hearing on the Motion for Preliminary Approval is CONTINUED to April 13, 2023 at 2:00 p.m. in department CX101 to permit the parties to respond to the following issues. A supplemental briefing shall be filed at least 9 days before the continued hearing and respond where necessary to the points raised below. Redlined versions of the revised proposed Class Notice and proposed order are to be provided. If required, an amendment to the settlement agreement is directed, rather than "amended settlement agreement", to avoid use of limited Court time and resources.</p> <p><u>As to the Settlement</u></p> <ol style="list-style-type: none"> <li>1. Are the deadlines for opting out, objecting or submitting a prior owner verification extended if the Class Notice is re-mailed?</li> <li>2. The Court typically permits any Class Member who appears in person or through counsel at the Final Approval Hearing to object even if he or she has not submitted a written objection or filed a notice to appear. The Class Notice and proposed Order should advise that Class Members may still appear in person or through counsel at the Final Approval Hearing to orally object even if no written objection or notice to appear was submitted.</li> <li>3. The Final Approval Order and Judgment should give the Court continuing jurisdiction in accordance with CCP § 664.6 and CRC Rule 3.769(h).)</li> </ol> <p><u>As to the Class Notice</u></p> <p>-</p>

1. The Class Notice is to be revised consistent with the issues addressed above.
2. Does the Class Notice need to be translated to any other language?
3. The class notice has the typical language that if the recipient does nothing, he or she will receive their share of the settlement fund. That language should be revised to reflect the reality here. A prior owner who replaced or coated their piping must submit a Prior Owner Verification Form. And a current owner may be excluded if a valid prior owner form is submitted. The "do-nothing" language is here too misleading.
4. The Settlement Administrator's website should include all key documents in this matter, such as the operative Complaint, the Settlement, Class Notice and other forms, the Preliminary and Final Approval Orders and Final Judgment.
5. On page 1, the last bullet point, the last line, the phrase "by prior owners of the homes" appears twice.
6. On page 2, first bullet point, last line, the phrase "by prior owners of the homes" appears to be unnecessary.
7. On page 3 and on the last page, not all Class Counsel contact information have been provided. Is this intentional?
8. The Class Notice should consistently refer to Plaintiffs or Class Representatives, rather than Plaintiff or Class Representative.
9. The Class Notice should consistently refer to ILYM as the Class Administrator, Claims Administrator or Settlement Administrator to avoid any confusion.
10. The Exclusion Form attached as Exhibit D to the Settlement should include the address of the house at issue. The exclusion form should also include the deadline for submitting it and how it should be submitted to the Settlement Administrator.
11. The Prior Owner Verification Form should also include the deadline for submitting it and how it should be

submitted to the Settlement Administrator.

Proposed Order

1. The proposed order is to be revised consistent with the issues addressed above.
2. The Settlement, Class Notice, Request for Exclusion Form and Prior Owner Verification Form should be attached to the proposed order as exhibits.
3. Final Approval Hearings are held on Thursdays at 2:00 p.m.
4. The signature line should be updated with the correct judge.

At Final Approval, the parties are ordered to include the following:

1. Plaintiff must present a full report to the Court on all exclusions, objections and disputes received. The Court will consider any objections at the final approval hearing.
2. The Court has wide discretion on assessing the reasonableness of fees, including basing fees on the percentage of fund method, conducting a lodestar cross-check on a percentage fee, or foregoing a lodestar cross-check and using other means to evaluate the reasonableness of a requested percentage fee. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 506.) However, the parties must include sufficient information in the Motion for Final Approval to permit the Court to conduct a lodestar cross-check, such as billing records in support of fees and documentation of costs.
3. Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any other counsel, including the exact percentages, or confirm none exist. (*Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184; Cal. R. Ct. 3.769(b).)
4. In order for the Court to determine the appropriate amount of Plaintiff's enhancement at final approval, Plaintiff should submit a declaration addressing the factors set forth in *Golba v. Dick's*

		<p><i>Sporting Goods, Inc.</i> (2015) 238 Cal.App.4th 1251, 1272 and <i>Clark v. Am. Residential Servs. LLC</i> (2009) 175 Cal.App.4th 785, 804, including an estimate of the hours spent on this litigation.</p> <p>Plaintiff is ordered to give notice.</p>
<b>3.</b>	Ari Investment Cases JCCP 4811	Off calendar.
<b>4.</b>	Cackin vs. Ingersoll-Rand Industrial, U.S., Inc. 30-2020-01167485	<p>The hearing on the Motion for Preliminary Approval is CONTINUED to April 13, 2023 at 2:00 p.m. in department CX101 to permit the parties to respond to the following issues. A supplemental briefing shall be filed at least 9 days before the continued hearing and respond where necessary to the points raised below. Redlined versions of the revised proposed Class Notice and proposed order are to be provided. If required, an amendment to the settlement agreement is directed, rather than "amended settlement agreement", to avoid use of limited Court time and resources.</p> <p><u>As to the Settlement</u></p> <ol style="list-style-type: none"> <li>1. Plaintiff must submit all PAGA Notice letter(s) to the LWDA to the Court.</li> <li>2. Did the parties intend to include an escalator clause? In Section 3.06(a) the Settlement provides that the gross settlement amount is "subject to a pro rata increase under the conditions set forth in Section 3.04(e)" suggesting an escalator clause is intended. However, Section 3.04(e) only discusses rescission if the workweeks exceed 8,600.</li> <li>3. How are PAGA payments calculated and how are they characterized for tax purposes?</li> <li>4. Did the parties intend that Plaintiff will provide a general release? The supporting memorandum indicates Plaintiff is providing a general release pursuant to Section 5.03 of the Settlement. ROA 126, P&amp;A, p. 6:3-6 ["Only Plaintiff will agree to a general release of any and all claims, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date of the Settlement, and a waiver of Civ. Code § 1542. Settlement Agreement at § 5.03."]. However, the Settlement does not include a Section 5.03.</li> <li>5. The valuation analysis does not include the valuation for failure to reimburse</li> </ol>



necessary business expenses. If no value was placed on that claim, Plaintiff needs to state that and explain why.

6. Section 1.11 of Settlement permits objections and exclusion requests to be faxed or mailed. However, Section 3.04(b) provides that exclusion requests should be postmarked and does not permit submission by fax.
7. Did the parties consider whether to include a request for exclusion form that class members can complete and mail in?
8. Are Class Members permitted to submit disputes by fax or mail as well? Section 3.04(a) in the Settlement does not indicate when disputes are due or whether the extension for re-mailed notices apply to disputes. Paragraph 3.04(a) also provides that the Settlement Administrator is the "final arbiter" on disputes. This section should be revised so that the parties file with the Court all disputes submitted by class members, the evidence submitted, and the resolution of those disputes, and the Court has the right to review any decision made by the settlement administrator regarding a claim dispute.
9. Defendant filed a Notice of Related Cases on August 31, 2021 regarding the matter entitled, *Joshua Bolden v. Club Car, LLC, et al.*, in the Superior Court of the State of California for the County of Riverside, Case No. RIC2002185. ROA 66, Defendant's Notice of Related Cases. What is the status of this case and is this case affected by this settlement? Are there any other overlapping or related cases?
10. Section 6.13 of the Settlement contains a prevailing party attorney's fee provision. The Court will not approve a prevailing party attorney fee provision against the unnamed Class members.

#### Issues re Class Notice

1. The Class Notice is to be revised consistent with the issues addressed above.
2. Does notice need to be translated to other languages?
3. The Notice should reflect that this is also a PAGA action.
4. Sections 10 and 12 imply Class Members must mail their objections or exclusion

		<p>requests but the Settlement permits objections or exclusion requests to be submitted by fax or mail.</p> <ol style="list-style-type: none"> <li>5. The Class Notice should consistently refer to gross settlement amount, and not maximum settlement amount, to be consistent with the Settlement and avoid any confusion.</li> <li>6. The department should be updated. See Class Notice, § 17.</li> </ol> <p><u>Issues re Proposed Order</u></p> <ol style="list-style-type: none"> <li>1. The proposed order is to be revised consistent with the issues addressed above.</li> <li>2. The Settlement and Class Notice should be attached to the proposed order as exhibits.</li> <li>3. The proposed order needs a definition for PAGA Member [aggrieved employee].</li> <li>4. The response deadlines for opt outs, objections and disputes must be included.</li> <li>5. Add "IT IS SO ORDERED" at the end of the proposed Order and before the date and signature line.</li> </ol> <p>Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service at least 5 court days prior to the continued hearing. Any supplemental brief and/or amendments made pursuant to this Order should also be filed with LWDA along with notice of the continued hearing date, with a proof of service submitted to the Court.</p>
<p><b>5.</b></p>	<p>Del Rivero vs. Centex Homes of California, LLC 30-2013-00649338</p>	<p>The hearing on the Motion for Preliminary Approval is CONTINUED to April 13, 2023 at 2:00 p.m. in department CX101 to permit the parties to respond to the following issues. A supplemental briefing shall be filed at least 9 days before the continued hearing and respond where necessary to the points raised below. Redlined versions of the revised proposed Class Notice and proposed order are to be provided. If required, an amendment to the settlement agreement is directed, rather than "amended settlement agreement", to avoid use of limited Court time and resources.</p> <p><u>As to the Settlement</u></p>

1. The settlement and proposed notices address the fact that a prior notice was sent to the class, but do so in a manner that is potentially ambiguous and/or misleading. By way of example, in the settlement agreement, while the class is defined as present owners who have not replaced or coated their piping, or prior owners who replaced or coated, section 1.40 defines Settlement Class Members as Original Class Members and present homeowners etc. The proposed notices make clear that there can only be one claimant per household, but the definitions in the settlement of Class, Original Class Members, Participating Settlement Class Member and Settlement Class Members leaves this unclear.
2. The class notices have the typical language that if the recipient does nothing, he or she will receive their share of the settlement fund. That language should be revised to reflect the reality here. A prior owner who replaced or coated their piping must submit a Prior Owner Verification Form. And a current owner may be excluded if a valid prior owner form is submitted. The "do-nothing" language is here too misleading.
3. The class notice to be sent to owners who received the earlier class notice informs them that they are receiving the notice because they did not opt out of the action in response to the earlier notice. Should owners/former owners who opted out be given an opportunity to "opt in"? Relatedly, how many owners/former owners opted out in response to the earlier notice, and what is the correlation between opt outs and number of homes? Stated differently, are there a total of 145 affected homes, or was the overall number reduced by prior opt outs?
4. How does the Settlement take into account Original Class Members who were compelled to arbitration in this matter? Does the Class Home List exclude all of the Original Class Members who were compelled to arbitration?
5. What is the deadline for submitting a Prior Owner Verification Form?

6. Are the deadlines for opting out, objecting or submitting a prior owner verification extended if the Class Notice is re-mailed?
7. The Court typically permits any Class Member who appears in person or through counsel at the Final Approval Hearing to object even if he or she has not submitted a written objection or filed a notice to appear. The Class Notice and proposed Order should advise that Class Members may still appear in person or through counsel at the Final Approval Hearing to orally object even if no written objection or notice to appear was submitted.
8. The Final Approval Order and Judgment should include a provision that the Court has continuing jurisdiction over this matter in accordance with CCP § 664.6 and CRC Rule 3.769(h).

As to the Ex. B, Class Notice for Prior Homeowners

1. The Class Notice is to be revised consistent with the issues addressed above.
2. On page 2, in the box, for the objection, Class Members are also permitted to orally object in person or through counsel at the Final Approval hearing whether they submitted a written objection or not.
3. The Notice incorrectly states the Settlement amount is \$1,372,348 (pp. 5-6) and the amount of attorney fees as \$457,449.33 (p. 6).
4. The Settlement Administrator's website should include all key documents in this matter, such as the operative Complaint, the Settlement, Class Notice and other forms, the Preliminary and Final Approval Orders and Final Judgment.
5. The objection procedure should be revised in accordance with the above.
6. The Class Notice should consistently refer to ILYM as the Class Administrator, Claims Administrator or Settlement Administrator to avoid any confusion.

7. The Class Notice does not advise Class Members how to obtain underlying documents and papers from the Orange County Superior Court website.

As to Ex. C, Class Notice for Subsequent Homeowners

1. The Class Notice is to be revised consistent with the issues addressed above.
2. The Exclusion Form attached as Exhibit D to the Settlement should include the address of the house at issue. The exclusion form should also include the deadline for submitting it and how it should be submitted to the Settlement Administrator.
3. The Prior Owner Verification Form should also include the deadline for submitting it and how it should be submitted to the Settlement Administrator.

As to the Proposed Order

1. The proposed order is to be revised consistent with the issues addressed above.
2. Do the Class Notices, Request for Exclusion Form and Prior Owner Verification Form need to be translated to another language? If so, certified copies of the translations should be submitted to the Court.
3. The Settlement, Class Notice, Request for Exclusion Form and Prior Owner Verification Form should be attached to the proposed Order as exhibits.
4. There is no amended settlement or amendment to the settlement. Proposed Order, p. 2, line 13.
5. The deadline for Prior Owner Verification Form should be updated.
6. The names of all individuals who previously opted out after the February 2018 Class Notice as well as all those who choose to opt out after receiving this Class Notice should be identified and included in the Final Approval Order.
7. Paragraph 22 should be deleted.

		<p>8. Final Approval Hearings are held on Thursdays at 2:00 p.m. The parties should choose a date for the Final Approval Hearing.</p> <p>9. The signature line should be updated with the "Honorable Peter J. Wilson".</p> <p>The Motion for Final Approval should include the following:</p> <ol style="list-style-type: none"> <li>1. Plaintiff must present a full report to the Court on all exclusions, objections and disputes received. The Court will consider any objections at the final approval hearing.</li> <li>2. The Court has wide discretion on assessing the reasonableness of fees, including basing fees on the percentage of fund method, conducting a lodestar cross-check on a percentage fee, or foregoing a lodestar cross-check and using other means to evaluate the reasonableness of a requested percentage fee. (<i>Laffitte v. Robert Half Intern. Inc.</i> (2016) 1 Cal.5th 480, 506.) However, the parties must include sufficient information in the Motion for Final Approval to permit the Court to conduct a lodestar cross-check, such as billing records in support of fees and documentation of costs.</li> <li>3. Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any other counsel, including the exact percentages, or confirm none exist. (<i>Barnes, Crosby, Fitzgerald &amp; Zeman, LLP v. Ringler</i> (2012) 212 Cal.App.4th 172, 184; Cal. R. Ct. 3.769(b).)</li> <li>4. In order for the Court to determine the appropriate amount of Plaintiff's enhancement at final approval, Plaintiff should submit a declaration addressing the factors set forth in <i>Golba v. Dick's Sporting Goods, Inc.</i> (2015) 238 Cal.App.4th 1251, 1272 and <i>Clark v. Am. Residential Servs. LLC</i> (2009) 175 Cal.App.4th 785, 804, including an estimate of the hours spent on this litigation.</li> </ol> <p>Plaintiff is ordered to give notice.</p>
<p><b>6.</b></p>	<p>Nava vs. Bar Bakers. LLC</p>	<p>Off calendar.</p>

	30-2021-01232303	
<b>7.</b>	Retana vs. Bar Bakers, LLC 30-2019-01096563	The status conference remains on calendar.
<b>8.</b>	Rodriguez Diaz vs. Corales Restaurants, Inc. 30-2015-00825337	Plaintiff has advised that Defendants are behind on their installment payments and that Defendants' counsel has not been in communication with or responded to Plaintiff's counsel. ROA 384, Supp. Appleton Decl., ¶¶4-5.  Defendants should be prepared to respond to these issues at the hearing.
<b>9.</b>	Shah vs. Pulte Home Corporation 30-2014-00731604	The hearing on the Motion for Preliminary Approval is CONTINUED to April 13, 2023 at 2:00 p.m. in department CX101 to permit the parties to respond to the following issues. A supplemental briefing shall be filed at least 9 days before the continued hearing and respond where necessary to the points raised below. Redlined versions of the revised proposed Class Notice and proposed order are to be provided. If required, an amendment to the settlement agreement is directed, rather than "amended settlement agreement", to avoid use of limited Court time and resources.  <u>As to the Settlement</u>  1. The class notice to non-arbitration owners has the typical language that if the recipient does nothing, he or she will receive their share of the settlement fund. That language should be revised to reflect the reality here. A prior owner who replaced or coated their piping <u>must</u> submit a Prior Owner Verification Form. And a current owner may be excluded if a valid prior owner form is submitted. The "do-nothing" language is here too misleading.  2. What is the deadline for submitting a Prior Owner Verification Form?  3. Are the deadlines for opting out, objecting or submitting a prior owner verification extended if the Class Notice is re-mailed?  4. The Court typically permits any Class Member who appears in person or through counsel at the Final Approval Hearing to object even if he or she has

not submitted a written objection or filed a notice to appear. The Class Notice and proposed Order should advise that Class Members may still appear in person or through counsel at the Final Approval Hearing to orally object even if no written objection or notice to appear was submitted.

5. The Final Approval Order and Judgment should include a provision that the Court has continuing jurisdiction over this matter in accordance with CCP § 664.6 and CRC Rule 3.769(h).

As to the Ex. C, Arbitration Owner Class Members

1. The Class Notice is to be revised consistent with the issues addressed above.
2. In Section 2, the Class Notice indicates the property is located in Talega, California but the 1AC indicates the property is in Yorba Linda.
3. The Settlement Administrator's website should include all key documents in this matter, such as the operative Complaint, the Settlement, Class Notice and other forms, the Preliminary and Final Approval Orders and Final Judgment.
4. The objection procedure should be revised in accordance with the above.
5. The Class Notice should consistently refer to ILYM as the Class Administrator, Claims Administrator or Settlement Administrator to avoid any confusion.
6. The Notice does not advise Class Members how to obtain underlying documents and papers from the Orange County Superior Court website. The Class Notice should be revised to provide instructions on how to access documents from the court's website.

As to Ex. D, Non-Arbitration Owner Class Members Homeowners

1. The Class Notice is to be revised consistent with the issues addressed above.
2. The Exclusion Form attached as Exhibit E to the Settlement should include the address of the house at issue. The



exclusion form should include the deadline for submitting it and how it should be submitted to the Settlement Administrator.

3. The Prior Owner Verification Form should include the deadline for submitting it and how it should be submitted to the Settlement Administrator.

As to the proposed Order

1. The proposed order is to be revised consistent with the issues addressed above.
2. Do the Class Notices, Request for Exclusion Form and Prior Owner Verification Form need to be translated to another language?
3. The Settlement, Class Notice, Request for Exclusion Form and Prior Owner Verification Form should be attached to the proposed order as exhibits.
4. The deadline for Prior Owner Verification Form should be updated.
5. The parties have chosen to file the Final Approval Motion 24 days prior to the hearing. This is acceptable but they are only required to file the Motion no later than the date required per the Code.
6. Paragraph 24 should be deleted.
7. Final Approval Hearings are held on Thursdays at 2:00 p.m. The parties should propose a date for Final Approval.
8. The signature line should be updated with the "Honorable Peter J. Wilson".

The Motion for Final Approval should include the following:

1. Plaintiff must present a full report to the Court on all exclusions, objections and disputes received. The Court will consider any objections at the final approval hearing.
2. The Court has wide discretion on assessing the reasonableness of fees, including basing fees on the percentage of fund method, conducting a lodestar cross-check on a percentage fee, or foregoing a lodestar cross-check and

		<p>using other means to evaluate the reasonableness of a requested percentage fee. (<i>Laffitte v. Robert Half Intern. Inc.</i> (2016) 1 Cal.5th 480, 506.) However, the parties must include sufficient information in the Motion for Final Approval to permit the Court to conduct a lodestar cross-check, such as billing records in support of fees and documentation of costs.</p> <p>3. Plaintiff’s counsel must disclose whether they have any fee-splitting arrangement with any other counsel, including the exact percentages, or confirm none exist. (<i>Barnes, Crosby, Fitzgerald &amp; Zeman, LLP v. Ringler</i> (2012) 212 Cal.App.4th 172, 184; Cal. R. Ct. 3.769(b).)</p> <p>4. In order for the Court to determine the appropriate amount of Plaintiff’s enhancement at final approval, Plaintiff should submit a declaration addressing the factors set forth in <i>Golba v. Dick’s Sporting Goods, Inc.</i> (2015) 238 Cal.App.4th 1251, 1272 and <i>Clark v. Am. Residential Servs. LLC</i> (2009) 175 Cal.App.4th 785, 804, including an estimate of the hours spent on this litigation.</p> <p>Plaintiff is ordered to give notice.</p>
<p><b>10.</b></p>	<p>Smith vs. Pulte Home Corporation 30-2015-00808112</p>	<p>The hearing on the Motion for Preliminary Approval is CONTINUED to April 13, 2023 at 2:00 p.m. in department CX101 to permit the parties to respond to the following issues. A supplemental briefing shall be filed at least 9 days before the continued hearing and respond where necessary to the points raised below. Redlined versions of the revised proposed Class Notice and proposed order are to be provided. If required, an amendment to the settlement agreement is directed, rather than “amended settlement agreement”, to avoid use of limited Court time and resources.</p> <p><u>As to the Settlement</u></p> <p>1. The settlement and proposed notices address the fact that a prior notice was sent to the class, but do so in a manner that is potentially ambiguous and/or misleading. By way of example, in the settlement agreement, while the class is defined as present owners who have not replaced or coated their piping, <u>or</u> prior owners who replaced or coated, section</p>

1.40 defines Settlement Class Members as Original Class Members and present homeowners etc. The proposed notices make clear that there can only be one claimant per household, but the definitions in the settlement of Class, Original Class Members, Participating Settlement Class Member and Settlement Class Members leaves this unclear.

2. The class notices have the typical language that if the recipient does nothing, he or she will receive their share of the settlement fund. That language should be revised to reflect the reality here. A prior owner who replaced or coated their piping must submit a Prior Owner Verification Form. And a current owner may be excluded if a valid prior owner form is submitted. The "do-nothing" language is here too misleading.
3. The class notice to be sent to owners who received the earlier class notice informs them that they are receiving the notice because they did not opt out of the action in response to the earlier notice. Should owners/former owners who opted out be given an opportunity to "opt in"? Relatedly, how many owners/former owners opted out in response to the earlier notice, and what is the correlation between opt outs and number of homes (56)? Stated differently, are there a total of 56 affected homes, or was the overall number reduced by prior opt outs?
4. Confirm that the Class Home List (56 homes) excludes all of the Original Class Members who were compelled to arbitration.
5. What is the deadline for submitting a Prior Owner Verification Form?
6. Are the deadlines for opting out, objecting or submitting a prior owner

verification extended if the Class Notice is re-mailed?

7. The Court typically permits any Class Member who appears in person or through counsel at the Final Approval Hearing to object even if he or she has not submitted a written objection or filed a notice to appear, and the Class Notice and proposed Order should so advise.
8. There appears to be a typo with "Defendant-Defendants" in Section 1.28 of the Settlement.
9. The Final Approval Order and Judgment should include a provision that the Court has continuing jurisdiction over this matter in accordance with CCP § 664.6 and CRC Rule 3.769(h).

As to Ex. B, Class Notice

1. The Class Notice is to be revised consistent with the issues addressed above.
2. The Class Notice informs them that they are receiving the notice because they did not opt out of the action in response to the earlier notice. Should owners/former owners who opted out be given an opportunity to "opt in"? Relatedly, how many owners/former owners opted out in response to the earlier notice, and what is the correlation between opt outs and number of homes (56)? Stated differently, are there a total of 56 affected homes, or was the overall number reduced by prior opt outs?
3. On page 2, in the box, for the objection, Class Members should also be permitted to orally object in person or through counsel at the Final Approval hearing whether they submitted a written objection or not.
4. On page 2, only one contact for Class Counsel is provided. Is this intentional?
5. The Settlement Administrator's website should include all key documents in this matter, such as the operative Complaint, the Settlement, Class Notice and other forms, the Preliminary and Final Approval Orders and Final Judgment.

6. The objection procedure should be revised in accordance with the above.
7. The Class Notice should consistently refer to ILYM as the Class Administrator, Claims Administrator or Settlement Administrator to avoid any confusion.
8. The Class Notice does not advise Class Members how to obtain underlying documents and papers from the Orange County Superior Court website. The Class Notice should be revised to provide instructions on how to access documents from the court's website.

As to Ex. C, Class Notice

1. The Class Notice is to be revised consistent with the issues addressed above.
2. The Exclusion Form attached as Exhibit D to the Settlement should include the address of the house at issue. The exclusion form should include the deadline for submitting it and how it should be submitted to the Settlement Administrator.
3. The Prior Owner Verification Form should include the deadline for submitting it and how it should be submitted to the Settlement Administrator.

As to the Proposed Order

1. The proposed order is to be revised consistent with the issues addressed above.
2. Do the Class Notices, Request for Exclusion Form and Prior Owner Verification Form need to be translated to another language?
3. The Settlement, Class Notice, Request for Exclusion Form and Prior Owner Verification Form should be attached to the proposed order as exhibits.
4. The deadline for Prior Owner Verification Form should be updated.
5. The objection procedure should be updated so that it is consistent with the above and Paragraph 22 should be deleted.

6. Final Approval Hearings are held on Thursdays at 2:00 p.m. The parties should propose a date for Final Approval.
7. The signature line should be updated with the "Honorable Peter J. Wilson".

The Motion for Final Approval should include the following:

1. Plaintiff must present a full report to the Court on all exclusions, objections and disputes received. The Court will consider any objections at the final approval hearing.
2. The Court has wide discretion on assessing the reasonableness of fees, including basing fees on the percentage of fund method, conducting a lodestar cross-check on a percentage fee, or foregoing a lodestar cross-check and using other means to evaluate the reasonableness of a requested percentage fee. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 506.) However, the parties must include sufficient information in the Motion for Final Approval to permit the Court to conduct a lodestar cross-check, such as billing records in support of fees and documentation of costs.
3. Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any other counsel, including the exact percentages, or confirm none exist. (*Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184; Cal. R. Ct. 3.769(b).)
4. In order for the Court to determine the appropriate amount of Plaintiff's enhancement at final approval, Plaintiff should submit a declaration addressing the factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272 and *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804, including an estimate of the hours spent on this litigation.
5. Along with the Motion for Final Approval, the Settlement Administrator should provide an estimated high and low for individual settlement payments, along with Plaintiff's individual payouts.

		<p>6. The names of all individuals who previously opted out after the 2021 Class Notice as well as all those who choose to opt out after receiving this Class Notice should be identified and included in the Final Approval Order.</p> <p>Plaintiff is ordered to give notice.</p>
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### **Procedural Guidelines for Preliminary Approval of Class Action Settlements**

Parties submitting class action settlements for preliminary approval should be certain that the following procedures are followed and that all of the following issues are addressed. Failure to do so may result in unnecessary delay of approval. It is also strongly suggested that these guidelines be considered during settlement negotiations and the drafting of settlement agreements.

1) NOTICED MOTION - Pursuant to California Rule of Court ("CRC") 3.769(c), preliminary approval of a class action settlement must be obtained by way of regularly noticed motion.

2) CLAIMS MADE VS. CHECKS-MAILED SETTLEMENT/CY PRES – The court typically finds that settlement distribution procedures that do not require the submission of claim forms, but rather provide for settlement checks to be automatically mailed to qualified recipients, result in greater benefit to the members of most settlement classes. If a claims-made procedure is proposed, the settling parties must be prepared to explain why that form is superior to a checks-mailed approach. If the settlement results in "unpaid residue or unclaimed or abandoned class member funds," the agreement must comply with Code of Civil Procedure § 384.

3) REASONABLENESS OF SETTLEMENT AMOUNT – Admissible evidence, typically in the form of declaration(s) of plaintiffs' counsel, must be presented to address the potential value of each claim that is being settled, as well the value of other forms of relief, such as interest, penalties and injunctive relief. Counsel must break out the potential recovery by claims, injuries, and recoverable costs and attorneys' fees so the court can discern the potential cash value of the claims and how much the case was discounted for settlement purposes. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.) Where the operative complaint seeks injunctive relief, the value of prospective injunctive relief, if any, should be included in the *Kullar* analysis. The court generally requires that this analysis be fully developed and supported at the preliminary approval stage. The analysis must state the number of anticipated class members (broken down by subclasses if applicable), and the final approval hearing papers must similarly state the number of class members (again by subclass, if applicable).

This analysis must also include a description of the expected low, average, and high payments to class members, and the expected amount to be received by the Plaintiff(s) (excluding any enhancement award).

4) ALLOCATION – In employment cases, if the settlement payments are divided between taxable and non-taxable amounts, a rationale should be provided consistent with counsel's *Kullar* analysis. The agreement and notice should clearly indicate whether there will be withholdings from the distribution checks, and who is paying the employer's share of any payroll tax. The court is unlikely to approve imposing the employer's share of payroll taxes on class members. If the operative complaint and the

settlement include penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), proof of submission to the LWDA must be provided. (Labor Code §2999(l)(1).)

5) RELEASE - The release should be fairly tailored to the claims that were or could be asserted in the lawsuit based upon the facts alleged in the complaint. Releases that are overbroad will not be approved. Furthermore, while the court has no problem, conceptually, with the waiver by the named Plaintiff of the protection of Civil Code §1542, a 1542 waiver by the absent class members is generally inappropriate in the class settlement context. A comprehensive description of released claims as those arising out of the allegations of the operative complaint generally provides an adequate level of protection against future claims. A 1542 waiver, which by its own terms is not necessarily circumscribed by any definition of "Released Claims," goes too far. Also, although the court will not necessarily withhold approval on this basis, it generally considers a plain language summary of the release to be better than a verbatim rendition in the proposed class notice.

6) SETTLEMENT ADMINISTRATION - The proposed Settlement Administrator must be identified, including basic information regarding its level of experience. Where calculation of an individual's award is subject to possible dispute, a dispute resolution process should be specified. The court will not approve the amount of the costs award to the Settlement Administrator until the final approval hearing, at which time admissible evidence to support the request must be provided. The court also generally prefers to see a settlement term that funds allocated but not paid to the Settlement Administrator will be distributed to the class pro rata.

The settlement should typically provide that the settlement administrator will conduct a skip trace not only on returned mail, but also on returned checks.

7) NOTICE PROCEDURE - The procedure of notice by first-class mail followed by re-sending any returned mail after a skip trace is usually acceptable. A 60-day notice period is usually adequate.

8) NOTICE CONTENT - The court understands that there can be a trade-off between precise and comprehensive disclosures and easily understandable disclosures and is willing to err on the side of making the disclosures understandable. By way of illustration, parties should either follow, or at least become familiar with the formatting and content of The Federal Judicial Center's "Illustrative" Forms of Class Action Notices at <http://www.fjc.gov/>, which conveys important information to class members in a manner that complies with the standards in the S.E.C.'s plain English rules. (17 C.F.R. § 230.421.)

Notices should always provide: (1) contact information for class counsel to answer questions; (2) an URL to a web site, maintained by the claims administrator or plaintiffs' counsel, that has links to the notice and the most important documents in the case; and (3) for persons who wish to review the court's docket in the case, the URL for the court: : <https://ocapps.occourts.org/civilwebShoppingNS/Search.do>

The motion should address whether translation(s) of the Notice and all attachments thereto should be provided to class members.

9) CLAIM FORM - If a claim form is used, it should not repeat voluminous information from the notice, such as the entire release. It should only contain that which is necessary to elicit the information necessary to administer the settlement.



10) EXCLUSION AND OBJECTION- The court prefers that the Notice be accompanied by a Form to be completed by the class member seeking to be excluded, and a separate Form to be completed by the class member wishing to object.

The notice need only instruct class members who wish to exclude themselves to send a letter to the settlement administrator setting forth their name and a statement that they request exclusion from the class and do not wish to participate in the settlement. It should not include or solicit extraneous information not needed to effect an exclusion. The same applies to the contents of the Form, if used.

Objections should also be sent to the settlement administrator (not filed with the court nor served on counsel). Thereafter counsel should file a single packet of all objections with the court. The court will not approve blanket statements that objections will be waived or not considered if not timely or otherwise compliant—rather, any such statements must be preceded by a statement that "Absent good cause found by the court..."

11) INCENTIVE AWARDS - The court will not decide the amount of any incentive award until final approval hearing, at which time evidence regarding the nature of the plaintiff's participation in the action, including specifics of actions taken, time committed and risks faced, if any, must be presented. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.)

12) ATTORNEY FEES - The court will not approve the amount of attorneys' fees until final approval hearing, at which time sufficient evidence must be presented for a lodestar analysis. Parties are reminded that the court will not award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case, even if the parties have agreed to the fees. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 573-575.) Further information regarding fee approval is set forth in the court's Procedural Guidelines for Final Approval of Class Action Settlements (below).

At the final approval hearing, Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any other counsel or confirm none exists. (*Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184; California Rules of Court, rule 3.769(b).)

13) CONCURRENT PENDING CASES – The declaration(s) filed in support of the motion must inform the court as to whether the parties, after making reasonable inquiry, are aware of any class, representative or other collective action in any other court that asserts claims similar to those asserted in the action being settled. If any such actions are known to exist, the declaration shall also state the name and case number of any such case and the procedural status of that case. (*Trotsky vs. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal. App. 3d 134, 148; Effect of failure to inform court of another pending case on same or similar issues.)

14) PROPOSED ORDER GRANTING PRELIMINARY APPROVAL – All proposed orders should include the requisite "recital," "finding," and "order" language, including adequate information to provide clear instruction to the settlement administrator. The proposed order should also attach the proposed notice and any associated forms as exhibits. The proposed order must contain proposed dates for all future events contemplated therein.

### **Procedural Guidelines for Final Approval of Class Action Settlements**

Parties submitting class action settlements for final approval should be certain that the following procedures are followed, and that all of the following issues are addressed. Failure to do so may result in unnecessary delay of final approval.

1) Since the date and place of final approval hearings are set by the preliminary approval order, notice of which is typically included in the notice to class members of the settlement itself (California Rules of Court ["CRC"] 3.769(e) & (f)), the final approval hearing is outside the scope of Code of Civil Procedure §1005. Nevertheless, settling parties should caption their papers submitted in support of final approval as a "Motion for Final Approval," and set the matter for hearing on the reserved date.

2) With rare exceptions, the court will expect all issues related to final approval to be heard at the same time, including, without limitation, (a) final approval of the settlement itself, (b) approval of any attorney's fees request, (c) approval of incentive awards to class representatives, and (d) approval of expense reimbursements and costs of administration. If the settling parties elect to file separate motions for any of these categories, the motions must be set on the same day.

3) All requests for approval of attorney's fees awards, whether included in a Motion for Final Approval or made by way of a separate motion, must include detailed lodestar information, even if the requested amount is based on a percentage of the settlement fund. The court generally finds the declarations of class counsel as to hours spent on various categories of activities related to the action, together with hourly billing-rate information, to be sufficient, provided it is adequately detailed. It is generally not necessary to submit copies of billing records themselves with the moving papers, but counsel should be prepared to submit such records at the court's request.

Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any other counsel or confirm none exists. (*Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4<sup>th</sup> 172, 184; California Rules of Court, rule 3.769(b).)

4) Requests for approval of enhancement/incentive payments to class representatives must include evidentiary support consistent with the parameters outlined in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4<sup>th</sup> 785, 804-807.

5) For all settlements that include a distribution to settlement class members, a final compliance hearing must be set, which requires the submission and approval of a final compliance status report after completion of the distribution process. The compliance hearing will be set when final approval is granted, so the moving papers should include a suggested range of dates for this purpose. The compliance status report must be filed at least 5 court days prior to the compliance hearing.

6) In light of the requirements of CRC 3.769(h), all final approvals must result in the entry of judgment, and the words "dismissal" and "dismissed" should be avoided not only in proposed orders and judgments, but also in settlement agreements.

7) To ensure appropriate handling by the court clerk, the court prefers the use of a combined "order and judgment," clearly captioned as such (e.g. "Order of Final Approval and Judgment" or "Order and Judgment of Final Approval"). The body of the proposed order and judgment must also incorporate the appropriate "judgment is hereby entered" language, and otherwise fully comply with California Rule of Court ("CRC") 3.769(h), including express reference to that rule as the authority for the court's continuing jurisdiction. The proposed order and judgment should also include the compliance hearing provision (with suggested date and time) discussed above.

8) If the actions that are being settled are included in a Judicial Council Coordinated Proceedings ("JCCP"), termination of each included action by entry of judgment is subject to CRC 3.545(b) & (c), and proposed orders and judgments must so reflect. Language must also be included to the effect that compliance with CRC 3.545(b)(1 & 2) shall be

undertaken by class counsel, and that a declaration shall be filed confirming such compliance.

9) All proposed orders and judgments should include all the requisite "recital," "finding," "order" and "judgment" language in a manner that clarifies the distinctions between these elements, and care must be taken that all terms that require definition are either defined in the proposed order and judgment itself or that definitions found elsewhere in the record are clearly incorporated by reference. No proposed order and judgment should be submitted until after review by counsel for each settling party.

### **Procedural Guidelines for PAGA Settlements**

#### **(Private Attorney General Act of 2004, Labor Code sections 2698 et seq.)**

Pursuant to Labor Code section 2699(1)(2): "The superior court shall review and approve any settlement of any civil action filed pursuant to this part."

While the court will review every such motion for approval on its own merits, the court requires that at a minimum the settlement and/or any order or judgment requested from the court in connection with it must contain at least the following:

1. A comprehensive definition of the group of allegedly aggrieved employees represented by plaintiff in the action.
2. A definition of the PAGA claims encompassed by the settlement, premised on the allegations of the operative complaint.
3. The total consideration being provided by defendant(s) for the settlement ("gross settlement amount"), and a description of each allocation of the consideration, such that all of the total consideration is accounted for. This description must include:
  - a. A description of all consideration being received by plaintiff, including for plaintiff's individual claims and PAGA claims.
  - b. A description of all consideration being received by aggrieved employees including, as applicable, civil penalties and/or unpaid wages.
  - c. A statement of the amount of consideration that will be subject to the 75%/25% allocation required by section 2699(i).
  - d. The amounts sought for attorney's fees, attorney costs, and costs of administration.
  - e. Any amount sought as a plaintiff's enhancement.
  - f. A description of any other amount(s) being deducted from the gross settlement amount.
4. An explanation as to how the amount payable to each purported aggrieved employee is to be calculated.
5. An explanation as to why the attorneys' fees and costs sought are reasonable within the meaning of Labor Code section 2699 (g)(1).
6. A description of the tax treatment for any of the payments to plaintiff and/or aggrieved employees.
7. A provision setting forth the disposition of unclaimed funds, i.e., checks uncashed within a stated period of time after being sent to aggrieved employees.

8. A provision that the proposed settlement be submitted to the Labor and Workforce Development Agency at the same time that it is submitted to the court. (Labor Code section 2699(l)(2)).
9. A provision that the Court will retain jurisdiction to enforce the settlement pursuant to CCP section 664.6.
10. A notice to aggrieved employees that will accompany the payment to them. A copy of such notice is to be provided to the court for approval along with the motion seeking approval of the settlement. The notice must inform the recipient as to the scope of the released claims, and as to the recipient's responsibility for any taxes payable on the amount received.
11. Releases that do not include Civil Code section 1542 releases for aggrieved employees other than plaintiff.
12. Releases that release, for aggrieved employees other than plaintiff, no more than the civil penalties available under PAGA by reason of the facts alleged in the operative complaint.

Counsel's declaration(s) in support of the motion must state whether the parties (Plaintiff(s) and Defendant(s)) know of any other cases that may be impacted by the settlement.

The moving papers must include a copy of all written notices to the LWDA pursuant to Labor Code section 2699.3(a)(1)(A).

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**PROOF OF SERVICE**

**Ali v. Warmington Residential California, Inc., et al.**  
**Orange County Superior Court Case No.: 30-2013-00689593**

I, the undersigned, declare that:

I am over the age of 18 years and not a party to the within action. I am employed in the County where the Proof of Service was prepared and my business address is Law Offices of BRIDGFORD, GLEASON & ARTINIAN, 26 Corporate Plaza, Suite 250, Newport Beach, CA 92660.

On the date set forth below, I served the following document(s): **NOTICE OF CONTINUED HEARING ON PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested party(s):

**SEE ATTACHED SERVICE LIST**

by the following means:

- ( ) **BY MAIL:** By placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid. I am readily familiar with the business practice for collecting and processing correspondence for mailing. On the same day that correspondence is processed for collection and mailing it is deposited in the ordinary course of business with the United States Postal Service in Newport Beach, California to the address(es) shown herein.
- ( ) **BY PERSONAL SERVICE:** By placing a true copy thereof, enclosed in a sealed envelope, I caused such envelope to be delivered by hand to the recipients herein shown (as set forth on the service list).
- ( ) **BY OVERNIGHT DELIVERY:** I served the foregoing document by Overnight Delivery as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to recipients shown herein (as set forth on the service list), with fees for overnight delivery paid or provided for.
- (X) **BY ELECTRONIC MAIL (EMAIL):** I caused a true copy thereof sent via email to the address(s) shown herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: March 6, 2023

/s/Denise Schriedel

Denise Schriedel

**SERVICE LIST**

**Ali v. Warmington Residential California, Inc., et al.**  
**Orange County Superior Court Case No.: 30-2013-00689593**

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