

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 839-979

DIVISION "H"

ANNE CANNON, INDIVIDUALLY,
AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VERSUS

METAIRIE TOWERS CONDOMINIUM ASSOCIATION, INC, ET AL

FILED : _____

DEPUTY CLERK

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED
SECOND AND FINAL CLASS ACTION SETTLEMENT, PROPOSED NOTICE PLAN,
AND TO SET THE FAIRNESS HEARING ON THE PROPOSED SECOND CLASS
SETTLEMENT

NOW COME, Class Counsel for Plaintiffs and Class Representative, ANNE CANNON, INDIVIDUALLY AND ON BEHALF OF ALL SIMILARLY SITUATED and respectfully move the Court for the following relief:

1. Preliminary approval of the proposed second and final class settlement ("Second Class Settlement") with Defendants, The Burlington Insurance Company ("TBIC"), Colony Insurance Company ("CIC"), Federal Insurance Company ("Federal") and Greenwich Insurance Company, ("Greenwich"), insurers for and on behalf of defendants, Metairie Towers Condominium Association, Inc. ("MTCA"), MTCA Board of Directors and GNO Property Management (GNO), as well as Strategic Claims Consulting, LLC ("SCC") and its insurers Old Republic Insurance Company ("ORIC"), ACE Property and Casualty Insurance Company, ("ACE") Harco National Insurance Company ("Harco") and International Fidelity Insurance Company (IFIC") collectively referred to herein as "Settling Defendants" in the above referenced litigation and pursuant to Louisiana Code of Civil Procedure Article 591(B)(4);
2. Approval of Plaintiffs' proposed plan to notify the class of the second class settlement;
3. Setting of the second final fairness hearing regarding the second settlement; and
4. Setting of all other pertinent interim dates and deadlines.

WHEREFORE, Class Counsel for Plaintiffs respectfully pray for the aforementioned relief for the reasons more fully stated in the accompanying Memorandum.

Respectfully submitted,

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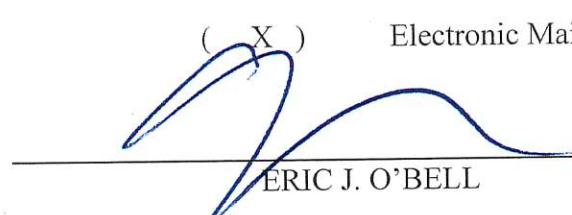
Plaintiffs' Class Counsel

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 1st day of October, 2025, served a copy of the foregoing pleadings on counsel for all parties by:

() Hand Delivery () Prepaid U.S. Mail

() Facsimile () Electronic Mail


ERIC J. O'BELL

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 839-979

DIVISION "H"

**ANNE CANNON, INDIVIDUALLY,
AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED**

VERSUS

**METAIRIE TOWERS CONDOMINIUM ASSOCIATION, INC., METAIRIE TOWERS
BOARD OF DIRECTORS, THROUGH ITS INDIVIDUAL MEMBERS, RON CARTER,
BETTY MILES, ELLYN MEIER, CAROLYN DIAZ, JENNIFER FAGAN, MARY KAY
ZAHN, & ANNE BABST, STRATEGIC CLAIMS CONSULTANTS, LLC, GNO
PROPERTY MANAGEMENT, L.L.C., BURLINGTON INSURANCE COMPANY,
GREENWICH INSURANCE COMPANY, FEDERAL INSURANCE COMPANY,
INTERSTATE FIRE & CASUALTY INSURANCE COMPANY, COLONY INSURANCE
COMPANY, SCOTTSDALE INSURANCE COMPANY, EVANSTON INSURANCE
COMPANY, OLD REPUBLIC INSURANCE COMPANY, AND ACE PROPERTY AND
CASUALTY INSURANCE COMPANY**

FILED:

DEPUTY CLERK

**[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

NOW, BEFORE THIS COURT, is Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion"). The Court has reviewed the Motion and Settlement Agreements between Plaintiff Anne Cannon, individually and as class representative ("Plaintiffs") and Defendants The Burlington Insurance Company ("TBIC"), Colony Insurance Company ("CIC"), Federal Insurance Company ("Federal"), and Greenwich Insurance Company ("Greenwich") as the insurers for and on behalf of Metairie Towers, Condominium Association ("MTCA") and/or the Board and/or GNO Property Management, and Strategic Claim Consultants, LLC ("Strategic"), and its insurers Old Republic Insurance Company ("ORIC"), ACE Property and Casualty Company ("ACE"), Harco National Insurance ("Hanco") and International Fire Insurance Company ("IFIC"). The proposed Settlement Agreements involve a Settlement Class consisting of members of the Class previously certified by this Court in its July 31, 2024 Judgment, and represented by Class Counsel and the Class Representative appointed by the Court in that Judgment.

The Settlement Agreements address and resolve the Plaintiffs' and Settlement Class Members' claims against TBIC, CIC, Federal, Greenwich, Strategic, ORIC, ACE, Harco, and IFIC, and any uninsured claims against GNO Property Management, LLC ("GNO"), Metairie Towers Condominium Association ("MTCA"), and MTCA's Board of Directors (collectively, the "MTCA"). The Settlement Agreement does not address or resolve the Plaintiffs' and Settlement Class Members' claims against any other defendant or insurer. After reviewing Plaintiffs' request for preliminary approval, this Court grants the Motion and preliminarily concludes that the proposed Settlement is fair, reasonable, and adequate.

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreements and the definition of words and terms contained therein are incorporated by reference in this Order.
2. The Settlement Agreements are fair, reasonable, and adequate, and within the reasonable range of possible final approval, subject to further consideration at the Final Approval Hearing described below.
3. The Court approves, as to form and content, the Notices as presented during the August 11, 2025 status conference and attached to the Motion for Preliminary Approval, and finds that the Notice plan meets the requirements of La. C.C.P. Art. 592(B)(1) and 594(A)(2), and due process, and is the best notice practicable under the circumstances, and shall constitute due and efficient notice to all persons or entities entitled to notice.
4. A Final Approval Hearing shall be held before the Court on November 21, 2025 at 8:00 a.m. for the following purposes:
 - a. To determine whether the proposed Settlement is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court;
 - b. To determine whether the Notice plan as conducted was appropriate;
 - c. To address any timely objections to the Settlement;
 - d. To rule upon such other matters as the Court may deem appropriate.
5. The Court also shall hold a hearing for the approval of Plaintiffs Class Counsel's Common Benefit Fees and Reimbursement of Common Benefit Expenses following the Final Approval Hearing on November 21, 2025.

No later than seven (7) days prior to the Fee Hearing, Class Counsel shall provide sworn affidavit stating all common benefit work that he or she performed during the litigation of the Pending Class Action Partial Settlement and all expenses incurred which benefited the Settlement Class and support for the requested common benefit expense application to be paid from the Settlement Fund.

6. All requests to opt out of the proposed Settlement must be submitted in writing to Class Counsel and must be postmarked no later than November 10, 2025. Any request to opt out of the Settlements should, to the extent possible, contain words or phrases such as "opt-out," "opt out," "exclusion," or words or phrases to that effect indicating an intent not to participate in the Settlements or be bound by the Settlement Agreements. Opt-out requests shall not be rejected simply because they were inadvertently sent to the Court or Defendant so long as they are timely postmarked or timely received by the Court, Defendant, or Class Counsel on or before the Opt-Out Deadline. Class Members who seek to opt-out shall receive no benefit or compensation under the Agreements they have excluded themselves from.

7. Class Members may submit an objection to the proposed Settlements. For an Objection to be valid, it must be filed with the Court, and mailed to Class Counsel no later than November 10, 2025 and include each and all of the following:

- (i) The objector's full name and address;
- (ii) The case name and docket number, *Michael O'Dwyer, et al. v. Metairie Towers Condominium Association, Inc., et al.*, Case No. 839-979, 24th Judicial District for the Parish of Jefferson, State of Louisiana;
- (iii) A written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- (iv) The identity of any and all counsel representing the objector in connection with the objection;
- (v) A statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and

(vi) The objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection.

8. All participating Settlement Class Members shall be bound by all determinations and judgments in this Action concerning the Settlement Agreements, including, but not limited to, the Release provided for in the Settlement Agreements, whether favorable or unfavorable, except those who timely and validly request exclusion from the partial class action Settlements. The persons and entities who timely and validly request exclusion from the Settlement Class will be excluded from the Settlement Class and shall not have rights under the Settlement Agreements they have excluded themselves from, shall not be entitled to any of the Settlement benefits for the Settlement Agreements they have excluded themselves from, and shall not be bound by the Settlement Agreements or any Final Approval Order as to TBIC, CIC, Federal, Greenwich, and/or Strategic and its insurers, ORIC, ACE, Harco, and IFIC in this Action with respect to the Settlement Agreements they have excluded themselves.

9. Pending final determination of whether the Settlement Agreements should be approved, Plaintiffs and the Settlement Class Members are barred and enjoined from commencing or prosecuting any claims asserting any of the Released Claims against TBIC, CIC, Federal, Greenwich, and/or Strategic and its insurers, ORIC, ACE, Harco, and IFIC in this Action.

10. If for any reason the Settlement Agreements terminate, the Parties shall return to the status quo ante in the Action, without prejudice to the right of any of the Parties to assert any right or position that could have been asserted if the Settlement Agreements had never been reached or proposed to the Court.

11. The Court reserves the right to adjourn the date of the Final Approval Hearing without further notice to the Settlement Class Members and retains jurisdiction to consider all further requests or matters arising out of or connected with the proposed Settlements. The Court may approve the Settlements, with such modification as may be agreed to by the Parties or as ordered by the Court, without further notice to the Settlement Class.

12. The Court hereby approves EAG Gulf Coast, LLC d/b/a EisnerAmper as the Court Approved Disbursing Agent and Claims Administrator (CADA) and CADA and to establish a Class Settlement Fund Account.

Gretna, Louisiana, this _____ day of _____, 2025.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 839-979

DIVISION "H"

ANNE CANNON, INDIVIDUALLY,
AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VERSUS

METAIRIE TOWERS CONDOMINIUM ASSOCIATION, INC., ET AL

FILED

DEPUTY CLERK

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION
FOR APPROVAL OF SECOND AND FINAL CLASS ACTION SETTLEMENT, FOR
APPROVAL OF PLAINTIFFS' PROPOSED NOTICE PLAN FOR SECOND
SETTLEMENT AND TO SET THE SECOND AND FINAL FAIRNESS HEARING

Class Counsel for the Representative Plaintiff, ANNE CANNON, INDIVIDUALLY AND ON BEHALF OF ALL SIMILARLY SITUATED, hereinafter "Plaintiffs" have reached a second and final proposed class action settlement with an additional four (4) of the Defendant Insurers in the litigation, including The Burlington Insurance Company ("TBIC"), Colony Insurance Company ("CIC"), Federal Insurance Company ("Federal") and Greenwich Insurance Company, ("Greenwich"), insurers for and on behalf of defendants, Metairie Towers Condominium Association, Inc. ("MTCA"), MTCA Board of Directors and GNO Property Management (GNO), as well as Strategic Claims Consulting, LLC ("SCC") and its insurers Old Republic Insurance Company ("ORIC"), ACE Property and Casualty Insurance Company, ("ACE") Harco National Insurance Company ("Hanco") and International Fidelity Insurance Company (IFIC") collectively referred to herein as "Settling Defendants."

Plaintiffs and Settling Defendants hereby seek court approval of a second settlement class pursuant to Louisiana Code of Civil Procedure Article 591(B)(4). Accordingly, Plaintiffs respectfully move for the Court's preliminary approval of the proposed second and final class action settlement ("Second Settlement") with Settling Defendants referenced hereinabove. Plaintiffs also move for approval of their proposed plan to notify the class of the partial settlement and for the Court to schedule a final fairness hearing regarding the Second Settlement and all other pertinent interim dates and deadlines. After more than two years of litigation and after months of extensive settlement negotiations, this Second Settlement will bring a resolution to this Action.

As the Court is aware, Plaintiffs previously reached a partial class settlement with, Interstate Fire & Casualty Company, (“IFCC”), Evanston Insurance Company (“Evanston”), Scottsdale Insurance Company, (“Scottsdale”), and filed a Motion for Preliminary Approval, issuing notice to the class members and setting the Fairness Hearing for October 6, 2025.

BACKGROUND

On April 21, 2023, Plaintiffs filed their original Class Action Petition for Damages alleging that defendant Metairie Towers Condominium Association (“MTCA”) and its Board of Directors, (“BOD”) (collectively “MTCA”) failed to maintain adequate insurance, mismanaged recovered insurance proceeds, mismanaged the restoration and made misrepresentations to the unit owners. Plaintiffs further alleged that the defendant property manager GNO Property Management, LLC (“GNO”) and others mismanaged the remediation and repair efforts at Metairie Towers. The original Petition for Damages and amending First, Second, Third and Fourth Supplemental Petitions also named as defendants several defendant insurance companies as direct-action defendants pursuant to Louisiana Revised Statutes section 22:1269.

On July 31, 2024, following a weeklong class certification hearing, this Honorable Court issued a Judgment certifying the following class pursuant to La. C.C.P. Art. 591(B)(3):

A. Class Definition:

The Court’s Order provides the following Class Definition:

- a. All condominium owners at Metairie Towers Condominium complex located at 401 Metairie Road, Metairie, Louisiana, 70005, that owned units, continuously, from August 29, 2021, through April 21, 2023. Excluded from the class are unit owners who were members of the board of directors during the period defined herein and
- b. All condominium owners, at Metairie Towers Condominium complex located at 401 Metairie, Louisiana, 70005, that acquired ownership of units after August 29, 2021, and retained ownership through April 21, 2023. Excluded from the class are unit owners who were members of the board of directors during the period defined herein.

The Court also appointed plaintiff Anne Cannon as a class representative and George B. Recile of Chehardy, Sherman, Williams, Recile & Hayes; Eric J. O’Bell of O’Bell Law Firm, LLC and Kevin O. Larman and Shannon Freese of Kirkendall Dwyer, LLC as Class Counsel. On June 18, 2025, the Fifth Circuit Court of Appeal issued a decision affirming the District Court’s Judgement certifying the class.

Now after extensive discovery, litigation, and motion practice related to insurance coverages, Plaintiffs and Settling Defendants and extensive after arm’s length settlement negotiations, the efforts finally resulted in this second settlement between Plaintiffs and Settling

Defendants. The agreement provides that Settling Defendants will pay amounts into a settlement fund totaling \$8,850,000.00 that will provide monetary benefits to the class members and from which Plaintiffs' Class Counsel will apply for reimbursements of litigation expenses and attorneys' fees. This settlement fund will also reimburse Plaintiffs' Class Counsel's administration costs associated with Notice to the settlement class and costs associated with a Court Approved Claims Administrator. This second and final settlement will bring a conclusion to highly contested litigation which lasted approximately three years and included a three-day class certification hearing.

Given the lengthy and extensive discovery into the facts underlying this case and after careful review and due diligence, Class Counsel have been able to fully analyze Plaintiffs' claims, including their relative risks, and their potential for recovery based on the insurance coverage defenses asserted by the Settling Defendants. For the reasons provided herein, Class Counsel believes the proposed Partial Class Action Settlement is fair, reasonable and in the best interests of the Class.

II. THE PROPOSED PARTIAL CLASS ACTION SETTLEMENT

The Proposed Partial Class Action Settlements with the various Settling Defendants have been memorialized in formal Releases with Reservations of Rights which have been executed by Plaintiffs' Counsel, Class Representative and Defendants and the executed Releases are attached hereto as **Exhibit 1 (A-D)**. For purposes of preliminary approval, the following summarizes the terms of the Releases and/or stipulations of settlements.

A. The Class

The Proposed Settlement Class consists of:

- a. All condominium owners at Metairie Towers Condominium complex located at 401 Metairie Road, Metairie, Louisiana, 70005, that owned units, continuously, from August 29, 2021, through April 21, 2023. Excluded from the class are unit owners who were members of the board of directors during the period defined herein and
- b. All condominium owners, at Metairie Towers Condominium complex located at 401 Metairie, Louisiana, 70005, that acquired ownership of units after August 29, 2021, and retained ownership through April 21, 2023. Excluded from the class are unit owners who were members of the board of directors during the period defined herein.
- c. Excluded from the Proposed Settlement Class are unit owners who were members of the board of directors from August 29, 2021 to April 21, 2023.

B. Settlement Terms

The proposed partial class settlement provides significant monetary relief for the claims as alleged above which include but are not limited to the wasting of insurance proceeds by Defendants. The Settling Defendants have agreed in principle to pay Eight Million Eight Hundred and Fifty Thousand (\$8,850,000.00) into a Settlement Fund for the benefit of the Class. The parties' agreements in principle include the following primary terms and conditions:

Defendants TBIC has agreed to pay \$350,000; CIC has agreed to pay \$500,000; Federal has agreed to pay \$1,000,000; Greenwich has agreed to pay \$6,500,000; and Strategic and its insurers has agreed to pay \$500,000, respectively into a Court Approved Settlement Fund, which will be administered by the previously approved Court Approved Claims Administrator, EAG. Plaintiffs' Class Counsel will seek court approval for reimbursement for attorneys' fees and common benefit expenses related to the prosecution of this action as well as reimbursement from the Settlement Fund to pay for the expenses associated with the administration of the proposed partial and second class action settlement including but not limited to the Claims Administration expenses. After deduction of the Class Counsel's approved attorney's fees and costs, the settlement funds will be distributed to participating and eligible settlement class members that file a Proof of Claim Form. Class members will be compensated based on the number of units owned at Metairie Towers and utilizing the same formula in which the insurance proceeds were previously distributed by MTCA to unit owners for one bedroom and a two bedroom units as follows:

One bedroom	.42905
Two bedroom	.52968

C. Attorneys' Fees and Costs

Plaintiffs' Class Counsel attorneys' fees and costs will be set by the Court if the proposed partial and second final class settlements are finalized. In that event, Plaintiffs' Class Counsel will submit an application to the Court for common benefit attorneys' fees in an amount not to exceed (35.00%) of the total settlement amount and an application for their actually incurred costs and litigation expenses also to be paid out of the Settlement Fund. The fee award will be allocated between Plaintiffs' Class Counsel, and the expenses will be reimbursed to those law firms that actually incurred them.

Additionally, Plaintiffs' Class Counsel will request the court approve the additional amounts necessary to provide Notice to the Class and any necessary payments to administer the

settlement through the Court Approved Claims Administrator, which will be deducted from the Settlement Fund.

D. Notice

The Proposed Settlement Class consists of the Representative Plaintiff and all unit owners of Metairie Towers as defined by the above-mentioned class definition. Excluded from the Proposed Class shall be any unit owners that served on the Board of Directors of Metairie Towers during the applicable period. Plaintiffs' Class Counsel already represents approximately forty (40) percent of the proposed Settlement Class and will provide the Court-Approved Notice directly to their respective clients. Plaintiffs' Class Counsel using the list of former unit owners and maintained by MTCA will be able to identify and be provided with the names and e-mail addresses of almost all known potential class members and/or unit owners. Therefore, almost all the class members will be identifiable, and notice can be sent direct to class members through the United States mail and/or electronic mail from the lists previously identified and/or maintained by MTCA. Class Counsel will make the Notice and all necessary documents available on-line as well at a website to be published along with the Class Notice. A copy of the Notice of Proposed Second and Final Settlement of Class Action, Settlement Hearing and Right to Appear and Opt-Out Form is attached hereto as **Exhibit 2**. This detailed notice provides a description of the litigation as well as all details regarding the proposed partial class settlement. A copy of the short-form Notice which will be directly sent to all class members is attached hereto as **Exhibit 3**.

Importantly, Class Counsel and the Court Appointed Claims Administrator have already provided notice to the settlement class as part of the notice campaign for the first partial action settlement, currently set for final fairness hearing on October 6, 2025. As detailed in the Plaintiffs' Motion for Final Approval of the First Partial Class Settlement, the Claims Administrator, along with Class Counsel successfully were able to provide notice via e-mail and/or direct mail of the first partial proposed settlement to almost 97% of all settlement class members.

E. Class Representatives' Incentive Awards

An incentive award for each person that served as a Class representative in this case will be set by the Court at the conclusion of the notice and claims submission periods. These incentive awards will recognize the Class representatives' service to and significant efforts on behalf of the Class. These incentive awards will be in addition to the relief the Class representatives will be entitled to under the terms of the Settlement, and they will be paid from the Settlement Fund.

Throughout the litigation, the Class representative, Anne Cannon, accepted burdens that were not imposed on the rest of the Class. Unlike unnamed Class members, who will enjoy the benefits of the representatives' efforts without taking any personal action, the named Class representative exposed herself to the Defendants' investigation, answered written discovery, allowed for the production and examination of their receipts and records, gave depositions, made herself available as a witness for hearings and at the class certification, and subjected herself to all the obligations of named parties over the last two years. An incentive award of \$2,500.00 from the first partial settlement as well as an incentive award from the second final settlement, for a total of \$5,000 for the above-named Class representative is therefore appropriate to be paid out of this Settlement Fund.

Incentive awards, which serve as premiums in addition to any claims-based recovery from the settlement, promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.¹ Such awards are common and range from several hundred dollars to many thousands of dollars.²

E. Settlement Administration

As set forth in the Settlement Agreement, all costs of notice and claims administration will be paid out of the gross settlement funds. EAG Gulf Coast, LLC will act as the Claims Administrator, and the Claims Administrator will establish compensation rates for the class members, which compensation rates which the Settling Defendants will not oppose. Class members/claimants may appeal an adverse determination by the Claims Administrator to the District Court within 15 days (or such other reasonable time period as determined by the Court) of the Claims Administrator's mailing of the claims determination letter to the class member. Class Counsel will request a Reserve Fund be established from the Settlement Fund to pay for costs of Notice, Administration and unexpected contingencies.

¹ See, e.g., *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (courts routinely approve incentive awards to compensate named plaintiffs for services they provide), *Manual for Complex Litigation* (Fourth) § 21.62 n. 971 (2004) (incentive awards may be "merited for time spent meeting with class members, monitoring cases, or responding to discovery").

² See, Sherrie R. Savett, *Consumer Class Actions: Class Certification Issues, Including Ethical Considerations and Counsel Fees and Incentive Payments to Named Plaintiffs*, Prac. Law. Inst. pp. 340-345 (1996) (compiling list of 52 cases with incentive awards to class representatives).

III. PRELIMINARY APPROVAL OF THE SETTLEMENT

A. Legal Standard

The dismissal of a class action is governed by La. Code Civ. Proc. Ann. art. 594,

which states:

A. (1) An action previously certified as a class action shall not be dismissed or compromised without the approval of the court exercising jurisdiction over the action.

(2) Notice of the proposed dismissal of an action previously certified as a class action shall be provided to all members of the class, together with the terms of any proposed compromise that the named parties have entered into. Notice shall be given in such manner as the court directs.

B. After notice of the proposed compromise has been provided to the members of the class, the court shall order a hearing to determine whether the proposed compromise is fair, reasonable, and adequate for the class. At such hearing, all parties to the action, including members of the class, shall be permitted an opportunity to be heard.

C. The court shall retain the authority to review and approve any amount paid as attorney fees pursuant to the compromise of a class action, notwithstanding any agreement to the contrary.

D. Any agreement entered by the parties to a class action that provides for the payment of attorney fees is subject to judicial approval.

E. If the terms of the proposed compromise provide for the adjudged creation of a settlement fund to be disbursed to and among members of the class in accordance with the terms thereof, the court having jurisdiction over the class action is empowered to approve the compromise settlement of the class action as a whole and issue a final judgment accordingly, following a finding that the compromise is fair, reasonable, and adequate for the class, and to order the distribution of the settlement fund accordingly, without the necessity of prior qualification of representatives of minors, interdicts, successions, or other incompetents or absentees, or prior approval of the terms of the settlement or the distribution thereof by another court; provided, that in such cases the court having jurisdiction over the class action shall include in the orders of settlement and distribution of the settlement fund appropriate provisions to ensure that all funds adjudicated to or for the benefit of such incompetents, successions, or absentees are placed in appropriate safekeeping pending the completion of appointment, qualification, and administrative procedures otherwise applicable in this Code to the interests and property of incompetents, successions, and absentees.

The *Manual for Complex Litigation* (“MCL”) describes the dismissal of a class action, as

embodied in La. Code Civ. Proc. Ann. art. 594, as a three-step process:

- (1) Preliminary approval of the proposed settlement at an informal hearing;
- (2) Dissemination of mailed and/or published notice of the settlement to all affected class members; and
- (3) A “formal fairness hearing,” or final settlement approval hearing, at which class members may be heard regarding the settlement, and at

which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented.³

This procedure, used universally by federal and state courts, safeguards class members' due process rights and enables the court to fulfill its role as the guardian of class interests.⁴

B. The Class Action Settlement Approval Process

The Court's preliminary approval will allow all prospective Class Members to receive notice of the proposed Second Final Settlement's terms and the date and time of the final Settlement approval hearing, at which Class Members may be heard regarding the Second and Final Settlement, and at which time the Court will hear further evidence and argument concerning the fairness, adequacy, and reasonableness of the Second and Final Class Settlement.⁵ This step allows, just like it was implemented successfully for the first partial class settlement allows for preliminary approval of the proposed class settlement and allows the Court to approve a procedure to ensure that all class members are notified of the proposed settlement. The process also allows the Court to specify a hearing date for any class member to state any objection the objecting class member(s) may have to the Partial and Second Class Settlement, at which time, the court may rule that the Second Class Settlement is fair and binding, or may rule in favor of the objector(s) and strike the Second Class Settlement as unfair and non-binding; thus allowing the litigation to continue as though no Settlement Releases had been reached and/or agreed to by the Parties. This process ensures fairness to the proposed class.

B. The Second Partial and Final Settlement Meets the Criteria for Preliminary Approval

The purpose of preliminary evaluation of proposed second and final class action settlements is to determine whether this second proposed settlement is within the "range of reasonableness," and thus whether notice to the class of the settlement's terms and the scheduling of a formal fairness hearing is worthwhile.⁶ The decision to approve or reject a proposed settlement is committed to the Court's sound discretion.⁷ Neither formal notice nor a hearing is

³ MCL at § 21.63.

⁴ Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11.24 (4th ed. 2002) ("Newberg on Class Actions").

⁵ See, MCL at §§ 13.14, 21.634.

⁶ Newberg on Class Actions at § 11.25.

⁷ *Moore v. Nat'l Ass'n of Sec. Dealers, Inc.*, 762 F.2d 1093, 1106 (D.C. Cir. 1985) ("Rule 23 places the determination [to approve or reject a proposed settlement] within the sound discretion of the trial judge who can be sensitive to the dynamics of the situation"); *City of Seattle*, 955 F.2d at 1276 (in context of class action settlement, appellate court cannot "substitute [its] notions of fairness for those of the [trial]

required at the preliminary approval stage; the Court may grant such relief upon an informal application by the settling parties, or even on the basis of information already known, at the Court's discretion.⁸ While consideration of the requirements for *final* approval is unnecessary at this stage, the Settlement not only meets the criteria for preliminary approval, it meets the heightened standard for final approval because it is "fundamentally fair, adequate, and reasonable."⁹ This proves the Settlement is "within the range of reasonableness" and should be preliminarily approved.

1. This Second and Final Partial Settlement is the Product of Serious, Informed, and Arm's Length Negotiations

Arm's length negotiations conducted by competent counsel constitute *prima facie* evidence of fair settlements.¹⁰ As the Court is aware, having been advised of the progress of settlement negotiations throughout and following multiple mediations and, these partial settlements were all conducted at arm's length, and the negotiations were hard-fought and adversarial and conducted between experienced attorneys who are familiar with class action litigation in general and with the legal and factual issues of this case in particular. In negotiating these final settlements with the remaining parties, Plaintiffs' Class Counsel had the benefit of years of experience combined with their familiarity with the facts of this case.

Led by Plaintiffs' Class Counsel, settlement negotiations in this case with Settling Defendants began almost a year ago at mediation and continued in the period that followed while litigation proceeded. The negotiations, which included days long mediations, multiple telephone conferences, and numerous settlement drafts, have now resulted in a second and final agreement-in-principal and Gasquet Releases with Reservations of Rights Settlements with the above referenced Settling Defendants. After reaching agreements in principle, the parties memorializing the terms of settlement in formal Settlement Agreements with Reservations of Rights, attached hereto as Exhibit 1. Plaintiffs' Class Counsel submits that the resulting Second Final Partial Settlement is fair and that it provides reasonable relief to the members of the Class.

⁸ judge and the parties to the agreement," and will reverse only upon strong showing of abuse of discretion).

⁹ MCL at § 21.632.

⁹ *City of Seattle*, 955 F.2d at 1276.

¹⁰ *Berenson v. Faneuil Hall Marketplace*, 671 F. Supp. 819, 822 (D. Mass. 1987) *citing Manual for Complex Litigation* (Second) § 30.41 (1985). ("where . . . a proposed class settlement has been reached after meaningful discovery, after arm's-length negotiation by capable counsel, it is presumptively fair").

2. The Partial Settlement Provides Substantial Relief for Class Members

The second and final class settlement provides additional significant monetary relief for Class Members. Class members will again be required to provide a notarized signature and submit a simple claim form to establish their eligibility to participate in the settlement. Based upon proof of ownership of a unit and/or units at Metairie Towers within the class definition, the Class Members will receive a specific amount of compensation to be determined by the Claims Administrator and will receive a certain amount as determined by the number of claims received in accordance with the following terms and allocations:

- (A) Allocation of funds on a pro-rata basis to owners of one bedroom unit at One bedroom .42905
- (B) Allocation of funds on a pro-rate basis to owners of a two bedroom unit using the following formula. Two bedroom .52968

3. The Settlement Treats All Class Members Fairly

The proposed second and final class settlement provides the same remedy of certainty to all Class Members. While the compensation to the Class Members may vary slightly, any differences will be based upon objective factors such as the number of units owned by class members and whether the class members owned a one- or two-bedroom unit. Accordingly, any differences in financial compensation between class members will be based on objective criteria taken from the actual facts at issue in this case and using a previously utilized accepted formula.

4. The Requested Attorneys' Fees Are Fair and Reasonable

Pursuant to the Settlement, Class Counsel will petition the Court for an award of attorney's fees not to exceed thirty five percent (35.00%) of the Settlement Fund. Class Counsel will also petition the Court for reimbursement from the Settlement Fund of their actually incurred costs and expenses of the litigation. Provided the settlement is confirmed, the settling Defendants have agreed not to oppose Class Counsel's fee and/or expense applications.

5. The Court Should Provisionally Certify the Settlement Class

The proposed second and final Settlement is submitted by Plaintiffs' Counsel and settling Defendants and creates a presumptive settlement class. Thus, if the Court finds the proposed partial Settlement within the range of reasonableness, provisional approval of the partial Settlement is appropriate and necessary to inform Class members, as required by La. Code Civ. Proc. Ann. art. 594(B)(2), of the existence and terms of the proposed partial Settlement, of their right to be heard

on its fairness and to object to or support its approval, and of the date, time, and place of the formal fairness hearing.¹¹

IV. THE COURT SHOULD ORDER NOTICE IN ACCORDANCE WITH PLAINTIFFS' PROPOSED NOTICE PLAN

In order to provide the Class with the best notice practicable under the circumstances of the partial settlement, Plaintiffs propose that notice be made through a broad variety of means as follows:

1. Direct mail notice of the second and final class settlement to those Class members who can be identified from Class Counsel's records and/or as utilized lists as maintained by MTCA in previously communications sent to unit owners by MTCA;
2. Direct e-mail notice of the partial settlement using e-mail lists as maintained by MTCA for communications with unit owners;
3. Published notice of the settlement on the www.metairietowerssettlement.com website.

La. Code Civ. Proc. Ann. art. 594(A)(2) requires the court to direct “[n]otice of the proposed dismissal of an action previously certified as a class action . . . to all members of the class, together with the terms of any proposed compromise that the named parties have entered into.”¹² In order to protect the rights of absent class members, the Court must provide the best notice practicable to class members.¹³ Notice must “be given to class members who can be identified through reasonable efforts. Those who cannot be readily identified must be given the ‘best notice practicable under the circumstances.’”¹⁴

Many of the same considerations govern both certification and settlement notices.¹⁵ Plaintiffs propose a comprehensive notice plan that complies with the tenets of La. Code Civ. Proc. Ann. art. 594.

A. Direct Mail Notice and Direct E-Mail Notice

¹¹ See also, MCL at § 21.633.

¹² See also, MCL at § 21.312.

¹³ See *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12, 70 S. Ct. 652, (1985); *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 174–175, 94 S. Ct. 2140 (1974); *Mullane v. Cen. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652 (1950).

¹⁴ See also, MCL at § 21.311.

¹⁵ La. Code Civ. Proc. Ann. art. 592(B) describes the requirements of notice of class certification.

First, Class Counsel proposes that the best practicable efforts be made to identify Class Members through the records kept by Plaintiffs' Class Counsel of the lists of currently represented clients. Plaintiffs Class Counsel and/or the Claims Administrator using mailout lists maintained by MTCA and using Plaintiff's own expert used to identify all unit owners will receive a direct mail notice. Reasonable efforts will also be made to forward any notice that is returned after the initial mailing.

Class Counsel and the Claims Administrator will also issue direct e-mail notice to all Class Members using the e-mail lists as maintained by MTCA and/or by Class Counsel to sent the notice to all Class Members.

3. The Content of the Direct Mail Notice

The direct mail notice, a copy of which is attached hereto as Exhibit 3 and is submitted to the Court prior to the preliminary approval hearing, should be carefully crafted to fully inform the Class about the claims. As stated in the *MCL*, a settlement notice should:

- Define the class;
- Describe clearly the options open to the class members and the deadlines for taking action;
- Describe the essential terms of the proposed settlement;
- Disclose any special benefits provided to the class representatives;
- Provide information regarding attorneys' fees;
- Indicate the time and place of the hearing to consider approval of the settlement, and the method for objecting to the settlement and/or opting out of the settlement;
- Explain the procedures for allocating and distributing settlement funds, and, if the settlement provides different kinds of relief for different categories of class members, clearly set out those variations;
- Provide information that will enable class members to calculate or at least estimate their individual recoveries; and
- Prominently display the address and phone number of class counsel and the procedure for making inquiries.¹⁶

Plaintiffs' proposed direct mail notice includes clear headings and call-outs addressing each of these requirements. Second, the notice plan should use the best practicable efforts to notify any Class Member who is not identified in the records. In this case the identifies and addresses of previous unit owners and class members is available and will be utilized during the notice process.

V. THE COURT SHOULD ESTABLISH THE FOLLOWING DATES/DEADLINES

¹⁶ *MCL* at § 21.312, *see also*, La. Code Civ. Pro. Art 592(B)(2)(a)-(h).

FOR NOTICE, FILING OBJECTIONS AND OPT-OUTS, AND THE FINAL FAIRNESS HEARING

The last step in the Settlement approval process is a final fairness hearing at which the Court may hear all evidence and argument necessary to make its settlement evaluation. Proponents of the Settlement may explain the terms and conditions of the Settlement, and offer argument in support of final approval.¹⁷ In addition, Settlement Class members, or their counsel, may be heard in opposition to the Settlement Agreement, if any choose to oppose it.¹⁸ After this hearing, the Court will determine whether the Settlement should be finally approved, and whether to enter a final Order and Judgment.¹⁹

Plaintiffs respectfully suggest that the Court set appropriate dates for purposes of this class action:

- a. A deadline for mailing and e-mailing to Settlement Notice to Class;
- b. A deadline for Class Counsel to activate the class notice website;
- c. A deadline for filing of Class Members' Objections to any aspect of the Settlement;
- d. A deadline for class members to Opt-Out of the proposed class action settlement;
- e. A deadline for filing of Opposition or Reply to Objections
- f. A deadline for Plaintiffs' Class Counsel to file their Application for Attorneys' Fees and Reimbursement of Expenses; and
- g. A date for Final Approval Hearing.

VI. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court: (1) grant preliminary approval to the proposed second and final proposed class settlement; (2) approve Plaintiffs' proposed Notice Plan and (3) set a formal fairness hearing for the second and final Settlement approval as well as the other necessary interim dates and deadlines.

Respectfully submitted:

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¹⁷ La. Code Civ. Pro. Art 594 B.

¹⁸ La. Code Civ. Pro. Art 594 B.

¹⁹ La. Code Civ. Pro. Art 594 B.

-AND-

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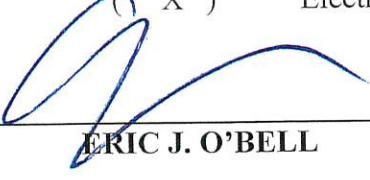
Plaintiffs' Class Counsel

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 15 day of October, 2025, served a copy of the foregoing pleadings on counsel for all parties by:

() Hand Delivery () Prepaid U.S. Mail

() Facsimile (X) Electronic Mail


ERIC J. O'BELL