STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT) CASE NUMBER: 2007-CP-07-1396	
ANTHONY AND BARBARA GRAZIA, individually and on behalf of all other similarly situated Plaintiffs, Plaintiffs, vs. SOUTH CAROLINA STATE PLASTERING, LLC, Defendant.	)	**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT OF CLASS ACTION**
SOUTH CAROLINA STATE PLASTERING, LLC, Third-Party Plaintiff, vs. DEL WEBB COMMUNITIES, INC., PULTE HOMES, INC., and KEPHART ARCHITECTS, INC., Third-Party Defendants.	)	

THIS MATTER came before the Court pursuant to the Court's Order of October 30, 2018 (together with the Orders of January 11, 2019; March 8, 2019; and April 18, 2019, the "Preliminary Approval Order") granting preliminary approval of the class action settlement in this case and

setting a final approval hearing. The Court held the final approval hearing on April 18, 2019 in accordance with the notice provided to the class. Plaintiffs appeared and were represented by Michael S. Seekings, W. Jefferson Leath, John T. Chakeris, and Phillip W. Segui, Jr. Defendant South Carolina State Plastering, LLC ("SCSP") appeared and was represented by Everett A. Kendall, II and R. Michael Ethridge. Third Party Defendants Del Webb Communities, Inc. and Pulte Homes, Inc. (together, "Del Webb") appeared and were represented by A. Victor Rawl, Jr. and Henry W. Frampton, IV. Third Party Defendant Kephart Architects appeared and was represented by William Horvath. In addition, Messrs. Hartman and O'Connell appeared *pro se* and presented material to the Court as set forth more fully below.

The Court received and reviewed the Affidavits of Roger Young, Brittany Huskey, Phillip W. Segui, Jr., and Michael Seekings. The Court also reviewed the seven objections filed with the Court and the Court exhibits marked during the hearing.

BACKGROUND

On December 8, 2011, the Court certified a class on a preliminary basis. Notice was then provided to the preliminarily certified class, and certain members of the putative class excluded themselves from the preliminary class. The Right to Cure Process took place thereafter.

At the conclusion of the Right to Cure process, SCSP made thousands of settlement offers to members of the putative class, some of which were accepted. The settling members of the putative class have received the settlement funds and have provided releases in accordance with the terms of those agreements.

On September 9, 2016, this Court issued a class certification order certifying the following class:

> All individuals, corporations, unincorporated associations, or other entities that currently own stucco-clad homes in Sun City Hilton

> Head to which SCSP applied the exterior stucco in whole or in part prior to July 31, 2007, which allegedly are damaged due to (a) the lack of head flashing above doors and windows, (b) the failure to install stucco control joints, and/or (c) the presence of moisture encapsulation by the failure to leave a gap between the stucco exterior and the structure slab.

The Parties then reached an agreement to resolve the case, subject to the Court's review and approval. The Parties' agreement has been filed with the Court, and the Court has reviewed it carefully. In addition, the Court has heard argument from counsel for all Parties and has permitted the insurers to present any argument or information they so desire.

On October 30, 2018, following the Court's careful review of the proposed Settlement Agreement, which is fully incorporated herein by reference, and following a hearing in open court where the Parties and insurers were permitted to make any argument they deemed appropriate, the Court approved the settlement on a preliminary basis. As part of that approval, the Court certified the following class to replace the class previously certified:

> All persons who owned a house on the Final Class List on or before October 30, 2018 and/or who received notice of the preliminarily certified class.

The Court also appointed class representatives and class counsel, approved the proposed settlement on a preliminary basis, appointed a claims administrator, directed notice to the class, and set the date, time and place for this final approval hearing, all as reflected in the Preliminary Approval Order, which is fully incorporated into this Order.

After the Preliminary Approval Order was issued, Plaintiffs moved to amend the Order three times. First, on January 10, 2019, Plaintiffs moved to amend the Preliminary Approval Order to (1) correct the settlement amount (by increasing the amount reflected in the Preliminary Approval Order) and (2) correct certain *de minimis* errors in the Final Class List attached to the Preliminary Approval Order, none of which were material to the other members of the settlement

class. These amendments required a change in the notice schedule, and Plaintiffs proposed that notice be sent out by January 11, 2019, and that this final approval hearing be scheduled for April 18, 2019. After carefully considering the motion and all matters of record, the Court granted the motion on January 11, 2019.

Second, on March 8, 2019, Plaintiffs filed a motion to (1) add 13 homes to the Final Class List, (2) correct a scrivener's error with respect to the exterior square footage on 6 homes, and (3) mail notice to certain secondary addresses inadvertently omitted in the initial round of notice. On Mach 8, 2019, after full consideration of the motion and the matters of record, the Court granted the motion. The Court provided a 30-day period for opt outs and objections for the owners of homes added to the list and for owners whose secondary addresses were to be given notice. The Court directed Plaintiff's counsel to use good faith efforts to make contact with such homeowners to ensure their awareness of their rights.

Third, on April 18, 2019, Plaintiffs filed a motion to correct the exterior square footage on one house, the square footage for which was correct on the initial list submitted to the Court but was inadvertently made incorrect on a subsequent version. After carefully considering the motion and all matters of record, the Court granted the motion on April 18, 2019.

NOTICE

The Court has carefully reviewed the affidavit of Roger Young of Total Class Solutions, the Claims Administrator appointed by the Court. Based on the affidavit, the Court understands that, on January 11, 2019, the Claims Administrator mailed 5,822 notice packages to the Final Class List and the available secondary addresses. Then Court further understands that notice was re-mailed when returned with a forwarding address.

The Court understands that, on March 8, 2019, an additional 424 notice packages were mailed in accordance with the Court's Order of that date. The Court further understands from the assurances provided by Michael S. Seekings, Esq. as an officer of the Court at the Final Approval Hearing that Plaintiffs' counsel undertook substantial efforts to make personal contact with homeowners in accordance with the Court's Order of March 8, 2019, and in fact made contact with the majority of such homeowners.

The Court understands from Mr. Young's affidavit that notice of the settlement was also published for three consecutive weeks in both the (Hilton Head) *Island Packet* and *Bluffton Today.* The Court further understands that the settlement website, www.suncitystuccosettlement.com, was launched on January 20, 2019 and has been live ever since. The Court has visited the website and verified that it appears to be in good working order. According to Mr. Young, the website has garnered more than 2,100 unique visitors, which suggests that it has been utilized by a meaningful portion of the settlement class. Moreover, Mr. Young reports that the Claims Administrator has already received more than 2,800 claims forms (even though they are not due for months), which further suggests that class members are readily aware of the proposed settlement and have received adequate notice thereof. The Court further understands that both the Claims Administrator and Plaintiffs' counsel have been available for questions by telephone throughout the notice period and have in fact spoken by telephone with numerous class members. The Court further notes that the settlement has been covered in news stories in local media.

Based on the evidence provided, the Court is satisfied that the Claims Administrator has substantially complied with the notice plan directed by the Court. Further, upon review of the response received from the notice, the Court is further satisfied and concludes that notice was

reasonably calculated to reach the class and was the best notice practicable under the circumstances.

CLASS REPRESENTATIVES AND COUNSEL

The Court has reviewed and is satisfied with the performance of the class representatives and class counsel. Then Court has reviewed the affidavit of Anthony Grazia and agrees that the Grazias have been heavily involved in this matter for 12 years, during which time they have been deposed, participated in discovery, participated in mediations, and participated in numerous calls and meetings with class counsel. The Court concludes that they have ably and adequately represented the class.

Likewise, the Court has become familiar with class counsel's work through numerous rounds of briefing, telephone conferences, and hearings, and through reviewing the work that was done before prior judges in this case. The Court has been impressed with their representation of the class and their work to bring this difficult and complex matter to a satisfactory conclusion. The Court concludes that class counsel have ably and adequately represented the class.

OBJECTIONS

Per the Affidavits of Brittany Huskey and Roger Young, the Court has received five requests for exclusion from the propose settlement. These persons are hereby excluded from the class.

Further, the Court has received seven (7) bona fide objections to the proposed settlement. The Court has carefully and in detail reviewed each one of them and rules on them as follows.

45 Red Tail – This objection addresses the amount of the settlement and contends that such amount is insufficient. It is in the nature of a settlement that claimants do not receive every dollar to which they are arguably entitled, just as it is in the nature of a settlement that the defense pays

more than it would arguably be required after trial. After 12+ years of litigating stucco issues at Sun City, including multiple rounds before the appellate courts, the Court is satisfied that the parties have adequately determined the value of the case and the funds available in settlement, as balanced against the need to obtain funds in a timely fashion. Through its own experiences with the case through reading numerous briefs, examining the evidence (including deposition transcripts, documentary evidence, discovery responses, and affidavits), and hearing argument on myriad issues, the Court notes that the case contained significant and complex disputes of law and fact, the outcome of which was highly uncertain, and that it was therefore entirely reasonable for both sides to compromise their positions. It is also important to note that the settlement substantially exhausts the insurance coverage for SCSP, the only direct defendant in this case, which is otherwise not operating and is without material assets to satisfy any judgment. Accordingly, with great respect for the objector and her claim, the Court overrules the objection.

74 Thomas Bee Drive – This objection also addresses the amount of the settlement and contends that such amount is insufficient. For the reasons discussed above, and with great respect for the objector and her claim, the Court overrules the objection.

19 Pomegranate Lane – This objection addresses the process for challenging exterior square footage as set forth on the Final Class List. While the Court appreciates that participating in the challenge process requires the modest expense of an architect or engineer certification, the Court does not believe it would have been a good use of settlement funds to measure each and every house (as would be required for a perfect determination of exterior square footage). Rather, the Court agrees with the parties that it made sense to use the known square footage of the base model, and then permit challenges such that it could be corrected if materially different from the actual square footage. The Court understands that measurements for each and every potential

upgrade was not readily available and would have required individual measurement, which, again, the Court does not believe would have been a good use of the settlement funds. Therefore, with appreciation for the objector's concerns, the objection is overruled.

9 Geranium Court – This objection addresses the method of distribution of the settlement funds and suggests that the distribution include a component based on actual repair costs, rather than one based solely on exterior square footage. The objection further suggests increasing the settlement amount. As to the settlement amount, the Court overrules the objection for the reasons set forth above. As to the method of distribution, while the Court appreciates that some homeowners may have incurred repair costs, the Court concludes that a method based on repair costs to date could easily underpay class members who were waiting on the settlement to undertake repairs or may not yet be aware of potential damage. In addition, such a method would add substantial administrative complexity to ensure that submitted repair costs were appropriate for reimbursement. It would also introduce the potential for fraud through inflated or otherwise fraudulent repair bills. Accordingly, the Court agrees with the parties that the exterior square footage method is the most sensible and fair method for distributing class funds, as it pays homeowners based on the amount of stucco. Accordingly, the objection is overruled.

17 Wandering Daisy Drive – This objection addresses the amount of the settlement and requests that additional information be provided to the class. The objector, Mr. Hartman, appeared at the Final Approval Hearing and read his objection into the record under oath. As to the amount of the settlement, the objection is overruled for the reasons set forth above. As to the request for additional information, the Court has reviewed the notice documents and concludes that they are sufficient to give class members a reasonable summary of the litigation and proposed settlement. Further, the Court understands that Plaintiffs' counsel have been available throughout the notice

period (and, indeed, for over a decade) to answer more detailed questions concerning the nuts and bolts of the alleged problems with the stucco. Further, the Court understands that Plaintiffs' counsel have conducted multiple town hall meetings for Sun City residents addressing just this topic. The Court concludes that more detailed information, while not required by due process, has been available to class members. Therefore, the Court respectfully overrules the objection. Furthermore, the Court notes that Mr. Hartman specifically testified that he was **not** asking the Court to decline to approve the settlement.

9 Teaberry Lane – This objection addresses the calculation of exterior square footage, for which there is a challenge process. For the reasons discussed above, the objection is respectfully overruled.

27 Tupelo Court – This objection addresses the amount of the settlement. For the reasons discussed above, the objection is respectfully overruled.

James O'Connell – Mr. O'Connell submitted a letter to the Court concerning the settlement. Mr. O'Connell is not counted as a formal objector because he admits that he is not a member of the class as certified by this Court. Rather, he purchased a home in Sun City ***after*** the cut-off date of October 30, 2018. Mr. O'Connell appeared at the Final Approval Hearing, was placed under oath, and offered testimony, the crux of which is that he believes the sellers of his home defrauded him by not disclosing sufficient information concerning the settlement. While the Court appreciates Mr. O'Connell's situation, he has no standing to object because he is not a member of the class. Moreover, the Court certified the class based on a cut-off date, and the date of preliminary approval was the most sensible date, as any later date would interfere with the notice process. Finally, Mr. O'Connell testified that he was **not** asking the Court to decline approval of the settlement. Therefore, Mr. O'Connell's objection is made without standing and would be

overruled in any event. The Court further notes that, following final approval, notice will be placed in the land records to avoid similar issues in the future.

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The Court notes that it received only 7 bona fide objections to the settlement and only 5 requests for exclusion out of over 6,000 notices sent. The Court asked at the hearing if any other class member wanted to be heard, and no one else asked to be heard. This strongly suggests to the Court that the settlement is, by and large, acceptable to the class, which serves as a further reason for overruling the objections set forth above and for approving the settlement as set forth more fully below.

APPROVAL OF SETTLEMENT

The Court continues to find that that the settlement class, as defined above and including the amendments thereto, satisfies the requirements of numerosity, commonality, typicality, adequacy of representation (as discussed above), and amount in controversy, all as set forth in Rule 23, SCRCP. Nothing has been presented to the Court that changes the Court's view as set forth in the Preliminary Approval Order, which analysis is incorporated herein by reference.

The Court has carefully reviewed the settlement agreement presented by Plaintiffs and signed by the Parties. In brief, the settlement involves the creation of a settlement fund in the amount of $43,034,922.39. This amount does not include $2,653,000.00 previously paid out as part of the Right to Cure process in this action. After review of the objections, the requests for exclusion, the notice process, the affidavits of record (including the affidavit of Anthony Grazia as class representative), and the matter of record, the Court continues to agree that the proposed Settlement Agreement is in the best interest of all Settlement Class members because it gives them a way to get a monetary payment without the delays, risks, and expenses of a trial, appeal and

efforts to recover on a judgment (if any). The Court recognizes that SCSP is out of business and possesses no assets. Its only assets are insurance policies. Those insurers have repeatedly urged defenses to their insurance policies, and have either denied coverage to South Carolina State Plastering, or have reserved the right to deny coverage. In spite of the above, this Settlement represents payment of not only substantially all of the insurance coverage possibly available to SCSP, but also a significant settlement contribution by Del Webb and its insurers. A trial in this matter would most likely lead to an uncertain result, and if favorable to the Class, would result in additional lengthy appeals and Declaratory Judgment actions by insurers seeking to avoid payment. For all of these reasons, the Court believes that this settlement is in the best interests of the Class.

The Court finds and concludes that the settlement is fair and reasonable under the circumstances. The Court believes that the recovery obtained by this settlement is the most that would reasonably be available to the class. Because of the continued depletion of the insurance policies at issue, the Court further believes that the recovery here likely exceeds any recovery the class would obtain following a successful trial and likely appeal and further concludes that the various insurer payments exhausting certain insurance policies are proper, appropriate, and in good faith. The Court is also aware of the significant defenses advanced by SCSP and the substantial value to the class of bringing this decade-old matter to a resolution now, rather than awaiting the outcome of a trial and the appeals likely to be filed thereafter. The Court approves the settlement.

ATTORNEYS' FEES

Plaintiffs' counsel and the Class Representatives have asked the Court to approve the attorneys' fees and litigation expenses. The Court has reviewed Mr. Segui's affidavit concerning the fees. With respect to attorneys' fees, the Supreme Court of South Carolina has approved

contingency fee agreements and has set forth factors which must be considered by this Court in determining the reasonableness of the attorneys' fees. The factors, and my findings in regard thereto, are as follows:

(a) The nature, extent and difficulty of the case. This lawsuit was commenced in 2007 and involves claims of improper design and installation of the stucco system on approximately 4,700 homes clad in whole or in part with stucco in Sun City Hilton Head as identified on the Final Class List. A class action was preliminarily certified on December 8, 2011, and certified with Finality on September 9, 2016. The litigation has been extremely complex and difficult involving novel legal issues in South Carolina jurisprudence to include harmonizing the Right to Cure Statute and SCRCP Rule 23 for which the South Carolina Supreme Court decided in this case. The prosecution of this case thus far has resulted in thousands of hours being expended by the legal teams for both sides. The Plaintiffs have engaged experts to determine the nature and extent of the alleged deficiencies as well as experts to determine the cost of repairing the alleged deficiencies. Extensive written discovery has been conducted and thousands of pages of documents have been exchanged among the parties. Many depositions have been taken of the parties, their experts and homeowner class members. Motions were heard in numerous different courthouses throughout the State, which required extensive briefing and argument. There also have been numerous appeals throughout the Twelve (12) years of this litigation.

(b) Professional standing of counsel. Class counsel, the individual attorneys, W. Jefferson Leath, Jr., Michael S. Seekings, Phillip W. Segui, Jr., and John T. Chakeris, have handled large and complicated construction deficiency cases ranging from single family residences, multi-family townhomes and condominium projects and class action construction defects and building product claims, and they are well known for their legal skills in these areas of the law. Class

Counsel are well established in class action litigation and are all in good standing in the legal community with excellent reputations.

(c) The contingency of compensation. The Class Representatives specifically requested Class Counsel to take this matter on a contingency fee basis, and it was agreed in writing by the Class Representatives and by Class Counsel that they be compensated on a contingency basis. In this case, there were significant questions concerning liability, damages, insurance availability and insurance coverage with regard to SCSP and other matters upon which a successful recovery depended, including but not limited to, the determination of novel issues of law in this State. Despite these significant obstacles, Class Counsel was able to obtain a significant settlement.

(d) Beneficial results obtained. Many weeks were spent in mediation in Atlanta and in South Carolina, along with many more hours being spent negotiating outside of the mediation setting in an effort to secure the settlement obtained. Additionally, three different mediators participated in attempting to effectuate a settlement over the nearly twelve years this case has been litigated. The Class Settlement is $43,034,922.39 (plus accrued interest) which is in addition to the $2,653,000.00 that was paid during the pendency of this case to settle claims during the Right to Cure process. Given the insurance coverage issues that exist, depletion of the various insurance policies at issue, including policy exhaustion, and the defenses of the Defendants and Third-Party Defendants, the Court believes that the recovery obtained is the most that would reasonably be available to the class and likely exceeds any recovery the class would obtain at trial and likely appeal.

(e) Legal fees for similar services. Construction defect cases are typically handled on a contingency fee basis ranging from 33.33% to 40.00% in South Carolina. The Notice of Proposed Settlement of Class Action, Notice of Hearing on Proposed Settlement, and Plaintiffs'

Counsels' Application for an Award of Attorneys' Fees and Reimbursement of Expenses, circulated to all Class members in accordance with the directive of this Court, indicate that Class counsel would petition the Court for attorneys' fees of 1/3 and reimbursement of litigation expenses.

A contingency fee of 1/3 of the Class Settlement is fair and reasonable and is approved by this Court to be paid to Class Counsel, W. Jefferson Leath, Jr., Michael S. Seekings, Segui Law Firm, PC, and Chakeris Law Firm. The Court further notes that all settlement funds have been kept in an interest-bearing account for the benefit of the class. The Court agrees with this procedure and approves the distribution 1/3 of the accrued interest (as of and including the date of disbursement) to class counsel as interest on attorneys' fees and 2/3 of the interest to the class pro rata based on the distribution formulae reflected in the Settlement Agreement.

The Court has reviewed the Affidavit of Michael S. Seekings concerning class counsel's request for reimbursement of $42,026.63 in court costs and litigation expenses, in addition to the reimbursement of $468,759,69 approved in the Preliminary Approval Order. The Court understands from Mr. Seekings' affidavit that all of the reimbursements requested are court costs and litigation expenses that should not be advanced without reimbursement under Rule 1.8(e) of the South Carolina Rules of Professional Conduct. The Court further notes that the bulk of the additional funds are related to claims administration, for which the Preliminary Approval Order provided reimbursement following Final Approval. The impact of this reimbursement on any class member's recovery is de minimis and immaterial. The Court approves the reimbursement of court costs and litigation expenses as requested. Accordingly, the Court approves the reimbursement of litigation expenses to Class Counsel in the amount of $510,796.32, which reflects the additional expenses of $42,036.63.

CLAIMS PROCESS / DISBURSEMENT / RELEASE

In light of the final approval of the settlement, releases set forth in the Settlement Agreement are now fully effective. The parties are hereby directed to proceed with the claims and challenge processes as set forth in the Settlement Agreement. Class Counsel are hereby authorized to distribute the attorneys' fees, reimbursement of litigation expenses, and class representative payments of $10,000 each to Anthony and Barbara Grazia on or after the 30th day following "Final Approval" as that term is defined in the Settlement Agreement. The Court retains jurisdiction over this matter.

AND IT IS SO ORDERED.

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Edgar W. Dickson
Presiding Judge, Fourteenth Judicial Circuit

_____, 2019
_____, South Carolina

Beaufort Common Pleas

Case Caption:	Anthony Grazia VS South Carolina State Plastering , defendant, et al
Case Number:	2007CP0701396
Type:	Order/Other

So Ordered

s/ Edgar W. Dickson #2153