IN THE CIRCUIT FOR THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

RICHARD HANEY, SEMYON GENNIS AND MANYA SCHONFELD on behalf of themselves and others similarly situated,	)	**CASE NO. 12-17609 CA 42**
Plaintiffs,	)	
-vs-	)	
GEORGE F. PLUCIENKOWSKI; LUIS A. D'AGOSTINO; ALVARO R. MINOR; JOSHUA G. BUSTOS; and THE PINNACLE CONDOMINIUM ASSOCIATION, INC.	)	
Defendants	)	

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ORDER GRANTING CLASS CERTIFICATION

This cause came before the Court on November 6, 2017, pursuant to the Plaintiffs, ESTATE OF RICHARD HANEY, SEMYON GENNIS and MANYA SCHONFELD's Motion for Class Certification. The Court conducted an evidentiary hearing and fully reviewed the Class Representation Complain, Answer and Affirmative Defenses, the Memoranda filed in support or in opposition to class certification, and the evidence filed in support thereof. The Court, receiving the parties' exhibits into evidence, hearing the argument of counsel and being otherwise duly advised in the premises, finds that this action should be certified as a class action for the reasons set forth herein below.

Finding of Facts

Pursuant to Florida Rule of Civil Procedure 1.220(d)(1), the Court makes the following findings of fact:

1. The Plaintiffs/Putative Class Representatives, Estate of Richard M. Haney, Semyon Gennis, and Manya Schonfeld are some of the unit owners in the Pinnacle Condominium building, located in Miami-Dade County, Florida.

2. The Pinnacle Condominium Association, Inc., (the "Association") is a not-for-profit Corporation organized in Florida, whose membership consists of unit owners in the Pinnacle Condominium Building, and whose principle place of business is in Miami-Dade County, Florida, at 17555 Collins Avenue, Sunny Isles, Florida, 33160.

3. The Pinnacle Condominium Buildings are four high-rise condominium towers containing 244 condominium units located at 17555 Collins Avenue, Sunny Isles Beach, Florida, 33160.

4. The Pinnacle Condominium Buildings sustained structural damage during Hurricane Katrina, in late August 2005, and Hurricane Wilma, in October 2005.

5. On or about March 3, 2006, the Pinnacle Condominium Association, Inc., by and through its Board of Directors, entered into two contracts (the "Contracts") with Continental Painting, Waterproofing & Restoration, Inc., ("CPWR") for certain exterior repairs and painting work at the Pinnacle Condominium Building.

6. On November 14, 2005, the Association notified Pinnacle Unit Owners that the special assessment would be put to a vote.[1] On February 28, 2006, the Board notified members

[1] Exhibit "A", at Tr. 36:13 – 21, and Deposition Exhibit No. 6.

that a special assessment of $1,244,612.00 had passed to begin repairs.[2] The Association's designated representative testified that a vote to levy the assessment may or may not have been necessary.[3]

7. In April 2006, the Association was advised by their insurer QBE that their hurricane damage claims would be denied.[4] Following the insurance coverage denial, the Board circulated proposals for further assessments on July 14, 2006 to pay for the CPWR contracts, which assessments never passed.[5] Following the proposed second assessment, a small group of residents led by George Plucienkowski and Luis D'Agostino solicited the recall of the 2006 Board Members[6], which ultimately resulted in the resignation of the Board (the "old board").[7] On August 16, 2006, the same small group of residents were appointed as emergency interim directors ("new board"), with Mr. Plucienkowski appointed President of the Board.[8]

8. On August 30, 2006, without putting the matter to a full-membership vote, the Association decided to halt CPWR's work on the Pinnacle.[9] In September 2006, the Association, through their attorneys, asked CPWR to cease their operations at the Pinnacle. CPWR performed work under the contracts, but the Board did not pay CPWR's bills.[10]

9. The Association agreed to a payment plan to pay CPWR $200,000.00, and subsequently pay $50,000.00 per month until the debt was exhausted.[11] The first payment of

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[2] Exhibit "A", at Deposition Exhibit 7.
[3] Exhibit "A", at Tr. 36:7 – 12.
[4] Exhibit "D", August 24, 2007 Deposition of Jad Shor, at Tr. 65:23 – 66:21.
[5] Exhibit "A", at Tr. 61:1 – 62:16, and Deposition Exhibit No. 10.
[6] Exhibit "A", at Tr. 47:10 – 18.
[7] Exhibit "E": November 1, 2007 Deposition of George Plucienkowski, at Tr. 144:24 – 145:15).
[8] Exhibit "E", at Tr. 149:12 – 22.
[9] Exhibit "A", at Tr. 64:12 – 15.
See also Exhibit "F": November 8, 2007 Deposition of George Plucienkowski, Tr. at 32:1 - 33:5.
[10] Exhibit "A", at Tr. 67:21 – 68:8.
[11] Exhibit "A", at Tr. 69:5 – 18.

$200,000.00 was made in January 2007, but the subsequent payments of $50,000.00 were not[12], and CPWR instituted a lawsuit to recover its unpaid invoices on March 30, 2007.[13]

10. On July 30, 2008, the Association lost a non-binding arbitration award of the CPWR claims for $1,320,795.91, plus attorney's fees and costs.[14] CPWR extended settlement offers to the Association, but those offers were never communicated to the members.[15]

11. After losing a trial and appealing the verdict, the Association and CPWR agreed on February 3, 2010, to settle CPWR's claims for $2,440,000.00.[16] Under the terms of the Settlement Agreement, each of the 244 Pinnacle Unit Owners (who are the Plaintiffs and putative class members) became liable to CPWR for their proportional share of the $2,440,000.00 settlement amount.[17] These damages, which approximately average $10,000 per class member, form the basis of the damages in the instant action for breach of fiduciary duty and negligence against the Association.[18]

12. The Association's Board of Directors have a fiduciary duty to the Association Members.[19] Specifically, the Association By-Laws state that the Directors have a fiduciary duty towards the Unit Owners, who are the putative class members in this case: "The officers and directors of the Association, as well as any manager employed by the Association, have a fiduciary relationship to the Unit Owners."[20]

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[12] Exhibit "A", at Tr. 69:19 – 70:16.
[13] Exhibit "F", at Tr. 38:3-15.
[14] Exhibit "A", at Tr. 95:4 – 25, and Deposition Exhibit No. 20.
[15] Exhibit "A", at Tr. 97:7 – 23.
[16] Exhibit "A", at Tr. 101:5 – 25; and Deposition Exhibit No. 21.
[17] Exhibit "A", at Tr. 102:1 – 14; and Deposition Exhibit No. 21.
[18] *Id.*
[19] Exhibit "A", at Tr. 19:17 – 21.
[20] Exhibit "A", at Tr. 17 – 23, and Deposition Exhibit No. 2. (at Sec. 7)

Conclusions of Law

Pursuant to Florida Rule of Civil Procedure 1.220(d)(1), the Court makes the following conclusions of law:

The purpose of a "class suit" is to save a multiplicity of suits, to reduce the expense of litigation, to make legal procedure more effective and expeditious, and to make available a remedy that would not otherwise exist. *Tenney v. City of Miami Beach,* 152 Fla. 126, 11 So.2d 188 (1942). A class action provides litigants who share common questions of law and fact with an economically viable means of addressing their needs in a court. *Johnson v. Plantation General Hospital Ltd Partnership,* 641 So. 2d 58 (Fla. 1994); *R.J. Reynolds Tobacco Company v. Ciccone,* 123 So. 3d 604, 613 (Fla. 4th DCA 2013). Some types of legal claims are better suited for class treatment. Often the amount in controversy is so small that an attorney would be reluctant to undertake representation of a single plaintiff. *See Amchem Products, Inc. v. Windsor,* 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor."). These "negative value" cases are the paradigm for class certification.

Class actions are not driven by issues of law; rather, a court exercises its discretion in a factual context to assure that the case meets the requirements of Rule 1.220:

> "the determination that a case meets the requirements of a class action is a factual finding," which falls within a trial court's discretion. Updegraff 807 So.2d at 771. The

> discretion of a trial court is to be applied within the structure of rule 1.220. The certification of a class follows the parameters of the class action rule and the theory upon which the rule is based when the court is faced with a multiplicity of individual actions. The class action rule has a real and meaningful position in the administration of justice to address the ever-increasing caseload burden placed upon our trial courts.

Sosa v. Safeway Premium Finance Company, 73 So. 3d 91, 103 (Fla. 2011).

> At the class certification stage, the inquiry does not focus on whether the c1ass representatives will prevail at trial. *Id.* at 105. "Instead, the focus is on whether a litigant's c1aim is suited for class certification and whether the proposed class provides a superior method for the fair and efficient adjudication of the controversy." *Porsche Cars N. Am., Inc. v. Diamond*. 140 So.3d 1090, 1095 (Fla. 3d DCA 2014) (quotations and citation omitted).

Celebrity Cruises, Inc. v. Rankin, 175 So. 3d 359, 361 (Fla. 3d DCA 2015) (emphasis added). *See also Porsche Cars North America, Inc. v. Diamond,* 140 So. 3d 1090, (Fla. 3d DCA 2014) (Focus of certification hearing is not whether movant will prevail, but rather whether claim is suited for c1ass treatment and a superior method to adjudicate the controversy); *City of Fort Pierce v. Australian Properties, LLC,* 179 So. 3d 426, 430-31 (Fla. 4th DCA 2015) (In determining whether to certify a c1ass, the trial court should focus on class certification rather than the merits of the case, except for considering evidence on the merits as they apply to class certification) (emphasis added). A trial court should resolve doubts with regard to certification in favor of certification, especially in the early stages of litigation. *Sosa,* 73 So. 3d at 105 citing *Chase Manhattan Mortg. Corp. v. Porcher,* 898 So. 2d 153, 156 (Fla. 4th DCA 2005).

Prerequisites for Class Certification

Rule 1.220(a) of the Florida Rules of Civil Procedure, provides the prerequisites to class representation. They are that (1) the members of the class are so numerous that separate joinder of each member is impracticable ("numerosity"), (2) the claim or defense of the representative party raises question of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class ("commonality"), (3) the claim or defense of the representative party is typical of the claim or defense of each member of the class ("typicality"), and (4) the representative party can fairly and adequately protect and represent the interests of each member of the class ("adequate representation"). *See Canal Ins. Co. v. Gibraltar Budget Plan, Inc.*, 41 So. 3d 375, 377 (Fla. 4th DCA 2010); Fla. R. Civ. P. 1.220(a). These prerequisites are easily satisfied by this proposed class.

Numerosity

Rule l.220(a)(l) requires the proposed class be so numerous that joinder of all members is impracticable. A precise number of class members is not required. *See Toledo v. Hillsborough Cnty. Hosp. Auth.*, 747 So. 2d 958, 961 (Fla. 2d DCA 1999); *Smith v. Glen Cove Apartments Condo. Master Ass'n.*, 847 So. 2d 1107, 1110 (Fla. 1st DCA 2003) (finding a class of "approximately 100 members" sufficient). In *Sosa v. Safeway Premium Fin. Co.* 73 So. 3d 91, 114 (Fla. 2011), Sosa asserted a projected class of at least several hundred, if not thousands, of aggrieved class member which "assuredly satisfies the numerosity requirement." A putative class presents sufficient proof of numerosity when it can make a reasonable supported estimate as to the size of the proposed class. *Agan v. Katzman & Korr, P.A.*, 222 F.R.D. 692, 696 (S.D. Fla. 2004).

In this case, the estimated number of class members is 230 persons. Unit owners of 244 condominium units sustained damages as a result of the Settlement Agreement.[21] Further, the Association's corporate representative testified that 242 of the 244 units paid their respective debts to CPWR, and consequently sustained damages complained-of herein.[22] Of the 244 units that paid their debts, at least five current or former owners who were the complicit members of the Board of Directors are excluded from the class. Further, a small number of class members own multiple units, but are nonetheless quantified as one class member. Under these circumstances, the numerosity factor specified in Rule l.220(a)(l) is satisfied. *See Smith v. Glen Cove Apartments Condo. Master Ass'n.*, 847 So. 2d 1107, 1110.

Commonality

Rule l.220(a) further requires the proposed class present common questions of law or fact. *Paladino v. Am. Dental Plan, Inc.*, 697 So. 2d 897, 898 (Fla. 1st DCA 1997). The commonality requirement is satisfied if the questions linking the class members are substantially related to the resolution of the litigation, even if the individuals are not identically situated. *See Morgan v. Coats*, 33 So. 3d 59, 64 (Fla. 2d DCA 2010).

The essential common questions of law and fact that are common to the class include, but are not limited to:

(a) whether or not the Association is liable for the injurious actions of the "new" Directors of the Board;

(b) whether or not the Association's actions or omissions in connection with the breach of the CPWR contract constitute negligence and/or a breach of fiduciary duty;

[21] Exhibit "A", at Tr. 102:1 – 14; and Deposition Exhibit No. 21.
Exhibit "A", at Deposition Exhibit 21 (at Exhibit "B" to Settlement Agreement).
[22] Exhibit "A", at Tr. 130:16 – 131:22.

(c) whether or not the Association (via its "new" directors) breached a duty owed to the Association members by their actions and inactions leading up to and resulting in the lawsuit settlement;

(d) whether or not the Association knew or should have known of the risk posed by breaching the CPWR contacts;

(e) whether Association's actions are the proximate and legal cause or a substantial factor in causing the damages wrought by the breached contract and Settlement Agreement on the Plaintiff Class, including hiring of a third-party construction firm, incurred attorneys' fees defending the breach action, and additional expenses including interest paid on the CPWR contracts; and

(f) whether or not the Association is liable to the putative class for the damages caused by their actions or omissions complained of herein.

These questions center on the events surrounding the litigation, negotiation of settlement, and satisfaction of settlement related to the CPWR suit. Each class member is similarly affected by resolution of these issues. There are no fundamental distinctions on a claimant-by-claimant basis regarding the Associations acts and omissions as it relates to the members. The same fiduciary duty applies to each member, and identical information was disseminated or withheld from the members in meeting minutes by the Board relative to the CPWR suit.[23] The fact that the class members sustained damages in varying amounts is not fatal to a class action. *See Oullette v. Walt-Mart Stores, Inc.*, 888 So. 2d 90, 92 (Fla. 1st DCA 2004) (citation omitted). Therefore, the commonality requirement is satisfied.

[23] Exhibit "A", at Tr. 93:25 – 94:9.

Typicality

Typicality requires that the claim of the representative party be typical of the claim of each member of the class. Fla. R. Civ. P. l.220(a)(3). The key inquiry is whether the class representative possesses the same legal interest and has endured the same legal injury as the class members. *See Morgan,* 33 So. 3d at 65; *Medine v. Washington Mut.,* 185 F.R.D. 366, 370 (S.D. Fla. 1998).

In this case, the Representative Plaintiffs' claims are typical of the claims of the rest of the members of the proposed class because all class claims arise from damages sustained in connection with the breach of duty by the directors and officers of the Association, and the Settlement Agreement between CPWR and the Association. The Representative Claimants are unit owners who were not complicit Directors in the breaches alleged herein. They sustained and paid damages relative to the settlement agreement, identical to the remaining putative class members.

Because the Association's source of duty to all putative class members arises out of their membership in the Association, if the Representative Plaintiffs successfully establish that the Association is liable for breach of duty towards them in connection with their acts and omissions surrounding the CPWR suit, then invariably the "same unlawful conduct was directed at or affected both the class representatives and the class itself." Therefore, the typicality requirement is satisfied. *Agan,* 222 F.R.D. at 698.

Adequacy of Representation

The last of the class action prerequisites is "adequacy." Rule 1.220(a)(4) states that a class action can be maintained if "the representative parties will fairly and adequately protect the interests of the class." "Two grounds frequently employed to determine adequacy of

representation are the skill of the attorney to prosecute the case and the lack of conflict between the interests of the representatives and those of the class they seek to represent. *Leibell v. Miami-Dade County,* 84 So. 3d 1078, l082 (Fla. 3d DCA 2012) (emphasis added). "The 'adequacy of representation' requirement is met if the named representatives have interests in common with the proposed class members and the representatives and their qualified attorneys will properly prosecute the class action." *Union American insurance Company v. Rodriguez,* 696 So. 2d 1248 (Fla. 3d DCA 1997); *Colonial Penn Insurance Company,* 694 So. 2d at 854; *WS. Radcock Corp. v. Myers,* 696 So. 2d 776, 780 (Fla. 1st DCA 1996); *Broin v. Philip Morris Cos., Inc.,* 641 So. 2d 888, 892 (Fla. 3d DCA 1994). "The adequacy of class representation is a fact issue within the discretion of the trial court ... a trial court's determination as to the qualifications of Plaintiffs to adequately represent a class will not be disturbed on appeal absent a showing of clear abuse of discretion." *Adiel v. Electronic Financial Systems,* 513 So. 2d 1347 (Fla. 3d DCA 1987); *Arvida/J&B Partners v. Counsel of Villages, Inc.,* 733 So. 2d 1026 (Fla. 4th DCA 1999). The Court's *goal* should be to ensure that the putative class representative will adequately represent the interest of the absent members. *Paulino v. Hardister,* 306 So. 2d 125 (Fla. 2d DCA 1974); *Powers v. Government Employees Insurance Company,* 192 F.R.D. 313 (S.D. Fla. 1998).

Adequacy exists when the putative class representative is part of the class, possesses the same interest, and suffers the same injury as the class members. *City of Tampa v. Addison,* 979 So. 2d 246 (Fla. 2d DCA 2007). Adequacy of representation encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will

adequately prosecute the action. *See Sosa,* 73 So. 3d at 115. Adequacy of representation means that the class representative has common interests with unnamed class members and will vigorously prosecute the interests of the class through qualified counsel. Plaintiffs have consistently maintained at least the minimal level of interest in the action required by law. *Leibell v. Miami-Dade County,* 84 So. 3d 1078, 1085 (Fla. 3d DCA 2012).

Plaintiffs have retained qualified, experienced, and skilled counsel to handle this class action. There are no latent or patent interests of Plaintiffs that are hostile or antagonistic to the members of the class. Plaintiffs have been proactive in making sure that class discovery was promptly promulgated and that the critical dates for filing all pleadings and papers in this action were met. They have prioritized responding to discovery requests sent to them and has cooperated with their counsel in advancing this cause in every way. Here, there are no facts that could form the predicate for a determination that the Plaintiffs have any existing or potential conflict with any putative class member. If they prevail, Plaintiffs will realize the same type of recovery that will be realized by every other Class Member, no more, no less.

Adequate representation also involves questions of whether plaintiff's counsel is "qualified" and generally able to conduct the proposed litigation. *Olen Properties Corp. v. Moss,* 981 So. 2d 515 (Fla. 4th DCA 2008). Bruno & Bruno, LLP, through Joseph M. Bruno, Sr., and Daniel A. Meyer, and Baron & Herskowitz, through Jon M. Herskowitz, have presented their *curriculum vitae* to the Court. They have demonstrated significant skill in complex litigation so as to clearly satisfy the adequacy of counsel prerequisite. The Court must consider the "ability" of putative class counsel to represent the interests of the

proposed class and meet the due process requirements pertaining to unnamed class members. "Sosa's legal team was competent and experienced, giving them the ability to advocate effectively on behalf of Sosa and the putative class members." *Sosa*, 73 So. 3d at 115 (emphasis added).

Finally, the putative class representative and class counsel have the resources to prosecute this action as a c1ass action and will zealously and competently represent the interest of all c1ass members. All aspects of the "adequacy" prerequisite of Rule l.220(a)(4) have been met.

Rule 1.220(b)
The Type of Class Action

Upon establishing that the prerequisites to class representation under Rule 1.220(a) are present, Rule 1.220(b) sets out forms of classes that may be certified. This class action may be maintained under subsection (b)(3). Certification of a class under (b)(3) is appropriate where "the claim or defense is not maintainable under either subdivision (b)(1) or (b)(2), but the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law of fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy." Fla. R. Civ. P. 1.220(b)(3).

Predominance

For purposes of satisfying Rule 1.220(b)(3)'s requirements, the class members' common questions of law and fact must predominate over individual class member claims. *See* Fla. R. Civ. P. l.220(b)(3); *See also InPhynet Contracting Servs., Inc.* v. *Soria,* 33 So. 3d 766, 771 (Fla. 4th DCA 2010). The class representative must only demonstrate that some questions are

common, and that they predominate over individual questions. *See Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.,* 601 F.3d 1159, 1170 (11th Cir. 2010). This case is a straightforward scenario of breach of duty by officers and directors of the Association, where the source and nature of duty is identical for each class member, and the source, nature, and amount of damages is substantially similar for each class member. Further, as set forth in Section II.B, above, nearly every material inquiry in this case affecting the class representatives also affects all class members. Therefore, common questions of fact and law predominate over questions of fact and law affecting only individual members of the Class.

Superiority

In addition to the predominance requirement, Rule 1.220(b)(3) requires that the Court determine that the class action mechanism is superior to other available methods for fair and efficient adjudication of the matter at issue. The economic damages in cases range in the $5,000 – $18,000 per class member, which damage amounts tend to reduce the economic viability of prosecuting a directors' and officers' liability case. *See Colonial Penn v. Magnetic Imaging*, 694 So. 2d 852, 854 (Fla. 3d DCA 1997) ("This case presents the quintessential scenario for class action treatment. The purpose of the class action is to provide litigants who share common questions of law and fact with an economically viable means of addressing their needs in court."); *McFadden v. Staley*, 687 So. 2d 357, 359 (Fla. 4th DCA 1997) ("There also is no error or abuse of discretion in the trial court's conclusion that a class action is particularly appropriate in this case because of the confluence of a large number of class members and the fact that the injuries suffered by each were relatively minor.")

Colonial Penn and *McFadden* underscore the important function that class certification plays in cases, like this one, where the economic reality militates against individual actions

because the amounts at stake are small enough that separate suits for many class members are economically impracticable.

Additional factors the Court may consider to determine superiority of the class action procedure are: (A) the interests of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class. *See Morgan,* 33 So. 3d 66.

The putative class members in this case have not initiated separate suits in this matter, and have a mutual interest in utilizing the class action procedure to prosecute their interests against the Association. Further, maintaining all claims set forth in the Amended Complaint in this forum is desirable because the evidence, documentation, most parties, and offending actions took place within Miami-Dade County. Finally, the class action procedure is superior to other means of litigations because the factual and legal issues to be resolved in this case will apply to all injured members of the putative class. Further, management of this case as a class action is superior because individual joinder of these parties is impracticable in this case. The members of the putative class are spread out (many putative class members utilize the Pinnacle Condominiums as a vacation home). Because many class members spread around the country which would make joinder impracticable, a class action would better serve the interests of the scattered individual class members. Accordingly, the superiority requirement is satisfied.

A (b)(3) class is appropriate when the class action exclusively or predominately seeks money damages, as in the present case. *See Chase Manhattan Mortgage Corp. v. Porcher*, 898 So. 2d 153, 157 (Fla. 4th DCA 2005); *Holmes v. Cont'l Can Co.*, 706 F.2d 1144, 1155-56 (11th

Cir. 1983). In this case, the putative class action is for monetary damages, and declaratory or injunctive relief is unlikely to remedy the complained-of injuries. Consequently, the additional requirements for certification of a class action under Rule 1.220(b)(3) are met. This class action is suitable as a "(b)(3)" class.

Based upon the foregoing findings of fact, matters contained in the record of these proceedings, and conclusions of Jaw;

The Plaintiffs' Motion for Class Certification is **GRANTED** and the case is certified by this Court to proceed on a class wide basis.

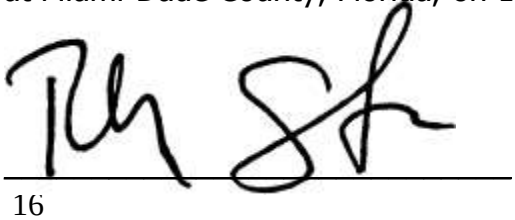
1. The class is defined as:

> "All condominium unit owners of the Pinnacle Condominium who suffered financial damage from the obligations imputed upon them under the February 3, 2010 Settlement Agreement for the matter of "*Continental Painting, Waterproofing & Restoration, Inc. v. The Pinnacle Condominium Association*, Circuit Court of the Eleventh District of Florida, Case No. 07-09196 CA 06", who were not members of the Board of Directors from August 30, 2006 through February 3, 2010."

2. Bruno & Bruno, LLP, through Joseph M. Bruno, Sr., and Daniel A. Meyer, and Baron & Herskowitz, through Jon M. Herskowitz, shall serve as class counsel for the entire class defined above.

3. Class Counsel shall, pursuant to Rule 1.220(d)(2), within 15 days from the date of this Order, submit for court approval, a proposed Notice of Pendency of this action. The submission shall include a plan for the manner of providing Notice of Pendency to the Class Members.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 11/09/17.



RODNEY SMITH
CIRCUIT COURT JUDGE

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

HONORABLE RODNEY SMITH
CIRCUIT COURT JUDGE

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