

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19-CVS-8602

GREGORY, INC., TRIPLE A HOMES,
INC., WISEMANPLUS, LLC, and
WISEMANPLUS DEV CO LLC,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TOWN OF FUQUAY-VARINA,

Defendant.

**ORDER GRANTING PRELIMINARY APPROVAL
OF SETTLEMENT AGREEMENT**

This action is before the Court on the Plaintiffs WISEMANPLUS, LLC's, and WISEMANPLUS DEV. CO. LLC's (herein "Plaintiffs" or "moving Plaintiffs")¹ Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement pursuant to Rule 23 of the North Carolina Rules of Civil Procedure.

WHEREAS, on or about August 16, 2023, the Settling Defendant Town of Fuquay-Varina (the "Settling Defendant" and/or "the Town"), and Plaintiffs, entered into a Settlement Agreement and Release (the "Settlement Agreement") intended to resolve this litigation pending in Wake County, North Carolina;

¹ The claims of Plaintiffs Gregory, Inc. and Triple A Homes, Inc. were resolved by Order and Judgment entered by this Court on June 2, 2021, finally approving the Class Action Settlement with the Town resolving all impact fee claims for the Pre-July 1, 2018 Sub-Class.

WHEREAS, the Settlement Agreement, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of the claims of the Settlement Sub-Class in this action against the Settling Defendant, with the Parties intending to be legally bound by those terms and conditions;

WHEREAS, the Court has before it Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement and Memorandum in Support, exhibits and supporting materials;

WHEREAS, the Settlement Class will be administered under the exclusive jurisdiction of this Court; and

WHEREAS, the Court is satisfied that the settlement set forth in the Settlement Agreement was the result of good faith, arm's-length settlement negotiations between competent and experienced counsel for both the Plaintiffs and Defendant.

Upon consideration of the motion, supporting memorandum and attachments, statements made by counsel for all Parties at the hearing on this motion, and other pertinent parts of the record in this case, and for good cause shown, the Court finds that the motion is due to be, and hereby is, GRANTED. IT IS HEREBY ORDERED AS FOLLOWS:

1. To the extent not otherwise defined herein, all capitalized terms shall have the same meaning as used in the Settlement Agreement and this Order.
2. The Court has jurisdiction over the subject matter of the Lawsuit, over all Parties to the Lawsuit, and over all other members of the Settlement Class.
3. Plaintiffs and Defendant Town of Fuquay-Varina are each legally bound to the terms and conditions set forth in the Settlement Agreement, and the terms and conditions

Settlement Agreement are hereby preliminarily approved, subject only to further consideration thereof at the Fairness Hearing provided below.

4. The Court finds that said settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.

5. For the purposes of settlement in accordance with the Settlement Agreement, the Settlement Class is hereby **CONDITIONALLY CERTIFIED** as an opt-out class pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, as against the Defendant Town of Fuquay-Varina; with the Settlement Class being defined as follows:

All individuals, proprietorships, partnerships, corporations, and other entities who (a) from July 1, 2018 through July 11, 2022 (b) paid water or sewer system development fees to the Town of Fuquay-Varina.

6. The Court finds that the prerequisites for a class action under North Carolina Rules of Civil Procedure, Rule 23, have been satisfied for the purposes of this Settlement Class in that: (a) the number of Settlement Class members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the members of the Settlement Class; (c) the claims of the moving Plaintiffs are typical of the other members of the Settlement Class; (d) the moving Plaintiffs will fairly and adequately represent the interests of the Settlement Class; (e) the prosecution of separate actions by or against individual members of the Settlement Class would create a risk of (1) inconsistent or varying adjudications with respect to individual members of the Settlement Class which would establish incompatible standards of conduct for the Defendant, or (2) adjudications with respect to individual members of the Settlement Class that would as a practical matter be dispositive of the interests of the other members or would otherwise substantially impair or impede other members' ability to protect

their interests; and (f) there are numerous common questions of law and fact involving the Settlement Class Members, which common questions predominate over any individualized issues.

7. The Court finds that the Plaintiffs Wiseman Plus, LLC and Wiseman Plus Dev. Co., LLC shall represent the Settlement Class as Settlement Class Representatives and are adequate class representatives for the Settlement Class.

8. The Court further finds that William G. Wright of Shipman and Wright, L.L.P., John Scarbrough and Jim Scarbrough of Scarbrough & Scarbrough, PLLC, and James R. DeMay of Milberg Coleman Bryson Phillips Grossman, PLLC are appointed as and should serve as Settlement Class Counsel.

9. The Court approves the proposed Notice Plan, the Class Notice and Press Release.

10. The settlement documented in the Settlement Agreement is hereby PRELIMINARILY APPROVED as fair, reasonable, and adequate; to have been the product of informed and extensive arm's length negotiations among the Parties; and to reflect the hard-fought compromise between the Parties; and to be in the best interest of the Settlement Class.

11. The notice to be provided as set forth in the Settlement Agreement and this Order is hereby found to be the best means practicable of providing notice under the circumstances and when completed, shall constitute due and sufficient notice of the proposed settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with Rule 23 of the North Carolina Rules of Civil Procedure, due process, the Constitution of the United States, the laws of North Carolina and any other applicable laws.

12. Settlement Services, Inc. is hereby appointed Class Notice and Settlement Administrator to supervise and administer, in conjunction with the Parties, the notice process and aid in the effectuation of the settlement pursuant to the terms described in the Settlement Agreement.

13. The Parties are instructed to specify an opt-out and objection deadline date in the Notice which shall be sixty (60) days after the date of mailing of the Class Notice.

14. Within thirty (30) days of the date of this Order: (a) the Notice and Settlement Administrator shall cause a copy of the Notice (in a form substantially similar to that approved herein), to be mailed by first class mail, postage prepaid, to the last known address of all Settlement Class members who can be identified by reasonable effort; (b) the parties shall agree upon the form and content of, and the Notice and Settlement Administrator shall publish, an internet website containing a copy of the Notice and other relevant information; and (c) Plaintiffs will disseminate a Press Release, substantially in the form attached as Exhibit D to the Settlement Agreement.

15. Settlement Class Counsel shall file with the Court, no later than fourteen (14) days prior to the Fairness Hearing, (a) a sworn statement attesting to compliance with the provisions of this paragraph, attesting to the mailing of the Class Notice to each member of the Settlement Class and the dissemination of the Press Release; (b) a list identifying all members of the Settlement Class (name and last known address); (c) a print-out of the information available on the internet website; and (d) the Notice and Settlement Administrator's itemization of the costs incurred in printing, mailing, publishing and otherwise administering the class notice process, and such other information as may be appropriate to document and summarize the class notice process.

16. The Court hereby finds the form and method of notice herein to be the best practicable under the circumstances, consistent with due process of law and N.C. R. Civ. P. 23 and constituting due and sufficient notice of the pendency of this action.

17. Any Settlement Class member who wishes to opt-out of the Settlement must file with the Clerk of the Court and serve on Plaintiffs' Class Counsel and Defense Counsel (at the addresses listed below) no later than sixty (60) days after the initial mailing of the Notice by the Class Notice and Settlement Administrator, a letter and/or written and signed statement, titled "Request for Exclusion," requesting his or her exclusion from the Settlement Class. Requests for Exclusions must be postmarked by no later sixty (60) days after the initial mailing of the Notice by the Class Notice and Settlement Administrator, and addressed to Town of Fuquay-Varina System Development Fee Class Action – Exclusions, Post Office Box 10269, Tallahassee, FL 32302-2269 with copies of the Request postmarked by the same date and sent to:

William G. Wright
Shipman & Wright, LLP
575 Military Cutoff Rd,
Suite 106
Wilmington, N.C. 28405

Dan Hartzog
Hartzog Law Group, LLP
2626 Glenwood Ave., Suite 305
Raleigh, North Carolina 27608

Jim Scarbrough & John Scarbrough
Scarbrough & Scarbrough, PLLC
137 Union Street South
Concord, North Carolina 28025

James R. DeMay
Milberg Coleman Bryson Phillips Grossman, PLLC
900 West Morgan St.
Raleigh, North Carolina 27603

18. A Final Approval Hearing (the "Fairness Hearing") is hereby scheduled to be held before the undersigned on March 8, 2024, at 2:00 p. m. to consider the fairness, reasonableness, and adequacy of the proposed settlement, Plaintiffs' Counsel's application for an award of

attorney fees and costs, incentive payments to the Class Representative/moving Plaintiffs in the amount of \$5,000.00 each, the dismissal with prejudice of the claims of the Settlement Sub-Class in this Class Action with respect to the Released Defendant Town of Fuquay-Varina, and to rule upon such other matters as the Settlement Agreement contemplates, and as the Court may deem appropriate. The date and time of the Fairness Hearing shall be set in the Notice, but the Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court.

19. Any person or entity that has not elected to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement Class members who do not enter an appearance through their own attorneys will be represented by Settlement Class Counsel.

20. Any Settlement Class Member who has not elected to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed settlement. Any Settlement Class Member may object to the proposed Settlement, entry of the Final Order and Judgment approving the Settlement, and Plaintiffs' Class Counsel's application for fees and expenses by filing and serving a written objection. The Settlement Class Member making the objection ("objector") must sign the objection either personally or through his or her attorney. If the Settlement Class Member is a trust, corporation, or other entity, the objection must be signed by an authorized representative of the trust, corporation, or other entity or the trusts, corporation, or entities' attorney. An objection must provide: (1) the objector's name and current address; (2) the name of the lawsuit, *Gregory, Inc. v. Town of Fuquay-Varina*, Wake Co. File No. 19-CVS-8602; (3) the specific reason(s), if any, for each objection, including all legal support the settlement class member wishes to bring to the Court's attention and all factual evidence the

settlement class member wishes to offer in support of the objection; (4) Include an identification, by case style and number, of any other class settlements the objector or the objector's attorney(s) have asserted an objection; and (5) Include an identification of all attorneys having a financial interest or stake in the objection. If an objector intends to appear personally at the Fairness Hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing. Objections, along with any notices of intent to appear, must be filed no later than sixty (60) days after the initial mailing of the Notice by the Class Notice and Settlement Administrator. If counsel is appearing on behalf of more than one Settlement Class Member, Counsel must identify each such Settlement Class Member and each Settlement Class Member must have complied with the requirements of this paragraph. These documents must be filed with the Clerk of Superior Court at the following address: Office of the Clerk of the Superior Court, General Court of Justice, located at the Wake County Courthouse at 316 Fayetteville Street, Raleigh, N.C. 27601.

21. Objections, along with any notices of intent to appear, must be postmarked by no later than sixty (60) days after the initial mailing of the Notice by the Class Notice and Settlement Administrator, and addressed to Town of Fuquay-Varina System Development Fee Class Action – Objections, Post Office Box 10269, Tallahassee, FL 32302-2269 with copies of the Request sent to:

William G. Wright
Shipman & Wright, LLP
575 Military Cutoff Rd,
Suite 106
Wilmington, N.C. 28405

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137 Union Street South
Concord, North Carolina 28025

James R. DeMay
Milberg Coleman Bryson Phillips Grossman, PLLC
900 West Morgan St.
Raleigh, North Carolina 27603

24. Only Settlement Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Fairness Hearing. Any Settlement Class Member who does not timely file and serve an objection in writing to the Settlement, entry of Final Order and Judgment, or to Plaintiffs' Class Counsel's application for fees, costs, and expense, in accordance with the procedure set forth in the Class Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

25. Persons wishing to be heard at the Fairness Hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the Fairness Hearing. Settlement Class members need not appear at the hearing or take any other action to indicate their approval.

26. The Court having determined preliminarily that this action may proceed as an opt-out class action under N.C.R. Civ. P. 23, Settlement Class members who do not opt out in accordance with the terms and provisions of the Class Notice shall be bound by any judgment in this Action, whether favorable or unfavorable, subject to the Court's final determination at the Final Approval Hearing as to whether this Action may so proceed.

27. Any of the Parties' papers with respect to whether the settlement should be approved, and any application by Settlement Class Counsel for an award of attorneys' fees and costs, and service payments, together with papers in support thereof, shall be filed with the Court and served on other Parties no later than February 27, 2024 (10 days prior to the Fairness

Hearing). Copies of such materials shall be available for inspection at the Office of the Clerk of Court.

28. The Court reserves the right to approve the settlement with such modifications as may be agreed to by counsel for the Parties and without further notice to members of the Settlement Class.

29. Upon approval of the settlement provided for in the Settlement Agreement, each and every term and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

30. In the event the settlement is not approved by the Court, or such approval does not become Final as provided in the Settlement Agreement, the Settlement Agreement and this Order, and all negotiations and proceedings relating thereto, shall be withdrawn without prejudice as to the rights of any and all Parties thereto, who shall be restored to their respective positions prior to the settlement.

31. The Court hereby retains jurisdiction for purposes of implementing the Settlement Agreement and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the settlement as may from time to time be appropriate and resolve any and all disputes thereunder.

32. All settlement funds are and shall remain subject to the jurisdiction of the Court.

33. All reasonable costs incurred in notifying members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

SO ORDERED this 23rd day of October, 2023.


The Honorable Jeffrey B. Foster