

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08-CV-21190

MARK ELLIOTT, TOR and MICHELLE
GABRIELSON, MICHIHIRO and YOKO
KASHIMA, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

KB HOME NORTH CAROLINA INC., and
KB HOME RALEIGH-DURHAM INC.,

Defendants.

KB HOME RALEIGH-DURHAM INC.,

Third-Party Plaintiff,

vs.

STOCK BUILDING SUPPLY, LLC,

Third-Party Defendant.

**AFFIDAVIT OF DANIEL K. BRYSON IN SUPPORT
OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND IN SUPPORT OF
MOTION SEEKING AWARD OF ATTORNEYS' FEES AND EXPENSES**

I, DANIEL K. BRYSON, hereby testify as follows:

1. I am counsel for Plaintiffs in this action. I make this Affidavit in support of final approval of the settlement agreement reached between Plaintiffs and KB Home Raleigh-Durham Inc. ("KB Home") in this litigation as well as in support of Plaintiffs' counsel's application seeking an award of attorneys' fees and expenses in connection with the services provided throughout this protracted litigation.

2. The exhibits appended to this Affidavit are true and correct copies of the following documents:

- a. **Exhibit 1:** Whitfield Bryson & Mason LLP's Firm Resume
- b. **Exhibit 2:** List of All Briefs Filed In This Matter
- c. **Exhibit 3:** Exhibit C to Settlement Agreement
- d. **Exhibit 4:** Addendum to Exhibit C
- e. **Exhibit 5:** Stock Building Invoice for Tor and Michele Gabrielson's home

3. I have actively participated in the conduct of this hotly contested litigation spanning over eight (8) years, have personal knowledge of the matters set forth in this Affidavit, and if called to testify, could and would testify competently about them.

4. I am a founding partner of the law firm Whitfield Bryson & Mason LLP ("WBM"), which was counsel for the Plaintiffs in this matter. Initially, when this action commenced in 2008, I was a partner with Lewis & Roberts, PLLC ("Lewis & Roberts"), and we filed the action with Gary E. Mason's previous firm, Mason, LLP. In or about October, 2011, I, as well as my current partner, Scott C. Harris, left Lewis & Roberts to form WBM with Gary E. Mason and John Whitfield on or about January 1, 2012. From October 2011 through January 1, 2012, we operated as separate entities as Bryson Law, PLLC and Mason, LLP. Therefore, while the firm names may have changed over time, the primary partners and attorneys have remained the same, and I submit this affidavit on behalf of all firms who have participated on behalf of the Plaintiffs' in this matter.

5. As shown in detail in **Exhibit 1**, WBM regularly litigates complex class actions across the country, including construction product defect and class action cases.

6. WBM's years of experience representing homeowners in complex class action cases contributed to an awareness of the Plaintiffs' settlement leverage, as well as the needs of Plaintiffs and the class. We believed, and continue to believe, that our clients have claims that would ultimately prevail in the litigation on a class-wide basis. However, we are aware that a successful outcome was uncertain for all class and subclass members and would have been achieved, if at all, only after several more years of prolonged, arduous litigation with the attendant and real risk of additional drawn-out appeals and attempts to de-certify the classes.

7. The paragraphs that follow detail this case's prolonged history over eight years and the arm's length negotiations resulting in the settlement agreement now before the Court for final approval. As described below, the settlement provides significant and substantial relief to the members of the two classes given the uncertainties and length of this litigation. It is, in the opinion of the undersigned, based on my and my partners' substantial experience in construction defect related litigation and complex class actions, fair, reasonable, adequate, and worthy of final approval because it brings concrete relief to the Classes and the ability to repair their homes or the ability to receive an amount due to the reduction in sale of their home..

Summary of Procedural History

8. On January 31, 2008, Plaintiffs Mark Elliott, Tor and Michelle Gabrielson, and Michihiro and Yoko Kashima ("Plaintiffs") initiated this action on behalf of themselves as well as all of those similarly situated by filing a warranty claim with KB Home for failing to install a weather-restrictive barrier ("WRB") behind the fiber-cement siding on their homes, called HardiePlank.

9. The parties attempted but were unable to resolve this matter at a negotiation conference. Plaintiffs filed a class action lawsuit in the Wake County, Superior Court Division

against KB Home North Carolina Inc., and KB Home Raleigh-Durham Inc., on December 5, 2008, alleging that the two entities violated the North Carolina Residential Building Code by failing to install a WRB behind the fiber-cement siding in homes they constructed in North Carolina.

10. On July 17, 2009, after submitting briefs by the parties, Judge W. Osmond Smith, III denied KB Home's motion to dismiss but granted KB Home North Carolina Inc.'s motion to dismiss.

11. On January 7, 2010, KB Home moved for leave to file a third party complaint against its subcontractor Stock Building Supply, LLC ("Stock"). KB Home then filed its complaint against Stock on January 19, 2010.

12. Meanwhile, on January 8, 2010, Plaintiffs moved the Superior Court to compel KB Home to produce responsive discovery that included, among other things, KB Home's cost to install HardiePlank without a WRB. Judge Kenneth Titus partially granted the motion to compel on March 16, 2010. Subsequently, KB Home produced all of their construction files for all homes constructed with HardiePlank and without a WRB

13. On June 17, 2010, this case was designated a complex business case and was assigned to the Honorable John R. Jolly, Jr., Special Superior Court Judge for Complex Business Cases.

14. After performing extensive discovery across the country as described *infra*, Plaintiffs moved to certify a class on March 31, 2011, of homeowners in North Carolina who own a home constructed by KB Home without a WRB. Following numerous time extensions obtained by the parties, the submission of several briefs, and a hearing on this issue, Judge Jolly issued an order certifying Plaintiffs' class on February 27, 2012. A Notice of Class Action was

mailed to all class members on or before March 15, 2012. No one filed an objection or a request to be excluded from the class action.

15. KB Home responded to the class certification order by filing a notice of appeal (filed March 28, 2012), a writ for certiorari (filed March 28, 2012), and two simultaneous motions to stay (both filed April 12, 2012). One of the motions asked the Court to stay the action during the pendency of the appeal. The other motion asked the Court to stay the action and compel the Plaintiffs and Class Members to arbitrate their claims. Plaintiffs responded to each of these motions.

16. On April 13, 2012, Judge Jolly denied KB Home's motion to stay the case pending appeal. Following Judge Jolly's ruling, KB Home petitioned the Court of Appeals for a writ of supersedeas on July 12, 2012. Plaintiffs responded to this petition and filed a motion to dismiss the appeal.

17. The Court of Appeals denied all of KB Home's requested relief. On August 27, 2012, the Court of Appeals denied KB Home's petition for a writ of supersedeas. On August 28, 2012, the Court of Appeals granted Plaintiffs' motion to dismiss the appeal. Finally, on August 30, 2012, the Court of Appeals entered an order denying KB Home's petition for a writ of certiorari.

18. After being denied their petition in the Court of Appeals, KB Home petitioned the North Carolina Supreme Court for a writ of certiorari regarding this Court's class certification order on October 4, 2012. KB Home's petition was denied, again, on March 7, 2013. Plaintiffs responded to this petition.

19. On November 2, 2012, Judge Jolly denied KB Home's motion to compel arbitration following extensive briefing by Plaintiffs. Judge Jolly found that "KB Home's delayed

attempt to enforce the arbitration provisions only after Plaintiffs have expended material amounts of time and resources in pursuing their Claims would be prejudicial to Plaintiffs...KB Home could have demanded arbitration as early as 2008, well before the named Plaintiffs actively litigated the Claims.” *See* November 2, 2012 Order, ¶ 39.

20. KB Home appealed this Court’s order denying the motion to compel arbitration on November 29, 2012. KB Home also moved to stay the case pending the outcome of this appeal regarding the motion to compel arbitration, which Judge Jolly granted on February 26, 2013. Plaintiffs filed both a response to the appeal as well as a motion to dismiss the appeal.

21. The Court of Appeals heard oral argument on KB Home’s second appeal regarding the motion to compel arbitration on October 8, 2013. After hearing oral arguments and reviewing the extensive briefing, it affirmed Judge Jolly’s denial of KB Home’s motion to compel arbitration on December 17, 2013.

22. In response to the Court of Appeals’ opinion, KB Home filed a motion for rehearing on January 17, 2014. The Court of Appeals denied the motion five days later on January 22, 2014.

23. Then, on February 6, 2014, KB Home filed a petition for discretionary review and a notice of appeal based on a constitutional question with the North Carolina Supreme Court. Plaintiffs filed an opposition to this petition and a motion to dismiss the petition. The North Carolina Supreme Court rejected KB Home’s petition for discretionary review and granted Plaintiffs’ motion to dismiss KB Home’s appeal regarding the constitutional question on June 11, 2014.

24. Shortly after the North Carolina Supreme Court rejected KB Home’s appeal, Plaintiffs filed a motion in the Business Court on June 23, 2014, to lift the stay that had been in

place since February 26, 2013. KB Home opposed lifting the stay, noting its intention to petition the United States Supreme Court for a writ of certiorari. On August 12, 2014, this Court denied Plaintiffs' motion to lift the stay.

25. On October 9, 2014, KB Home filed a petition for writ of certiorari with the United States Supreme Court regarding its motion to compel arbitration. Plaintiffs responded to this petition. On November 10, 2014, the United States Supreme Court denied KB Home's petition.

26. Following the United States Supreme Court's declination, this Court entered an order maintaining the stay entered on February 26, 2013, to allow the parties to potentially resolve the case through a mediation on March 4, 2015 in Miami, Florida with mediator John S. Freud.

27. After mediation was unsuccessful, this Court lifted the stay on June 5, 2015, and scheduled briefing deadlines regarding the filing of dispositive motions and modifications to the class definition.

28. On June 5, 2015, Plaintiffs, KB Home, and Stock moved for partial summary judgment on whether a weather-restrictive barrier was required to be installed on Plaintiffs' and Class Members' homes. On June 26, 2015, the parties were required to submit their responsive briefs for the motions for summary judgment. The Court denied all of the parties' motions on July 29, 2015.

29. Additionally, on June 19, 2015, Plaintiffs, KB Home, and Stock filed motions regarding their respective positions on the class definition. On July 10, 2015, the parties were required to file their responsive briefs regarding the class definition.

30. On September 25, 2015, this Court entered an order that modified the Class definition to include a subclass of “Post-Notice Sellers,” or individuals who sold their home after receiving the Notice of Class Action on March 15, 2012. Specifically, the Court amended the class definitions to:

All persons in the State of North Carolina who owned a home on March 15, 2012, in the Twin Lakes Homes or Amberlee Homes developments in Cary, North Carolina constructed by Defendant KB Home without a weather-restrictive barrier behind the exterior veneer of HardiePlank cement fiber lap siding. Excluded from the Class are: (a) any judge or magistrate presiding over this action and members of their families; (b) any Defendant and/or Third-Party Defendant and any entity in which any Defendant and/or Third-Party Defendant have a controlling interest or which has a controlling interest in any Defendant and/or Third-Party Defendant and its legal representatives, assigns and successors of any Defendant and/or Third-Party Defendant; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

All persons in the State of North Carolina who owned a home on March 15, 2012, in the Twin Lakes Homes or Amberlee Homes developments in Cary, North Carolina constructed by Defendant KB Home without a weather-restrictive barrier behind the exterior veneer of HardiePlank cement fiber lap siding but who sold the home after March 15, 2012. Excluded from the Class are: (a) any judge or magistrate presiding over this action and members of their families; (b) any Defendant and/or Third-Party Defendant and any entity in which any Defendant and/or Third-Party Defendant have a controlling interest or which has a controlling interest in any Defendant and/or Third-Party Defendant and its legal representatives, assigns and successors of any Defendant and/or Third-Party Defendant; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

31. The Court also ordered Plaintiffs to file an amendment to the Complaint to add a Post-Notice Seller as a named Plaintiff to represent the interests of the subclass.

32. On October 30, 2015, Plaintiffs filed the Amendment to their Complaint to include Fairway 13 Properties, LLC (“Fairway”) as the Class Representative of the Sub-Class.

33. On December 18, 2015, KB Home filed an objection to Plaintiffs' Amendment to the Complaint, Motion for Clarification and/or Reconsideration of the Order on Motions for Class Clarification. On January 26, 2016, Plaintiffs filed their response to KB Home's objection and motion. On February 9, 2016, this Court denied KB Home's objection and its motion.

34. On January 15, 2016, KB Home and Stock jointly moved the Court to reconsider this Court's July 29, 2015 Order denying summary judgment, claiming that the Court actually ruled as a matter of law that KB Home was not required by the North Carolina Building Code to install a WRB behind HardiePlank siding. On February 4, 2016, Plaintiffs filed an opposition to this motion to reconsider.

35. On March 23, 2016, this Court reconsidered its July 29, 2015 Order and found that Plaintiffs were entitled to judgment as a matter of law. Specifically, the Court found that Section 205.1 of the Administrative Code required KB Home to obtain the review and approval of the Town of Cary's Code Enforcement Official before it installed HardiePlank without a WRB, and that KB Home failed to obtain such review and approval.

36. Several other motions have been filed, but have not been ruled on, since the stay was lifted on June 5, 2015. These motions include KB Home's and Stock's motion to disqualify Fairway as class representative of the Post-Notice Sellers subclass, Plaintiffs' motion for partial summary judgment as to the breach of contract claim against KB Home, KB Home's motion for partial summary judgment as to Stock, KB Home's motion for partial summary judgment as to Plaintiffs, KB Home's motion to compel as to Plaintiffs, and Stock's motion for summary judgment as to KB Home.

37. Beginning on May 12, 2016, this Court has entered several orders continuing hearings and briefing schedules for the pending motions to allow the parties to, again, seek a resolution through mediation.

38. The parties attended five settlement sessions (not including the pre-suit negotiation on July 25, 2008) with three separate mediators. Prior to the Court's order on May 16, 2016, the parties had previously mediated the case on two separate occasions. The first mediation was held in Raleigh, North Carolina in 2011 with mediator Robert A. Beason. The second mediation was held May 18, 2015 in Miami, Florida with mediator, John S. Freud. After the May 12, 2016 orders from this Court, the third, fourth and fifth mediation sessions were held on July 11, August 29 and September 27, 2016 in Raleigh, North Carolina with mediator Ross R. Hart.

39. At the August 31, 2016, mediation KB Home and Plaintiffs reached a tentative agreement to provide benefits to the class and subclass that was further negotiated for over two months and ultimately reached on November 10, 2016.

40. Finally, on November 10, 2016, Plaintiffs' counsel and counsel for KB Home agreed to the terms of a settlement to resolve this litigation, subject to the review, approval, and execution of the named Plaintiffs and KB Home's executive management. Subsequently, the Settlement has been approved by named Plaintiffs and KB Home's executive management.

41. In summary, Plaintiffs have extensively litigated this case over its eight year history. As part of their involvement in this litigation, Plaintiffs have:

a. Filed or responded to approximately twenty-seven briefs in the trial court, and eight briefs in the North Carolina appellate courts;

b. Reviewed over 46,000 pages of produced documents and multiple sets of written interrogatories and requests for documents; and

c. Taken, defended, or attended forty-four (44) depositions of witnesses, homeowners, parties, and expert witnesses in Arizona, California, Florida, North Carolina, and Texas. These depositions include:

1. Michihiro Kashima on March 15, 2011, in Raleigh, NC;
2. Yoko Kashima on March 15, 2011, in Raleigh, NC;
3. Kenneth Greene on March 17, 2011, in Raleigh, NC;
4. Mark Elliott on April 5, 2011, in Raleigh, NC;
5. Michelle Gabrielson on April 5, 2011, in Raleigh, NC;
6. Tor Gabrielson on April 5, 2011, in Raleigh, NC;
7. Matthew Christensen on April 27, 2011, in Raleigh, NC;
8. Edward Fitzgerald on May 18, 2011, in Raleigh, NC;
9. Richard Ricks on May, 18, 2011, in Raleigh, NC;
10. Jason Krear on June 29, 2011, in Raleigh, NC;
11. Chad Goldston on July 18, 2011, in Raleigh, NC;
12. Daniel Bridleman on July 22, 2011, in Los Angeles, CA;
13. Brian E. Cooper on August 9, 2011, in Mission Viejo, CA;
14. William Harrill on August 11, 2011, in Phoenix, AZ;
15. Ronald Wright on October 24, 2011, in Charlotte, NC;
16. David R. Holsinger on October 26, 2011, in Raleigh, NC;
17. Albert H. Best on November 10, 2011, in Wilmington, NC;
18. Ronald Wright on November 14, 2011, in Charlotte, NC;

19. Carl L. Catoe on November 21, 2011 in Charlotte, NC;
20. Stephen Peklenk on November 22, 2011, in Charlotte, NC;
21. Charles Eric Webb on November 29, 2011, in Jacksonville, FL;
22. Tony Richelieu on December 13, 2011, in Los Angeles, CA;
23. David R. Holsinger, on February 10, 2012, in Wilmington, NC;
24. Daniel H. Tingen on April 17, 2012, in Raleigh, NC;
25. Doug Beninate on October 26, 2012, in Cary, NC;
26. Lawrence Gelfond on November 24, 2015, in Los Angeles, CA (via videoconference);
27. Gregory Lee Moore on November 24, 2015, in Los Angeles, CA (via videoconference);
28. Travis Cope on December 15, 2015, in Grapevine, TX;
29. Michael Meyer on February 16, 2016, in Raleigh, NC;
30. Melissa Sexton on February 16, 2016, in Raleigh, NC;
31. Shawn People on February 16, 2016, in Raleigh, NC;
32. Timothy and Brenda Carroll on February 16, 2016, in Raleigh, NC;
33. Abraham George on February 17, 2016, in Raleigh, NC;
34. Scott Stevens on February 17, 2016, in Raleigh, NC;
35. Graham Shepard on February 17, 2016, in Raleigh, NC;
36. Doel Ramos on February 18, 2016, in Raleigh, NC;
37. Margaret Wheeler on February 19, 2016, in Raleigh, NC;
38. Phillip Boyte on February 19, 2016, in Raleigh, NC;
39. Saurabh Signal in February 22, 2016, in Raleigh, NC;
40. Gurpreet Singh Walia on February 22, 2016, in Raleigh, NC;

41. Manjunath Laxetti on February 22, 2016, in Raleigh, NC;
42. Susan Schena on February 23, 2016, in Raleigh, NC;
43. John Nicholson on February 23, 2016, in Raleigh, NC; and
44. Brian Roh on February 24, 2016, in Raleigh, NC.

Benefits of the Settlement

42. Under the Settlement, Settlement Class A is composed of homeowners who owned a home as of March 15, 2012, constructed by KB Home without a WRB in the Twin Lakes or Wynbrooke subdivisions in Cary, North Carolina, and still own the home as of the date of the settlement: November 10, 2016. Settlement Class A also includes all those who may have transferred ownership interest of their homes due to marriage, death, divorce, or estate planning in a transaction in which at least one of the owners both (1) retained possession of the home; and (2) did not sell their home after March 15, 2012. Settlement Class B is composed of homeowners who owned a home as of March 15, 2012, that was constructed by KB Home without a WRB in the Twin Lakes or Wynbrooke subdivisions in Cary, North Carolina, but sold the home after March 15, 2012.

43. Pursuant to the terms of the Settlement Class A members will be eligible for one of two forms of relief. First, Settlement Class A members can choose to receive cash in accordance with the original square footage of their home, which was determined by the square footage listed on KB Home's original plans. Settlement Class A members own homes that range from 1,378 square feet to 4,133 square feet. As seen on the table below, the compensation for the homes ranges from \$6,500 to \$17,000.

Original Size of Home by Square Footage	Cash Payment Per Home
1500 and below	\$6,500
1501-1600	\$7,250
1601-1750	\$7,750
1751-1900	\$8,250
1901-2100	\$9,000
2101-2300	\$10,250
2301-2500	\$11,000
2501-2800	\$12,250
2801-3000	\$13,000
3001-3200	\$13,750
3201-3500	\$15,000
3501-3800	\$16,000
3800 and above	\$17,000

44. The cash option available to Settlement Class A members is approximately seventy-five (75%) of the cost to remove HardiePlank, install a WRB, paint, and reinstall new HardiePlank on the homes with a WRB. Settlement Class Counsel determined the repair costs by soliciting quotes from various local fiber-cement siding installers as well as reviewing websites about what it would cost to install fiber-cement siding in the Raleigh, North Carolina area.

45. Some Settlement Class A members may receive more under the settlement than what KB Home actually paid to install their HardiePlank siding. For example, due to the size of their home, Settlement Class Representative Tor and Michelle Gabrielson are entitled to \$16,000. In reviewing the invoice submitted by Stock to KB Home for the Gabrielson's home,

KB Home originally paid \$15,583.00 to install the HardiePlank over eight years ago. In depositions, KB Home stated that it would have cost between five hundred to a thousand dollars extra to install a WRB underneath the HardiePlank. (Deposition of Matthew Christensen Dep. pp. 172:17-173:1). Therefore, even if the homeowners choose the lump sum payment, they will receive almost the full cost to fix their house.

46. Alternatively, Settlement Class A members can apply to have their homes repaired. This repair option includes the complete removal of the HardiePlank, installation of a WRB, and replacement of the HardiePlank, provided that the home meets certain requirements pursuant to the Neutral Testing Protocol. *See* Exhibit E to Exhibit 1 attached to Bryson Affidavit in Support of Preliminary Approval.¹ The Neutral Testing Protocol was a negotiated protocol developed by engineers retained by Plaintiffs' counsel and KB Home's counsel.

47. Settlement Class B members will likewise have the opportunity to choose between two options. Settlement Class B members can choose between either accepting a one-time lump sum payment of \$3,250.00 or applying for compensation for the actual diminution in value damages for the property in a sum up to and not to exceed the maximum cash recovery they would have received based upon the original square footage of their home had they been a Settlement Class A member with a maximum payment of \$12,000 for each home.

48. The different benefits offered to Settlement Class A and B members reflect the different liability and damage theories for each class. Settlement Class A members' injury is tied to the owning a home without a WRB, and thus their damages include the costs to remove their current HardiePlank siding, install a WRB, and install new HardiePlank siding. In contrast, Settlement Class B members' injury is tied to the loss in sale value of their former home from

¹ The Neutral Testing Protocol is also available for the homeowners to review at www.TwinLakesClassAction.com.

not having an installed WRB, and therefore their damages rest on the actual decreased sales value of their former homes.

49. The disparity between the cash options available to the classes reflects the uncertainty and risks associated with Settlement Class B. At the time the parties entered into the Settlement Agreement, KB Home had engaged in significant discovery, including depositions of subsequent purchasers, which could present significant defenses to Settlement Class B members' damage claims and filed a motion to disqualify Class B's representative. Although Settlement Class Counsel strongly disagrees with the merits of KB Home's positions, the defenses and potential disqualification of the Settlement Class B's representative presents distinct risks to Settlement Class B that are not shared with Settlement Class A.

50. More fundamentally, both Settlement Classes are at risk for losing some of their rights the longer this case continues. As the procedural history of this case reveals, but for this settlement, KB Home would vigorously defend these claims at trial and through every appellate avenue available. The process of reaching a final, enforceable litigated judgment would almost certainly take several more years. The settlement ensures a resolution to this almost decade-long case and promises concrete benefits. This risk of yet another change to the class definition would further diminish the number of individuals who are a part of the class.

51. The settlement benefits have a value between four million to six million dollars, depending upon whether the homeowners choose the lump sum cash options, the repair option, and the actual decrease in sale value option. On the low end, only the lump sum cash benefits for both Settlement Classes were computed and added together. On the high end, the full cost of repair was computed and then added to the amounts Settlement Class B members could receive under the actual decrease in sale value option.

52. Both the low and high figures discussed above include the proposed award of attorneys' fees and expenses because these amounts necessarily contributed to the settlement. Settlement Class Counsel agreed to represent the Settlement Class Representatives on a contingency basis subject to the Court's discretion in awarding fees. Settlement Class Counsel also agreed to front all expenses in the case. If no recovery were to be obtained for the classes, Settlement Class Counsel agreed not to seek recovery of expenses from the Settlement Class Representatives. Absent these provisions, I believe the Settlement Class Representatives could not have sustained eight years of litigation and obtained the benefits provided under the settlement.

Post-Preliminary Approval Activities

53. Following the Court's entry of preliminary approval on January 4, 2017, Settlement Class Counsel worked with KB Home and the Settlement Administer, the Angeion Group, to effectuate notice of the settlement to Settlement Class members.

54. After notice was sent to Settlement Class members, it is my understanding that Settlement Class members initiated informal conversations with other homeowners in Twin Lakes in person and online through their private Twin Lakes Facebook page.

55. Around this time, Settlement Class Counsel received numerous inquiries from individuals who owned a home in the Twin Lakes neighborhood as of March 25, 2012, but who were not listed on Amended Exhibit C to the Settlement Agreement which is attached hereto as Exhibit 4. According to KB Home's discovery responses, Stock began installing a WRB on Twin Lakes homes on June 1, 2007.

56. However, subsequent to the notice being provided, Settlement Class Counsel have been informed that there are likely eighteen additional homes that should have been included in

the Settlement Classes. For a total of 313 homes: 204 homes in Settlement Class A, and 109 homes in Settlement Class B.

57. After providing notice about these new sets of homeowners who likely should have been included to KB Home, the parties agreed to allow them to qualify for benefits under the settlement pending an inspection to confirm they do not have a WRB installed underneath the HardiePlank siding. A list of these additional class members is attached as Exhibit 4. The parties' agreement to include these individuals as class members will be memorialized by the parties and submitted to the Court prior to the final approval hearing.

58. Since the notice of the settlement was mailed, Settlement Class Counsel received numerous phone calls and emails from Settlement Class members concerning their legal rights under the settlement. Based on my past experiences in class action settlements, I believe that Settlement Class Counsel will continue to receive continued communication from Settlement Class members through the claim form deadline.

Attorneys' Fees and Expenses

59. As part of the Settlement, KB Home has agreed to pay up to \$1,925,000 in attorneys' fees and expense reimbursement, as the Court may award them to Plaintiffs' counsel.

60. An award of \$1,925,000 for attorneys' fees and expenses would be reasonable, given, among other things, the contingent nature of Plaintiffs' counsel's work in this protracted litigation, the result achieved, the hours, lodestar and expenses incurred by Plaintiffs' counsel in the prosecution and settlement of this litigation.

61. During the pendency of this litigation, each of the firms that has worked on this case, Lewis & Roberts, Mason LLP, Bryson Law, and WBM have maintained detailed

contemporaneous firm time records for all work that has been done, which can be produced *in camera* upon request.

62. Over the eight years of litigating this case, Settlement Class Counsel, their associates and paralegals have, as of March 21, 2017, collectively worked 6,362.48 hours, generating a fee (calculated using rates of \$500 for partners, \$250 for associates and \$125 for paralegals) of \$1,986,301.25 as reflected in the chart below.

Law Firm	Total Hours Expended
Whitfield Bryson & Mason LLP/Bryson Law	3,560.57
Mason, LLP	1,751.81
Lewis & Roberts PLLC	1050.1

63. Prior to preparing this affidavit, I reviewed the billing rates of our firm, WBM, and the billing rates of our previous firms Bryson Law, Mason LLP, and Lewis & Roberts. I did so to ensure that the rates reflected in the lodestar report were reasonable and reflected of the rates charged in similar matters both by my colleagues and by attorneys at other North Carolina firms.

64. My firm's rates, both WBM and my former firms Bryson Law and Lewis & Roberts, are fully commensurate with the hourly rates of other prominent North Carolina firms performing similar complex class action litigation for both plaintiffs and defendants. Further, the hourly rates of my law partner Gary Mason, who practices in Washington D.C., has had a rate of \$775 per hour approved. *See, e.g., In re Adobe Systems Inc. Privacy Litig.* No. 5:13-cv-5226

(Koh, J.). However, for purposes of the attorneys' fees request in this matter, we have calculated our Washington, D.C. Rates at the same as those for the Raleigh, North Carolina office.

65. After considering all of these data points, the rates set forth in my lodestar report are reasonable for each of the professionals who worked on this matter. Of course, should the Court have any questions about the rate for any of the professionals who worked on this matter, I am available to answer them.

66. A detailed summary indicating the amount of time expended by the partners, associates, and professional support staff of the firms who were involved in this litigation is set forth below:

Whitfield Bryson & Mason LLP

Timekeeper	Rate	Hours	Cumulative Value
Daniel Bryson	\$500	134.00	\$67,000.00
Gary Mason	\$500	213.75	\$106,875.00
Scott Harris	\$500	884.85	\$442,425.00
Nicholas Migliaccio	\$500	2.25	\$1,125.00
Jason Rathod	\$250	559.75	\$139,937.50
Patrick Wallace	\$250	492.55	\$123,137.50
Scott Harris ²	\$250	201.20	\$50,300.00
Jennifer Goldstein	\$250	126.50	\$31,625.00
Ben Branda	\$250	3.75	\$937.50
Margaret Sandwith	\$250	37.50	\$9,375.00
Jeremy Williams	\$250	8.25	\$2,062.50

² Scott Harris joined WBM as an associate and was elevated to partner on January 1, 2014. Therefore, this summary includes entries for Mr. Harris under his associate and partner rates.

Danielle Perry	\$250	0.75	\$187.50
Amanda Mkamanga	\$125	339.10	\$42,387.50
Lucy Eckhart	\$125	7.10	\$887.50
Scott Heldman	\$125	16.00	\$2,000.00
Monica DiCocco	\$125	79.00	\$9,875.00
Kay Bakemeier	\$125	4.50	\$562.50
Lynda Mottershead	\$125	71.55	\$8,943.75
Lee Siegel	\$125	4.00	\$500.00
Shannon Kelly	\$125	3.25	\$406.25
Elizabeth Thompson	\$125	1.00	\$125.00
Jean-Marie Jones	\$125	0.25	\$31.25
Total:		3190.85	\$1,040,706.25

Mason, LLP

Timekeeper	Rate	Hours	Cumulative Value
Gary Mason	\$500	238.10	\$119,050.00
Nicholas Migliaccio	\$500	230.46	\$115,230.00
Donna Solen	\$500	241.75	\$120,875.00
Jason Rathod	\$250	671.00	\$167,750.00
Monica DiCocco	\$125	304.75	\$38,093.75
Lee Siegel	\$125	65.75	\$8,218.75
Total:		1,751.81	\$569,217.50

Bryson Law, PLLC

Timekeeper	Rate	Hours	Cumulative Value
Daniel Bryson	\$500	51.50	\$25,750.00
Scott Harris	\$250	225.90	\$56,475.00
Karl Amelchenko	\$250	23.10	\$5,775.00
Amanda Mkamanga	\$125	69.22	\$8,652.50
Total:		369.72	\$96,652.50

Lewis & Roberts

Timekeeper	Rate	Hours	Cumulative Value
Dan Bryson	\$500	197.90	\$98,950
Scott Harris	\$250	550	\$137,500
Matthew Lee	\$250	44	\$11,000
Mary Crawley	\$125	47.4	\$5,925
Julie Yates	\$125	4.3	\$537.50
Jessica Vickers	\$125	4.8	\$600
Amanda Mkamanga	\$125	174.1	\$21,762.50
Deborah Sena	\$125	25.1	\$3,137.50
Kay Bakemeier	\$125	2.5	\$312.50
Total:		1,050.10	\$279,725.00

67. The summary was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm and former firms Bryson Law and Lewis & Roberts, and by my law partner's former firm, Mason, LLP.

68. As the chart shows, all of the above firms expended a total of 6,362 hours in this litigation from inception until March 21, 2017. The time incurred by each attorney and paralegal who worked on this case, and each attorney's and paralegal's billing rate is reflected in this summary.

69. Further, in connection with the preparation of the lodestar chart, I performed a detailed analysis of the work performed by each professional and the time spent on each particular task. To the extent that I believe any professional spent too much time on a particular task, I have made appropriate reductions. As such, based upon my analysis of the rates charged, and the time spent on this complex matter, I believe that the lodestar incurred by these firms in a matter of complexity and magnitude is reasonable and appropriate.

70. Settlement Class Counsel's time records include their pre-suit investigation and interactions with potential class representatives; research relating to North Carolina law pertaining to the North Carolina Building Code, warranties, contracts, consumer protection statutes, and arbitration; drafting over thirty briefs; preparing, taking, and defending depositions; and extensive work with engineers relating to the construction of homes under various versions of the North Carolina Building Code. Settlement Class Counsel also spent substantial time in numerous and contentious settlement discussions and negotiations over the terms of a comprehensive agreement, working with the Settlement Administrator to design an effective notice program, and overseeing the claims process.

71. In addition to the work already performed, Settlement Class Counsel anticipates expending further time and resources to effectuate the settlement. This work will involve preparing and presenting the motion for final approval and application for attorneys' fees and expenses at the upcoming fairness hearing, monitoring claim reports issued weekly by the Settlement Administrator, and responding to questions from Settlement Class members about the settlement and their claims. I estimate this time to be approximately 100 additional hours.

72. Class Counsel incurred a total of \$148,493.61 in expenses in connection with the prosecution of this litigation. These expenses were reasonable and necessarily incurred on behalf of the class. The expenses pertaining to this case are reflected in the books and records of each firm. These books and records are prepared from expense vouchers, check records, or other documents and are an accurate record of the expenses. These expenses include costs for experts, deposition costs, travel to and from depositions and hearings, mediation costs, and inspections of the homes with the experts.

73. After the parties agreed on class member benefits, the parties negotiated over the amount of attorneys' fees, costs, and service awards that KB Home will agree to pay, subject to Court approval. KB Home agreed to pay Plaintiffs' attorneys' fees and expenses for a total amount of \$1,925,000. After deducting \$148,493.61 in expenses, this results in an attorneys' fee award of \$1,776,506.39. This is a loss of \$209,794.86 from the firms' lodestar time.³

74. KB Home has agreed to pay attorneys' fees and out of pocket expenses up to \$1,925,000 separately from the benefits offered to the Settlement Classes, which means that

³ The \$209,794.86 figure is derived using usual and customary rates for North Carolina attorneys of \$500 per hour for partners, \$250 per hour for associates, and \$125 per hour for paralegals. However, Mason, LLP, which was a Washington D.C. law firm, now WBM's Washington D.C. office, bills its time at a higher rates than those typically charged in North Carolina. Therefore, Settlement Class Counsel's lodestar loss is greater than the \$209,794.86 figure when using the usual and customary rates of the Washington D.C.-based attorneys and paralegals.

awarding this amount will not diminish the benefits to Settlement Class members. Any reduction in attorneys' fees and expenses from what KB Home already agreed to will only accrue to the benefit of KB Home.

75. Therefore, Settlement Class Counsel seeks an award of \$1,776,506.39 for attorneys' fees and \$148,493.61 for expenses for a total of \$1,925,000.

76. Additionally, KB Home agreed to pay each set of Settlement Class Representatives \$8,000 each for a total of \$32,000, to compensate them for their time and energy in brining the suit, producing documents, attending depositions and attending hearings. The Settlement Class Representatives devoted substantial time to this litigation in meeting with counsel, preparing for and providing deposition testimony, reviewing multiple rounds of settlement negotiations, and disseminating information to Settlement Class members. But for the actions of the dedicated Settlement Class Representatives, other class members would receive nothing.

77. I declare under the penalty of perjury under the laws of the state of North Carolina that the foregoing is true and correct.

FURTHER THE AFFIANT SAYS NOT.

SIGNATURE ON FOLLOWING PAGE

This is the 27th day of March, 2017.

Daniel K. Bryson

Daniel K. Bryson
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(919) 600-5000
dan@wbmlp.com

STATE OF NORTH CAROLINA
COUNTY OF Wake

SWORN TO AND SUBSCRIBED before me in my presence, voluntarily for the purposes stated therein, in the county and state indicated above, this the 27th day of March, 2017. That the undersigned has personal knowledge of the identity of the principal or satisfactory evidence of the principal's identity by having inspected a picture identification.

SCOTT E. HELDMAN
Notary Public
North Carolina
Orange County

Scott E. Heldman

Notary Public - Scott E. Heldman
Printed Name

My Commission Expires: 10-3-17