

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

Case No.: 2019-CA-001332-O
Division: 39

YEVGENIA KIMLAT, RANDY HALTERMAN,
JULIA HALTERMAN, JASON HELVENSTON,
JENNIFER HELVENSTON, SHANI HESLOP,
KATHY WATTS, ERIK KRALLINGER,
COSME RAMIREZ, GWENDALINA RAMIREZ,
ROSE BOTA, CATHLEEN BOTA,
individually and
as the representatives of a class of similarly
situated persons,

Plaintiffs, **CLASS REPRESENTATION**
vs.

SKANSKA-GRANITE-LANE, a Joint Venture
d/b/a SGL CONSTRUCTORS,

Defendants.

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**FIRST AMENDED CLASS REPRESENTATION COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs on behalf of themselves and all other similarly situated class members, file this class action First Amended Complaint against Defendant, Skanska-Granite-Lane, Joint Venture d/b/a SGL Constructors and state as follows:

JURISDICTION AND VENUE

1. This is a class action for damages with each claim seeking damages in excess of \$15,000

exclusive of interest and costs, or in the alternative, the aggregated claims of the class meet the monetary jurisdictional requirement even though an individual claim of a class member does not reach that threshold.¹

2. Defendant, Skanska-Granite-Lane, a Joint Venture doing business as SGL Constructors, is a Florida Joint Venture with a principle place of business located at 1551 Sandspur Rd., Maitland, Florida in in Orange County where the above-styled Circuit Court sits. Therefore, venue is proper before this Court.
3. The Court has personal jurisdiction over Defendant consistent with Fla. Stat. 48.193 and due process because Defendant has, at all times relevant to this cause of action, individually or through its agents, officers and representatives, operated, conducted, engaged in and carried on a business venture in this State and/or maintained an office or agency in this State, committed tortious conduct within this State related to the allegations made in this Complaint, and caused damages to Plaintiff and the class members described herein, which arose out of the acts or omissions which occurred inside the State of Florida and Orange County, during the relevant period of time.

THE PARTIES

4. Plaintiff, Yevgenia Kimlat, is an individual residing in Orange County, Florida who owns the affected real property at 3685 Midiron Dr., Winter Park, FL 32789.
5. Plaintiffs, Randy Halterman and Julia Halterman, are individuals residing in Orange County, Florida who own the affected real property at 111 Yale St., Orlando, FL 32804.

¹ *Johnson v. Plantation Gen. Hosp. Ltd. P'ship*, 641 So. 2d 58 (Fla. 1994).

6. Plaintiffs, Jason Helvenston and Jennifer Helvenston, are individuals residing in Orange County, Florida who own the affected real property at 108 E. Orlando St., Orlando, FL 32804.
7. Plaintiff, Shani Heslop, is an individual residing in Orange County, Florida who owns the affected real property at 3215 Surfside Way, Orlando, FL 32805.
8. Plaintiff, Kathy Watts, is an individual residing in Orange County, Florida who owns the affected real property 790 30th St., Orlando, FL 32805.
9. Plaintiff, Erik Krallinger, is an individual residing in Florida and owns the affected real properties at 748 29th St., Orlando, FL 32805 and 750 29th St., Orlando, FL 32805.
10. Plaintiff, Rose Bota, is an individual residing in Orange County, Florida at 112 E Winter Park St., Orlando, FL 32804.
11. Plaintiff, Cathleen Bota, is an individual who owns the property located at 112 E Winter Park St., Orlando, FL 32804.
12. Plaintiffs, Cosme F. Ramirez and Gwendalina S. Ramirez, are individuals residing in Orange County, Florida who own the affected real property at 2144 Oglesby Ave., Winter Park, FL 32789.
13. Plaintiffs, on behalf of themselves individually, and on behalf of all other similarly situated class members bring this action against Defendant for damages.
14. Defendant, Skanska-Granite-Lane is a Florida Joint Venture doing business as SGL Constructors, which maintains a principle place of business located at 1551 Sandspur Rd., Maitland, Florida in Orange County, Florida and has been participating in conduct which is the subject of this action in Florida, specifically in Orange and Seminole counties.

FACTS

15. The I-4 Ultimate Improvement Project is a massive interstate highway “makeover” that covers 21 miles of the road, running from Kirkman Road in Orange County to State Road 434 in Seminole County, in Central Florida (“the construction zone”).
16. The mega construction project involves adding two tolled express lanes in each direction to the existing roadway, reconstructing the entire 21-mile stretch of the highway, replacing approximately 150 existing bridges and redesigning 14 interchanges on the highway.
17. The project began in February 2015 and was originally projected to be completed by the end of 2020, but delays in construction postponed the completion by almost a year. Additional delays in construction are likely.
18. Defendant was entrusted by the Florida Department of Transportation, on behalf of the People of Florida with planning, executing and overseeing the I-4 Ultimate Improvement Project and received compensation for doing so.
19. Defendant undertook the mammoth project and committed to making tremendous changes to the highway knowing that parts of the highway ran through dense residential neighborhoods, with many houses located in the vicinity of the construction zone.
20. Defendant knew or should have known that in order to complete the project within the time limits to which it agreed and to achieve the results it promised, it would need to implement certain construction practices that will be dangerous to the surrounding structures and will be an extreme nuisance to inhabitants occupying nearby properties.
21. Defendant knew or should have known that the type of construction activities it planned to perform were going to create strong vibrations causing seismic activity akin to an

earthquake that would ripple out beyond the construction zone and affect surrounding structures.

22. Defendant knew or should have known that prolonged exposure to such seismic activity will cause damage to the existing structures in the vicinity of the construction zone.

23. Defendant knew or should have known that the existing structures in the vicinity of the project were not built to withstand the kind of vibrations and seismic activity that Defendant's work would create and that there was a high likelihood of damage to the structures.

24. Defendant also knew or should have known that the construction activities it planned to perform would most likely be extremely disturbing to the inhabitants occupying properties in the vicinity of the construction zone. It knew that it would be doing loud construction work at all hours of the day and night which will likely be extremely disturbing to persons exposed to it on a daily basis.

25. At all times material, Defendant was required to adhere to the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, and other related state and federal laws and regulations which were enacted to ensure that road construction projects do not harm surrounding properties, whether public or private.

26. Defendant did not adhere to those laws and regulations.

27. Defendant also owed a general duty of care to persons its construction activities were likely to affect.

28. Defendant had a duty to preserve from damage all properties which were in the vicinity of or would be in any way affected by its work.

29. Defendant had a duty to inspect existing structures in the vicinity of the construction project in order to understand the condition of the existing structures and the impact its construction activity would have on those structures.
30. Defendant had a duty to monitor said structures throughout the project to ensure that its construction activities were not harming them.
31. Defendant had a duty to immediately restore any property damaged by its activities to a condition similar or equal to that existing before such damage occurred.
32. Defendant had a duty to mitigate unreasonable nuisance caused by its construction activities.
33. Defendant had a duty to stop all construction activity that were destructive to the surrounding persons' properties and disruptive to their lives when it became aware that its conduct was in fact causing damage and nuisance.
34. Defendant failed to perform any pre-construction inspections of the existing structures in the vicinity of the I-4 Ultimate Improvement Project.
35. Defendant proceeded with the construction activity, without regard for the property rights of persons located in the vicinity of the project.
36. The heavy vibrations from Defendant's construction activity rippled to the surrounding buildings and permeated them. People experienced earthquake-like conditions resulting in property damage including but not limited to the following: houses shook so hard that things fell off shelves and walls, light fixtures became loose and broke, water meters lost calibration, septic tanks, pool pumps, HVAC systems, and similar mechanical systems started malfunctioning, garage doors kept opening due to the strong vibration burning the motors, the soil began shifting into hills and valleys in people's yards, pavers came out of

alignment, walls cracked, wood floors separated, tiled floors developed cracks running throughout the length of the house, car alarms were going off, windows and doors stopped closing properly. These are just some of the effects of the vibrations that people in the vicinity of the construction zone experienced on a daily basis, since the project began.

37. The vibrations were not only causing property damage, but were impacting people's psyches. The constant shaking inside the houses at all times of the day disrupted people's peace and enjoyment of their properties.

38. The strong vibrations were coupled with extreme noise. Loud and obnoxious construction activity occurred at night as well as during the day. Defendant's construction activity included but was not limited to the following: people were awoken from their sleep in the middle of the night by sounds of heavy machinery breaking the ground underneath them, trucks dumping piles of construction material and loudly banging and shaking the last bits of material out of the dump beds. Defendant used blinding stadium sized lights in the middle of the night that shined in people's windows, not allowing them to rest peacefully. During the early morning hours, people would be shocked awake by sonic booms from piles drivers bashing metal poles into the ground and heavy machinery compacting soil which created ground tremors and loud noise. During the day, the noise and vibration continued, making it impossible to enjoy people's back yards or concentrate on anything inside the house.

39. Throughout the construction, Defendant received multiple claims (at least 40) regarding damages suffered by persons inhabiting properties in the vicinity of the construction zone. Defendant was notified many times that its conduct was in fact causing damages which it

anticipated (property damage and nuisance). But, Defendant proceeded to conduct itself in the same manner, ignoring the notices.

40. During the construction, Defendant knew that its construction activity was most likely affecting the surrounding inhabitants, but it did not reduce the intensity of its impact.

41. Plaintiff, Yevgenia Kimlat suffered property damage and nuisance resulting from the Defendant's conduct.

42. Plaintiffs, Randy Halterman and Julia Halterman's home is located approximately 1.7 miles from Kimlat's property, near a different part of the construction project. But, similar to Kimlat, the Haltermans also suffered property damage and nuisance resulting from the Defendant's conduct.

43. Plaintiffs, Jason Helvenston and Jennifer Helvenston's home is located approximately 1.2 miles from Kimlat's property, closer to the Haltermans. Yet, the Helvestons also suffered property damage and nuisance resulting from the Defendant's conduct.

44. Plaintiff, Shani Heslop's home is located in a different part of the construction project, about eight miles from Kimlat's house and she too suffered property damage and nuisance resulting from the Defendant's conduct.

45. Plaintiff, Kathy Watts's home is located approximately 6.5 miles from Kimlat, but just like Kimlat and the other Plaintiffs, Watts suffered property damage and nuisance resulting from the Defendant's conduct.

46. Plaintiff, Erik Krallinger, owns two properties near each other which he rents out to tenants. Both of his properties sustained damage from vibrations caused by Defendant's construction activities.

47. Plaintiffs Cosme F. Ramirez and Gwendalina S. Ramirez live in the vicinity of the construction project. Similar to the other Plaintiffs, they also have suffered property damage and nuisance resulting from the Defendant's conduct.
48. Plaintiffs Cathleen Bota and Rose Bota also live in the vicinity of the construction zone. Just like the other Plaintiffs, they have suffered property damage and nuisance resulting from the Defendant's conduct.
49. In addition to themselves, Plaintiffs are aware of other similarly situated persons in their neighborhoods that have sustained similar damages as the result of Defendant's conduct.
50. Since the filing of the original Complaint in this action, multiple other similarly situated persons located in the vicinity of the construction zone have made themselves known and expressed interest in collecting compensation from Defendant due to the property damage and nuisance that they suffered resulting from Defendant's execution of the I-4 Ultimate Improvement Project.
51. The type of damages suffered by Plaintiffs and those similarly situated were reasonably foreseeable to the Defendant before it began its construction activity.
52. Defendant's disregard for the property rights of those situated in the vicinity of the construction zone caused Plaintiffs and the prospective class members to suffer property damage and nuisance.

CLASS REPRESENTATION ALLEGATIONS

53. **CLASS ACTION PROVISION (*Fla. R. Civ. P. 1.220(c)(2)(A)*):** This claim is maintainable on behalf of a class under Subdivision (b)(1)(B) and (b)(3) of Florida Rule of Civil Procedure 1.220.

54. COMMONALITY (*Fla. R. Civ. P. 1.220(c)(2)(B)*): The claims of each individual Plaintiff and the putative class members arise out of substantially identical facts: the claims arose out of the same course of conduct, by the same Defendant, within the same time frame, on the same construction project. Defendant's disregard for the property rights of those situated in the vicinity of the construction zone was a general business practice in its undertaking of the I-4 Ultimate Improvement Project that resulted in damages to the Plaintiffs and the putative class members. The prevailing factor in all of the Plaintiffs' and the putative class members' claims resulted from Defendant's failure to lessen the risk or take sufficient precautions to protect them from foreseeable harm. Therefore, the common issues which must be determined in resolving each of the Plaintiffs' and the putative class members' claims against the Defendant are as follows:

- a. Whether the Defendant's undertaking of the I-4 Ultimate Improvement Project created a foreseeable zone of risk invoking a duty to exercise prudent foresight and to conform to a certain standard of conduct for the protection of those situated in the vicinity of the construction zone?
- b. Whether Defendant is strictly liable for damages resulting from its participation in hazardous construction activities?
- c. Whether Defendant failed to conform to the standard required by failing to implement certain practices for the protection of those situated in the vicinity of the construction zone?
- d. Whether there exists a reasonably close causal connection between the Defendant's wrongful conduct and the resulting damages suffered by the Plaintiffs and putative class members?

- e. Whether the Plaintiffs and the putative class members suffered damages as the result of Defendant's wrongful conduct?
55. **TYPICALITY** (*Fla. R. Civ. P. 1.220(c)(2)(C)*): The damages suffered by Plaintiffs are typical of the damages suffered by the class they seek to represent because they are all similarly situated in the vicinity of the I-4 Ultimate Improvement Project. Defendant's pattern or practice implemented in the undertaking of the I-4 Ultimate Improvement Project violated the Plaintiffs' and the putative class members' rights. The Plaintiffs and putative class members possessed the same interest in having their properties protected and being free from unreasonable nuisance. Every Plaintiff and putative class member were in the same position because they were within the foreseeable zone of risk. Defendant set out to perform a major road construction project using invasive construction practices that it knew could cause damage to the surrounding structures and create unreasonable nuisance to persons inhabiting properties nearby. Therefore, Defendant knew that conducting itself in a particular manner or failing to adopt certain practices and procedures would cause harm to those persons. The claims of each Plaintiff are typical of the claims of the putative class members because the Defendant's conduct affected those situated within the vicinity of the construction zone in a similar manner. Ultimately, Defendant's failure to act prudently in its undertaking of the I-4 Ultimate Improvement Project brought about a series of anticipated damages which the Plaintiffs and putative class members suffered.
56. **NUMEROSITY** (*Fla. R. Civ. P. 1.220(c)(2)(D)(i)*): The approximate number of class members is more than 40. Joinder of each injured person is impractical.
57. **DEFINITION OF CLASS** (*Fla. R. Civ. P. 1.220(c)(2)(D)(ii)*): The class is divided into the following subclasses pursuant to Fla. R. Civ. P. 1.220(d)(4):

- a. **Subclass I** includes persons who are either Florida residents or non-residents² that owned real estate property and improvements which lie partially or completely within 0.25 miles of the construction zone on the date this complaint was filed who suffered property damage as the result of Defendant's execution of the I-4 Ultimate Improvement Project.
- b. **Subclass II** includes persons who are Florida residents that inhabited real estate property or improvements which lie partially or completely within 0.25 miles of the construction zone from the date the construction project began in their area until the date of the filing of this action who suffered nuisance as the result of Defendant's execution of the I-4 Ultimate Improvement Project.

58. **EXCLUDED PERSONS.** Excluded from the putative class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's legal representatives, predecessors, successors, and assigns; (ii) governmental entities; (iii) Defendant's employees, officers, directors, agents and representatives and their family members; (iv) Defendant's partners, co-venturers, co-owners, lessors, lessees, contractors and/or bus-contractors on the I-4 Ultimate Improvement Project, and (v) the Judge and staff to whom this case is assigned, and any member of the Judge's immediate family. Plaintiff reserves the right to amend the class definition as appropriate after class discovery is completed.

59. **ADEQUACY OF REPRESENTATION** (*Fla. R. Civ. P. 1.220(c)(2)(D)(iii)*): Plaintiffs will fairly and adequately represent the interests of the entire class because their interests are aligned with the interests of all other similarly situated class members. Plaintiffs do not have interests that are antagonistic to or in conflicts with other similarly situated class members.

² § 768.734(1)(b)(2), Fla. Stat. (2018).

Plaintiffs are committed to the vigorous prosecution of this action on behalf of themselves and the class and have retained competent counsel to do so. The issues in this case are not ultra-complicated and the discovery required to prevail in this case on behalf of the class is not anticipated to differ in volume or expense from that which is needed for the Plaintiffs to prevail on their own. The class of similarly situated members stands to benefit greatly from Plaintiffs' efforts in this litigation. Additionally, the volume of similar damages suffered by the class as a whole due to the acts of the Defendant establish a *prima facie* case of causation.

60. RULE 1.220(b)(1)(B) REQUIREMENTS: All members of the class sustained damages resulting from Defendant's common course of conduct while it was engaged in construction activity on the I-4 Ultimate Improvement Project. Each and every class member brings a claim for the same or similar damages based upon the same theories of liability against the Defendant. Defendant is a joint venture that was established for the sole purpose of executing the I-4 Ultimate Improvement Project. Therefore, the entity Skanska-Granite-Lane, JV d/b/a SGL Constructors is very likely to dissolve upon the completion of the construction project. As the result of its probable dissolution, there is a substantial risk that the interests of other members of the class who are not parties to the adjudications to protect their interests will be substantially impaired because the entity will no longer have adequate financial resources or insurance to pay for judgments entered against it or be sufficiently funded to settle claims arising out of its liability on the I-4 Ultimate Improvement Project in the future. Therefore, this matter should be adjudicated as a class action to ensure fair access to compensation for all members of the class.

61. RULE 1.220(b)(3) REQUIREMENTS: This action should also be permitted as a class representation because the basic issues of liability common to all members of the class will predominate over the individual issues of each claimant's specific damages. The damages described herein arise from the same transaction or occurrence (Defendant's execution of the I-4 Ultimate Improvement Project) which created a zone of risk requiring Defendant to adhere to a certain standard of care for the protection of those persons situated within the zone of risk. The Plaintiffs and the putative class members were within the zone of risk and are the persons Defendant was required to protect. Therefore, the common issues involved in establishing the standard of care to which Defendant was obligated to adhere in its undertaking of the I-4 Ultimate Improvement Project and determining whether Defendant breached its duty of care predominates over any question affecting individual members of the class. Furthermore, class representation is superior to other available methods for a fair and efficient adjudication of this controversy because:

- a. **Notice.** Many of the prospective class members damaged by Defendant's conduct in this controversy are not aware of their right to sue Defendant individually or by joinder. Whereas, in a class action each prospective member of the class will be notified of their right to obtain compensation against the Defendant for damages they sustained as the result of Defendant's conduct.
- b. **Mitigation of Damages.** Prospective members of the class have an inherent interest in protecting themselves from suffering further losses from this controversy which may arise in the form of stigma associated with being named as plaintiffs in a lawsuit and having their property address associated with such. Therefore, many people who suffered from this controversy may forego exercising their right to

pursue a claim against the Defendant in order to avoid suffering additional damages. Whereas, in a class action each prospective member can passively participate in exercising their legal right against the Defendant's wrongful conduct without subjecting themselves to further damages.

- c. **Discovery.** Because there are numerous class members who have been similarly damaged, repetitive discovery would have to be obtained separately by each individual plaintiff, which will be an undue burden on both the plaintiffs and the Court in resolving the same discovery issues which will inevitably arise. For example, discovery relating to the Defendant's modus operandi in its undertaking of the I-4 Ultimate Improvement Project and prior similar claims it received from persons living in the vicinity of the construction zone will be relevant and necessary to prove each individual class member's case. Therefore, in order to avoid the burden on the court system of having to resolve the same discovery issues and in the interest of fairness and justice to all prospective plaintiffs who would be required to expend unnecessary resources to request the same discovery separately from Defendant and wait to obtain the same, a class action is a superior method of adjudicating this controversy over requiring each damaged party to individually prosecute their claim against the same Defendant for damages arising from the same course of conduct.

- d. **Risk of Defendant's Impending Financial Insolvency.** Defendant is a joint venture of three foreign corporations that has been established solely for the purpose of executing the I-4 Ultimate Improvement Project. Therefore, the entity Skanska-Granite-Lane, JV d/b/a SGL Constructors is very likely to dissolve upon

the completion of the construction project. As the result of its probable dissolution, there is a substantial risk that the interests of future plaintiffs who are not named parties to this lawsuit will be substantially impaired because the entity will no longer have adequate financial resources or insurance to pay for judgments entered against it or be sufficiently funded to settle claims arising out of its liability on the I-4 Ultimate Improvement Project in the future. Therefore, this matter should be adjudicated as a class action to ensure fair access to compensation for all members of the class.

COUNT I
STRICT LIABILITY

62. Plaintiffs incorporate the substantive allegations contained in Paragraphs 1 through 61 as if fully set forth herein.
63. Defendant performed or caused to have performed hazardous construction activity near real property owned by Plaintiffs and class members.
64. Defendant's construction activity is classified involved a high degree of risk of harm to properties proximately situated thereto, thereby subjecting Defendant to strict liability under Florida law.³
65. As a direct and proximate cause of Defendant's hazardous construction activity Plaintiffs and the putative class members suffered damages.

COUNT II
NUISANCE

66. Plaintiff incorporates the substantive allegations contained in Paragraphs 1 through 61 as if fully set forth herein.

³ *Hutchinson v. Capeletti Bros., Inc.*, 397 So. 2d 952 (Fla. 4th DCA 1981).

67. Defendant had a duty to act reasonably in its undertaking of the I-4 Ultimate Improvement Project.
68. Defendant breached that duty by failing to take reasonable measures to avoid exposing Plaintiff and class members to unreasonable conduct which constituted a nuisance.
69. Defendant engaged in unreasonable conduct which annoyed, injured, endangered the comfort and welfare and caused property damage to the Plaintiffs and the class members.
70. As a direct and proximate cause of Defendant's conduct Plaintiff and class members suffered damages.

COUNT III
NEGLIGENCE

71. Plaintiff incorporates the substantive allegations contained in Paragraphs 1 through 61 as if fully set forth herein.
72. Defendant's undertaking of the I-4 Ultimate Improvement Project created a foreseeable zone of risk invoking a duty to exercise prudent foresight and to conform to a certain standard of conduct for the protection of those persons situated within the zone of risk.
73. Defendant owed a duty to protect Plaintiffs and the putative class members from unreasonable risks of its conduct because they were situated within the zone of risk.
74. Defendant failed to conform to the standard required by participating in a certain course of conduct that caused the anticipated harm or by failing to implement certain practices for the protection of the Plaintiffs and putative class members.
75. As a direct and proximate cause of the Defendant's breach of its duty to act in a reasonable and prudent manner especially in light of its superior knowledge of the construction risks to the surrounding properties, Plaintiffs and the class have been damaged.

76. DEMAND FOR JURY. Plaintiff and the class request a jury trial on all matters at issue in this action.

77. ATTORNEY'S FEES. Plaintiff's attorney(s) are entitled to reasonable attorney's fees with a court approved multiplier under Florida law upon the successful resolution of this class action lawsuit.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all class members described in this Complaint, respectfully requests that this Court enter judgment in their favor and against Defendant, Skanska-Granite-Lane, Joint Venture d/b/a SGL Constructors as follows:

- I. Enter an Order certifying the class and each subclass as defined herein, and appointing Plaintiff and her Counsel to represent the class;
- II. Enter an Order awarding actual damages;
- III. Enter an Order awarding costs of the lawsuit and attorney's fees, as allowable by law; and
- IV. Enter an Order granting such other relief as this Court may deem just and proper.

CERTIFICATE OF SERVICE

I certify that a copy of this document was electronically filed with the Clerk of the Court by using the Florida Courts E-Filing Portal, and furnished via email to John L. Morrow, Esq. and Sarah May Swartz, Esq., Conroy Simberg, jmorrow@conroysimberg.com, sswartz@conroysimberg.com and eserviceorl@conroysimberg.com on or about June 12, 2019.

s/Louiza Tarassova
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