QUAN-EN YANG, *et al.* On Their Own Behalf and on Behalf of All Others Similarly Situated,	*	IN THE
	*	CIRCUIT COURT
Plaintiffs,	*	FOR
vs.	*	MONTGOMERY COUNTY, MD.
G & C GULF, INC. d/b/a G&G TOWING, *et al.*	*	Case No. 403885V TRACK VI
and	*	
BRUCE PATNER t/a PATNER PROPERTIES, On His Own Behalf and on Behalf of All Others Similarly Situated	*	Hon. Ronald B. Rubin, Specially Assigned
	*	
Defendants.	*	

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PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION TO APPROVE ADMINISTRATIVE ORDER NO. 3

The certified Plaintiff Class, by and through its undersigned counsel, submit the following limited Reply in Further Support of the Motion to Approve Administrative Order No. 3 to address the central point made by the Defendant Class Representative in the Opposition. In particular, Defendant Class Representative Bruce Patner t/a Patner Properties ("Patner") argues that Administrative Order No. 3 is premature because: (1) both he and the Named Class Representatives Mary Pelz and Darcy Pelz-Butler ("Pelz" and "Pelz-Butler," respectively) have settled their claims against each other; and (2) thus, Pelz and Pelz-Butler no longer have standing to sustain the suit as the representatives of the Plaintiff Class, thus permitting Patner to withdraw from his role as representative of the Defendant Class. Patner's argument is not only incorrect, but also ignores the established protocols in class action litigation, as recently endorsed and approved by the Maryland Court of Appeals' decision in *Frazier v. Castle Ford, Ltd.*, 430 Md. 144

(2013).

The general rules of mootness and standing are different in the class action context than in individual litigation. This is especially true ***after*** the Court has certified a class (as has occurred in this litigation). Indeed, Professor Newberg notes that the jurisprudence in this area goes back more than forty (40) years to *Sosna v. Iowa*, 419 U.S. 393 (1975):

> Starting with *Sosna v. Iowa* in 1975, and concluding with *Deposit Guaranty National Bank v. Roper*[, 445 U.S. 326 (1980)] and *United States Parole Commission v. Geraghty*[, 445 U.S. 388 (1980)] in 1980, the Supreme Court gradually developed the broad rule that once an order granting or denying class certification has issued, a class action will not be mooted if the class representative's claim becomes moot – ***so long as a live controversy remains between the defendant and the represented class.***

1 H. Newberg, *Newberg on Class Actions* § 2:10 (5th ed.)(emphasis added). Professor Newberg continued:

> Courts have extended *Geraghty* to permit appeal of the class certification denial by a plaintiff whose claims have been found to be without substantive merit. Courts have permitted mooted class members to intervene as representatives of a subclass, mooted named plaintiffs to pursue broader class definitions on appeal, and mooted class representatives to appeal decertification of the class where that decertification turned on the mootness of the representative's claim. Finally, a class representative may possess standing to enforce a judgment for the class even if his or her individual claims have since become moot.

Id.

The Maryland Court of Appeals has agreed with and applied this approach, even as to cases where the named plaintiff's claims are mooted ***prior to*** the class certification ruling. In *Frazier v. Castle Ford, Ltd.*, 430 Md. 144 (2013), a defendant argued that a class action was mooted when it sought to "pick off" the named plaintiff early in the litigation. The Court soundly rejected this argument noting that "[w]hile a rule that a defendant may moot a putative class action by tendering individual damages prior to certification of the class is a bright line rule, it is not a wise one." *Id.* at 157. Looking to the decision of the Ninth Circuit in *Pitts v. Terrible Herbst,*

Inc., 653 F.3d 1081 (9th Cir. 2011), the Court held that even prior to class certification, settlement with the named plaintiff does not moot the litigation and, the case will continue even where there is "full satisfaction" of the plaintiff's claim. *Id.* at 159, quoting *Pitts*, 653 F.3d at 1092.

Despite the expansive approach of the Court of Appeals in *Frazier*, Patner argues that Administrative Order No. 3 is premature. According to Patner, the only consideration on whether to mail Notice to the Defendant Class is that Patner has already "settled claims related to the majority of tows associated with his properties." Opposition at ¶3. And Patner adds that he may now withdraw as representative of the Defendant Class following the settlement because "no named Plaintiff [i.e., Pelz and Pelz-Butler] has a claim against" him.[1] Opposition at ¶4. In support of these arguments, Patner relies entirely upon a few non-Maryland cases, all of which determined that at the beginning of the litigation, and prior to class certification, that a named plaintiff had to have standing and a live claim in order to sue a defendant. *See* Opposition at ¶4.

Contrary to Patner's suggestion, however, the question here is not whether the Named Plaintiffs' claims remain unsettled and live, but rather whether ***any*** members of the Plaintiff Class Members still have active claims in the litigation following the settlement. The answer to this question is, of course, yes.

In this case, following the recent settlement, it is undeniable that: (a) 56 Plaintiff Class Members – whose vehicles were towed from the Patner Properties – still have live and viable claims against Patner; (b) another 11,000 or so Plaintiff Class Members remain as active members of the Plaintiff Litigation Class; and (3) as many as 398 Defendant Litigation Class

[1] According to Patner, "[i]f no named Plaintiff has a claim against the named Defendant Class Representative, the Plaintiff Class lacks standing and cannot maintain a claim against that Defendant." Opposition at ¶4. This argument is contrary to the *Frazier* Court's approach.

Members remain in the litigation, as well.[2] Thus, while the Defendant Class Representative may assert that the recent settlement resolved the Named Plaintiffs claims vis-à-vis Patner, there is no question that Patner, Pelz and Pelz-Butler each remain viable in their respective fiduciary roles in this case because "a live controversy remains between the defendant and the represented class." 1 H. Newberg, *Newberg on Class Actions* § 2:10.[3]

Accordingly, the certified Plaintiff Class requests that the Court approve proposed Administrative Order No. 3 and authorize notice to go out to the Defendant Litigation Class at this time.

Respectfully submitted,

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[2] In two recent hearings before the Court – on February 2 and March 2, 2018 – Counsel for both the Defendant Class and the Defendant Intervenors have suggested that if the Court rules against the Plaintiff Class on the statute of limitations issue now before the Court in Defendants' Motion for Partial Summary Judgment (Dkt. No. 395), then there are no more than a few Defendants left in the litigation. Mr. Duvall even suggested that only 8 Defendant Class Members are left in the case. These claims are without any factual basis. In fact, even without the statute of limitations group, **78 Defendants and more than 3,700 Plaintiff Class Members** remain in the litigation; more than sufficient to satisfy numerosity.

[3] Even if the Court were to find that Pelz and Pelz-Butler were no longer adequate to represent the Plaintiff Class, the appropriate solution would be to permit Plaintiffs to add one of the 56 remaining Patner Plaintiffs as a substitute class representative. 1 H. Newberg, *Newberg on Class Actions* § 2:17 (5th ed.).

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March 2018, I served the foregoing Plaintiffs' Reply in Further Support of Motion to Approve Administrative Order No. 3 by electronic mail and first-class mail, postage prepaid on:

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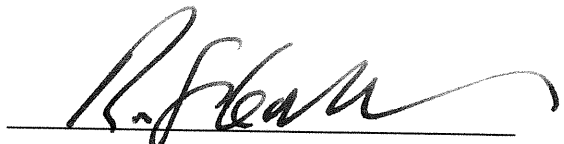

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