

Docketed 11/05/2025

148.0

COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

SUPERIOR COURT DEPARTMENT

NORFOLK, ss.

Civil Action No. 2382CV00389

K.F., a Minor, by his Legal Guardian, Sandra Fernandez,
Filed Under Special Appearance and Reservation of Rights,
Movant,

v.

MARINA BAY RESIDENCES, LLC, BOZZUTO

MANAGEMENT CO., and DELANEY BARRETT,
Defendants,

**MOTION TO ENFORCE MINOR'S RULE 23 RIGHTS, COMPEL COMPLIANCE,
PROTECT ABSENT PUTATIVE CLASS MEMBERS, AND REQUIRE INSURANCE
DISCLOSURE**

**With Incorporated Memorandum of Law; Mass. R. Civ. P. 1, 9A, 17(c), 23, 24, 26(c),
77, 79; Mass. Decl. of Rights, art. 11**

INTRODUCTION

This motion addresses the ongoing mischaracterization of this litigation as a “class action” despite the absence of any Rule 23 motion or certification by Plaintiff’s counsel or any party, including Beth Materna. The only Rule 23 motion properly filed is that of the minor, K.F., submitted August 28, 2025 (eFileMA #4088249; #4088193), which remain undocketed and under review, prejudicing the minor and obstructing justice.

Opposing counsel Jonathan Sweet has repeatedly represented that numerosity data, expert models, and damages analyses exist, yet he has failed to file a Rule 23

motion or produce core certification materials. Meanwhile, parties continue to characterize this litigation as a “class case,” steering toward settlement without certification, creating judicial estoppel, misrepresentation, and prejudice to a minor.

This Court is respectfully asked to enforce the proper procedural sequence, compel compliance, prevent pre-certification settlements, and require insurance disclosure to safeguard the minor’s rights and interests.

MEMORANDUM OF LAW

I. No “Class” Exists Without Certification; Judicial Estoppel Applies

Rule 23(c)(1) requires that certification decisions occur as soon as practicable, yet until certification is granted, no class exists. Parties cannot assert class rights while avoiding Rule 23 obligations. Judicial estoppel bars inconsistent positions. *See Otis v. Arbella Mut. Ins. Co.*, 443 Mass. 634 (2005).

This Court should prohibit any class characterizations, absent-member reliance, or settlements until certification is properly adjudicated in this docket.

II. Minor Protection and Rule 17(c) Authority

Mass. R. Civ. P. 17(c) empowers the Court to protect the interests of minors. Any settlement, waiver, or release affecting a minor without guardian consent and court approval is void ab initio. The minor’s rights under Mass. Decl. of Rights, art. 11 and due process require that no pre-certification action binds the minor.

III. Anti-Snap Certification; Evidentiary Rigor Required

Massachusetts courts require evidentiary support for all Rule 23 elements (numerosity, commonality, typicality, adequacy; and for 23(b)(3), predominance and

superiority). *See Fletcher v. Cape Cod Gas Co.*, 394 Mass. 595 (1985); *Weld v. Glaxo Wellcome Inc.*, 434 Mass. 81 (2001); *Aspinall v. Philip Morris Cos.*, 442 Mass. 381 (2004).

The Court should set a strict schedule requiring:

1. Sworn submissions of numerosity, ascertainability, and damages models.
2. Proposed class definition.
3. Trial/management plan.
4. Counsel adequacy/conflict declarations.

No certification should issue without a hearing and written findings.

IV. File-or-Fold Requirement for Jonathan Sweet

Sweet must file within fourteen (14) days any Rule 23 motion he intends to pursue and produce core materials, including:

- Sworn numerosity and ascertainability data.
- Expert reports and damages models.
- Contingency agreements and engagement/solicitation letters relevant to

adequacy or conflicts.

If Sweet fails to file or produce, the Court should decide K.F.'s Rule 23 motion as the only certification motion properly before the Court.

V. Pre-Certification Settlement Prohibited; Sanctionable Conduct

Rule 23(d) and Rule 26(c) empower the Court to prevent coercive or prejudicial settlements. Any attempt to:

- Bind absent tenants or the minor,
- Require confidentiality, dismissal, or waiver,

- Engage in mediation without court approval,

is void and sanctionable.

VI. Insurance Disclosure and Financial Protection

To protect the minor's financial interests, the Court should require disclosure of all insurance policies covering claims related to:

- Marina Bay Residences, LLC
- Bozzuto Management Company
- Delaney Barrett
- Jonathan Sweet

Failure to disclose these policies may result in sanctions and exclusion of evidence, and disclosure is required before any settlement or pre-certification agreement.

VII. Severed Docket Does Not Confer Class Authority

The severed docket (2582CV00364) cannot certify a class or bind the minor. Severance and substitution issues are under appellate review, and any "class" resolution based on a separate docket risks reversal. Certification, if any, must occur in this docket (2382CV00389) on a proper, written record.

VIII. Clerk Compliance and Record Preservation

Rule 77 and 79 require:

- Timely docketing of filings.
- Service of orders and notation on the docket.
- Preservation of all metadata.

The Court should order nunc pro tunc docketing of K.F.'s August 28, 2025 filings, strict service under Rule 77(d), and anti-alteration protection for eFileMA metadata,

including “under review” and “rejected” logs.

IX. Prompt, Lawful Administration Required

Delay or obstruction causes reversible prejudice, particularly to a minor. The Court must act promptly on the minor’s Rule 23 motion.

X. Reservation of Rights

Filed under special appearance and reservation of rights. Nothing herein:

- Waives any right in this docket, the severed docket, or federal proceedings.
- Limits interlocutory or superintendence review, including G.L. c. 231, §118 or

G.L. c. 211, §3.

RELIEF REQUESTED

The minor respectfully requests the Court to:

1. Rule on K.F.’s pending Rule 23 motion within fourteen (14) days, with written findings on all elements.

2. Order Sweet to file-or-fold any intended Rule 23 motion within fourteen (14) days, producing:

- Numerosity/ascertainability data
- Expert reports/damages models
- Contingency/engagement letters

3. If no competing motion is filed, decide K.F.’s motion as the only proper motion.

4. Enter a protective order under Rule 23(d)/26(c) barring settlements, waivers, releases, or mediation binding the minor or absent putative members.

5. Prohibit any party from referring to this as a “class action” or acting for absent members until certification with written findings.
6. Clarify that the severed docket has no class authority and cannot bind or prejudice the minor.
7. Set a strict certification schedule with filing, opposition, reply deadlines, evidentiary requirements, and hearing before any order.
8. Direct the Clerk to docket nunc pro tunc K.F.’s August 28 filings, serve all orders, and preserve eFileMA metadata.
9. Require full disclosure of all insurance policies related to defendants and counsel.
10. State that no case in this litigation is a “class action” until certification in this docket.
11. Grant any further relief as justice requires.

Respectfully submitted,

K.F., a Minor, by his Legal Guardian, Sandra Fernandez,
Filed Under Special Appearance and Reservation of Rights,
Movant,

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Braintree, MA 02184

Tel: (617) 806 6566

Email: sandreva14@yahoo.com

Date: October 15th, 2025

By: Sandra Fernandez
On Behalf of K.F., a Minor, as his Legal Guardian, Pro Se,
Filed Under Special Appearance Only

/s/ Sandra Fernandez
Sandra Fernandez

CERTIFICATE OF SERVICE

I hereby certify that on October 15th, 2025 a copy of the foregoing was served electronically on all counsel of record.

DEFENDANT,
MARINA BAY RESIDENCES, LLC,
BY ITS ATTORNEYS,

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By: Sandra Fernandez, Legal Guardian of K.F., a Minor
Filed Under Special Appearance and Reservation of All Rights,
Petitioner,

/s/ Sandra Fernandez
Sandra Fernandez