

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 16-25359-Civ-COOKE/TORRES

KAREN SANTIAGO, individually and
on behalf of all others similarly situated,

Plaintiff,

CLASS ACTION

vs.

HONEYWELLINTERNATIONAL, INC.,

Defendant.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiff, KAREN SANTIAGO, pursuant to Fed. R.Civ. P. 23(b)(2), moves this Court to certify the proposed class and as grounds therefore states:

I. Background

In 2009, Florida Power & Light Company ("FPL") awarded defendant, Honeywell International, Inc. ("Honeywell"), a contract to replace the existing analog meters, which had been operating for years without issue, at approximately 4.3 million FPL's customers' homes with Smart Meters.¹

The Smart Meter was of no benefit to the FPL customer. It allowed FPL to meet certain federal statutory requirements with which it was compelled to comply² and also provided FPL

¹ See Exhibit 1, Confidential Document HON0000084 [Filed under seal pursuant to Local Rule 5.4]; Exhibit 2, deposition dated June 27, 2014, of Honeywell's Smart Meter Program Manager, Alan Jones ("Jones Depo") at p. 7 ("approximately 4.3 million residential meters for FPL customers.").

² Exhibit 3, In re: Petition for declaratory statement regarding the repair and replacement of meter enclosures for smart meters by Florida Power & Light Company, Docket No. 110033-EI; Order No. PSC-11-0194-DS-EI, Issued April 13, 2011 ("PSC Petition").

with more information on power usage, more accurate readings and the ability to turn the power on and off remotely.³ FPL was provided with a \$200 million grant from the Department of Energy to implement this program.⁴

Honeywell was paid a fee per Smart Meter installed,⁵ so Honeywell had an economic incentive to complete the installations as quickly as possible. Honeywell completed this monumental residential deployment project an astounding nine months ahead of schedule.⁶ In order to accomplish the installation of the approximately 4.3 million Smart Meters ahead of time, Honeywell hired and ostensibly “trained”⁷ non-licensed, non-electrician installers.⁸ The supervisors of these installers, who not only supervised the work performed but also conducted the training, likewise were not licensed electricians.⁹ Over the course of the three-and-a-half year project, there were between 80 – 110 installers at a given time.¹⁰ The fact that the installers are not licensed electricians was not disclosed to the customers at whose homes these installers performed the meter exchange and installation.¹¹

Honeywell’s improper installations of the Smart Meters resulted in ill-fitting or damaged connections between the Smart Meter itself and the property owners’ meter enclosures; and that

³ Jones Depo at p. 9

⁴ PSC Petition

⁵ Exhibit 4, Confidential Document HON0000095 at “Attachment 11 – Residential Meter Pricing.” [Filed under seal pursuant to Local Rule 5.4].

⁶ Jones Depo at p. 16.

⁷ The “training” did not weed out those individuals incompetent to perform the task; Honeywell would just keep administering its tests until the trainee passed, and everybody eventually passed. Exhibit 5, deposition of Honeywell Field Manager and Trainer Luis Rosa (“Rosa Depo”) at p. 51.

⁸ Rosa Depo at pp. 17, 25, 28, 30, 68, 84 & 93.

⁹ Jones Depo at pp. 22-23 (actually, one supervisor was a licensed electrician but he was not authorized to make repairs and he was only in charge of one of the many installation teams).

¹⁰ Exhibit 6, deposition dated July 8, 2014, of Honeywell’s Smart Meter Program Manager, Alan Jones (“Jones Depo 2”) at p. 81.

¹¹ Jones Depo at pp. 21-22.

in turn caused arcing, overheating, power-surges, burning of meter enclosure components, and other damage to affected owners' property. For thousands of customers, the expense associated with repairing or replacing the damaged meter enclosure and its components was borne by the customer without any reimbursement by either FPL or Honeywell. The repair typically required the expense of hiring a licensed electrician who had to not only repair the damage caused by Honeywell's negligent installation of the Smart Meter, but because the electrician had to pull a permit to perform the repairs (at the customer's expense), mandated the additional expense of updating components of the property to current code and obtaining inspections by the local code authorities.

These types of damages were certainly not a result of an unexpected or bizarre phenomenon. Rather, these very types of damages were explicitly contemplated by Honeywell.¹² They are called "hot sockets" – a dangerous condition which occurs when there exists a poor connection between the "blades" of the Smart Meter ("male" prongs as identified in Plaintiff's Complaint) and the meter socket "jaws" ("female" receptacles as identified in Plaintiff's Complaint).¹³ Honeywell knew that "[t]he most effective method [to identify existing "hot sockets"] is to examine the meter removed from the socket" and look for the tell-tale signs.¹⁴ Amazingly, this was not done,¹⁵ which inevitably led to the situation we now face: Consumers

¹² Exhibit 7, Honeywell Confidential "Hot Sockets" Training ("Hot Sockets") [Filed under seal pursuant to Local Rule 5.4].

¹³ Hot Sockets; Rosa Depo at pp. 14, 71-72 ("Now, if you have spread jaws which we call hot socket, spread jaws meaning that the connection is wider than the blade of the meter. If the jaws are separated and the blade comes in, yes, sir, that's the condition. It's called a hot socket.") & 159-160.

¹⁴ Hot Sockets.

¹⁵ Jones Depo 2 at p. 75.

have to bear the risk of having to fix their electrical systems due to the faulty installation of the Smart Meter.

Honeywell knew that loose, corroded or contaminated meter jaws and faulty or loose wiring would cause the very damages which the plaintiff and the putative class are at risk of suffering.¹⁶ Honeywell saw “a lot of houses with these older jaws,”¹⁷ some 30-50 years old,¹⁸ where it should not have installed a Smart Meter.¹⁹ Despite knowing this, Honeywell did not check the back of the analog meters they removed for signs of micro arcing,²⁰ and did not train its installers “on the different sizes of jaws versus blades that they’d be encountering in the field”²¹ and what is an allowable jaw gap.²² These installers did not know what materials or conditions to expect on the customers’ side of the meter can.²³ Honeywell did not require “that female receptors be checked for proper alignment and fitting with the male connectors.”²⁴ “They’re not doing any check of the condition of the connectivity when they’re doing the install...”²⁵

Honeywell knew that the “solution” to the dangerous condition of “hot sockets” is to replace all of the jaws, even if just one of the jaws is suspected to be bad, and to tighten all loose connections.²⁶ Since Honeywell was obligated to make these repairs when installing the Smart Meter,²⁷ it shirked this obligation by simply disregarding it and passing it along as a post-

¹⁶

Id.

¹⁷ Rosa Depo at p. 172, Mr. Rosa was one of Honeywell’s three primary trainers for the Smart Meter program in Florida,

¹⁸ Rosa Depo at p. 236.

¹⁹ Rosa Depo at pp. 174 & 177.

²⁰ *See* Rosa Depo.

²¹ Rosa Depo at p. 223.

²² Rosa Depo at p. 80.

²³ Rosa Depo at pp. 39-40.

²⁴ Rosa Depo at p. 250.

²⁵ Rosa Depo at p. 152.

²⁶ Hot Sockets.

²⁷ Jones Depo 2 at p. 24.

installation issue. To ensure that this lurking problem remained hidden, neither Honeywell nor FPL warned the customers whose meter was being changed of these dangers;²⁸ in fact, Honeywell acknowledges that FPL's customers do not even know they have a new meter.²⁹

Because Honeywell's installers and their supervisors were not licensed electricians, they were neither trained to nor authorized to perform repairs to customers' meter enclosures which Honeywell had identified as necessary to avoid "Hot Sockets."³⁰ Accordingly, Honeywell contracted with licensed electricians to perform repairs which were identified as being needed at the time of the installation of the Smart Meter or within six months after installation.³¹ However, it was the unlicensed Honeywell installer and supervisor who was charged with identifying any problem requiring a licensed electrician to repair.³² FPL's customers were not told that non-licensed electrician was changing their meter.³³ The unlicensed installer was required to make this determination within a 15-20 second period of time in which the existing analog meter was

²⁸ Rosa Depo at pp. 63, 65 & 123-124.

²⁹ Rosa Depo at pp. 186 ("I hear that all the time.") & 188; even if the FPL customer knew its meter was being changed, it could not refuse to have a Smart Meter installed, Jones Depo 2 at pp. 94-95.

³⁰ Rosa Depo at pp. 25, 27 & 143 ("You're not taught to mess with anything in there except for you're taught [sic] to pull the meter."). They are, however, required to perform a pre-installation visual inspection and be able to identify any pre-existing meter enclosure condition that needs repair prior to installing the Smart Meter. Rosa Depo at pp. 16-17 & 27. Installation of the Smart Meter presumes that the inspection did not reveal any pre-existing problems with the customer's meter enclosure or its components. Rosa Depo at pp. 45 ("A new meter will not be installed if there's a repair to be made."), 58 (if there was damage it would be documented at the time of the install along with why was there damage there) & 199 (if there is no documentation of existing damage, it was not present at the time of install); Jones Depo at p. 20; Jones Depo 2 at p. 18.

³¹ Jones Depo at pp. 26-27, 36 & 69; Rosa Depo at pp. 31 & 93.

³² Rosa Depo at pp. 16-17 & 27.

³³ Rosa Depo at p. 185; Jones Depo at pp. 21-22.

removed and before the Smart Meter was installed,³⁴ during which time “he just looks at” the can from which the old analog meter was removed.³⁵ “You’re not taught to mess with anything in there except you’re taught to pull the meter.”³⁶ Since “the only testing was visual,” nothing was done to examine the “[e]ffects of age, current flow over time, micro arcing [or] metal fatigue.”³⁷ Significantly, the installer never checks the back of the old analog meter for the tell-tale signs of hot sockets.³⁸ Furthermore, Honeywell disposed of the analog meters, destroying the evidence of its shoddy work.³⁹ Although the unlicensed installer was making this critical determination, he was not trained⁴⁰ to verify that attachments which, if loose, could cause “hot sockets,” were tight nor even provided with the tool,⁴¹ a simple screwdriver, to make this determination.

The unlicensed supervisor’s word was the law, “[i]f the supervisor says there’s no damage, there’s no damage.”⁴² However, that dictate only went one way; there were occasions when the supervisor observed spread jaws and they were not replaced by the electrician.⁴³ Performing the examination necessary to make this determination would, naturally, slow down the installer,

³⁴ Rosa Depo at pp. 29 (“can’t see loose wires in the can ... [u]ntil you open the can up.”), 82-83, 93-97 & 192; Jones Depo at p. 21; Exhibit 8, Honeywell email correspondence HON0000234-237 at 237.

³⁵ Rosa Depo at p. 192; Jones Depo at p. 21.

³⁶ Rosa Depo at p. 140.

³⁷ Rosa Depo at p. 222.

³⁸ Rosa Depo at p. 74; Jones Depo 2 at p. 60.

³⁹ Jones Depo 2 at p. 75.

⁴⁰ Rosa Depo at pp. 228 (“there’s no training as to what size gap is allowable...”) & 229 installers can not by training “ascertain whether there’s enough pressure to avoid micro arcing over time.”).

⁴¹ Rosa Depo at pp. 145-146 (“That answer is no because you’re not given the tools.”) & 227 (“I don’t train them gap because it’s kind of hard because they don’t have the proper tools.”).

⁴² Rosa Depo at p. 83.

⁴³ Rosa Depo at p. 239.

resulting in less meters installed which was contrary to Honeywell's relentless pressure on its installers to install as quickly as possible.⁴⁴

On January 19, 2011, FPL petitioned Florida's Public Service Commission ("PSC") for a declaratory statement regarding the Smart Meter installation program. "FPL state[d] that standard meter enclosures housing the traditional electromechanical meters found throughout the FPL system *are clearly not obsolete* ... as evidenced by the fact that prior to the change-out, those meter enclosures were functional and would likely have remained so for any number of years into the future, *but for the act of FPL pulling out the old electromechanical meter to install the new smart meter.*"⁴⁵ FPL explained that it "encounters situations where meter enclosures are functional prior the removal of the existing electromechanical meter and may have continued to function without any problem for many years to come, but during the course of the change-out the existing meter enclosure needs to be repaired or replaced in order to safely and efficiently install the new smart meter in a manner that will help to assure safe and reliable service to the customer."⁴⁶

The need to repair or replace the affected meter enclosures occurs in two distinct situations: First, during the course of the meter change-out, the existing meter enclosure is damaged and must be repaired or replaced in order to safely and efficiently install the new smart meter in a manner that will help to assure safe and reliable service to the customer into the future. In the second scenario, [FPL] cannot say with certainty that the existing functional meter enclosure is clearly damaged by the removal of the existing meter or the installation of the new smart meter. However, as a result of the meter change-out, there is enough doubt about the continued viability of the existing meter enclosure that [FPL] exercises its judgment and errs on the side of repairing or replacing the meter enclosure.⁴⁷

FPL unequivocally stated that these meters "are not being repaired or replaced due to obsolescence or wear, but as a result of FPL's implementation of its system-wide smart meter

⁴⁴ *Infra* starting at p. 8.

⁴⁵ PSC Petition (emphasis added).

⁴⁶ *Id.*

⁴⁷ *Id.*

program.”⁴⁸ These meter enclosures “are being repaired or replaced to facilitate this process and not because of obsolescence or wear of the previously functional meter enclosures.”⁴⁹ Accordingly, FPL sought and obtained an acknowledgment “that individual customers whose meter enclosures must be repaired or replaced in conjunction with the installation of the smart meters *should not individually bear the expenses associated with that repair or replacement....*”⁵⁰ Plaintiff and the class simply seek to obtain what FPL told the PSC would occur.

While FPL was telling the PSC that it would repair its customers’ meter enclosures, Honeywell and FPL did nothing to so inform the customers. They did not tell the customers that installation of the Smart Meter may have an effect on electrical service or that repairs that the customer performed may have been caused by the Smart Meter installation.⁵¹

Honeywell consistently emphasized meeting and exceeding production numbers throughout the Smart Meter project, pressing its crews to “[k]eep grinding”, “[k]eep your eye on the ball and we will meet and exceed production requirements,”⁵² “stress the importance of production to your team,” and “focus on production is the key.”⁵³ The acceptable production numbers grew by the thousands as the project went on. For example, on February 3, 2010, the target was 3,000 installs per day.⁵⁴ On February 8, 2010, Honeywell observed that it had “only three weeks to hit 120k installations which does not include the ~10k we are behind.”⁵⁵ On February 10, 2010, the target number ballooned to 5,000 daily installs, which required “[o]pening

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Id.

49

Id.

50

Id. (emphasis added).

51

Jones Depo at pp. 81-83; Jones Depo 2 at pp. 20-21; Rosa Depo at pp. 123-24.

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Exhibit 9, Honeywell email correspondence HON0000176-177 at 176.

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Exhibit 10, Honeywell email correspondence HON0000222-224 at 222.

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Exhibit 9, Honeywell email correspondence HON0000176-177 at 176.

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Exhibit 10, Honeywell email correspondence HON0000222-224 at 222.

a 55 gallon of whoop ass!!!!”⁵⁶ The next day the crews were praised for having two days over 4,500, exhorted that “5k a day is getting closer!” and advised that after 3,100 more installs the following day “all installs go to the bank!!!!”⁵⁷ By February 8, 2011, Honeywell allocated over 7,000 meters for deployment for installation per day so it should “[c]ontinue to pressure on the inventory as much as possible.”⁵⁸

Honeywell could not accomplish this without cutting corners. A Honeywell installer acknowledged that “[w]e each do 88 meters per day.”⁵⁹ Other installers did over 100 per day.⁶⁰ This installer further stated that these rushed installations to stay on schedule were done in “about 20 seconds,”⁶¹ not the 10-15 minutes a properly performed installation should take.⁶² Not even a brand new installer was given sufficient time to properly install a Smart Meter.⁶³ For telling the truth, which Honeywell wanted kept secret,⁶⁴ this installer was suspended without pay for 2 days.⁶⁵ Honeywell knew and did not care that its installers were not following proper procedure, as long

⁵⁶ Exhibit 11, Honeywell email correspondence HON0000178-179 at 178.

⁵⁷ Exhibit 12, Honeywell email correspondence HON0000180-181 at 180.

⁵⁸ Exhibit 13, Honeywell email correspondence HON0000265-266 at 265.

⁵⁹ Exhibit 8, Honeywell email correspondence HON0000234-237 at 237.

⁶⁰ Rosa Depo at p. 254.

⁶¹ *Id.*

⁶² See http://www.youtube.com/watch?v=pQWp_F_FjM0FP&L Video demonstrating installation.

⁶³ New installers were expected to start installing 50 meters in an 8 hour day. Rosa Depo at p. 252. This provided the installer 9.6 minutes per installation, which does not take into account traveling to and from the staging area to the homes where the installation would take place, moving from home to home, documenting the install, informing the homeowner of the impending installation, lunch, restroom breaks, conferring with a supervisor, etc.

⁶⁴ Exhibit 8, Honeywell email correspondence HON0000234-237 at 235 (“we’ve talked about staying on script and buttoning loose lips ad nauseum...”, if installers don’t keep quiet about what is going on Honeywell would “[d]iscipline identified individuals ... up to and including termination of employment.”).

⁶⁵ *Id.*

as they did not get caught.⁶⁶ The 15-20 seconds of visual inspection⁶⁷ conducted by the Honeywell installers simply did not provide enough time to check the meter blocks and their component parts inside the meter can after removal of the analog meter to make sure they remained undamaged after the removal and that they were of a type that adequately matched the male prongs with which the Smart Meters were equipped. Indeed, Honeywell confesses that its installers did not even bother to check if the blades on the Smart Meter were compatible with the jaws in the meter can or to simply tighten any of the connections inside the meter can.⁶⁸ And, as stated previously, the installers did not bother to perform the critically important inspection of the back of the removed analog meters.

The rushed exchanges meant that installers knocked the analog meters off and jammed the Smart Meters on, instead of removing the former slowly and carefully and placing the latter likewise slowly and carefully. This lack of care was evidenced by an August 2010 issuance of an amendment to the Honeywell Standard Operating Procedures to prohibit the “rocking” of meters as they are being installed.⁶⁹ In November 2010, FPL expressed concern that Honeywell was “hurrying too much and cutting corners to maximize productivity.”⁷⁰ In March 2011, Honeywell installers were reminded to conduct thorough visual inspections of the contents/components of

⁶⁶ *Id.* (“If an installer knows that he is being photographed, at least put ALL of the PPE on including safety glasses.”)

⁶⁷ Rosa Depo at p. 73.

⁶⁸ Rosa Depo pp. 77-78 & 143-144.

⁶⁹ Exhibit 14, Honeywell Confidential Document HON0000517 [Filed under seal pursuant to Local Rule 5.4]; Exhibit 15, Honeywell Confidential Document HON0000518-521 at 519 [Filed under seal pursuant to Local Rule 5.4].

⁷⁰ Exhibit 16, Honeywell Confidential Document HON0002665 [Filed under seal pursuant to Local Rule 5.4].

meter cans “to look for pre-existing damages or unsafe conditions” and a discussion was had about “forcing meters into the socket.”⁷¹

The 15-20 seconds of visual inspection conducted by the Honeywell installers was insufficient to determine whether the meter jaws were loose, corroded or contaminated. As Honeywell’s material themselves advised, “sometimes the evidence is obvious, and other times it is more subtle.”⁷² Incredibly, Honeywell’s non-electrician installers were not even provided a screwdriver in order to tighten any loose connections, which Honeywell knew was one of the “solutions” to hot sockets;⁷³ in fact, Honeywell’s non-electrician installers were explicitly prohibited from tightening any loose connections.⁷⁴ Honeywell knew full well what was happening, it failed to properly train and thereafter supervise its installers,⁷⁵ and then pushed the installers to work faster and faster and “cut corners.”

Honeywell’s pressure to complete the Smart Meter installs, and get paid, at the unreasonable pace Honeywell set had the inevitable consequence. By going so fast, the installations were damaging the customer’s property. Honeywell heard “all the time” that customers were experiencing problems that they did not experience before the Smart Meters were installed.⁷⁶ Honeywell’s agreement with FPL only required it to repair pre-existing conditions that

⁷¹ Exhibit 17, Honeywell Confidential Document HON0001149-1152 at 1149 [Filed under seal pursuant to Local Rule 5.4].

⁷² Hot Sockets.

⁷³ Hot Sockets.

⁷⁴ Rosa Depo at pp. 145-146.

⁷⁵ Rosa Depo at p. 226 (“What I train you and what you do out in the field, I can’t control that.”); Exhibit 18, Honeywell Confidential Document HON0001109 [Filed under seal pursuant to Local Rule 5.4]. (“At this point I have no faith in the supervisors’ ability to effectively supervise their teams.”).

⁷⁶ Rosa Depo at p. 209.

are encountered or as they occur during installation attempts,⁷⁷ Honeywell had a huge financial incentive to disregard those conditions requiring repair. Honeywell acknowledged to itself, but kept secret from the consumers,⁷⁸ that “there is a fairly substantial risk for an increase in repairs and also customer being notified that the condition found is a direct result of the installation....”⁷⁹ Honeywell had no regard for fixing the problems caused or slowing down to alleviate the problems caused, both of which would negatively impact Honeywell financially; its sole concern was that it was “opening up a can of worms.”⁸⁰

That can of worms did open: Honeywell experienced repair at a rate that was “way more than we expected.”⁸¹ Instead of figuring out how to fix the damage its repairs of the Smart Meters caused, Honeywell’s sole concern was that it “had to place additional resources on the service repair work” and “[t]he existing 5% management fee is not covering the additional expenses that Honeywell is incurring.”⁸² Honeywell wanted to “hit FPL for some more money for administering the service repairs.”⁸³ Honeywell did not do so because it believed that FPL was in “panic mode and not open to any ideas other than their own.”⁸⁴ FPL had nothing about which to panic if the

⁷⁷ Exhibit 19, Honeywell email correspondence HON0001318-1320; Exhibit 20, Honeywell email correspondence HON0001323; Exhibit 21, Honeywell email correspondence HON0001348-1350; Jones Depo 2 at p. 75.

⁷⁸ Jones Depo 2 at pp. 17 & 20-21; Honeywell did not even tell FPL “that some of its installation may have directly resulted in damage to the customers meter locker,” Jones Depo 2 at pp. 21-22.

⁷⁹ Exhibit 22, Honeywell email correspondence HON0000276; *see also* Rosa Depo at pp 159-160.

⁸⁰ Exhibit 22, Honeywell email correspondence HON0000276.

⁸¹ Exhibit 19, Honeywell email correspondence HON0001318-1320; “Honeywell anticipated that there would be a half of one percent of the meters installed, there would be some type of need for a service repair,” Jones Depo 2 at p. 83, which did not “include conditions that were not discovered by inspection, yet existed at the can prior to installation,” Jones Depo 2 at p. 85.

⁸² Exhibit 19, Honeywell email correspondence HON0001318-1320.

⁸³ Exhibit 20, Honeywell email correspondence HON0001323.

⁸⁴ Exhibit 21, Honeywell email correspondence HON0001348-1350.

Smart Meter exchange was conducted in the careful manner Honeywell called for in its SOP, which would identify any deficiency in the customer's meter can at the time of the exchange and fix it. FPL knew that Honeywell was not following its procedures and was cutting corners as it rushed to meet its production schedule which was causing the damages customers were complaining about; that is the only logical reason FPL would panic. As Honeywell acknowledged, if FPL and Honeywell "were proactive v reactive we all would not be in the situation."⁸⁵

There also were a multitude of complaints and claims made by FPL customers to the PSC regarding the Smart Meter project and electrical problems these customers were experiencing following the Smart Meter installation. Many of these involved damage to meter enclosures, the expense of hiring electricians, burnt meter components, power surges, flickering lights, overheating of the meter can, and even a house fire.⁸⁶

During the deployment of the Smart Meters, Honeywell performed random post-installation "quality assurance checks" of the Smart Meter installations.⁸⁷ An analysis of the weekly reports provided by Honeywell reveals that by the end of 2010, Honeywell installed approximately 1.3 million Smart Meters. Honeywell's "quality assurance checks" of these installations determined that 4.1% failed inspection. Thus, based strictly on Honeywell's own "quality assurance checks", there are a minimum of 53,300 of the approximately 1.3 Smart Meters installed from September 2009 to December 2010 which were improperly installed. At the end of the residential Smart Meter deployment, Honeywell's "quality assurance checks" revealed an "improved" rate of improper installations to 1.9%. There can be no dispute, therefore, based upon

⁸⁵ *Id.*

⁸⁶ See Exhibit 23, Summary of PSC Complaints and Composite Exhibit 24 Corresponding PSC Complaints.

⁸⁷ Rosa Depo at p. 84.

Honeywell's own investigation, that between 1.9 - 4.1% of the 4.3 million Smart Meters were improperly installed, or between 79,800 and 172,200.

On December 18, 2014, FPL reported to the PSC that it had developed a "statistically valid sample size" of "randomly selected customers whose [Smart] meters were displaying the communications data patterns consistent with problems within the customer-owned meter enclosure."⁸⁸ 78% of the meters examined in this study "were found to have some level of damage or degradation that required repair." 46% of those that were fixed "required major repairs to multiple components within the enclosure or, in a few cases, complete replacement of the enclosure. [I]n nearly 60% of all cases where FPL determined that there was a need for meter enclosure repairs, local permitting authorities required the customers to perform additional work to bring the customer's electrical system up to current electrical codes." FPL concluded: "Based on the results of the study, FPL currently expects that it will identify approximately 1,800 - 2,200 customer-owned meter enclosures annually through the use of the predictive tool, with 78 percent (+/- 5 percent) of the enclosures identified having some level of damage or deterioration of components requiring repair in order for the enclosure to be in proper operating condition." Thus, FPL itself anticipates that approximately 1400 - 1700 consumers per year will require repairs to their meter cans as a result of the Smart Meter installation. Further, implicit in FPL's findings from its study is that those consumers who will require repairs will not be identified for years.

The implications of this submission by FPL to the Commission are frightening: 78% of homeowners from the sample size whose Smart Meter displayed one "specific communications pattern" – just one! – "required repairs to be in proper operating condition before those

⁸⁸ Exhibit 25, December 18, 2014, letter from FPL to PSC, Document No. 06788-14, Docket No. 140000-EI.

[potential problems within the customer's meter enclosure] caused further damages to the customer's enclosure and potentially surrounding property which could cause power quality conditions and probable damages to the meter itself.”⁸⁹ And not only is this just one specific communications pattern among untold possible patterns, but FPL concedes that the data only “**might** serve as the basis to develop a useful tool that **could** help identify [those] potential problems].”⁹⁰ While the results “confirmed” FPL's “belie[f]” that this one data pattern proved “indicative of [the] problems,” FPL merely “hope[s] to validate and potentially increase the predictive capabilities of the tool” after “comprehensive use of the tool has been refined and fully implemented.”⁹¹

Electricity is inherently dangerous and neither Plaintiff nor the putative class requested to be placed in a risk of harm caused by the installation of Smart Meters. There is simply no other way to alleviate Plaintiff and the putative class' fear other than a proper inspection. Honeywell needs to remove each Smart Meter it installed, adequately inspect the meter and the meter can to determine if there is any damage (including, without limitation, to the “Male” or “Female” connectors, to the wiring or any sign of arching), photograph the meter and meter can, provide an inspection report and the photographs to the customer and, if any damage is present, repair that damage without any cost or charge to Plaintiff or the Class and provide adequate warning of the risks associated with the installation of the Smart Meter.

Honeywell also needs to be enjoined from installing future Smart Meters without first properly training its supervisors and installers, inspecting the Smart Meter and the meter can to determine if there is any damage (including, without limitation, to the “male” blades or “female”

⁸⁹ *Id.*

⁹⁰ *Id.* (emphasis added).

⁹¹ *Id.*

jaws, to the wiring or any sign of arching), photograph the meter and meter can, provide an inspection report and the photographs to the customer and, if any such damage is observed, repair that damage (including replacement of the “female” jaws in the meter cans with new properly matched and mated “female” jaws before installing the Smart Meter) without any cost or charge to Plaintiff or the Class including the costs of updating components of the Plaintiff’s or the Class’ property to current code due to reasonably necessary repair work; and provide adequate warning of the risks associated with the installation of the Smart Meter.

II. Named Plaintiff Karen Santiago

Plaintiff Santiago is a Broward County domiciliary who is justifiably concerned that her Smart Meter will experiencing micro arcing events and cause damage to her property and, perhaps, injury or death to her or her loved ones.⁹²

Class Certification Standard

The determination whether to certify a class is vested within the district court’s sound discretion.⁹³ The Court’s awesome power in this regard is not unbridled, however, and must be exercised within the framework of Federal Rule of Civil Procedure Rule 23.⁹⁴ Since a class action is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties, the certification question pre-supposes a rigorous analysis which should entail some

⁹² Defendant’s own corporate representative conceded that an improper install could cause micro arcing events causing damages over a period of time. Rosa Depo at pp. 159-160 & 164-167.

⁹³ *Cooper v. Southern Co.*, 390 F.3d 695, 711 (11th Cir. 2004)(citing *Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374, 1386 (11th Cir. 1998)), overruled on other grounds by *Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 457 (2006).

⁹⁴ *Collins v. Erin Capital Management, LLC*, 290 F.R.D. 689, 693 (S.D. Fla. 2013)(citing *Klay v. Humana, Inc.*, 382 F.3d 1241, 1251 (11th Cir. 2004)).

limited probing into the merits of the plaintiff's underlying claim, but only "to the degree necessary to determine whether the requirements of Rule 23 will be satisfied."⁹⁵

Because Rule 23 directs the Court's analysis, it is necessary that the party seeking certification have standing and affirmatively show that the four pre-requisites of numerosity, commonality, typicality and adequacy of representation are satisfied. Fed. R.Civ. P. 23(a). The class must also satisfy one of the three additional requirements of Rule 23(b).⁹⁶ Here, certification of the Plaintiff's class action is appropriate under Rule 23(b)(2) where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole" to enjoin Honeywell from continuing to install Smart Meters in a negligent or grossly negligent fashion.

A. Plaintiff Has Standing

Though not embedded within the actual text of Rule 23, "[i]t is well settled that prior to the certification of a class, and technically speaking before undertaking any formal typicality or commonality review, the district court must determine that at least one named class representative has Article III standing to raise each class sub-claim."⁹⁷ To have standing a plaintiff must show (1) an injury in fact; (2) a causal connection between the alleged injury and defendant's challenged action, and (3) that the injury will be redressed by a favorable decision.⁹⁸ "Thus, to satisfy this requirement, the Court must determine that the class representative is 'part of the class and

⁹⁵ *Collins*, 290 F.R.D. at 693; *Valley Drug Co. v. Geneva Pharmaceuticals, Inc.*, 350 F.3d 1181, 1188 n.15 (11th Cir. 2003).

⁹⁶ *Collins*, 290 F.R.D. at 693 (citing *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009)).

⁹⁷ *Wolf Prado-Steiman v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000).

⁹⁸ *County of Monroe, Fla. v. Priceline.com, Inc.*, 265 F.R.D. 659, 666 (S.D. Fla. 2010)(quoting *Shotz v. Cates*, 256 F.3d 1077, 1081 (11th Cir. 2001)).

possess[es] the same interest and suffer[ed] the same injury as the class members.”⁹⁹ There can be no doubt that Karen Santiago has standing. Honeywell installed her Smart Meter, and Plaintiff is at risk of suffering damage to her meter enclosure and components and other property, as well as her person and the person of her loved ones.

B. Plaintiff Satisfies Rule 23(a)

(i) Numerosity.

Plaintiff must establish that the proposed class is so numerous that joinder of all members is impracticable. Fed. R.Civ. P. 23(a)(1). “Impracticality, however, does not mean impossibility. The numerosity requirement is met when it would be inconvenient or difficult to join all of the class member....”¹⁰⁰ While there is no hard and fast numeric requirement, generally a group of more than forty (40) satisfies Rule 23’s numerosity requirement, a group of fewer than twenty-one (21) does not. The numbers in between are subject to judgment based on additional factors.¹⁰¹ Plaintiff need not prove the exact size of the proposed class, but rather demonstrate only that the number is exceedingly large such that joinder is impracticable.¹⁰² Plaintiff need not allege the exact identity of the class members either.¹⁰³ Essentially, a plaintiff seeking to certify a class must provide factual support sufficient to satisfy the court that the numerosity requirement will be satisfied.¹⁰⁴

⁹⁹ *In re Terazosin Hydrochloride Antitrust Litigation*, 220 F.R.D. 672, 679 (S.D. Fla. 2004)(citing *Prado-Steiman*, 221 F.3d at 1279 (citing *Gen. Tel. Co. of Southwest v Falcon*, 457 U.S. 147, 156, 102 S.Ct. 2364, 72 L.Ed. 2d 740 (1982))).

¹⁰⁰ *Terazosin Hydrochloride*, 220 F.R.D. at 684;*Israel v. Avis Rent-A-Car Systems, Inc.*, 185 F.R.E. 372,377 (S.D. Fla. 1999).

¹⁰¹ *See Vega*, 564 F.3d at 1266-67.

¹⁰² *Collins*, 290 F.R.D. at 694.

¹⁰³ *A Aventura Chiropractic Center, Inc. v. Med Waste Management LLC*, (slip opinion), 2013 WL 3463489 (S.D. Fla. 2013)(granting reconsideration of order denying class certification)(citing *Holtzman v. Turza*, 2014 WL 3334909 *4 (N.D. Ill. 2009)).

¹⁰⁴ *Id.* (citing *Vega*, 564 F.3d at 1267).

The Court may also consider factors such as “the geographic diversity of the class members, the nature of the action, the size of each plaintiff’s claim, judicial economy and the inconvenience of trying individual lawsuits and the ability of the individual class members to institute individual lawsuits.”¹⁰⁵

The number of potential class members in this case is a finite number and well exceeds the minimum threshold recognized in the Eleventh Circuit. We know that 4.3 million Smart Meters were installed. Honeywell approximates that between 79,800 and 172,200 will require repairs due to improper installation.¹⁰⁶ FPL anticipates that 1400-1700 per year will require repair due to improper installation.¹⁰⁷

The proposed class includes FPL customers from diverse geographical areas, as the FPL customer base covers multiple counties and all of the federal districts in Florida.¹⁰⁸ These customers incurred damages in relatively nominal amounts, the vast majority of which fall within the jurisdictional limits of Florida’s County Courts. The cost of litigation would make filing individual lawsuits impracticable and financially unwise, not to mention create a serious drain on judicial resources as well as cost Honeywell, which would be called upon in thousands of cases to produce the same documents and provide the same deponents who could be deposed thousands of times on the same issues. For all of these reasons, joinder is impracticable, the class is ascertainable, and, hence, class action is the fairest alternative and makes the most sense.

(ii) The Class Definition Is Adequate.

¹⁰⁵ *Terazosin Hydrochloride*, 220 F.R.D. at 685; *Muzuco v. Re\$ubmitIt*, 2013 WL 4566305 *6 (S.D. Fla. 2013).

¹⁰⁶ *Supra* at p. 14.

¹⁰⁷ *Supra* at p. 14.

¹⁰⁸ Exhibit 26, Honeywell Confidential Document HON0000134 “Attachment 9 – Deployment Schedule.”

The adequacy of the class definition may be considered either before analyzing the Rule 23(a) requirements or as part of the numerosity inquiry.¹⁰⁹ The proposed class is adequately defined and clearly ascertainable.¹¹⁰ There were a finite number of Smart Meters installed by Honeywell. There are a finite number of customers who had their meter enclosures repaired or replaced at the time of or after install, all of whom are obviously excludable as class members. There are a finite number of customers who reported problems and who had their meter enclosures repaired or replaced by Honeywell or FPL, all of whom, again, are obviously excludable as class members. What remains is the Class, which Plaintiff approximates at more than 3.5 million members, as follows:

All residential property owners throughout the State of Florida who had an analog meter removed and Smart Meter installed by Honeywell for FPL. This Class would exclude the approximately 17,964 residential properties between 2009 and 2014 that Honeywell and FPL previously facilitated repairs for.

(iii) Commonality Exists Class-wide.

This part of the rule demands that there be “questions of law or fact common to the class.”¹¹¹ It does not require that all the questions of law and fact raised be common or that the common questions of law or fact predominate over individual issues.¹¹² Commonality merely requires that there be at least one issue whose resolution will affect all or a significant number of the putative class members.¹¹³ The Eleventh Circuit has noted that the commonality requirement is a “low hurdle.”¹¹⁴ Commonality requires the Plaintiff to demonstrate that the class members

¹⁰⁹ *A Aventura* WL 2243972 *6 (citing *Perez v Metabolife Intern., Inc.*, 218 F.R.D. 262, 269 (S.D. Fla. 2003)).

¹¹⁰ *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir.2012).

¹¹¹ Fed. R.Civ. P. 23(a)(2).

¹¹² *Vega*, 564 F.3d at 1268.

¹¹³ *Id.*; see also *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2556 (2001)(stating “we quite agree that for purposes of Rule 23(a)(2) even a single common question will do”).

¹¹⁴ *Williams v. Mohawk Industries, Inc.*, 562 F.3d 1350, 1356 (11th Cir. 2009).

suffered the same injury.¹¹⁵ The truth or falsity of the common contention should resolve an issue that is central to the validity of each of the claims in one stroke. The capacity of the class-wide proceeding to generate common answers apt to drive the resolution of the litigation is what matters.¹¹⁶

Plaintiff and all members of the putative class are FPL customers that were recipients of Smart Meters installed by Honeywell during a three-and-a-half year time period, by Honeywell-trained installers who were instructed in, and expected to follow, the same Standard Operating Procedures as every other installer. They also were subject to the same production requirements and standards of conduct. It is this systematic failure to properly train, supervise, inspect and thereafter install Smart Meters that caused systematic problems from which Plaintiff and the putative Class are at risk of suffering. “Where the complaint alleges that the Defendants have engaged in a standardized course of conduct that affects all class members, the commonality requirement will generally be met.”¹¹⁷

All of the potential class members are at risk of suffering damage to their meter enclosure, meter components and other property and persons caused by arcing, deterioration to the metal jaws or meter blocks in the meter can caused by arcing, overheating and burning within their meter enclosure which, in turn, necessitate repair and its associated expense. All class members are at risk of suffering the same injury – namely, damage to their meter can, its components, other property and persons, due to actions taken during installation, and resulting damage. Hence, commonality is established.

¹¹⁵ *Williams v. Wells Fargo Bank, N.A.*, 280 F.R.D. 665, 672 (S.D. Fla. 2012)(citing *Walmart*, 131 S.Ct. at 2551).

¹¹⁶ *Id.*

¹¹⁷ *Terazosin Hydrochloride*, 220 F.R.D. at 685 (citing *Roper v. Conserve, Inc.*, 578 F.2d 1106, 1113 (5th Cir. 1978)).

(iv) Typicality is Established.

The claims or defenses of the representative party must be typical of the claims or defenses of the class.¹¹⁸ Typicality under Rule 23(a)(3) is satisfied if a plaintiff's claim arises from the same event, practice or course of conduct that gives rise to the claim of the other class members, and if the claims are based on the same legal theory.¹¹⁹ Typicality measures whether a sufficient nexus exists between the claims of the named representative and those of the class at large.¹²⁰ Typicality and commonality while often merged are distinguished by noting that commonality traditionally refers to the group characteristics of the class as a whole while typicality refers to the individual characteristics of the named plaintiff in relation to the class.¹²¹

Here, Plaintiff is a FPL customer who had a Smart Meter installed by Honeywell in accordance with the same standards and procedures as every other class member. The genesis of the Plaintiff's and the Class' claims is the negligent or grossly negligent training, supervision, inspection and installation of a Smart Meter which poses the substantial risk of causing damage to the meter can, components, other property and persons, from arcing and damaged connections between the Smart Meter and the meter enclosure, i.e., "hot sockets." Once it is established "that the same unlawful conduct was directed at or affected both the class representatives and the class itself, then 'the typicality requirement is usually met irrespective of varying fact patterns which

¹¹⁸ Fed. R.Civ. P. 23(a)(3).

¹¹⁹ *A Aventura Chiropractic Enter, Inc. v. Med Waste Management LLC*, 2013 WL 3463489 *4 (S.D. Fla. 2013)(slip opinion); *see also Williams*, 568 F.3d at 1357 (quoting *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984)).

¹²⁰ *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1322 (11th Cir. 2008).

¹²¹ *Vega*, 564 F.3d at 1275.

underlie the individual claims.”¹²² “Indeed, ‘there is nothing in Rule 23(a)(3) which requires named plaintiffs to be clones of each other or clones of other class members.’”¹²³

(v) Adequacy of Representation is Served by the Named Plaintiff and Counsel

The final requirement is that the representative party will fairly and adequately protect the interests of the class. The Eleventh Circuit has described the analysis of this prong as consisting of two separate inquiries: (1) whether any substantial conflicts of interest exist between the representative and the class; and (2) whether the representative will adequately prosecute the action. If substantial conflicts of interest are determined to exist among a class, class certification is inappropriate.¹²⁴

Both requirements are met here. Ms. Santiago’s claims are identical to the other members of the class and she does not seek preferential treatment. She does not have interests antagonistic to the rest of the class. Ms. Santiago shares a common goal with the class: To have Honeywell inspect and replace the Smart Meters so there is no risk of harm.

As for Plaintiffs’ counsel, the attorneys who seek to represent the putative class are plainly qualified to serve as Class Counsel and have served as lead counsel in complex cases, including class actions. Absent specific proof to the contrary, the adequacy of class counsel is presumed.¹²⁵ There are three (3) law firms representing the Plaintiffs in this action: Brill & Rinaldi, The Law Firm; The McKee Law Group, LLC; and Lewis Legal Group, P.A. These law firms have prosecuted several state court and federal court complex litigation matters, including matters of

¹²² *Terazosin Hydrochloride*, 220 F.R.D.at 687.

¹²³ *Id.* at 688.

¹²⁴ *Valley Drug*, 350 F.3d at 1189.

¹²⁵ *In re Seitel, Inc. Securities Litigation*, 245 F.R.D. 263 (S.D. Tex. 2007); *Walton v. Franklin Collection Agency, Inc.*, 190 F.R.D. 404, 410 (N.D. Miss. 2000)(stating while the burden in class certification motions is on the plaintiffs the adequacy of the putative representatives and of Plaintiffs’ counsel is presumed in the absence of specific proof to the contrary).

personal injury, product liability, class action and multi-district aviation and mass-tort litigation. Some of the members have been invited to chair or speak on panels, including for the ABA, AAJ, FJA, the Louisiana Bar, Georgia Trial Lawyers, and SMU Air Law Symposium, and each of the involved firms have attorneys participating in this case who have been practicing law in Florida for over 20 years.

C. Plaintiff Satisfies Rule 23(b).

In addition to satisfying all of the elements found at Fed. R.Civ. P. 23(a), Plaintiff must satisfy one of the three prongs of Fed. R.Civ. P. 23(b). In this case Plaintiff meets the requirements of Fed. R.Civ. P. 23(b)(2) and 23(b)(3).

(i) Rule 23 (b)(2)

“The only requirement for class treatment under Rule 23(b)(2) is that the relief sought in the complaint be predominately injunctive or declaratory in nature.”¹²⁶ “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.”¹²⁷ “[T]he claims contemplated in a (b)(2) action are *class* claims, claims resting on the same grounds and applying more or less equally to all members of the class. ... Moreover, the forms of relief available in Rule 23(b)(2) class actions are in the nature of group remedies that benefit the entire class.”¹²⁸ “Here, the Class Plaintiffs sought exclusively injunctive relief ... This case thus fits squarely within the ambit of cases for which Rule 23(b)(2) was created.”¹²⁹

¹²⁶ *Association for Disabled Americans, Inc. v Amoco Oil Co.*, 211 F.R.D. 457, 465 (S.D. Fla. 2002).

¹²⁷ *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2557 (2001).

¹²⁸ *Heffner v Blue Cross and Blue Shield of Alabama, Inc.*, 443 F.3d 1330, 1344-35 (11th Cir. 2006)(emphasis in original)(citation omitted).

¹²⁹ *Association for Disabled Americans*, 211 F.R.D. at 465.

The relief sought by the Plaintiff and the Class is likewise squarely within the ambit of cases for which Rule 23(b)(2) applies. Plaintiffs are entitled to certify a class under Rule 23(b)(2) if they can establish that the Defendants have “acted or refused to act on grounds generally applicable to all the members of the class, thereby making final injunctive relief or declaratory relief concerning the class as a whole appropriate.” Actions which seek declaratory, injunctive, or other equitable relief are appropriate under Rule 23(b)(2) when the opposing party, “has acted in a consistent manner towards members of the class so that his actions may be viewed as part of a pattern of activity, or to establish a regulatory scheme, to all members.”¹³⁰

A certification of a class pursuant to Rule 23(b)(2) for equitable or injunctive relief is proper when a defendant has adopted a consistent practice or pattern of behavior which the plaintiffs seek to alter.¹³¹ Defendant’s systematic failure to properly train, supervise, inspect and thereafter install Smart Meters caused systematic problems from which Plaintiff and the putative Class are at risk of suffering. Defendants have clearly acted in a consistent manner with regard to the entire putative class.

Plaintiff and the Class request that the Defendant remove each Smart Meter of the Plaintiff and the Class in order to adequately inspect the meter and the meter can to determine if there is any damage (including, without limitation, to the “male” connectors or “blades” or the “female” receptors or “jaws”, to the wiring or any sign of arching or “hot sockets”), photograph the meter and meter can, provide an inspection report and the photographs to the customer. Moreover, the Defendant shall be enjoined from installing future Smart Meters without first properly training its employees and agents, inspecting the Smart Meter and the meter can to determine if there is any

¹³⁰ *Rosen v. J.M. Auto Inc.*, 270 F.R.D. 675 (S.D. Fla. 2009) (Dimitrouleas, J.)

¹³¹ *Id.*

damage (including, without limitation, to the “male” connectors or “blades” or the “female” receptors or “jaws”, to the wiring or any sign of arching or “hot sockets”), replace the “female” receptors or “jaws” in the meter cans with new properly matched and mated“ jaws” before installing the Smart Meter, photograph the meter and meter can, provide an inspection report and the photographs to the customer and, if any damage is observed, to repair that damage without any cost including the costs of updating components of the property to current code due to reasonably necessary repair work.

III. Conclusion

This proposed class action is an exemplary model for class certification because it and its class representatives easily satisfy the elements of Fed. R.Civ. P. 23(a) and seek injunctive relief under Fed. R.Civ. P. 23(b)(2).

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that this Court enter an order as follows:

That pursuant to Federal Rule of Civil Procedure 23(b)(2) the Court certifies the Class as defined above;

That the named Plaintiff is appointed as class representatives of the Class;

That pursuant to Federal Rule of Civil Procedure 23(g), all of the Plaintiff’s firms and attorneys listed below are appointed as Class Counsel for the Class;

That in the interest of safety pursuant to Federal Rule of Civil Procedure 23(b)(2) the Defendant shall remove each Smart Meter of the Plaintiff and the Class in order to adequately inspect the meter and the meter can to determine if there is any damage (including, without limitation, to the “male” connectors or “blades” or the “female” receptors or “jaws”, to the wiring

or any sign of arching or “hot sockets”), photograph the meter and meter can, provide an inspection report and the photographs to the customer;

That pursuant to Federal Rule of Civil Procedure 23(b)(2), the Defendant is enjoined from installing future Smart Meters without first properly training its employees and agents, inspecting the Smart Meter and the meter can to determine if there is any damage (including, without limitation, to the “male” connectors or “blades” or the “female” receptors or “jaws”, to the wiring or any sign of arching or “hot sockets”), replace the “female” receptors or “jaws” in the meter cans with new properly matched and mated “jaws” before installing the Smart Meter, photograph the meter and meter can, provide an inspection report and the photographs to the customer and, if any damage is observed repair that damage without any cost including the costs of updating components of the property to current code due to reasonably necessary repair work;

That the Order is binding on the Plaintiffs and all Class members, as well as their heirs, executors and administrators, successors, assigns, and all other persons to the fullest extent provided for under the law; and

Any other relief which this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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