



CORY TOMCZYK

STATE SENATOR • 29TH SENATE DISTRICT

SB 966

Senate Committee on Shared Revenue, Elections, and Consumer Protection
Thursday, February 15, 2024

On January 2, 2024, the Dane County Circuit Court ruled in favor of the League of Women Voters of Wisconsin which will allow clerks to accept absentee ballots that contain errors or missing parts of witness addresses on the outside of the ballot envelope. This means that if a clerk receives an absentee ballot that has an incomplete witness address, it will not be rejected and can be counted. Previously, a Waukesha County Circuit Court ruled that guidance used to fix small witness address errors without contacting the voter was unlawful.

This ruling rejects guidance from the Wisconsin Elections Commission that requires a street number, street name, and municipality in order for a clerk to accept a ballot. This means that clerks cannot reject an absentee ballot that does not have a witness's full address.

Judge Nilsestuen, an appointee of Governor Tony Evers, said in his ruling, *"The problem at hand could be resolved if the Legislature passed a bill to define 'address.' Instead, it is up to the judiciary to make sense of an undefined word used in a variety of different contexts in a convoluted and poorly written statute."*

SB 966 takes the advice of Judge Nilsestuen and attempts to pass such a bill to define exactly what an address is so that there are no longer any questions regarding what must be present in the witness address portion of an absentee ballot envelope. SB 966 specifies that an absentee ballot that is returned with a witness certification that does not include ALL of the following may not be counted: printed first name, printed last name, house or apartment number, street name, municipality, state, and ZIP code. The bill also prohibits anyone other than the voter or witness (for the witness portion) from correcting any mistake on the absentee ballot envelope.

In Assembly Substitute Amendment 1 to SB 966, we made two changes: removed the requirement to provide the state and the requirement to provide a ZIP code. The sub now makes SB 966 identical to the language in 2021 SB 935/AB 1004, which was passed by both houses of the Legislature. That bill had many other unrelated provisions in it and was ultimately vetoed. This bill/sub only takes the "address" language from 2021 SB 935/AB 1004.



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: February 9, 2024

TO: Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Wisconsin County Clerks
Milwaukee County Election Commission

FROM: Wisconsin Elections Commission

SUBJECT: Q&A Concerning Witness Address Information Related to *Rise, Inc., et al. v. WEC et al.*, (2022-CV-002446), *League of Women Voters of Wisconsin v. WEC, et al.*, (2022-CV-002472), and *White et al. v. Wisconsin Elections Commission*, (2022-CV-001008)

This memo is intended to answer basic questions that may arise following the Commission's three clerk communications concerning the above-referenced cases relating to absentee ballot witness addresses. This Q&A document does not alter the meaning of those communications and is intended as a practical guide to understanding them.

Question 1: Can an election official modify or add information to absentee ballot witness certifications?

Answer 1: No. Election officials cannot modify or add information to absentee ballot witness certifications.

Question 2: What does "address" mean as used in Wis. Stat. § 6.87(2) and (6d)?

Answer 2: It means "a place where the witness may be communicated with."

Question 3: What information is required for a sufficient witness address?

Answer 3: No particular components or information are required, but **an absentee ballot cannot be rejected or returned to a voter for correction under Wis. Stat. § 6.87(9) as long as the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.** This does not prevent returning an absentee ballot to a voter or rejecting an absentee ballot after 8 p.m. on Election Day if this standard cannot be met or if there is a separate issue, such as a missing witness signature or missing voter signature.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Question 4: What information is enough for a reasonable person in the community to identify a location where the witness can be communicated with?

Answer 4: The Commission cannot provide a complete answer to this question since, by definition, it is community specific. However, it can state that in the four scenarios below, the witness address must be considered sufficient. A witness address is sufficient if:

- a. The witness's street number, street name, and municipality are present, but there is neither a state name nor a ZIP code provided;
- b. The witness's street number, street name, and ZIP code are present, but there is neither a municipality nor a state name provided;
- c. The witness's street number and street name are present and match the street number and street name of the voter, but no other address information is provided; or
- d. The witness certification indicates that the witness address is the same as the voter's address with any or any combination of the following words: "same," "same address," "same as voter," "same as above," "see above," "ditto," or by using quotation marks and/or an arrow or line pointing to or from the voter address.

Question 5: If one of these four scenarios is not present, should the absentee ballot be rejected?

Answer 5: Not on that basis. **If an election official determines that one of the four scenarios above is present, the witness address is sufficient, and no further determination is needed. If one of these scenarios is not present, an election official must apply the standard in Answer 3, which is to look to the face of the certificate for information that would allow a reasonable person in the community to identify a location where the witness may be communicated with. If the information can be found on the face of the certificate, it is sufficient.**

Please contact the WEC Help Desk at elections@wi.gov or at (608) 261-2028 with any questions. This memorandum was reviewed and approved by the six members of the Wisconsin Elections Commission at their February 8, 2024, public meeting.



Wisconsin Elections Commission

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(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: February 9, 2024

TO: Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Wisconsin County Clerks
Milwaukee County Election Commission

FROM: Wisconsin Elections Commission

SUBJECT: Permanent Injunction on WEC concerning Absentee Voter Witness Address Information in *Rise, Inc., et al. v. WEC et al. (2022-CV-002446)*

On January 30, 2024, the Honorable Judge Ryan D. Nilsestuen of the Dane County Circuit Court issued a Permanent Injunction in the above-referenced case relating to what witness address information must be included on an absentee ballot certificate. This memo discusses the case as well as the Commission's reissued memorandum concerning the Permanent Injunction in *White et al. v. WEC (2022-CV-001008)*. The decision and the reissued memorandum are attached to this memorandum. The Commission is also sending a Q&A document related to this memo.

1. Reissued Memorandum Concerning *White et al. v. WEC*

Pursuant to the Permanent Injunction in *Rise, Inc., et al. v. WEC et al.* of January 30, 2024, this communication is hereby issued to give notice that the WEC memorandum of September 14, 2022, contained a definition of a witness address that is invalid and contrary to law. That memorandum has therefore been revised and reissued. Specifically, the Commission's prior definition of a witness address has been withdrawn and replaced with the standards explained in this memorandum and attached permanent injunction. **Please refer to the reissued memorandum, also dated February 9, 2024, concerning *White et al. v. WEC* and continue to follow the Commission's guidance contained in that document.**

2. Concerning the Permanent Injunction for *Rise, Inc., et al. v. WEC et al.*

The Dane County Circuit Court declared that:

[W]ith respect to a witness's address on an absentee ballot certificate, the term 'address' in Wis. Stat. § 6.87(2) and (6d) means 'a place where the witness may be communicated with.'

The Dane County Circuit Court further declared that:

Wis. Stat. § 6.87's requirement that the witness's address be included on the absentee ballot certificate does not require that any particular components or information be included, but only

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

that the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.

The Dane County Circuit Court declared that, “an absentee ballot certificate is not ‘improperly completed’ under Wis. Stat. § 6.87(9), based on a witness address,” and that, “Wis. Stat. § 6.87 does not authorize the rejection of, return for cure of, or refusal to count an absentee ballot based on a witness’s address,” as long as “the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.”

The Commission is enjoined “from promulgating rules, guidance documents, or other materials inconsistent with this Order, or from otherwise taking any action inconsistent with” the decision. However, the Court did not require the Commission to modify the text of any absentee ballot certificate envelope as long as it advises Wisconsin election officials of the Court’s Order and advises Wisconsin election officials that they have an:

obligation not to reject, return for cure, or refuse to count any absentee ballot based on a witness’s address if the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.

This memorandum, the attached Permanent Injunction, and related Q&A document constitute the Wisconsin Elections Commission’s advisement to Wisconsin’s election officials of their obligations as stated by the Court.

Please review this notice, the attached Permanent Injunction, and the Q&A document with your municipal attorney to determine if any changes to your procedures are required.

Please contact the WEC Help Desk at elections@wi.gov or at 608-261-2028 with any questions. Thank you for your prompt attention to this matter. This memorandum was reviewed and approved by the six members of the Wisconsin Elections Commission at their February 8, 2024, public meeting.

BY THE COURT:

DATE SIGNED: January 30, 2024

Electronically signed by Ryan D. Nilsestuen
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

BRANCH 10

RISE, INC. AND JASON RIVERA,
Plaintiffs

Declaratory Judgment and Permanent
Injunction

vs.

WISCONSIN ELECTIONS
COMMISSION et al.,
Defendants

Case No. 2022CV2446

For the reasons stated on the record and given in the Court’s January 2, 2024, Decision and Order (Dkt. 223), the Court hereby:

1. **DECLARES** that, with respect to a witness’s address on an absentee ballot certificate, the term “address” in Wis. Stat. § 6.87(2) and (6d) means “a place where the witness may be communicated with”;
2. **DECLARES** that Wis. Stat. § 6.87’s requirement that the witness’s address be included on the absentee ballot certificate does not require that any particular components or information be included, but only that the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with;

3. **DECLARES** that an absentee ballot certificate is not “improperly completed” under Wis. Stat. § 6.87(9), based on a witness’s address, so long as the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with;
4. **DECLARES** that Wis. Stat. § 6.87 does not authorize the rejection of, return for cure of, or refusal to count an absentee ballot based on a witness’s address, if the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with;
5. **DECLARES** that the Wisconsin Elections Commission’s September 14, 2022, Memorandum entitled “Temporary Injunction on WEC Guidance re Missing Absentee Witness Address,” Dkt. 38 Ex. 8, is invalid and contrary to law to the extent that it adopts a different definition of “address” for purposes of the witness address requirement than the definition adopted in this Order;
6. **ORDERS** Defendant the Wisconsin Elections Commission, by February 9, 2024, to rescind the Memorandum entitled “Temporary Injunction on WEC Guidance re Missing Absentee Witness Address,” Dkt. 38 Ex. 8, or to revise and reissue the memorandum consistent with this Order;
7. **ORDERS** Defendant the Wisconsin Elections Commission, by February 9, 2024, to promptly advise all municipal and county election officials of this Court’s Order;
8. **ENJOINS** Defendant the Wisconsin Elections Commission from promulgating rules, guidance documents, or other materials inconsistent with this Order, or from otherwise taking any action inconsistent with this Order; and

9. **ENJOINS** Defendants Maribeth Witzel-Behl, Tara McMenammin, and Celestine Jeffreys from rejecting or returning for cure any absentee ballot based on a witness's address, if the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.
10. Provided, however, that nothing in this Order shall require Defendant the Wisconsin Elections Commission to modify the printed text of the absentee ballot certificate as the Wisconsin Elections Commission approved it at its December 19, 2023, meeting, so long as Defendant the Wisconsin Elections Commission advises municipal and county election officials of this Court's Order and of their obligation not to reject, return for cure, or refuse to count any absentee ballot based on a witness's address, if the face of the certificate contains sufficient information to allow a reasonable person in the community to identify a location where the witness may be communicated with.

This order is final for purposes of appeal.



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: February 9, 2024

TO: Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Wisconsin County Clerks
Milwaukee County Election Commission

FROM: Wisconsin Elections Commission

SUBJECT: Permanent Injunction on WEC concerning Absentee Voter Witness Address Information in *League of Women Voters of Wisconsin v. WEC, et al.* (2022-CV-002472)

On January 30, 2024, the Honorable Judge Ryan D. Nilsestuen of the Dane County Circuit Court issued a Permanent Injunction in the above-referenced case relating to what witness address information must be included on an absentee ballot certificate. The decision is attached to this memorandum. The Commission is also sending a Q&A document related to this memo.

Concerning the Permanent Injunction for *League of Women Voters of Wisconsin v. WEC, et al.*:

The Dane County Court declared that:

[T]he Materiality Provision of the federal Civil Rights Act of 1964, 52 U.S.C. § 10101, applies to the requirement under Wisconsin statute that each absentee ballot contain address information for an eligible adult U.S. citizen who witnessed the voter casting the absentee ballot.

Concerning witness address information, the Court found that the materiality provision prevents absentee ballots from being rejected in four specific instances. An absentee ballot may **not** be rejected if:

- a. The witness's street number, street name, and municipality are present, but there is neither a state name nor a ZIP code provided;
- b. The witness's street number, street name, and ZIP code are present, but there is neither a municipality nor a state name provided;
- c. The witness's street number and street name are present and match the street number and street name of the voter, but no other address information is provided; or
- d. The witness certification indicates that the witness address is the same as the voter's address with any or any combination of the following words: "same," "same address,"

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Administrator
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“same as voter,” “same as above,” “see above,” “ditto,” or by using quotation marks and/or an arrow or line pointing to or from the voter address.

The Wisconsin Elections Commission is enjoined from taking any action inconsistent with the decision.

Please review this notice, the attached Permanent Injunction, and the Q&A document with your municipal attorney to determine if any changes to your procedures are required.

Please contact the WEC Help Desk at elections@wi.gov or at (608) 261-2028 with any questions. Thank you for your prompt attention to this matter. This memorandum was reviewed and approved by the six members of the Wisconsin Elections Commission at their February 8, 2024, public meeting.

BY THE COURT:

DATE SIGNED: January 30, 2024

Electronically signed by Ryan D. Nilsestuen
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 10

DANE COUNTY

LEAGUE OF WOMEN VOTERS OF
WISCONSIN

Plaintiff

Declaratory Judgment and Permanent
Injunction

vs.

WISCONSIN ELECTIONS
COMMISSION, et al.,
Defendants

Case No. 2022CV2472

On January 2, 2024, after extensive briefing and fully apprised of the premises, the Court issued a Decision and Order on Summary Judgment (Dkt. 157) in favor of Plaintiff League of Women Voters of Wisconsin. After further consideration and a hearing involving counsel for all parties on January 30, 2024, the Court now enters the following declaratory judgment and permanent injunction.

THE COURT DECLARES that the Materiality Provision of the federal Civil Rights Act of 1964, 52 U.S.C. § 10101, applies to the requirement under Wisconsin statute that each absentee ballot contain address information for an eligible adult U.S. citizen who witnessed the voter casting the absentee ballot. *See* Wis. Stat. § 6.87. Because federal law preempts state authority that purports to establish rules determining substantive rights and obligations contrary to federal law, the Materiality Provision prohibits rejecting absentee ballots based upon one of the following

errors or omissions: (1) witness certifications containing the witness's street number, street name, and municipality, but not other address information such as state name or ZIP code; (2) witness certifications by a member of the voter's household who lists a street number and street name, but omits other information, such as a municipality; (3) witness certifications using terms like "same" or "ditto" or other means to convey that their address is the same as the voter; and (4) witness certifications with a street number, street name, and ZIP code, but not the municipality or state name.

Consistent with the judgment above and the Court's prior Decision and Order on Summary Judgment (Dkt. 157), IT IS HEREBY ORDERED that:

1. By February 9, 2024, Defendants Don Millis, Robert F. Spindell, Jr., Mark L. Thomsen, Ann S. Jacobs, Marge Bostelmann, Carrie Riepl, and Meagan Wolfe, through Defendant Wisconsin Elections Commission, must disseminate to all county clerks, all municipal clerks, the Milwaukee County Election Commission, and the Milwaukee City Election Commission, a copy of this Order and guidance on its implementation such that no absentee ballot may be rejected based upon witness certifications bearing witness-address information meeting any of the following four sets of criteria:

- a. The witness's street number, street name, and municipality are present, but there is neither a state name nor a ZIP code provided;
- b. The witness's street number, street name, and ZIP code are present, but there is neither a municipality nor a state name provided;
- c. The witness's street number and street name are present and match the street number and street name of the voter, but no other address information is provided;
or
- d. The witness certification indicates that the witness address is the same as the voter's address with any or any combination of the following words: "same," "same address," "same as voter," "same as above," "see above," "ditto," or by using quotation marks and/or an arrow or line pointing to or from the voter address.

2. Defendants Wisconsin Elections Commission, its Commissioners, and Administrator are hereby permanently enjoined from taking any action inconsistent with this Declaratory Judgment and Permanent Injunction.

This order is final for purposes of appeal.



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: February 9, 2024

TO: Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Wisconsin County Clerks
Milwaukee County Election Commission

FROM: Wisconsin Elections Commission

SUBJECT: **AMENDED February 8, 2024:** Permanent Injunction on WEC Guidance re: Missing Absentee Witness Address in *White et al. v. Wisconsin Elections Commission* (2022-CV-001008)

On October 3, 2022, the Honorable Judge Michael J. Aprahamian of the Waukesha County Circuit Court issued a Permanent Injunction declaring two memoranda issued by the Wisconsin Elections Commission (WEC) invalid and contrary to law. The Permanent Injunction, attached to this memorandum, prohibits the WEC from disseminating or displaying the following memoranda:

- 1) The October 18, 2016, memorandum entitled, “AMENDED: Missing or Insufficient Witness Address on Certificate Envelopes”
- 2) The October 19, 2020, memorandum entitled, “Spoiling Absentee Ballot Guidance”

The Court further prohibited WEC from providing any advice or guidance that municipal clerks or other local election officials have the duty or ability to modify or add information to absentee ballot certifications. The Court additionally prohibited WEC from giving any advice or guidance contrary to the provision in Wis. Stat. § 6.87 that, if a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector, inside the sealed envelope when an envelope is received, together with a new envelope if necessary, whenever time permits for the elector to correct the defect and return the ballot by the applicable deadline. *See*, Wis. Stat. § 6.87(9).

Pursuant to the Permanent Injunction of October 3, 2022, this communication is hereby issued to give notice that the WEC memoranda of October 18, 2016, and October 19, 2020, have been declared invalid and contrary to law and have been withdrawn. The Court stated that the Permanent Injunction is not “intended, nor shall be construed, to enjoin WEC from issuing or distributing its guidance regarding the definition of ‘address’ as used in Wis. Stat. § 6.87.” **With respect to witness address content, please refer to the Commission’s memoranda concerning *League of Women Voters of Wisconsin v. WEC, et al.* and *Rise, Inc., et al. v. WEC et al.* issued on February 9, 2024.**

Please review this notice and the attached Permanent Injunction with your municipal attorney to determine if any changes to your procedures are required.

Wisconsin Elections Commissioners
Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Please contact the WEC Help Desk at elections@wi.gov or at 608-261-2028 with any questions. Thank you for your prompt attention to this matter. This memorandum was reviewed and approved by the six members of the Wisconsin Elections Commission at their February 8, 2024, public meeting.



DATE: February 1, 2024

TO: Wisconsin Statewide Election Administration
Director of Administration
Director of Campaign Finance
Director of Election Administration
Director of Information Systems

FROM: Wisconsin Statewide Election Administration

SUBJECT: Wisconsin Statewide Election Administration
Request for Information (RFI) regarding the 2024
Election Administration

The Wisconsin Statewide Election Administration is seeking information from the public regarding the 2024 Election Administration. The information requested is for the purpose of conducting a study on the 2024 Election Administration. The information requested is for the purpose of conducting a study on the 2024 Election Administration.

1) The Director of the Wisconsin Statewide Election Administration is seeking information regarding the 2024 Election Administration.

2) The Director of the Wisconsin Statewide Election Administration is seeking information regarding the 2024 Election Administration.

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DATE SIGNED: October 3, 2022

Electronically signed by Michael J. Aprahamian
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY
BRANCH 9

MICHAEL WHITE, EVA WHITE, EDWARD
WINIECKE, *and* REPUBLICAN PARTY OF
WAUKESHA COUNTY,

Plaintiffs,

Case No. 2022CV1008

THE WISCONSIN STATE LEGISLATURE,

Intervenor-Plaintiff,

v.

WISCONSIN ELECTIONS COMMISSION,

Defendant,

WAUKESHA COUNTY DEMOCRATIC PARTY,
and LEAGUE OF WOMEN VOTERS OF
WISCONSIN,

Intervenor-Defendants.

**ORDER GRANTING FINAL JUDGMENT TO PLAINTIFFS AND INTERVENOR
PLAINTIFF THE WISCONSIN STATE LEGISLATURE**

After considering the parties' briefing, arguments, and all other record evidence presented in this case, it is hereby **ORDERED** that Plaintiffs and Intervenor Plaintiff are entitled to final judgment on their claims for declaratory and permanent-injunctive relief, *see* Wis. Stat. § 806.01(1)(c);

Defendant the Wisconsin Election Commission (“WEC”) is **PERMANENTLY PROHIBITED** and **ENJOINED** from publicly displaying or disseminating any document, communication, guidance, or memoranda that municipal clerks or election officials can add information to absentee ballot witness certifications in any form including, but not limited to, the October 18, 2016, memorandum entitled “AMENDED: Missing or Insufficient Witness Address on Absentee Certificate Envelopes,” and the memorandum dated October 19, 2020, entitled “Spoiling Absentee Ballot Guidance”;

WEC is **PERMANENTLY PROHIBITED** and **ENJOINED** from advising, guiding, instructing, publishing, or otherwise communicating information to Wisconsin municipal clerks and local elections officials that is contrary to Wis. Stat. § 6.87(9), which provides that if a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector, inside the sealed envelope when an envelope is received, together with a new envelope if necessary, whenever time permits the elector to correct the defect and return the ballot by the applicable deadline;

WEC is **PERMANENTLY PROHIBITED** and **ENJOINED** from advising, guiding, instructing, publishing, or otherwise communicating information to Wisconsin municipal clerks and local elections officials that clerks or local election officials have the duty or ability to modify or add information to incomplete absentee ballot certifications;

The Court's final judgment applies to portions of the WEC memoranda of October 18, 2016 and October 19, 2020, now withdrawn, and any other memoranda, communication, guidance, or publication of WEC that contains or indicates that municipal clerks or local election officials can modify or add information to absentee ballot certifications;

Nothing herein is intended, nor shall be construed, to enjoin WEC from issuing or distributing its guidance regarding the definition of "address" as used in Wis. Stat. § 6.87;

Thus, the Court now enters final judgment in favor of Plaintiffs and Intervenor-Plaintiff, consistent with the above. This final judgment resolves all claims pending in this case, and is final for purposes of appeal.

SO ORDERED.