

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**Mark LaValley and Terri King, individually and on behalf of themselves and all others
similarly situated**

v.

Concord Housing and Redevelopment Authority

No. _____

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

(HEARING REQUESTED)

Proposed class representatives Mark LaValley and Terri King move on behalf of themselves and all those similarly situated—and for the reasons detailed in their Complaint and the memorandum of law and declarations accompanying this Motion—to certify a class under Rule 16(a) of the New Hampshire Superior Court Rules.

In support of this Motion, Plaintiffs state:

1. This Motion seeks certification with respect to Count I (Part I, Article 2-b of the New Hampshire Constitution) and Count II (Part I, Article 19 of the New Hampshire Constitution) of the following class: “All current and future tenants of Concord Housing and Redevelopment Authority (“CHRA”) who have or will have Minut Monitor devices installed in their units.”
2. This is a civil rights action challenging a local housing authority’s decision to install intrusive electronic monitoring equipment in hundreds of residential units. Those devices have the capacity to monitor and transmit, on an ongoing basis, granular information about presence and activity in the home, including by sensing motion

and measuring noise levels, number of iOS devices (and thus estimated number of people inside a unit), smoke, and other information. The collection of this data—which, pieced together, can reveal the intimate details of someone’s personal life—is an intrusive governmental incursion into a person’s private and personal affairs in their home.

3. This Motion for Class Certification and Appointment of Class Counsel is straightforward. Since the devices are installed across virtually all of CHRA’s units, a class action is the most efficient way to address these important constitutional issues.
4. The proposed class satisfies the prerequisites of Rule 16(a).
5. The proposed class satisfies the numerosity requirements of Rule 16(a)(1) because the proposed class is so numerous that joinder of all members is impracticable. For example, CHRA has installed Minut Monitors in around 300 units representing around 500 tenants.
6. The class meets the commonality and predominance requirements of Rule 16(a)(2). The members of the proposed class are subject to a common practice: the policy of the installation of Minut Monitors in their homes and continued surveillance via the monitoring of the private data collected from the devices. Further, the legal issues at stake because of that common practice will predominate over any individual issues of individual tenants.
7. The proposed class meets the typicality requirements of Rule 16(a)(3) because the claims of the proposed class representatives are typical of the claims of the class. The proposed class representatives and the proposed class are all persons who are subjected, or will be subjected, to the facially unconstitutional act of unreasonable, warrantless,

non-consensual searches and government intrusion on their private data. Each class member who has had a Minut Monitor installed in their unit and had their personal and private information collected, faces the same injury based on the same government practice—namely, the installation of the Minut Monitor device and the non-consensual collection and retention of their personal and private data.

8. The adequacy requirements of Rule 16(a)(4) also are met. The proposed class representatives seek the same relief as the other members of the class, among other things, (i) a declaratory judgment that CHRA violated its tenants’ constitutional rights by installing the Minut Monitors and non-consensually collecting their personal and private information, and (ii) an injunction enjoining CHRA from continuing to install and maintain Minut Monitor devices that non-consensually collect personal and private information, and ordering CHRA to delete all data collected by the Minut Monitors from within tenants’ homes. In defending their rights, the proposed class representatives will defend the rights of all proposed class members fairly and adequately. The proposed class representatives are members of the class, and their interests do not conflict with those of the other class members.
9. Terri King will adequately represent the interests of all tenants, including those who have not signed the Minut Monitor lease addendum. Mark LaValley will adequately represent the interests of all tenants, including those who have signed the lease addendum. Together, both representatives adequately represent the interests of all tenants who have had a Minut Monitor installed in their apartment.
10. The proposed class is represented by experienced attorneys from New Hampshire Legal Assistance, the American Civil Liberties Union Foundation of New Hampshire, and the

American Civil Liberties Union Foundation. Proposed Class Counsel satisfy the adequate representation requirements of Rule 16(a)(6), as they have extensive experience litigating class action lawsuits and other complex systemic cases in federal and New Hampshire court and representing individuals challenging government actions, including violations of the rights of public housing tenants, and searches and other privacy violations involving digital-age technologies. Accordingly, the interests of the members of the class will be fairly and adequately protected by the proposed class representatives and their attorneys.

11. The proposed class also satisfies the adjudication requirements of Rule 16(a)(5). CHRA and their agents have acted (or will act) in the same unconstitutional manner with respect to all class members by continuing to collect and retain personal and private information through the Minut Monitor devices in violation of the New Hampshire Constitution. There is no guaranteed means of protecting the rights of all class members caused by CHRA's policy outside of a class action that will seek redress of the entire classes' injuries. Injunctive and declaratory relief is therefore appropriate with respect to the class as a whole.

12. Plaintiffs rely on and incorporate fully the memorandum of law in support of the Motion, and exhibits thereto, attached to this Motion.

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Grant their Motion for Class Certification and Appointment of Class Counsel;
- B. Appoint Attorneys Gilles Bissonnette, Henry Klementowicz, Maria Savarese from the ACLU of New Hampshire, Chris Schott and Stephen Tower from New Hampshire Legal

Assistance, and Nathan Wessler and Brett Kaufman from the ACLU as Class Counsel;
and

C. Grant such further relief as may be reasonable and just.

Respectfully submitted,

/s/ Maria Savarese

Gilles R. Bissonnette (N.H. Bar. No. 265393)
Henry R. Klementowicz (N.H. Bar No. 21177)
Maria D. Savarese (N.H. Bar No. 273285)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF
NEW HAMPSHIRE
Concord, NH 03301
Tel.: 603.224.5591
gilles@aclu-nh.org
henry@aclu-nh.org
maria@aclu-nh.org

Chris Schott (N.H. Bar. No. 270234)
Stephen Tower (N.H. Bar No. 268089)
NEW HAMPSHIRE LEGAL ASSISTANCE
1850 Elm Street, Suite 7
Manchester, NH 03104
Tel.: 603.668.2900
cschott@nhla.org
stower@nhla.org

Nathan Freed Wessler*
Brett Kaufman*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: 212.519.7847
nwessler@aclu.org
bkaufman@aclu.org

* *pro hac vice* application forthcoming

CERTIFICATION

I hereby certify that on this 2nd day of September, 2026, a copy of this Class Action Complaint for Declaratory and Injunctive Relief has been sent by first-class mail to Defendant's counsel Peter G. Callaghan.

/s/ Maria Savarese
Maria D. Savarese

STATE OF NEW HAMPSHIRE

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL**

INTRODUCTION

This is a proposed class-action challenging Concord Housing and Redevelopment Authority's ("CHRA") installation of intrusive electronic monitoring equipment in hundreds of public housing residential units across Concord. Those devices have the capacity to monitor and transmit, on an ongoing basis, granular information about presence and activity in the home, including by sensing motion and measuring noise levels, the number of iOS devices (and thus estimated number of people inside a unit), smoke, and other information. The collection of this data—which, pieced together, can reveal the intimate details of someone's personal life—is an invasive governmental intrusion into a person's private and personal space, and is a violation of Part I Article 2-b and Part I Article 19 of the New Hampshire Constitution. Since the devices are installed across virtually all of CHRA's units, a class action is the most efficient way to address these important constitutional issues.

Plaintiffs Mark LaValley and Terri King are CHRA tenants who have been subjected to the installation of these devices, called Minut Monitors. Plaintiffs are challenging the

installation and operation of Minut Monitors in their homes on behalf of themselves and all others similarly situated, and are requesting that the Court enjoin CHRA from continuing to install and maintain, in all units it owns or manages, Minut Monitor devices that non-consensually collect personal and private information. They seek to bring this action on behalf of a class of those similarly situated pursuant to New Hampshire Superior Court Rule 16 and respectfully request that the Court appoint Plaintiffs as class representatives, and appoint their counsel from New Hampshire Legal Assistance, the American Civil Liberties Union Foundation of New Hampshire, and the American Civil Liberties Union Foundation as class counsel.

This Motion seeks certification of the following class with respect to Count I (Part I, Article 2-b) and Count II (Part I, Article 19): *“All current and future tenants of CHRA who have or will have Minut Monitor devices installed in their units.”*

This Motion for Class Certification and Appointment of Class Counsel is straightforward. As the Minut Monitor devices create a uniform intrusion across all units they are installed in, the applications of Article 2-b and Article 19 apply across the board to each member of the class. Accordingly, Plaintiffs seek to certify a class under New Hampshire Superior Court Rule 16. As explained in more detail below, the proposed class satisfies the requirements of numerosity, commonality, typicality, adequacy, and superiority in Rule 16.

PROPOSED CLASS DEFINITION AND PROPOSED CLASS REPRESENTATIVES

I. The Proposed Class Definition.

“All current and future tenants of CHRA who have or will have Minut Monitor devices installed in their units.”

II. The Proposed Class Representatives¹

a. *Mark LaValley*

Mark LaValley is a resident of the Crutchfield Building, a public housing development owned and maintained by CHRA. He has lived there since November 2025. When Mr. LaValley signed the lease for his apartment, he also signed the Minut Monitor lease addendum. It was explained to Mr. LaValley that there was a Minut Monitor already installed in his unit and that it was there to detect noise and smoke in apartments. At the time, Mr. LaValley believed the lease addendum and the Minut Monitor were formalities that were necessary to be able to rent his apartment.

Prior to leasing the apartment in the Crutchfield Building, Mr. LaValley had faced a period of housing instability and was happy to finally be receiving a subsidized apartment. He understood that if he did not agree to the Minut Monitor lease addendum it would risk his ability to rent the apartment. He was unwilling to risk his housing. A Minut Monitor was already installed and activated in his living room when he moved into his apartment. Mr. LaValley received a notice from CHRA after moving in stating that they would be entering his apartment to charge the Minut Monitor, which they did.

CHRA did not disclose to Mr. LaValley that there would be active motion or Bluetooth sensors in the Minut Monitor device installed in his apartment. Unbeknownst to Mr. LaValley, between November 14, 2025 (the day Mr. LaValley moved into his apartment) and June 9, 2026, CHRA tracked a staggering 64,944 motion events from within his home, approximately 315 motion events per day. Compl. at ¶ 141. Similarly, the device initiated Bluetooth scans of Mr.

¹ The declarations of Proposed Class Plaintiffs Terri King and Mark Lavalley are attached to this Motion for Class Certification and Appointment of Counsel at Exhibit E incorporated by reference.

LaValley's apartment every 30 minutes of every single day. CHRA has also been tracking and collecting—on a minute-by-minute basis—a slew of noise, temperature, and humidity sensor stream data from Mr. LaValley's apartment. In combination, this data paints an intimate picture of Mr. LaValley's living habits. For example, Plaintiffs' counsel was quickly able to discern from the data that Mr. LaValley's motion events generally peak in the afternoons and evening around 5-8 p.m., while it ebbs during the early morning hours.

Mr. LaValley now wishes that the device be removed from his apartment.

b. *Terri King*

Terri King is a resident of Parmenter Place Apartments, a Low-Income Housing Tax Credit property owned by Parmenter Place, a New Hampshire non-profit corporation. However, CHRA manages and maintains the property and is actively in charge of all decisions at the property. Ms. King lives in a 2-bedroom unit with her husband Gary and has lived there for four years.

Ms. King received two notices about Minut Monitors on January 12, 2026. The first was an "entry notice" that informed her CHRA staff would be entering her unit for installation, and another was a "capabilities notice" that described that the Minut Monitors collected noise and smoke data to enforce lease provisions. On or around January 16, 2026, Tom Buckman and another CHRA maintenance staff member entered Ms. King's apartment to install and activate the Minut Monitor device. The device was installed on the ceiling of the inner hallway of her unit that connects various rooms.

Ms. King objected to the installation. Despite her objection to installation, the Minut Monitor device was installed in Ms. King's unit and began collecting personal and private information on Terri and Gary King that day. Ms. King did not consent to installation of the

Minut Monitor, and CHRA never sought her consent. Ms. King has not signed the Minut Monitor Lease Addendum.

In late January of 2026, Gary King temporarily removed the Minut Monitor device in their unit from its baseplate. In March of 2026, the Kings received a notice from CHRA notifying Ms. King that she was being fined for “repeated violations” of her lease, specifically the “Minut Monitor Lease Addendum.” The notice accused Ms. King and her husband of nine instances of tampering with her device between February 1, 2026, and February 23, 2026, and instituted a \$50 fine per alleged occurrence, in the amount of \$450 for the alleged tampering.

CHRA requested that Ms. King pay the fines immediately, but she was unable to afford the fines and did not consider them lawful since she did not recall ever agreeing to installation of the device or the fine schedule.

On or around March 6, 2026, CHRA charged Ms. King a \$15 late fee for the tampering fine. CHRA notified Ms. King of this late fee. Ms. King continued to not pay the Minut Monitor fines. CHRA charged her an additional late fee of \$15.

On April 2, 2026, CHRA served the Kings with a demand for rent and eviction notice. The rent demand included the \$450 fine for the alleged Minut Monitor tampering. Ms. King sought the assistance of New Hampshire Legal Assistance, which assisted her with resolving the eviction issue. In May 2026, discussions between counsel confirmed that the Kings had never signed a Minut Monitor lease addendum. As such, the Kings had never even purportedly agreed to the imposition of CHRA’s Minut Monitor fine schedule. Counsel for CHRA confirmed they would be waiving the charged fees and not moving forward with eviction.

Since this incident, Ms. King has not received further complaints from CHRA regarding tampering or any other adverse actions related to the Minut Monitor in her unit. The Minut

Monitor has remained active in her unit collecting data on a minute-by-minute basis daily. From January 17, 2026, to June 9, 2026, the Minut Monitor in Ms. King's home recorded more than 20,000 motion events and more than 199,000 sound readings. Compl. at ¶ 164.

Ms. King's husband Gary suffers from terminal heart failure as well as dementia. In the summer of 2026, he transitioned to in-home hospice care, and Ms. King serves as his caretaker. As Ms. King cared for her husband, her Minut Monitor registered their movement at all times of day and night. Compared to Mr. LaValley's apartment and several other units, there was often more motion recorded in the middle of the night in Ms. King's apartment. For instance, on one night in May 2026, the Minut Monitor in Ms. King's home recorded five clusters of motion events (for a total of 13 motion events) between 1 AM and 5 AM, potentially reflecting health related sleep disturbances or medical issues that Mr. and Ms. King would consider highly private. Compl. at ¶ 165.

Due to the Minut Monitor and the data it collects, the Kings faced eviction and termination of their housing assistance. Had CHRA been successful in evicting the Kings, it is unlikely they would have been able to find affordable housing at a time where Mr. King is in an extremely precarious medical situation and is unable to move.

ARGUMENT

I. The Proposed Class Meets the Requirements of Superior Court Rule 16(a).

New Hampshire Superior Court Civil Rule 16(a) sets forth the prerequisites for a class action:

One or more members of a class may sue or be sued as representative parties on behalf of all if:

- (1) The class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
- (2) There are questions of law or fact common to the class which predominate over any questions affecting only individual members;
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (4) The representative parties will fairly and adequately protect the interests of the class;
- (5) A class action is superior to other available methods for the fair and efficient adjudication of the controversy; and
- (6) The attorney or non-attorney representative for the representative parties will adequately represent the interests of the class.

N.H. Super. Ct. Civ. R. 16(a). “Because Rule 16 and Federal Rule of Civil Procedure 23 are similar, [the New Hampshire Supreme Court] ‘rel[ies] upon federal cases interpreting the federal rule as analytic aids.’” *Eby v. State*, 166 N.H. 321, 340–41 (2014) (quoting *In re Bayview Crematory, LLC*, 155 N.H. 781, 784 (2007) (“*Bayview*”)).²

These criteria are met here where CHRA³ has installed Minut Monitors in approximately 300 residential units across Concord, and many tenants have been presented with a coercive lease agreement for its installation and activation. The arguments in favor of class certification are especially strong in this context because many individual class members are unlikely to be able to pursue their claims individually due to their financial circumstances and access to counsel. *See, e.g., Torrezani v. VIP Auto Detailing, Inc.*, 318 F.R.D. 548, 554 (D. Mass. 2017) (footnote omitted) (class certification is favored where the Court “can reasonably infer that substantially all of the class members have limited financial resources and would find it difficult to pursue the

² *Bayview* interpreted former Superior Court Rule 27-A, which was “identical to [current] Superior Court Civil Rule 16.” *Eby*, 166 N.H. at 341. *See also Royer v. State Dep’t of Emp. Sec.*, 118 N.H. 673, 681–83 (1978) (Douglas, J. concurring) (prior to codification of Superior Court Rule 27-A, outlining prerequisites for class action procedures and encouraging the establishment of a superior court rule in New Hampshire).

³ CHRA is a government entity against whom Part I, Articles 2-b and 19 run. *See* RSA 203:4 (1947), 203:8 (1941) (amended 2016); *Atherton v. City of Concord*, 109 N.H. 164, 166–67 (1968) (The Concord Housing Authority “is an independent municipal corporation”), *overruled on other grounds by Totty v. Grantham Planning Bd.*, 120 N.H. 388 (1980).

claims themselves.”); *see also* Compl. at ¶¶ 19, 21 (alleging that “CHRA provides apartments to low-income tenants at subsidized rates through programs funded by the United States Department of Housing and Urban Development” and as a result tenants qualifying for CHRA’s subsidized units are unlikely to have the resources or ability to challenge the constitutionality of the installation of Minut Monitors in their homes). Thus, class certification is particularly appropriate here, and all the requisite elements of Rule 16 have been met.

a. The proposed class satisfies the numerosity requirement.

Rule 16(a)(1) requires that the class be “so numerous that joinder of all members, whether otherwise required or permitted, is impracticable.” “Impracticability of joinder means only that it is difficult or inconvenient to join all class members, not that it is impossible to do so.” *Bond v. Fleet Bank (RI), N.A.*, No. CIV.A. 01-177 L, 2002 WL 31500393, at *4 (D.R.I. Oct. 10, 2002) (citing *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993)). The First Circuit has recognized that numerosity has a “low threshold.” *Garcia-Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir. 2009). “Generally, classes over forty in size have been held to be sufficiently numerous.” *Ruiz v. NEI Gen. Contracting, Inc.*, 719 F. Supp. 3d 139, 149 (D. Mass. 2024) (citing *DeRosa v. Mass. Bay Commuter Rail Co.*, 694 F. Supp. 2d 87, 98 (D. Mass. 2010)).

CHRA owns and manages approximately 300 apartment units across various sites in Concord, New Hampshire. The CHRA Board of Directors approved the purchase of 329 Minut Monitor devices for installation in their properties, allocating \$46,060 for device and service purchases from Minut Inc., the maker of the Minut Monitor device. Compl. at ¶ 60. Data provided by CHRA pursuant to a public records request reveals that CHRA has collected and retained Minut Monitor data from approximately 300 apartment units. Given the number of Minut Monitors purchased, the number of housing units CHRA oversees, their stated intention to install Minut

Monitors in each unit, and the collection and retention of data from nearly 300 apartments, well over 40 CHRA tenants have been and/or will be impacted by CHRA's policy of installing Minut Monitors in CHRA public housing units. Therefore, the proposed class is sufficiently numerous.

Joinder is also impracticable because of the sheer number of proposed class members and because membership in the class will change as more people become tenants of CHRA public housing and are confronted with renting a unit that already contains a Minut Monitor device installed in their apartment. Here, "an influx of future members will continue to populate the class . . . at indeterminate points in the future." *See Gomes v. Acting Sec'y, U.S. Dep't of Homeland Sec.*, 561 F. Supp. 3d 93, 99 (D.N.H. 2021) (citation omitted); *Barbara v. Trump*, 790 F. Supp. 3d 80, 92 (D.N.H. 2025) ("Including future class members is no bar to class certification. Although the future class member children in this case have yet to be born, as soon as they are born, they will join the class and their claims will be ripe."). This fact makes joinder "not merely impracticable but effectively 'impossible.'" *Gomes*, 561 F. Supp. 3d at 99 (quoting *Reid v. Donelan*, 297 F.R.D. 185, 189 (D. Mass. 2014)).

b. There are questions of law or fact common to the class which predominate over any questions affecting only individual members.

Rule 16(a)(2) "is a combination of the 'commonality' requirement in Federal Rule 23(a)(2) and the 'predominance' requirement in Federal Rule 23(b)(3)." *Bayview*, 155 N.H. at 785. While the New Hampshire Supreme Court has characterized the "commonality" threshold as being "relatively low," it considers the "predominance" requirement to be "far more demanding." *Id.* (citing A. Conte & H. Newberg, *Newberg on Class Actions* § 3:10, at 274, 277 (4th ed. 2002) (stating that the commonality requirement is easily met in most cases)).

In first considering "commonality," "a single question of law or fact common to the members of the class will satisfy the commonality requirement." *Clough v. Revenue Frontier*,

LLC, No. 17-CV-411-PB, 2019 WL 2527300, at *3 (D.N.H. June 19, 2019) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011)) (granting class certification). All that is required is that the “claims must depend upon a common contention” that “is capable of classwide resolution.” *Dukes*, 564 U.S. at 350.

Here, Plaintiffs and the proposed class members are all subject to the policy of the installation of Minut Monitors in their homes and continued surveillance via the monitoring of the private data collected from the devices. Thus, they are united by the common question of whether this policy and practice violates Part I, Article 2-b, and Part I, Article 19 of the New Hampshire Constitution.⁴ Each member of the class is subject to the collection of their personal and private information by CHRA through the installation of Minut Monitors in their homes. If CHRA is permitted to continue to collect class members’ private and personal data, all class members will be subject to this common, unconstitutional harm. Proposed class representatives and proposed class members, thus, will “have suffered the same injury.” *Dukes*, 564 U.S. at 350. And that common injury is clearly “capable of classwide resolution.” *Id.* Should the Court agree that CHRA’s use of Minut Monitors is unlawful, all who fall within the class will benefit from the requested relief: among other things, a declaration that CHRA violated its tenants’ constitutional rights by installing the Minut Monitors and non-consensually collecting their personal and private information, and an injunction enjoining CHRA from continuing to install and maintain Minut

⁴ Cf. *Gutierrez v. City of East Chi.*, No. 16-CV-111-JVB-PRC, 2016 WL 5819818, at *14 (N.D. Ind. Sep. 6, 2016) (“In this case, Plaintiff and all putative class members are subject to the administrative searches as well as the drug sweeps. Thus, they are united by the common question of whether ECHA’s policies and practices violate the Fourth Amendment’s prohibition on unreasonable searches and seizures.”), *report and recommendation adopted*, No. 2:16-CV-111 JVB, 2016 WL 5816804 (N.D. Ind. Oct. 5, 2016); *McKenna v. Peekskill Hous. Auth.*, 647 F.2d 332, 335 (2d Cir. 1981) (holding public housing project’s requirement that houseguests register with management infringed on fundamental rights of association and privacy, and could only be justified if it was the least restrictive means in light of the interests served).

Monitors in its units. Thus, a common answer as to the legality of the challenged policies and practices will “drive the resolution of the litigation.” *Dukes*, 564 U.S. at 350.

Turning to predominance, “[t]o satisfy the predominance test, the issues common to the proposed class must outweigh the issues that are particular to the individual class members.” *Bayview*, 155 N.H. at 785. “[T]he trial court must consider how the case will be tried by identifying the substantive issues that will control the outcome of the case, assessing which issues will predominate, and determining whether those issues are common to the class.” *Id.* at 786; *see also Tardiff v. Knox Cnty.*, 365 F.3d 1, 4 (1st Cir. 2004) (explaining that Federal Rule of Civil Procedure 23(b)(3) “is a joinder device for consolidating separate but similar claims” and that the “predominance” label “turn[s] largely on the particular facts and issues presented”). “For purposes of class certification, the court does not decide whether the plaintiffs will prevail on the merits of their claims but may consider the probable course of the case to ‘formulate some prediction as to how specific issues will play out in order to determine whether common or individual issues predominate.’” *Carrier v. Am. Bankers Life Assurance Co.*, No. 2:16-CV-111-JVB-PRC, 2008 WL 312657, at *2 (D.N.H. Feb. 1, 2008) (quoting *In re PolyMedica Corp. Sec. Litig.*, 432 F.3d 1, 6 (1st Cir. 2005)).

The New Hampshire Supreme Court’s decision in *Bayview* considered the “predominance” threshold in detail. 155 N.H. at 785–86. In *Bayview*, a plaintiff brought negligence and negligent infliction of emotional distress claims against a crematorium on behalf of himself and others “whose next-of-kin or loved ones were cremated at the Bayview Crematory as the result of funeral directing services” performed by one of six funeral home defendants, alleging that the crematorium was not cremating the bodies of decedents in an appropriate manner or in accordance with the standard of care for a crematorium. *Id.* at 782. The plaintiff

sought certification of six subclasses, with each subclass containing all New Hampshire residents who contracted with one of the defendant funeral homes and whose decedent was cremated at Bayview. *Id.* Negligent infliction of emotional distress “requires, as an element of liability, that the plaintiff prove that physical injury resulted from the emotional distress caused by the defendant.” *Id.* at 786 (citing *Palmer v. Nan King Restaurant*, 147 N.H. 681, 683 (2002)). Thus, each putative class member in *Bayview* was required to show, with expert testimony, the physical symptoms they suffered, with an inquiry into each putative class member’s medical and psychological history, and the qualifications of each expert. *Id.* at 786–87. In *Bayview* it was clear that questions relating to individual putative class members would predominate over common questions in a claim for negligent infliction of emotional distress. Not so here, where Plaintiffs bring constitutional claims against a uniform policy and practice of CHRA that impacts hundreds of public housing tenants.

There are several common issues here that will predominate the litigation. The Court will need to consider the nature of the Minut Monitor technology and the device’s capability to monitor and transmit granular and ongoing information about presence and activity in the home through the various sensors installed in it. As alleged, CHRA purchased the same make and model device for each unit and then non-consensually collected personal information through each device in each unit. The Court will also need to consider whether the installation, activation, and operation of a Minut Monitor device in a tenant’s home is an unreasonable search of that tenant’s home in violation of Part I, Article 19 of the New Hampshire Constitution, and whether the installation, activation, and operation of a Minut Montor device in a tenant’s home is a violation of the tenant’s right to privacy under Part I, Article 2-b of the New Hampshire Constitution.⁵ These claims do not

⁵ See *cf. McKenna v. Peekskill Hous. Auth.*, 647 F.2d 332, 336 (2d Cir. 1981) (holding that housing authority’s “demand for prior permission, disclosure of names, and approval [of tenant’s houseguests], was thus an overbroad defense

turn on any individualized facts, such as where in the home the device was installed or what particular patterns of activity in the home are gleaned from the collected data. Nor do the claims turn on whether each individual tenant signed a lease addendum, as the lease addendum cannot constitute voluntary consent here as a matter of law.⁶ Put simply, the proposed class definition by its very terms dictates that common issues will predominate over individual ones.

c. The class representatives' claims are typical of the class.

Where “[c]ommonality looks at the relationship among the class members generally,” typicality under Rule 16(a)(3) “focuses on the relationship between the proposed class representative and the rest of the class.” *See George v. Nat’l Water Main Cleaning Co.*, 286 F.R.D. 168, 176 (D. Mass. 2012) (citing 1 William B. Rubenstein, *Newberg on Class Actions* § 3:26 (5th ed. 2012)) (considering federal equivalent: Rule 23(a)(3)). In practice, however, the analysis of typicality and commonality “tend to merge.” *Levy v. Gutierrez*, 448 F. Supp. 3d 46, 68 (D.N.H. 2019). “In order to represent a class, the [plaintiffs] must be part of that class, possessing the same interest and suffering the same injury as the class members.” *Eby*, 166 N.H. at 341; *Gen. Tel. Co. of SW. v. Falcon*, 457 U.S. 147, 156 (1982).

Typicality is established when the claims of the named plaintiffs and the class involve the same conduct by the defendant, “regardless of factual differences.” *Hawkins ex rel. Hawkins v.*

against remote dangers which could all have been combated in more direct and less intrusive ways”); *Lancor v. Leb. Hous. Auth.*, 760 F.2d 361, 363 (1st Cir. 1985) (citing *McKenna* and noting circuit support for proposition that a “regulation which requires a tenant to obtain the management’s prior written approval of every overnight guest and allows management unfettered discretion to approve or disprove a tenant’s request” “impinge[s] on a tenant’s constitutional rights of privacy and association,” but declining to reach constitutional claims because Department of Housing and Urban Development regulations clearly support tenants’ position).

⁶ The lease addendum constitutes an unconstitutional condition on a government benefit, and its presentation to class members on pain of losing their housing should they refuse to sign is inherently coercive. *See Gutierrez*, 2016 WL 5819818, at *8 (collecting cases characterizing tenant consent to drug testing and warrantless criminal searches of their apartments as coercive in nature). Moreover, CHRA uniformly failed to inform class members of the Minut Monitors’ full scope of data collection and retention, rendering any purported consent via the lease addendum unknowing and thus ineffective. Compl. at ¶ 7.

Comm’r of N.H. Dep’t of Health & Hum. Servs., No. Civ. 99-143-JD, 2004 WL 16672, at *3 (D.N.H. Jan. 23, 2004) (quoting *Johnson v. HBO Film Mgmt., Inc.*, 265 F.3d 178, 184 (3d Cir. 2001)). “For purposes of demonstrating typicality, ‘[a] sufficient nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.’” *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 69 (D. Mass. 2005) (quoting *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 686 (S.D. Fla. 2004)).

Here, the claims of the proposed class representatives are typical of, and aligned with, the claims of the class. The proposed class representatives and the proposed class are all current and future tenants of CHRA who have or will have Minut Monitor devices installed in their units. Each class member who has a Minut Monitor device installed in their CHRA unit faces the same injury based on the same government practice—namely, a violation of their privacy rights under Article 2-b, and their right to be free from unreasonable searches and seizures under Article 19 through this non-consensual collection of personal information. This violation occurs irrespective of where the device is installed in their unit or whether the tenant signed a lease addendum.⁷ In such circumstances, the representative’s claims are “obviously typical of the claims . . . of the class,” and satisfy Rule 16(a)(3). See *Baggett v. Ashe*, No. 11-cv-30223-MAP, 2013 WL 2302102, at *1 (D. Mass. May 23, 2013) (analyzing under the federal counterpart, Rule 23(a)(3)).

⁷ See *Gutierrez*, 2016 WL 5819818, at *8–9 (collecting cases); *Pope v. Gary Hous. Auth.*, No. 2:09-cv-301, 2012 WL 1035449, at *4 (N.D. Ind. Mar. 27, 2012) (rejecting defendants’ claim that tenants consented to warrantless criminal searches of their apartments by signing waivers in their leases).

d. The proposed class representatives and class counsel can adequately represent the class.

The named plaintiffs and their counsel will “fairly and adequately protect the interests of the class.” N.H. Super. Ct. R. 16(a)(4); *see also* Fed. R. Civ. P. 23(a)(4). Two factors must be satisfied to fulfill this prerequisite: “(1) the absence of potential conflict between the named plaintiff and the class members and (2) that counsel chosen by the representative parties is qualified, experienced and able to vigorously conduct the proposed litigation.” *Adair v. Sorenson*, 134 F.R.D. 13, 18 (D. Mass. 1991) (citation omitted).

Here, there is no conflict—much less anything close to a conflict fundamental to the suit—that would prevent Plaintiffs from meeting the adequacy requirement. *See cf. Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012) (“[T]o forestall class certification the intra-class conflict must be so substantial as to overbalance the common interests of the class members as a whole”). The proposed class representatives have alleged the same injury arising from the installation of Minut Monitors in their homes, and seek the same injunctive and declaratory relief, which will apply equally to the benefit of all class members. The proposed class representatives seek the same relief as the other members of the class—among other things, (i) a declaratory judgment that CHRA violated its tenants’ constitutional rights by installing the Minut Monitors and non-consensually collecting their personal and private information, and (ii) an injunction enjoining CHRA from continuing to install and maintain Minut Monitor devices that non-consensually collect personal and private information. In defending their rights, the proposed class representatives will defend the rights of all proposed class members fairly and adequately. The proposed class representatives are members of the class, and their interests do not conflict with those of the other class members. *See* Decl. of Mark Lavallee ¶ 13 (“Exhibit D”) (“I know that, as a plaintiff in this lawsuit, I will be representing other individuals in CHRA housing who are in a

similar situation to me. I understand that this means that I will need to stay informed about what is happening in this case and that I need to think about the interests of the other class members and act on those interests.”).

In addition, “counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation.” *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985) (citing *Weiss v. York Hospital*, 745 F.2d. 786, 811 (3d. Cir. 1984)). The proposed class would be represented by *pro bono* counsel from New Hampshire Legal Assistance, the American Civil Liberties Union Foundation of New Hampshire, and the American Civil Liberties Union Foundation. Proposed class counsel have extensive experience litigating class action lawsuits and other complex cases in state and federal court, including cases involving both tenants’ rights and the use of digital-age technologies to invade privacy. *See* Decl. of Gilles Bissonnette, Esq. (“Exhibit A”).

e. Superiority

Here, under Rule 16(a)(5), a class action is superior to other available methods for the fair and efficient adjudication of the controversy. “The superiority requirement is met where ‘a class action would achieve [the] economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.’” *Rainville v. Lakes Region Water Co*, 2008-CV-105, 2010 WL 9456958, at *6 (N.H. Super. Ct. May 12, 2010) (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 615 (1997)) (alteration in original).

A class action is superior here for several reasons. First, especially where commonality and typicality are satisfied, trying these constitutional claims in a single proceeding—as opposed to compelling hundreds of tenants to file their own individual lawsuits—“will save time, effort, and

expense, and promote uniformity of decision as to persons similarly situated.” *Id.* And, of course, not every one of the hundreds of tenants subjected to this violation will have the ability, resources, means, or “incentive to pursue separate claims.” *Id.*

Second, class certification may be necessary to address the prospect of any mootness claim in this case, especially if CHRA tactically elects to remove the Minut Monitors of the two named plaintiffs while this lawsuit is pending. In the context of class actions, the United States Supreme Court has established that “the controversy may exist . . . between a named defendant and a member of the class represented by the named plaintiff, even though the claim of the named plaintiff has become moot.” *Sosna v. Iowa*, 419 U.S. 393, 402 (1975). This is because “the class of unnamed persons described in the certification acquire[] a legal status separate from the interest asserted by” the named class representative. *Id.* at 398–99 (footnote omitted). Thus, certifying a class in this case will help ensure the classwide resolution of the important issues in this case regardless of how CHRA endeavors to address the Monitors in the units of the two named plaintiffs.

Though the removal of the Minut Monitors from the two named plaintiffs would not moot this case, the prospect of CHRA nonetheless potentially seeking to moot this case by removing the Monitors is not hypothetical. In late August 2025, CHRA filed a petition in Concord District Court against a Crutchfield Building tenant alleging that the tenant refused to allow a CHRA representative to enter their unit to re-install a Minut Monitor. *See Compl.* at ¶ 112. In defending against the lawsuit, the tenant, through undersigned counsel, alleged that the installation of the Minut Monitor violated Part I, Article 2-b of the New Hampshire Constitution. On November 5, 2025, CHRA withdrew the petition, meaning that CHRA was no longer insisting that this tenant have a Minut Monitor re-installed in that specific unit. However, the Minut Monitors remained

in CHRA’s approximately 300 other units, including those of Ms. King and Mr. LaValley. As a result of CHRA’s withdrawal of its petition, the constitutional claim raised by this tenant was left unaddressed for the tenants in these other units, thereby making this lawsuit necessary. Thus, as with the tenant in August of 2025, there are real concerns that CHRA may attempt to moot Ms. King and Mr. LaValley’s claims to evade judicial review of the significant constitutional implications of the Minut Monitors’ installation throughout CHRA’s units. Therefore, certifying this matter as a class action, and doing so expeditiously, is important to ensure judicial review of CHRA’s unconstitutional policy and practice. *See also* N.H. Super. Ct. R. 16(b) (“As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained” (emphasis added)).

Further, given the nature of the housing CHRA offers—public housing for lower-income individuals—there is a risk that, absent the intervention of class counsel on behalf of the class representatives, many individual class members are unlikely to be able to pursue their claims individually against CHRA due to their financial circumstances and access to counsel. *See, e.g., Torrezani*, 318 F.R.D. at 554 (class certification is favored where the Court “can reasonably infer that substantially all of the class members have limited financial resources and would find it difficult to pursue the claims themselves.” (citing *McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan & Trust*, 268 F.R.D. 670, 674 (W.D. Wash. 2010)); *see also* Compl. at ¶ 21 (noting that CHRA provides apartments to low-income tenants at subsidized rates through programs funded by the United States Department of Housing and Urban Development); *Id.* at ¶ 132 (alleging that Mr. LaValley struggled with housing instability prior to securing his unit with CHRA).

Additionally, Part I, Article 2-b is a relatively new amendment to the New Hampshire Constitution and as a result, there is not yet a robust body of caselaw interpreting its text. *See* Decl. of Albert Scherr, Esq. Plaintiffs bring a straightforward challenge under the new informational privacy protections enshrined in Article 2-b. In the interests of judicial economy and uniformity of outcome, it is in the Court's interest to consider the constitutionality of CHRA's uniform practice of installing Minut Monitor devices (and thereby surveilling hundreds of low-income residents in public housing) in one consolidated lawsuit. Indeed, as all units contain the same Minut Monitor device model with the same technology and the same sensors, each installation implicates the same unconstitutional violations of Article 2-b and Article 19. Adjudicating this matter as a class action on behalf of all current and future CHRA tenants who have or will have Minut Monitor devices installed in their units achieves goals of judicial economy and uniformity of outcome.

CONCLUSION

Plaintiffs respectfully request that the Court grant this Motion and enter an order certifying the proposed class under New Hampshire Superior Court Rule 16(a); appoint proposed class representatives Plaintiff Terri King and Plaintiff Mark LaValley as class representatives; and appoint their counsel from New Hampshire Legal Assistance, The American Civil Liberties Union Foundation of New Hampshire, and the American Civil Liberties Union Foundation as class counsel.

Respectfully submitted,

/s/ Maria Savarese

Gilles R. Bissonnette (N.H. Bar. No. 265393)

Henry R. Klementowicz (N.H. Bar No. 21177)

Maria D. Savarese (N.H. Bar No. 273285)

AMERICAN CIVIL LIBERTIES UNION OF NEW
HAMPSHIRE
Concord, NH 03301
Tel.: 603.224.5591
gilles@aclu-nh.org
henry@aclu-nh.org
maria@aclu-nh.org

Chris Schott (N.H. Bar. No. 270234)
Stephen Tower (N.H. Bar No. 268089)
NEW HAMPSHIRE LEGAL ASSISTANCE
1850 Elm Street, Suite 7
Manchester, NH 03104
Tel.: 603.668.2900
cschott@nhla.org
stower@nhla.org

Nathan Wessler*
Brett Kaufman*
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street, 18th Floor
New York City, NY 10004
Tel.: 212.519.7847
nwessler@aclu.org
bkaufman@aclu.org

* *pro hac vice* application forthcoming

CERTIFICATION

I hereby certify that on this 2nd day of September, 2026, a copy of this Class Action Complaint for Declaratory and Injunctive Relief has been sent by first-class mail to Defendant's counsel Peter G. Callaghan.

/s/ Maria Savarese
Maria D. Savarese