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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ZACHARY ZEFF, an individual, on behalf of himself and on behalf of others similarly situated, Plaintiff, vs. GREYSTAR CALIFORNIA, INC., a Delaware Corporation; Defendant.	Case No. 3:20-cv-07122-EMC **PLAINTIFF ZACHARY ZEFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** **Date**: June 13, 2024 **Time**: 1:30 p.m. **Courtroom**: 5 – 17th Floor **Judge**: Hon. Edward M. Chen **FAC Filed**: August 24, 2021 **Trial Date**: Not Set

TO DEFENDANT GREYSTAR CALIFORNIA, INC. AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 13, 2024 at 1:30 p.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Edward M. Chen, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff Zachary Zeff ("Plaintiff") will and hereby does seek an Order preliminarily approving the parties' proposed class action settlement under Federal Rule of Civil Procedure 23 and this District's Procedural Guidance for Class Action Settlements.

Plaintiff moves the Court for an Order that:

1. Grants preliminary approval of the parties' proposed Settlement;

2. Provisionally certifies this case as a class action for settlement purposes only, pursuant to Fed. R. Civ. P. 23(b)(3), and according to the following class definition:

> All Greystar tenants in California who, from October 13, 2016 until final judgment, paid at least one $100 late rent fee.

3. Appoints Plaintiff Zachary Zeff as Class Representative;

4. Appoints Plaintiff's counsel, Nicholas & Tomasevic, LLP, as Class Counsel;

5. Appoints Angeion Group as Settlement Administrator, and directs Angeion to carry out the duties of the Settlement Administrator specified in the Settlement;

6. Approves the proposed Notice Plan—including the form and content of the Class Notice and the proposed method for distributing the Class Notice—and directs the Parties and Settlement Administrator to implement the Notice Plan;

7. Stays all non-Settlement related proceedings in this litigation pending the outcome of a motion for final approval of the Settlement;

8. Sets a Fairness Hearing and certain other dates, as proposed herein, in connection with the final approval of the Settlement; and

9. Grants such other and further relief as the Court deems appropriate.

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This Motion is based upon this Notice; the Memorandum of Points and Authorities in support thereof; the Declaration of Alex Tomasevic; the Declaration of Steven Weisbot, the exhibits attached to such declarations; the files and records of the Court in this action; the arguments of counsel to be presented at the hearing; and such other information as the Court may find it appropriate to consider.

A proposed Order is submitted herewith.

Respectfully Submitted,

Dated: May 9, 2024

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By: */s/ Alex Tomasevic*

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. RELEVANT BACKGROUND 2

A. Allegations Regarding Greystar and the $100 Late Fee. 2

B. Procedural History. 4

C. Counsels' Investigation and Discovery. 4

D. The Settlement Discussions. 6

III. THE PROPOSED SETTLEMENT 6

A. The Settlement Fund and Reduced Late Fee Recommendation. 7

B. The Notice Plan. 8

1. Direct Notice to Settlement Class Members. 8

2. Settlement Website and Toll-Free Number. 9

3. Opt-Out and Objection Procedures. 9

C. The Release. 9

IV. PRELIMINARY APPROVAL IS WARRANTED HERE 10

A. The Class Was Adequately Represented. 11

B. The Settlement Was Negotiated at Arm's Length and Was Reached Only After Years of Litigation. 12

C. The Settlement is Adequate Given the Risk, Expense, Complexity, and Likely Duration of Further Litigation, and compared to the Results Achieved. 13

D. The Proposed Settlement Compares Favorably to Other Comparable Cases. 15

E. The Proposed Relief Distribution is Effective and Efficient. 16

F. The Proposed Allocation Plan is Also Fair. 17

G. The Request for Fees and Costs is Reasonable at this Stage. 17

V. THE COURT SHOULD PROVISIONALLY CERTIFY THE SETTLEMENT CLASS 18

A. The Requirements of Rule 23(a) Are Satisfied. 18

1. Numerosity (Rule 23(a)(1)). 18

2. Commonality (Rule 23(a)(2)). 18

3. Typicality (Rule 23(a)(3)). 19

4. Adequacy (Rule 23(a)(4)). 19

B. The Requirements of Rule 23(b)(3) are Also Satisfied. 20

VI. THE PROPOSED CLASS NOTICE AND NOTICE PLAN WILL PROVIDE THE BEST NOTICE PRACTICABLE AND SHOULD BE APPROVED 21

VII. THE REQUESTED SERVICE AWARD IS REASONABLE 22

VIII. FINALLY, THE COURT SHOULD SCHEDULE A FAIRNESS HEARING AND RELATED DATES 23

IX. CONCLUSION 24

TABLE OF AUTHORITIES

CASES

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997) 20

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980) 17

Boyd v. Bank of Am. Corp.,
300 F.R.D 431 (C.D. Cal. 2014) 19

Briseno v. Henderson,
998 F.3d 1014 (9th Cir. 2021) 13

Butler v. Sears, Roebuck & Co.,
702 F.3d 359 (7th Cir. 2012) 20

Chu v. Wells Farbo Invs., LLC,
2011 U.S. Dist. LEXIS 15821 (N.D. Cal. Feb. 16, 2011) 23

Class Plaintiffs v. Seattle,
955 F.2d 1268 (9th Cir. 1991) 10

Cleven v. Mid-Am. Apt. Communities, Inc.,
20 F.4th 171 (5th Cir. 2021) 14

Dexter's, LLC v. Gruma Corp.,
2023 WL 8790268 (S.D. Cal. Dec. 19, 2023) 11, 16, 17

Eisen v. Carlisle & Jacquelin,
417 U.S. 156 (1974) 21

Franklin v. Kaypro,
884 F. 2d 1222 (9th Cir. 1989) 10

Garner v. State Farm Mut. Auto. Ins. Co.,
2010 WL 1687832 (N.D. Cal. Apr. 22, 2010) 22

Garrett v. Coast & S. Fed. Sav. & Loan Ass'n,
511 P.2d 1197 (Cal. 1973) 14

Graham v. Overland Sols., Inc.,
No. 10-CV-0672 BEN BLM,
2012 WL 4009547 (S.D. Cal. Sept. 12, 2012) 22

Hanlon v. Chrysler Corp.,
150 F.3d 1011 (9th Cir. 1998) 18, 19

Harris v. Vector Marketing Corp.,
2012 WL 381202 (N.D. Cal. Feb. 6, 2012) 22

In re Bluetooth Headset Prod. Liab. Litig.,
654 F.3d 935 (2011) 12, 13, 17

In re Cellphone Termination Fee Cases,
193 Cal. App. 4th 298 (2011) 3

In re Immune Response Sec. Litig.,
497 F. Supp. 2d 1166 (S.D. Cal. 2007) 12

In re Mego Fin. Corp. Sec. Litig.,
213 F.3d 454 (9th Cir. 2000) 14

In re Pac. Enterprises Sec. Litig.,
47 F.3d 373 (9th Cir. 1995) 11, 17

James v. City of Dallas,
254 F.3d 551 (5th Cir. 2001) 18

Linney v. Cellular Alaska P'ship,
151 F.3d 1234 (9th Cir. 1998) 19

Munguia-Brown v. Equity Residential,
2017 WL 4838822, at *4 (N.D. Cal. Oct. 23, 2017) 19, 20

Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.,
221 F.R.D. 523 (C.D. Cal. 2004) 11, 12, 13

Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco,
688 F.2d 615 (9th Cir. 1982) 11

Pederson v. Airport Terminal Servs.,
2018 WL 11354549 (C.D. Cal. Aug. 3, 2018) 12

Rodriguez v. W. Publ'g Corp.,
563 F.3d 948 (9th Cir. 2009) 22

Serna v. Transp. Workers Union of Am.,
2014 WL 7721824 (N.D. Tex. Dec. 3, 2014) 18

Singer v. Becton Dickinson Co.,
2009 WL 4809646, at *7 (S.D. Cal. Dec. 9, 2009) 10

State of Cal. v. eBay, Inc.,
2014 WL 4273888 (N.D. Cal. Aug. 29, 2014) 10

Staton v. Boeing Co.,
327 F.3d 938 (9th Cir. 2003) 11, 12, 22

Thieriot v. Celtic Ins. Co.,
2011 U.S. Dist. LEXIS 44852 (N.D. Cal. Apr. 21, 2011) 22

Thompson v. NSC Techs., LLC,
No. 3:20-CV-00371-JO-MSB,
2023 WL 2756980 (S.D. Cal. Mar. 30, 2023) 17

Tyson Foods, Inc. v. Bouaphakeo,
136 S. Ct. 1036 (2016) 20

Vasquez v. Coast Valley Roofing, Inc.,
266 F.R.D. 482 (E.D. Cal. 2010) 17

Villegas v. J.P. Morgan Chase & Co.,
No. CV 09–00261 SBA (EMC),
2012 WL 5878390 (N.D. Cal. Nov. 21, 2012) 14

Wal-Mart Stores, Inc. v. Dukes,
564 U.S. 338 (2011) 18

Wolin v. Jaguar Land Rover North Am., LLC,
617 F.3d 1168 (9th Cir. 2010) 21

STATUTES

Cal. Civ. Code., § 1671(d) 3, 19

RULES

Fed. R. Civ. P. 23 ..... 10, 11, 16, 18, 20, 21

TREATISES

1 Newberg and Rubenstein on Class Actions (6th ed.) 19

Restatement (Second) of Contracts § 356(1) 19

I. INTRODUCTION

This Motion seeks preliminary approval of the parties' proposed $1,350,000 "late fees" class action settlement. This case challenges Defendant Greystar California's Inc.'s charges (sometimes "Defendant" or "Greystar") to California apartment tenants for late payment of rent. In short, Plaintiff alleged that the flat $100 late rent fee charged at apartment homes managed by Greystar amounts to an improper penalty under the California Civil Code and California's consumer protection laws. Defendant has vigorously opposed this matter, which was litigated for three and a half years.

The settlement, if approved, would provide significant monetary relief for tenants, and would finally put an end to lengthy and hotly contested litigation.

The basic terms of the settlement provide for:

- A total, non-reversionary class settlement amount of $1,350,000 to be funded by Defendant (the "Settlement Fund").
- The Settlement Fund covers all alleged damages, attorneys' fees (up to 30.0% of the Gross Settlement Amount), litigation costs (up to $15,000), costs of settlement administration (currently estimated at $52,500), and a typical representative enhancement award to the named Plaintiff for his efforts in filing the case against his landlord, sticking with the case for all this time, working closely with counsel, and helping to achieve these results ($10,000).
- Greystar will also recommend to the owners of the apartments it manages a late fee of no more than $50.
- An experienced and neutral Settlement Administrator, Angeion Group, will send out direct written notice to all class members via email or mail that will explain the settlement terms, and give everyone the option to participate in the settlement, object to it, or opt out of it with no obligation. The Administrator will also establish a settlement website and toll-free telephone support, and then process settlement payments.

An objective evaluation of the settlement confirms that the relief negotiated at arms-length is fair, reasonable, and valuable. The Parties negotiated the settlement only after a full day of mediation with the Honorable Joel M. Pressman (Ret.). And the settlement provides Class Members with valuable relief for their claims in terms of real money, not coupons or illusory equitable relief. The relief also does not require the submission of a claim. Further, by settling now, Class Members will not have to wait (possibly years, if ever) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial, or of recovering a smaller amount than obtained through this settlement, possible appeals, etcetera.

Overall, the settlement is an excellent result considering all the relevant circumstances. Accordingly, Plaintiff seeks approval of the proposed settlement as preliminarily fair, reasonable, and adequate and asks the Court to conditionally certify the Class and set dates for providing notice of settlement to the Class, requests for exclusion or objection, and the final approval and fee hearings.

II. RELEVANT BACKGROUND

A. Allegations Regarding Greystar and the $100 Late Fee.

Greystar manages apartment homes, including in California. It offers "end-to-end property management services." *See* Dkt. No. 115-1, Tomasevic Declaration in Support of Class Certification, Ex 2. Defendant Greystar does not own its own properties, but rather, manages apartments owned by its clients such as hedge funds, pension funds, and large financial institutions that have muti-family property interests in their investment portfolios, but who rely on Greystar for much of the day-to-day running of the properties. *See id.* ("representative clients").

Greystar typically uses written lease forms in California derived from the National Apartment Association's form lease. *See* Dkt. No. 115-2, Zachary Zeff Declaration in Support of Class Certification, Exs. A-C (the Zeff leases); Dkt. No. 115-1, Exs. 3-5 (additional sample leases). The leases include set fees for the late payment of rent. The leases couch the late fees as lawful "liquidated damages." Dkt. No. 115-2, Exs. A-C (the Zeff leases). The only late fee program at issue here is the flat $100 late fee at dozens of Greystar-managed California properties. *See* Dkt. No. 115-1, Ex. 7 (Greystar's Responses to Interrogatories at No. 1); *id.* at ¶ 23 & Ex. 8 (summarizing Greystar's data about its California apartments and late fee).

Plaintiff Zachary Zeff was a resident at a Greystar-managed property – "Lofts at Albert Park" in San Rafael, CA – from 2017 to 2020. Dkt. No. 115-1, Ex. 18. Per his leases, Mr. Zeff was subject to the $100 late fee. *See, e.g.*, Dkt. No. 115-2, Ex. A at p. 1, § 6. Mr. Zeff was charged and he paid several $100 late fees during his tenancy. *Id.* at ¶ 3; Dkt. No. 115-1, Ex. 18 (Mr. Zeff's tenant ledger).

Plaintiff alleges, in summary, that the $100 late fee is arbitrary, excessive, or otherwise unlawful under California Civil Code Section 1671(d).[1] That Section states that late fee provisions in residential leases are presumed to be invalid unless the landlord can prove both that the costs arising from a late payment are "impracticable or extremely difficult to fix" and that the landlord selected the late fee only after a "reasonable endeavor" to approximate those costs. Cal. Civ. Code., § 1671(d); *In re Cellphone Termination Fee Cases*, 193 Cal. App. 4th 298, 326-27 (2011).

Plaintiff alleged that the $100 late fee here bears no reasonable relation to the alleged "damage" suffered by Greystar or its clients, if any, arising from waiting for the rent payment. Most of the time, Plaintiff posited, there is little or no damage from any late payments because the amounts due are usually paid within a couple of days of the due date. Moreover, neither Greystar nor its clients have allegedly ever attempted to conduct any analysis or "reasonable endeavor" to set the fee. Plaintiff further alleges that the $100 late fee was adopted – somewhat blindly - by property owners on Greystar's written recommendation, which included an assessment of market conditions and what the competition was doing, but *not* necessarily any analysis of the true damage, to the owners/landlords, of rent being late. Plaintiff alleges that Greystar, therefore, must return all the

[1] Per this District's "Procedural Guidance for Class Action Settlements," ("Procedural Guidance") at Items 1(a) and 1(b), the proposed class and the alleged claims were broader in Plaintiff's original complaint filed in 2020. Plaintiff initially attempted to represent and pursue claims on behalf of *all* Greystar California tenants paying *any* late fee, and he also included allegations about improper security deposit activities. But as to the other late fees, during discovery Plaintiff learned that Greystar, over the years, had presided over many different late fees, many different late fee *structures* (like flat fee versus percentage of rent, etc.), and that sometimes different fees arose under differing circumstances – like late fees recommended by Greystar versus late fees inherited by Greystar from a property that it took over managing. Plaintiff also discovered similar issues regarding security deposit practices over the years. As such, and to simplify the case and – in counsels' opinion – strategically increase the chances of a favorable ruling on class certification, Plaintiff narrowed his case in moving for class certification. The parties then mediated with Plaintiff's motion for class certification pending as to the narrowed theories and then negotiated and settled the narrowed case. The proposed settlement release, in turn, is similarly narrowed to be related only to the $100 late fee claims. Tomasevic Decl., ¶ 21.

$100 late fees collected during the class period, but Plaintiff acknowledges that Greystar or the owners could be entitled to a "setoff" for any actual damage they can prove because of the late payment of rent. Defendant denies all material allegations and has always vigorously defended all claims.

B. Procedural History.

Plaintiff filed this case, as a putative class action, in October of 2020. Dkt. No. 1. Defendant moved to dismiss the complaint, in December of 2020, pursuant to Fed. R. Civ. P. 12(b)(6), 12(b)(7), and 12(e). Dkt. No. 16. Defendant argued, for example, that Plaintiff's claims under the California Civil Code must be dismissed because the Civil Code does not provide a private right of action for allegedly improper late fees. Defendant also argued that the complaint should be dismissed in its entirety because Plaintiff failed to name the record owner of his apartment complex – a party that Greystar argued as "necessary" to the action under Fed. R. Civ. P. 19. *See* Dkt. Nos. 16 and 24. Stated differently, Greystar argued strenuously that this action could not proceed against it (the alleged property manager) alone, but rather, that the record owners of the property (who were the counter parties to the leases and who Greystar argued were the true "landlords") must be included. *Id.* Based on the allegations before it at the time, the Court denied Greystar's motion in February of 2021. Dkt. No. 28. Greystar answered the complaint in March of 2021 by denying all material allegations and asserting 31 affirmative defenses. Dkt. No. 32.

The parties entered into a stipulated protective order to facilitate discovery, conducted discovery, and generally worked toward a contested class certification motion. Plaintiff filed said motion for class certification in June of 2023 – which was partially briefed and pending when the parties agreed to go to mediation. *See* Dkt. No. 115.

C. Counsels' Investigation and Discovery.

Prior to filing the suit, and continuing through the course of the litigation, Class Counsel conducted an extensive investigation into the factual and legal issues raised in this case. Tomasevic Decl., ¶ 24. These investigative efforts included reviewing publicly available information about Defendant and its clients, including other relevant lawsuits, searching for cooperating witnesses, and hours of talking with Defendant's current and former tenants and reviewing and analyzing their

circumstances and documents. Class Counsel also thoroughly researched and analyzed the legal issues regarding all late fee claims, and Greystar's many defenses, including by studying similar cases against rental property owners or managers. *Id.*

Moreover, the parties conducted significant discovery, making them well-informed about the relative strengths and weaknesses of their respective positions, and providing them with information needed to negotiate the proposed Settlement. The parties exchanged initial disclosures. Then Plaintiff served and Defendant responded to multiple sets of written discovery requests, including Interrogatories and Document Requests (50 such requests in total). Greystar also initially produced over 18,000 pages of documents, plus electronic data. *Id.* at ¶ 25.

The parties fought over the scope of allowable discovery, sometimes needing the help of the Court. *Id.* at ¶ 26. For example, a key dispute arose regarding Greystar's obligation (or lack thereof) to produce documents and proprietary data that its clients (e.g. the record owners of the apartment buildings included in the proposed class) had deemed confidential or otherwise undiscoverable. Many of Greystar's non-party clients lodged objections to Greystar disclosing or producing all documents and data Mr. Zeff requested, with some filing formal Motions for Protective Order to stop or to limit said discovery. *See, e.g.*, Dkt. No. 65 (Motion for Third-Party Raintree Partners, LLC for Protective Order). Resolving or otherwise litigating the objections of these third parties took many months and many letters, briefs, or stipulations filed with the Court. *See, e.g.*, Dkt. Nos. 61 (Order re discovery dispute), 63 (stipulation to allow nonparties BRE Silver MF North Hollywood CA LLC, Bre Silver MF Roosevelt CA LLC, and BPP Alphabet MF Sherman Circle LLC, more time to further meet and confer with Plaintiff and file a motion for protective order if necessary); 102 (same for non-parties MCREF DT Oakland, LLC, MCREF Kearny Mesa, LLC, MCREF DT Los Angeles, LLC, and Monrovia Apartment EPF I LLC). Eventually Plaintiff negotiated with each of the objecting third-party owners, and Greystar, and was able to resolve all objections – sometimes after the Court's assistance. These third parties and/or Greystar then produced thousands of additional pages of documents plus electronic data concerning their California apartment home interests, operations, and finances. *Id.*

Once Plaintiff completed sufficient written discovery and received sufficient documents, he started deposing Greystar personnel. Prior to moving for class certification Plaintiff deposed two of Greystar's managers. *Id.* at ¶ 27.

For its part, Greystar served, and Plaintiff responded to 25 interrogatories, 107 requests for production, and 25 Requests for Admission. *Id.* at ¶ 28. Greystar also subpoenaed Plaintiff's parents. *Id*. As with Plaintiff's requests to Defendant, Defendant also contested the sufficiency of many of Plaintiff's (or his parent's) responses, causing the parties to litigate the sufficiency of the responses before our Honorable Magistrate. *See* Dkt Nos. 109-111 (Discovery Dispute Letter Briefs and resulting Discovery Order). Greystar eventually deposed Plaintiff, in-person, over the course of a full day in November of 2022. Tomasevic Decl., ¶ 28.

D. The Settlement Discussions.

As mentioned, the parties conducted significant investigation and discovery, including third party discovery, and eventually Plaintiff filed his Motion for Class Certification. After Plaintiff filed his motion, the parties agreed to attend private mediation before a retired judge, the Honorable Joel M. Pressman of Judicate West. Tomasevic Decl., ¶ 29.

The parties exchanged additional data prior to mediation, then exchanged mediation briefs, and then attended a full day of mediation on January 22, 2024. *Id.* at ¶ 30. The case, however, did not settle that day. But the parties continued to negotiate on a class-wide basis thereafter with the assistance of Judge Pressman. The case settled only after Judge Pressman submitted a "mediator's proposal" to the parties to break their deadlock. The parties eventually accepted Judge Pressman's proposal. *Id*. The parties then drafted a Term Sheet and then negotiated and finalized their written class settlement agreement which is attached to the accompanying Declaration of Alex Tomasevic as **Exhibit 1** (the "Settlement Agreement"). *Id*.

III. THE PROPOSED SETTLEMENT

The proposed "Settlement Class" consists of Greystar-managed tenants in California who paid at least one $100 late rent fee during the "Settlement Class Period" of October 13, 2016 through the date of Preliminary Approval. Tomasevic Decl., Ex. 1 at I.J. & I.L. (Definitions).

A. The Settlement Fund and Reduced Late Fee Recommendation.

Per the settlement, defendant will pay $1,350,000 – the "Settlement Fund." *Id.* at I.P., VI.D. This Settlement Fund will cover each class member's individual "Benefit Payment" (described further below), plus cover Class Counsel's Costs of up to $15,000, Class Counsel's Fees of up to 30.0% ($405,000), a class representative service award of up to $10,000, and Settlement Administration Costs currently estimated to be about $52,500 or less. *Id.* at VI.D.; Tomasevic Decl., ¶ 31.

Regarding the individual Benefit Payment, the payouts to participating class members will be a function of how many $100 late fees the class member paid during the class period. The more late fees paid, the higher the Individual Settlement Allocation. The allocation will be done proportionally. More specifically, Greystar will provide the Settlement Administrator with the list of Class Members, their contact information, and the $100 late rent fees paid by each. Then Greystar and/or the Settlement Administrator will determine the amount of individual recovery from the pool of money left after deductions for fees and expenses described above (the total "Restitution Award") for each Settlement Class Member based proportionally on the number of $100 late rent fees paid by each participating Class Member. *Id.* at VI.E.

As noted, this settlement is completely non-reversionary. As such, any settlement funds that are returned, such as checks not cashed 180 days after distribution, will be distributed equally among three proposed *cy pres* recipients: Bay Area Legal Aid, the Legal Aid Foundation of Los Angeles, and the Legal Aid Society of San Diego. Each of these non-profit organizations provides low-income clients with free civil legal assistance, including in consumer protection and landlord/tenant matters. The distribution among the three non-profits was also chosen to, in part, reflect the areas where Greystar tenants also tend to reside in California (i.e. distributed throughout Northern, Central, and Southern California). *Id.* at p.14; Tomasevic Decl., ¶ 32.

Lastly, for four years following Preliminary Approval, Greystar will recommend to its client property owners that they include late fees in their leases of no more than $50. Tomasevic Decl., Ex. 1, Settlement Agreement at VI.C.

B. The Notice Plan.

The parties' proposed Settlement notice procedures, and procedures for opting out of or objecting to the settlement (sometimes collectively referred to as the "Notice Plan") are set forth in Section VI.F. of the Settlement Agreement, and in the Declaration of Angeion President and CEO Steven Weisbot ("Weisbot Decl."). The plan consists of the following:

1. Direct Notice to Settlement Class Members.

Written Class Notice consistent with this Court's Procedural Guidance will be sent directly to Class Members. After preliminary approval, Defendant will provide updated class member contact information to the Administrator.[2] Tomasevic Decl., Ex. 1, Settlement Agreement at pp. 9-13; Weisbot Decl., ¶¶ 17-26. Defendant has email addresses for most class members. As such, within 30 days of receipt of the updated class member contact information, the Administrator will email those class members with the summary version of the Class Notice (the "postcard notice"). *Id*. For those class members where email addresses are lacking, or where emails bounce back undelivered, the Administrator will mail the postcard notice via First Class Mail after doing a search for updated addresses through the National Change of Address Database. The Administrator will attempt to remail notice for any returned mailed notices. *Id.*

A mostly email-based notice program is the best notice practicable under the circumstances given the relative costs and the capacity to better reach class members. Tomasevic Decl., ¶ 34. As to costs, there are over 13,000 class members, and the individual damages (and, hence, the individual recovery) are relatively modest here, meaning that a pure first-class mail program costing substantially more would consume a relatively high proportion of the overall Settlement Fund. Moreover, as to reach, this is a situation where, in counsels' experience, mail is less reliable than email. That is because these class members, by definition, did not own their homes. Class members move apartments and sometimes move frequently. However, class members do not typically

[2] As explained in the accompanying declaration of attorney Alex Tomasevic, the proposed Administrator here is Angeion Group, Inc. Tomasevic Decl., ¶ 33. Angeion's bid was chosen out of three total bids received. *Id.* Angeion was chosen because its proposed costs were in-line with its competitors and because Angeion has specific experience administering late fee class action settlements like this one and administering class actions in the Northern District. *Id.* Angeion President and CEO Steven Weisbrot has also submitted a declaration in support of preliminary approval further outlining Angeion's background and plan for administration here.

"move" email addresses as often. In any event, the notice plan here is best described as a hybrid whereby if there are no email addresses available, or if emails bounce back or are returned, then the Administrator will use first class mail after conducting appropriate address checks and will perform skip traces on any postcard notices returned as undeliverable. Weisbrot Decl., ¶¶ 17-29. Counsel have used such notice plans before, and had them approved, in other cases, including other apartment late fee cases. Tomasevic Decl., ¶ 34.

2. Settlement Website and Toll-Free Number.

The Settlement Administrator will also establish a dedicated, case-specific settlement website where Settlement Class Members can obtain further information about the case and the Settlement. Weisbrot Decl., ¶¶ 27-30. The settlement website will be readable on mobile devices and include copies of key case documents, including but not limited to the Settlement Agreement and the operative Complaint. The Settlement Administrator will also establish a toll-free telephone number that Class members can call for more case information. *Id*.

3. Opt-Out and Objection Procedures.

Any person within the class definition above may request to be excluded from the settlement by sending a written request stating their desire to be excluded, to the Administrator, postmarked or delivered by the deadline proscribed by the Class Notice (generally 45 days). Tomasevic Decl., Ex. 1, Settlement Agreement at pp. 11-12. Any Class Member who does not submit a timely and valid exclusion request may submit a written objection to the Settlement, Class Counsel's application for attorneys' fees and expenses, and/or the request for the Class Representative service award. *Id.* at pp. 11-12.[3]

C. The Release.

In exchange for the consideration provided under the Settlement Agreement, Settlement Class Members will release Greystar and affiliates, and its client/owners from any claims relating to the $100 late fee that were brought in this matter or based on the same factual predicate as this action. Settlement Agreement at § VI.B.2. Mr. Zeff as the named representative, including considering his class representative award, will provide a broader "general" release of all claims. *Id.* at § VI.B.1.

[3] Also, Weisbrot discusses Angeion's Data Security practices and standards at paragraphs 12 through 16 of his declaration, as required by this District's Procedural Guidance at Item 2(b).

Per the Court's Procedural Guidance, at Item 1(d), there are no other pending cases that will be affected by this settlement, or the releases obtained in this settlement. Tomasevic Decl., ¶ 36.

IV. PRELIMINARY APPROVAL IS WARRANTED HERE

In class action litigation, a court must approve the dismissal or compromise of the action. Fed. R. Civ. P. 23(e). This involves a two-step process in which the Court first determines whether a proposed class action settlement has the potential to be fair, adequate, and reasonable, and second, after notice is sent to proposed Class Members, whether the settlement merits final approval. *See State of Cal. v. eBay, Inc.*, 2014 WL 4273888, at *5 (N.D. Cal. Aug. 29, 2014). A full fairness analysis is unnecessary at the preliminary approval stage. *Singer v. Becton Dickinson Co.*, 2009 WL 4809646, at *7 (S.D. Cal. Dec. 9, 2009). "Rather, at the preliminary approval stage, the Court need only review the parties' proposed settlement to determine whether it is with the 'permissible range of possible judicial approval' and thus, whether the notice to the class and the scheduling of the formal fairness hearing is appropriate." *Id.* (citations omitted).

Ultimately, a court considers several factors in determining whether a Settlement Agreement is potentially "fair, reasonable, and adequate" under Rule 23(e). The court should consider whether: (1) "the class representatives and class counsel have adequately represented the class"; (2) "the proposal was negotiated at arm's length"; (3) "the relief provided for the class is adequate," taking into consideration the risks associated with continued litigation, the effectiveness of distributing the proposed relief to the class, the terms of any proposed attorneys' fees, and the underlying settlement agreement; and (4) "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2).

In our Circuit, there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1991). "Litigation settlements offer parties and their counsel relief from the burdens and uncertainties inherent in trial. … The economies of litigation are such that pretrial settlement may be more advantageous for both sides than expending the time and resources inevitably consumed in the trial process." *Franklin v. Kaypro*, 884 F. 2d 1222, 1225 (9th Cir. 1989). To that end, the Ninth Circuit has articulated its own factors for final approval, which although they predate revised Rule

23(e), they overlap with the Rule: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining the case as a class action; (4) the amount of recovery; (5) the extent of discovery completed and the stage of proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of class members. *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). Ultimately, "[t]he initial decision to approve or reject a settlement proposal is committed to the sound discretion of the trial judge." *Id.* All factors indicate that this settlement is fair, reasonable, and adequate, and the settlement should be approved.

A. The Class Was Adequately Represented.

Rule 23(e)(2) requires the Court to consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). Relatedly, the Court also considers the experience and views of counsel. *See Staton*, 327 F.3d at 959. "'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. This is because '[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation.'" *Dexter's, LLC v. Gruma Corp.*, 2023 WL 8790268, at *3 (S.D. Cal. Dec. 19, 2023); *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (quoting *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995)).

Here, Class Counsel – who recommends this settlement – includes experienced class action trial attorneys having specific experience, and a track record of success, in landlord/tenant class actions, along with class actions of all types. Tomasevic Decl., ¶¶ 2-17. Counsel also diligently investigated this case, deflected all pleading challenges, conducted significant discovery including written discovery, third party discovery, and depositions, successfully prosecuted and defended

discovery disputes, and gathered evidence and research to put together a robust motion for class certification. *Id.* at ¶¶ 24-28.

Further, Class Counsel represents that Mr. Zeff has been instrumental in starting and shepherding this case over many years, having participated actively in discovery, depositions, settlement discussions, and so forth, and having devoted much personal time to the prosecution of this matter. *Id.* at ¶ 37. The class was adequately represented here, supporting preliminary approval.

B. The Settlement Was Negotiated at Arm's Length and Was Reached Only After Years of Litigation.

Courts must ensure settlements are not the product of collusion or other conflicts of interest. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 947 (2011); *Staton*, 327 F.3d at 960. "A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." *Nat'l Rural Telecomm. Coop.*, 221 F.R.D. at 528. Also, "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Pederson v. Airport Terminal Servs.*, 2018 WL 11354549, at *6 (C.D. Cal. Aug. 3, 2018).

Here, the Settlement Agreement is the result of arm's-length negotiations involving experienced counsel who are well-versed in the applicable substantive law, class action litigation procedures, and the legal and factual issues of this case. Tomasevic Decl., ¶¶ 2-17, 24-28. The Parties attended a full day of mediation with a retired Judge, did not settle, but then reached agreement only after the Judge continued to work with the parties and made a final "mediator's proposal." The Settlement occurred after more than three years of hard-fought litigation, only after the parties had conducted enough due diligence and discovery to test class certification, and only after extensive written and documentary discovery, depositions of the parties, and several contested motions. *Id.* at ¶¶ 2-17, 24-30. "[S]uch negotiations are highly indicative of [the] fairness" of the proposed Settlement. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1171 (S.D. Cal. 2007).

Finally, the Ninth Circuit has highlighted additional "signs" that may suggest collusion, or that the settlement was not truly negotiated at "arm's length:" (1) when counsel receive a "disproportionate" distribution of the settlement, such as "when the class receives no money but class counsel are amply rewarded;" (2) when the parties negotiate a 'clear sailing' arrangement

where the parties have agreed on an amount of attorneys' fees that the Defendant agrees beforehand not to contest; and (3) when the parties arrange for reversion of funds back to the Defendant, e.g., when claims to funds are not made or if fees are not awarded. *In re Bluetooth*, 654 F.3d at 947; *Briseno v. Henderson*, 998 F.3d 1014, 1023 (9th Cir. 2021).

None of these warning signs are present here. Class Counsel here are seeking, in fees, 30% of the total cash component of this settlement, and without assigning *any* value to the four years of relief Defendant agreed to in the form of recommending to its client owners to cap late fees at $50. And there is no "clear sailing" agreement here nor any possibility of reversion. Indeed, the settlement does not require any claims at all. Class Members will automatically receive payment according to the number of late fees they paid. This settlement was negotiated at arm's length only after counsel fully informed themselves through years of litigation, discovery, and motion work, and only with the assistance of an experienced mediator. This settlement is worthy of the presumption of fairness.

C. The Settlement is Adequate Given the Risk, Expense, Complexity, and Likely Duration of Further Litigation, and compared to the Results Achieved.

> The Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, [i]t has been held proper to take the bird in hand instead of a prospective flock in the bush.

Nat'l Rural Telecommunications Coop., 221 F.R.D. at 526 (internal quotation marks omitted).

The Settlement provides substantial monetary relief—$1.35 million—that is well-tailored to the alleged harm. Plaintiff in this case allege that Greystar charged excessive "late" fees that were not proper liquidated damages, but rather, illegal penalties. The settlement addresses the alleged harm by paying money meant to be, in essence, a partial refund of these fees. Moreover, Defendant collected about $3.495 million in late fees from the class during the relevant period. Tomasevic Decl., ¶ 35. A recovery today, before certification, of about 39% of the total collected, represents a substantial portion of what realistically could have been achieved in this case, even assuming Plaintiff was able to overcome the various remaining hurdles to certification and other milestones, successfully try this case to judgment, and hold onto that judgment through appeals. *See In re Mego*

Fin. Corp. Sec. Litig., 213 F.3d 454, 459 (9th Cir. 2000) (finding a recovery of one sixth (16.67%) of the potential recovery adequate in light of the plaintiff's risks); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09–00261 SBA (EMC), 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (approving a settlement representing 15% of the potential recovery).

Of course, Defendant vehemently denied that the late fees were in any way unreasonable or improper. Defendant had evidence that its fees were reasonable in relation to actual damages and set fairly because actual damages are difficult to quantify precisely under the circumstances. *Cf. Cleven v. Mid-Am. Apt. Communities, Inc.*, 20 F.4th 171, 177 (5th Cir. 2021) (a late fee need only be "a reasonable estimate of uncertain damages to the landlord that are incapable of precise calculation and result from late payment of rent.").

The recovery here is even better once one factors in Defendant's or its clients' entitlement to "set off," and the difficulties in proving or disproving the relevant amounts. That is, even if successful on the core question of liability, calculating the potential *net* class damages in this case with precision is very difficult (Defendant would argue impossible). Even if Plaintiff succeeded in obtaining a ruling that all fees were excessive or improper, that would have been just the start of the analysis, not the end. That is because even if Defendant is not entitled to the standard late charge as a *liquidated* damage, it would nonetheless be entitled to recover its *actual* damages as a potential setoff to any class member recovery here. *See, e.g., Garrett v. Coast & S. Fed. Sav. & Loan Ass'n*, 511 P.2d 1197, 1203 (Cal. 1973) (Even if the charge is found to be void, the consumer does not "escape[] unscathed. He remains liable for the actual damages resulting from his default."). Plaintiff's current estimate of having recovered 39% of all fees recovered, in other words, assumes he could prove that every late fee assessed was improper every time, and *also* that setoff was worth zero – which is probably not realistic.

And, of course, Greystar had defenses to class certification in the first instance. If Plaintiffs failed to certify a class, the practical result would not be $3.5 million, but rather, quite possibly, if not likely, no relief at all for the class. Thus, a pre-certification recovery of about 39% of estimated damages (again, not accounting at all for the prospective relief) is a strong result for Settlement Class

Members, particularly in light of the significant risks and challenges, and the substantial complexity, of ongoing litigation.

While Plaintiff absolutely believes that these obstacles are not insurmountable, they are indicative of the substantial risks that Plaintiff and the proposed Class would face if the litigation were to continue. The proposed Settlement provides considerable, appropriately tailored relief while allowing Class Members to avoid the risks of unfavorable, and in some cases dispositive, rulings on these and other issues.

Finally, the settlement also provides another significant benefit that would not be available if the litigation were to continue—prompt relief. Proceeding to trial could add years to the resolution of this litigation, given the legal and factual issues raised and likelihood of appeals.

D. The Proposed Settlement Compares Favorably to Other Comparable Cases.

Next, this Court's Procedural Guidance for Class Action Settlements, at Item No. 11, asks for a comparison of comparable cases. Class counsel is only aware of two late fee cases like this one that have settled on a class-wide basis – one of which is a case where this counsel also represented that class of tenants.

Those two cases are *McCumber, et. al. v. Invitation Homes* (N.D. Tex. Case No. 21-cv-02194) and *Seltzer v. G.H. Palmer Associates, et al.* (L.A. Superior Court Case No. 18STCV07828). Counsel for Plaintiff here is currently serving as counsel for the class in *McCumber*. The settlement in *McCumber* has only been preliminarily approved and the parties are briefing final approval now, with the final fairness hearing currently set for July 23, 2024. *Seltzer* was finally approved on January 5, 2024. Tomasevic Decl., ¶ 38.[4] Additional relevant details of those cases include the following:

	McCumber v. Invitation Homes	***Seltzer v. G.H. Palmer***
Released Claims	Excessive late fees charged at rental houses located in 11 different states, including California (and brought under the statutory and common law of all 11 of those states)	Excessive late fees charged at apartments in California (Civil Code Section 1671, Bus. & Prof. Code §§ 17200, et seq.)

[4] The *Seltzer* settlement website is at https://ghplatefeesettlement.com (last accessed May 7, 2024).

	McCumber v. Invitation Homes	***Seltzer v. G.H. Palmer***
Total Settlement Fund	$7.5 million ($5.625 million cash, $1.875 million in the form of debt forgiveness)	$1.75 million all cash
Total Number of Class Members	133,200	24,706
Average Recovery per class member	$56.31 gross, including the debt forgiveness	$70.83 gross
Amounts Distributed to *Cy Pres*	Data not yet available	Data not yet available
Administrative Costs	~ $175,000	$135,511.48
Attorneys' Fees & Costs	$2,504,425 ($2,450,000 in fees)	$583,333.33 ($532,532.56 in fees)
Total Exposure if Plaintiff Had Prevailed on Every Claim	~ $84 million before any setoff	$4,470,615.46

See Tomasevic Decl., ¶ 39.

As is apparent from the numbers, this case, with an average gross recovery per class member of $ 101.50 ($1.35 million divided by 13,300 class members), compares favorably to the two described above.

E. The Proposed Relief Distribution is Effective and Efficient.

In determining the effectiveness of distributing the proposed relief to the class and the processing of class claims, the Court should also "scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims. A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment; *Dexters, LLC*, 2023 WL 8790268, at *5.

Here, Class Members will not be required to make a formal claim as a condition of recovery. Class Members will receive their payments simply by being members of the class without any

possibility of reversion back to Defendant. Nor is there any danger of any illegitimate claims because, once again, there is no claims process, plus we know the actual identities of every class person and their number of late fees paid, because it was Greystar's job to track such information in the normal course of business. Class treatment here is manageable, and relief distribution will be efficient without facing any systematic fraud threats. This supports approving the class wide Settlement. *Dexters, LLC*, 2023 WL 8790268, at *5.

F. The Proposed Allocation Plan is Also Fair.

Next, the plan of allocation of the Settlement to Class Members is also fair and reasonable. The plan is objective. Individual payouts will be made proportionally and objectively according to the number of late fees the class member paid during the class period. I.e., the greater their alleged damages, the greater their recovery.

G. The Request for Fees and Costs is Reasonable at this Stage.

Attorney's fees and costs "may be awarded . . . where so authorized by law or the parties' agreement." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). Here, the Settlement provides that, prior to the final approval hearing, Class Counsel may petition the Court for an award of fees (and an award of litigation expenses). Tomasevic Decl., Ex. 1 at p. 8. Moreover, in cases like this one where recovery is made on behalf of a class through the establishment of a common fund, "a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The zealous and effective efforts of Plaintiff's and Class Counsel here merit awards of attorneys' fees, expenses, and case contribution awards.

Class Counsel contends that its eventual request for a 30% fee is fair and reasonable, given the significant time and expense that Class Counsel have devoted to this case over the last three-plus years and the result that they have achieved for the Class. *See Thompson v. NSC Techs., LLC*, No. 3:20-CV-00371-JO-MSB, 2023 WL 2756980 (S.D. Cal. Mar. 30, 2023) (awarding 33% in fees); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (finding that while 25% is the "benchmark," the lower court appropriately used its discretion to award 33% based on a case's complexity and risks); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010)

("The typical range of acceptable attorneys' fees in the Ninth Circuit is 20% to 33 1/3% of the total settlement value. . . ."). Here, Counsel assumed substantial risks in proceeding on a contingency fee basis in a highly complex class action case. And they obtained excellent relief for the tenants.

Counsel's request is also supported when cross-checked with their lodestar. Here, counsel have expended a total of 854 hours in pursuit of this matter. Tomasevic Decl., ¶¶ 42, 45. As further enumerated in the accompanying declaration of Alex Tomasevic, and as will be explained in more detail in any forthcoming motion for fees and costs, this equates to a current total lodestar of $429,322. This means that counsel here have negotiated for themselves a slightly *negative* multiplier. And, of course, counsels' work is not yet done, so the lodestar will only go up. Counsel's fee request is reasonable under the circumstances and supports preliminary approval.

V. THE COURT SHOULD PROVISIONALLY CERTIFY THE SETTLEMENT CLASS

The Court should provisionally certify the proposed Class for settlement because the standards of Rule 23(a) and Rule 23(b)(3) are satisfied. Greystar does not oppose certification of the Class for settlement purposes only.

A. The Requirements of Rule 23(a) Are Satisfied.

1. Numerosity (Rule 23(a)(1)).

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There is no magic number for meeting this requirement. *James v. City of Dallas*, 254 F.3d 551, 570 (5th Cir. 2001); *Serna v. Transp. Workers Union of Am.*, 2014 WL 7721824, *2 (N.D. Tex. Dec. 3, 2014). Numerosity is readily satisfied here. The Class, as defined, includes over 13,000 tenancies. Tomasevic Decl., ¶ 35.

2. Commonality (Rule 23(a)(2)).

Rule 23(a)(2) requires at least one common issue of fact or law "capable of class-wide resolution." *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Commonality is construed permissively. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), *overruled on other grounds by Dukes*, 564 U.S. 338. All questions of fact and law need not be common to satisfy the rule – there only need be one. *Id.* "The existence of shared legal issues with divergent

factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Id.*

This case raises multiple common questions, including what efforts Greystar took, if any, to estimate its actual damages before deploying its standard late fees, whether those efforts were reasonable, and/or whether the fees settled upon in Defendant's form lease contracts bare any reasonable relation to actual damages felt from the late payment of rent. Commonality is satisfied here. *See Munguia-Brown v. Equity Residential*, 2017 WL 4838822, at *4 (N.D. Cal. Oct. 23, 2017) (White, J.) (finding commonality in analogous apartment late fee class action).

3. Typicality (Rule 23(a)(3)).

"The test for typicality is not demanding." 1 Newberg and Rubenstein on Class Actions § 3:29 (6th ed.). At bottom, typicality requires "the class representative be a member of the class" and that, "in pursuing her own interest," the representative "will pursue the class's as well." *Id.* at § 3.28. A plaintiff's claim is typical if it arises from the same event, practice, or course of conduct that gives rise to the claims of other class members and if his or her claims are based on the same legal theory." *Id.* at § 3:29 (6th ed.).

Here, Plaintiff, like the other Class Members, had form leases with Greystar with late fee provisions, and he paid fees pursuant to those provisions. Plaintiff's and other Class Members' claims arise from the same alleged course of conduct (charging $100 as a late fee) and are based on the same legal theory—that the late fee charges were not a proper or reasonable liquidated damage. *See* Cal. Civ. Code, § 1671(d); Restatement (Second) of Contracts § 356(1).

4. Adequacy (Rule 23(a)(4)).

Rule 23(a)(4)'s adequacy requirement mandates that a representative plaintiff "fairly and adequately protect the interests of the class." *See Boyd v. Bank of Am. Corp.*, 300 F.R.D 431, 438 (C.D. Cal. 2014). Here, a plaintiff must merely show that her interests are not antagonistic to those of the class and that she will prosecute the action vigorously through qualified and competent counsel. *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998).

Class Counsel here have extensive experience litigating and resolving class actions and other similar complex matters and are well qualified to represent the Class. Since filing this case, Class

Counsel have vigorously litigated this action on behalf of the Class, conducted extensive investigation and discovery, negotiated the proposed Settlement, and have and will continue to fairly and adequately protect the interests of the Class. Likewise, Plaintiff has demonstrated his commitment to the Class, including by actively participating in the case for years, regularly communicating with Class Counsel about the case, and reviewing and approving the proposed Settlement. Finally, Plaintiff's interests are aligned with and are not antagonistic to the interests of the Class. Plaintiff and the Settlement Class Members share an interest in obtaining relief from Greystar for the alleged violations.

B. The Requirements of Rule 23(b)(3) are Also Satisfied.

In addition to the requirements of Rule 23(a), at least one of the prongs of Rule 23(b) must be satisfied. Here, Plaintiff seeks certification, for settlement purposes, under Rule 23(b)(3), which requires that "questions of law or fact common to the class members predominate over any questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "The predominance inquiry 'asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted). At its core, "[p]redominance is a question of efficiency." *Butler v. Sears, Roebuck & Co.*, 702 F.3d 359, 362 (7th Cir. 2012).

Common questions predominate here. Not only do the Class Members' claims all arise under the basic legal principles and alleged conduct (the collection of standard late fees), but under the proposed Settlement, there will not need to be a class trial, meaning there are no potential concerns about any individual issues, if any, creating trial inefficiencies. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems…for the proposal is that there will be no trial."); *see Munguia-Brown*, 2017 WL 4838822, at * 6("the central legal determination under Section 1671(d)—whether it is impracticable to determine actual damages from late payment of rent and whether the landlord made a reasonable

endeavor to estimate fair compensation for any loss sustained—[is] common to all named plaintiffs and the classes they seek to represent.").

Moreover, class treatment is superior to other methods for the resolution of this case. Rule 23(b)(3)'s superiority requirement tests whether a class action is the most efficient and effective means of resolving the controversy. *Wolin v. Jaguar Land Rover North Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). Plaintiff is not aware of any other actions against Greystar regarding the late fee issues raised in this case. Given the size of each Class Member's damages—which would be dwarfed by the expense of prosecuting a separate individual case—they would be unlikely to pursue individual claims. In all events, they remain free to exclude themselves from the Class if they wish to do so. Moreover, it would be far more efficient for the Court and the parties to have a single resolution (as with the proposed Settlement here), rather than multiple separate cases about the same issues.

VI. THE PROPOSED CLASS NOTICE AND NOTICE PLAN WILL PROVIDE THE BEST NOTICE PRACTICABLE AND SHOULD BE APPROVED

Before a proposed class settlement may be approved, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Where certification of a Rule 23(b)(3) settlement class is sought, the notice must also comply with Rule 23(c)(2)(B), which requires:

> the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974).

The proposed Notice Plan here (Weisbrot Decl., ¶¶ 17-30) meets all applicable standards, including those specified in this Court's Procedural Guidance for Class Action Settlements. Indeed,

Class Counsel often copied, verbatim, the language suggested for inclusion in class notices, in the proposed notice, and as found in the Court's Procedural Guidance. Tomasevic Decl., ¶ 34.

Moreover, the Notice Plan includes direct notice to Class Members sent via email and/or first-class U.S. Mail, a dedicated settlement website where Settlement Class Members can obtain additional information about the Settlement and view key case documents, and a toll-free telephone number where Settlement Class Members can get additional information. Moreover, the proposed Notice (Settlement Agreement, Ex. A) informs Class Members, in clear and concise terms, about the nature of this case, the Settlement, and their rights, including all the information required by Rule 23(c)(2)(B). The Court should approve the proposed Notice Plan.

VII. THE REQUESTED SERVICE AWARD IS REASONABLE

Service awards for class representatives "are intended to compensate class representatives for work done on behalf of the class, to make up for financial and reputational risk undertaken in bringing the action and [ ] to recognize their willingness to act as a private attorney general;" such awards are "fairly typical in class action cases." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). Service awards also compensate plaintiffs for the risk of stigma and retaliation to which they have submitted and a loss of income. *Graham v. Overland Sols., Inc.*, 2012 WL 4009547, at *8 (S.D. Cal. Sept. 12, 2012) (quoting *Staton*, 327 F.3d at 977) (approving service awards of $25,000 each to the named plaintiffs for their time and effort, the risks they undertook, and the stigma upon future opportunities, and a general release of all claims). "Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of $20,000 or more where . . . the class representative has demonstrated a strong commitment to the class." *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *17 (N.D. Cal. Apr. 22, 2010) (collecting cases awarding anywhere from $25,000 to $55,000).

This Honorable Court has observed that $5,000 is "generally" a reasonable amount to award to class representatives. *See Harris v. Vector Marketing Corp.*, 2012 WL 381202, at *6-8 (N.D. Cal. Feb. 6, 2012) (Chen, J.) (but ultimately awarding $12,500 in that case). However, higher amounts are often justified. *Id.* (citing *Thieriot v. Celtic Ins. Co.*, 2011 U.S. Dist. LEXIS 44852, at *21-22 (N.D. Cal. Apr. 21, 2011) (awarding $25,000), *Chu v. Wells Farbo Invs., LLC*, 2011 U.S. Dist.

LEXIS 15821, at *14 (N.D. Cal. Feb. 16, 2011) (awarding $10,000 but noting that it is "perhaps somewhat on the high end of the acceptable range")).

Plaintiff here will seek $10,000 in exchange for providing a broader, general, release of claims than compared with the rest of the class, and in recognition of his assistance throughout the litigation of this case. Plaintiff lent his name to the case, thus subjecting himself to public attention, including to the attention of future landlords who, in the normal course of business conduct background checks on prospective tenants, including by looking for lawsuits – especially lawsuits against other landlords. Plaintiff also helped draft the pleadings, he searched for and produced documents, sat for an all-day in-person deposition, helped with written discovery, assisted settlement efforts, and was actively engaged with counsel throughout this case. *See* Tomasevic Decl., ¶ 37. Mr. Zeff also had to endure his parents being subpoenaed and they having to provide sensitive personal and financial information related to the family. *Id.* This request is preliminarily reasonable subject to further analysis at the final approval stage.

VIII. FINALLY, THE COURT SHOULD SCHEDULE A FAIRNESS HEARING AND RELATED DATES

The next steps in the settlement approval process are to notify Class Members of the proposed Settlement, allow Class Members an opportunity to exclude themselves or file comments or objections, and hold a Fairness Hearing.

Towards those ends, the parties propose the following schedule:

Last day for Greystar to provide the final Class Information to the Settlement Administrator	**[30 days after entry of Preliminary Approval Order]**
Deadline to Send Notice of Settlement	**[30 days after Greystar provides the Class Information]**
Last day for Plaintiff to file his application for attorneys' fees, expenses and service awards	**[30 Days After Sending Notice of Settlement – or about 45 days after Preliminary Approval Order]**
Class Member Objection/ Opt-Out Deadline	**[45 days after sending Notice of Settlement – or about 60 days after Preliminary Approval Order]**

Last day for the Parties to file Motion for Final Approval of Settlement and responses to objections.	**[60 days after sending Notice of Settlement – or about 75 days after Preliminary Approval Order]**
Fairness Hearing	**[TBD, but about 90 or more days after entry of Preliminary Approval Order]**

IX. CONCLUSION

Based on the forgoing, Plaintiff Zachary Zeff respectfully requests that the Court do the following:

(a) grant preliminary approval of the Settlement;

(b) provisionally certify for settlement purposes the Class, as defined in the Settlement Agreement, pursuant to Fed. R. Civ. P. 23(b)(3);

(c) appoint Plaintiff as class representative;

(d) appoint Alex Tomasevic and Craig Nicholas of Nicholas & Tomasevic, LLP as Class Counsel;

(e) appoint Angeion Group as Settlement Administrator, and direct Angeion to carry out the duties of the Settlement Administrator specified in the Settlement;

(f) approve the proposed Notice Plan—including the form and content of the Class Notice and the proposed method for distributing the Class Notice—and direct the Parties and Settlement Administrator to implement the Notice Plan;

(g) continue the stay all non-Settlement related proceedings in this litigation pending final approval of the Settlement; and

(h) set a Fairness Hearing and certain other dates, as proposed in the table above, in connection with the final approval of the Settlement.

Respectfully Submitted,

Dated: May 9, 2024

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