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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ANNE MOULTON, individually and on behalf of all other persons similarly situated,

Plaintiff,

v.

UNITED DOMINION REALTY, L.P., UDR, INC.; and DOES 1-100, inclusive,

Defendants.

Case No. CIVSB2123480

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

Date: April 2, 2025
Time: 1:30 p.m.
Dept.: S17

Hon. Joseph T. Ortiz

PUBLIC REDACTED VERSION

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **April 2, 2025**, at **1:30 p.m.**, or as soon thereafter as this matter may be heard in Department S-17 of the above captioned Court, located at 247 West Third Street, Department S-17, San Bernardino, CA 92415, Plaintiff Anne Moulton ("Plaintiff" or "Class Representative") will move, and hereby does move, for final approval of a proposed class action settlement in this Action.

This Motion is made on the grounds that the proposed settlement (the "Settlement"), the terms of which are embodied in the Stipulation of Settlement submitted herewith,[1] is fair, reasonable, and falls within the range of possible approval. Accordingly, Plaintiff requests the Court to enter the accompanying [Proposed] Order and Judgment of Final Approval (the "[Proposed] Final Approval Order").

This Motion is based on the Memorandum of Points and Authorities; the Declaration of L. Timothy Fisher[2] (the "Fisher Decl."), the Declaration of Adrian Gucovschi, the Declaration of Anne Moulton, and the exhibits attached thereto, including the Stipulation of Settlement; the [Proposed] Order and Judgment of Final Approval submitted herewith;; the pleadings and papers on file in this action; and such other evidence and argument as may subsequently be presented to the Court.

Dated: February 14, 2025

BURSOR & FISHER, P.A.

By: L. Timothy Fisher

L. Timothy Fisher (State Bar No. 191626)
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[1] The Stipulation of Settlement is Exhibit 1 to the concurrently filed Declaration of L. Timothy Fisher in Support of Motion for an Award of Attorneys' Fees, Costs and Expenses, and Incentive Awards (the "Fisher Decl.").

[2] For efficiency, the Fisher Declaration has been filed as part of the concurrently filed Plaintiff's Motion for an Award of Attorneys' Fees, Costs and Expenses, and Incentive awards, and has not been refiled again as part of the present motion.

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I. INTRODUCTION

On October 24, 2024, this Court granted preliminary approval to the settlement ("Settlement") in this case. 10/24/2024 Order Preliminarily Approving Class Action Settlement ("Preliminary Approval Order") at 2. The Court also approved the proposed forms of notice, the claim form, procedures for objections and opt-outs, and the plan for the dissemination of the notice directly to Class Members. *See* Preliminary Approval Order at 3-6. The Court also set a final approval hearing for April 2, 2025 at 1:30 p.m. *Id.* at 7. As discussed in the settlement administrator's declaration ("Montague Decl."), notice has been effectuated pursuant to the Court's instructions (though the claims period has yet to expire). To date, the response from Class Members has been overwhelmingly positive. Plaintiff Anne Moulton ("Plaintiff" or "Class Representative") now seeks an order granting final approval of the Settlement and entry of judgment.

The Settlement provides substantial relief to Class Members and merits final approval by this Court. It has a total cash settlement value of $3,000,000 to compensate Class Members, to pay for the costs of notice and administration of the Settlement, to reimburse Class Counsel's attorneys' fees, costs and expenses, and to provide an incentive award to Plaintiff. Under the terms of the Settlement, Defendants United Dominion Realty, L.P. and UDR, Inc. ("UDR" or "Defendants") (together with Plaintiff, the "Parties"), in consideration of the release of the Class's claims challenging the Late Fees, will provide the following benefits:

1) Pay Class Members a *pro rata* share of the total number of Late Fees paid by Class Members from August 12, 2017, through October 24, 2024 (the "Settlement Class Period"). Current Tenants of UDR will automatically be paid via check without having to submit a Claim Form unless they elect another method of payment by submitting a Claim Form. Former Tenants of UDR who submit a valid Claim Form will receive payment via their preferred payment method. Fisher Decl. Exhibit 1, Settlement Agreement ("Settlement"), § III(A)(8)-(9). Because the deadline to file claims has not

yet passed, it is too early to tell precisely how many Class Members will ultimately submit claims. *See* Montague Decl. ¶ 18;

2) Pay the costs of Notice and Administration, which is presently estimated at $67,561. Montague Decl. ¶ 19. The notice includes direct notice via e-mail to current and former Tenants. *See* Settlement, § IV.F.

3) Pay Class Counsel's attorneys' fees in an amount up to $1,000,000 as well as their costs and expenses of $27,804.47, subject to court approval. Settlement, § III.A(6);

4) Payan incentive awards to Plaintiff in an amount of up to $5,000 subject to court approval. *Id.* at § III.A(7); and

5) Funds for checks not cashed within 180 days of issuance shall revert to a mutually agreed upon 501(c)(3) entity,[3] pursuant to the *cy pres* doctrine and California Code of Civil Procedure section 384.

The Settlement has the overwhelming approval of the Class Members. To date, only one person has opted out of the Settlement because they had not been charged late fees and thus were not a Class Member. The Court should grant Plaintiff's motion for final approval.

II. PROCEDURAL BACKGROUND

A. Litigation And Discovery

This is a putative class action challenging the Late Fees that UDR charges its residential Tenants for late rental payments. Plaintiff sought to represent a class of all current and former UDR Tenants who paid Late Fees since August 12, 2017 through the date of entry of the Preliminary Approval Order. The imposed Late Fees range between $100 - $110, depending on the UDR property. Plaintiff's operative complaint alleges that UDR's imposition of these Late Fees are unlawful penalties under Civil Code § 1671, which deems liquidated damages for

[3] The Parties have agreed upon either Tenant's Together (https://www.tenantstogether.org/) or Legal Aid of California (https://www.laaconline.org/). Both are 501(c)(3) nonprofits. Tenant's Together is a statewide coalition of local tenant organizations dedicated to defending and advancing the rights of California tenants to safe, decent, and affordable housing. Legal Aid of California is the statewide membership organization of legal services nonprofits that provide critical legal assistance to low-income Californians and ensure equal access to justice. Both organizations largely serve many of the Class Members in this case.

residential leases as "void" absent evidence that those charges were "impracticable or extremely difficult to fix." *See* Cal. Civ. Code § 1671(d).

Plaintiff filed her original complaint on August 12, 2021, alleging, *inter alia*, violations of: California Civil Code Section 1671(d), California Civil Code § 1750, *et seq.*, and Cal. Bus. & Prof. Code § 17200 *et seq.* In March 2022, the Court overruled Defendants' demurrer based on the contention that Plaintiff could only bring claims against Rancho Cucamonga, L.P., one of many wholly owned subsidiaries of UDR. The Court nonetheless granted Plaintiff leave to amend to add UDR Inc. and DOES 1-100, inclusive. Plaintiff filed her First Amended Complaint on July 5, 2022, adding the additional UDR Defendants, which is the current operative complaint. Defendants filed their answer to Plaintiff's complaint on September 19, 2022, denying the complaint's key allegations and raising numerous defenses. Shortly thereafter, the parties engaged in extensive formal discovery, including six document productions by Defendants and a person most knowledge deposition of Defendants. During this period, the parties also engaged in settlement discussions, and attended two full days of mediation with Jill R. Sperber, Esq., of Judicate West, with the first session occurring on September 27, 2023, and the subsequent session taking place on January 18, 2024. Fisher Decl., ¶ 4. After the second mediation, the parties were able to reach an agreement in principle and executed a term sheet on January 18, 2024 setting out the material terms of the Settlement. *Id.*

B. Preliminary Approval Of The Settlement

The Parties finalized their Stipulation of Settlement on May 17, 2024, and Plaintiff initially moved for preliminary approval on May 24, 2024. On October 2, 2024, the Parties attended a hearing regarding preliminary approval during which the Court inquired on the qualifications and the quote of the proposed administrator, and the proposed *cy pres* recipient. The Court granted preliminary approval on October 24, 2024.

III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. The Applicable Legal Standards

A class action settlement requires court approval after notice to the class members. *Malibu*

Outrigger Bd. of Governors v. Sup. Court (1980) 103 Cal.App.3d 573, 578; Fed. R. Civ. P. 23(e).[4]

California has a well-established and strong policy in favor of the settlement of litigation. *Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236; *Hamilton v. Oakland Sch. Dist.* (1933) 219 Cal. 322, 329; *Cent. & W. Basin Water Replenishment Dist. v. S. Cal. Water Co.* (2003) 109 Cal.App.4th 891, 912.[5] Settlement is particularly favored in class actions, given the costs and uncertainties inherent in complex litigation. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 ("the risks of maintaining class action status and pursuing judgment through trial would have been large"); *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607 (noting California's "'strong public policy in favor of settlement of class actions"'); *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276, *cert. denied*, 506 U.S. 953 (1992) ("strong judicial policy ... favors settlements, particularly where complex class action litigation is concerned"); Rubenstein, 4 Newberg on Class Actions (5th ed. 2013) § 13.44 ("The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding lengthy trials and appeals.").

Whether a class action settlement should receive final approval is committed to the broad discretion of the trial court. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438 ("the trial court has broad powers to determine whether a proposed settlement in a class action is fair"). The purpose of the final approval hearing is not, however, to rework a settlement that is the result of complex and hard-fought negotiations. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246 ("the proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.").

When the settlement results from arm's length bargaining by experienced counsel who performed sufficient discovery, and the percentage of objectors is small, there is a "presumption of fairness." *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801. That presumption

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[4] In resolving issues relating to class actions, California courts frequently look to Rule 23 of the Federal Rules of Civil Procedure, and to federal cases decided thereunder, for guidance. *Green v. Obledo* (1981) 29 Cal.3d 126; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.#

[5] Unless noted, internal citations, quotations, and footnotes are omitted, and emphasis added.

was summarized as follows by the First District Court of Appeal in *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723:

> At the same time, the trial court should give "[d]ue regard ... to what is otherwise a private consensual agreement between the parties." Such regard limits its inquiry "'to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" The trial court operates under a presumption of fairness when the settlement is the result of arm's-length negotiation, investigation and discovery that are sufficient to permit counsel and the court to act intelligently, counsel are experienced in similar litigation, and the percentage of objectors is small.

On final approval, a number of factors may be relevant to a determination that a settlement is "fair, adequate and reasonable," including:

> the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, … the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, … and the reaction of the class members to the proposed settlement.

Dunk, 48 Cal.App.4th at 1801.

As explained below, the Settlement Agreement before the Court amply satisfies these standards.

B. The Proposed Settlement Is Fair, Adequate, And Reasonable

1. <u>The Settlement Is Entitled To A Presumption Of Fairness</u>

As noted in *Microsoft I-V*, proposed class action settlements are presumed fair where the settlement is the result of arm's-length negotiation, discovery has been sufficient, counsel are experienced in similar litigation, and the percentage of objectors is small. 135 Cal.App.4th at 723; *see also Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389. Each of those criteria is met here. Therefore, when the Court reviews the settlement, it should begin with a presumption that the settlement is fair, adequate and reasonable.

a. <u>The Settlement Was The Result Of Arm's Length Negotiations</u>

Here, the Settlement was the result of arm's length negotiations under the aegis of a distinguished and experienced mediator, Jill R. Sperber, Esq., of Judicate West. The adversarial nature of the settlement negotiations is underscored by the fact that the Parties engaged in two full

days of mediation—the first on September 27, 2023, and the second on January 18, 2024—that culminated in the execution of a settlement term sheet. Fisher Decl. ¶ 4. The final Settlement was reached after nearly three years of hard-fought litigation and months of arm's-length negotiations through mediation. Fisher Decl. ¶ 4.

b. The Settlement Was Negotiated After Litigation And Sufficient Discovery

The Settlement was negotiated after the parties had completed significant discovery that included 13 document requests, 17 interrogatories, and six document productions by Defendant. *See id*. ¶ 16. Plaintiff also deposed Defendants' PMQ witnesses. *Id*. Thus, the Parties negotiated the Settlement with full knowledge of the total damages in this case, as well as the strengths and weaknesses of their own case and that of their adversaries.

c. Counsel Are Experienced In Similar Litigation

As demonstrated by their firm resumes submitted herewith, Class Counsel have extensive experience representing plaintiff classes in consumer litigation. Ex. 2 to the Fisher Decl. and Ex. 1 to the Gucovschi Decl.

d. The Class Response Has Been Overwhelmingly Positive

As discussed above, although Notice of the Settlement has already been provided in full (including the Reminder Notice), there has, to date, been only one "opt-out" out and no objections to the Settlement. Montague Decl. ¶ 16. The absence of objections also "raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *In re Omnivision Techs, Inc*. (N.D. Cal. 2008) 559 F. Supp. 2d 1038, 1043 (approving class settlement where the court "received objections from 3 out of 57,630 potential Class Members"); *see also 7-Eleven Owners for Fair Franchising v. Southland Corp*. (2000) 85 Cal. App. 4th 1135, 1144 (affirming settlement with 80 opt-outs and 9 objections out of 5,500 class members); *Churchill Village LLC v. Gen. Elec*. (9th Cir. 2004) 361 F.3d 566, 577 (affirming settlement with 45 objections out of 90,000 notices sent).

2. Review Of The Relevant Factors Demonstrates That The Proposed Settlement Is Fair, Adequate, And Reasonable

The non-exclusive list of factors that the Court may consider when reviewing a proposed class action settlement includes (1) the consideration obtained in the settlement, (2) the risk, expense, complexity and duration of further litigation as a class action, (3) the extent of discovery completed and the stage of the proceedings, (4) the experience and views of counsel, and (5) the reaction of class members to the proposed settlement. *Microsoft I-V*, 135 Cal.App.4th at 723. Reviewing those factors in light of the presumption of validity discussed above, the Settlement clearly merits final approval.

a. The Consideration Provided By The Settlement And The Risk, Expense, Complexity, and Duration Of Further Litigation Faced By Plaintiff

The $3 million provided by the Settlement represents an excellent recovery for the Settlement Class. That conclusion is based on the Class's likely recovery in the case as well as the significant risks the Class faced if the case proceeded to trial. Specifically, Defendants' internal records indicate that Settlement Class Members paid approximately [redacted] in late fees during the Class Period. *See* Fisher Decl. ¶ 6. In reality, however, it is doubtful whether the Class could recover that amount. If these claims would have gone forward, the Class likely could not have recovered more than the estimated maximum recoverable amount of [redacted], and, in all likelihood, that recovery would have been further diminished by Defendants' actual damages, possibly to an amount significantly below the current settlement fund. Thus, if Defendants succeeded in proving their damages at trial, those damages would be set off against the Settlement Class Members' recovery and could potentially leave them with nothing.

Even if Plaintiff had obtained a larger recovery at trial, it would have happened at a much later time and the Class would have incurred additional costs and attorneys' fees that would have further reduced their relief. Moreover, even if Plaintiff prevailed at trial, Defendants would likely appeal the verdict, which would delay the final resolution of this case by years and could result in the verdict being overturned. By settling now, Plaintiff avoids those risks and obtains significant monetary relief now. She also avoids any delay and the risk associated with post-trial motions and

the appellate process. The nature and scope of the relief obtained in the Settlement plainly supports final approval.

Under the terms of the Settlement, Plaintiff estimates that there will be approximately $1.9 million available for distribution to the Settlement Class after reimbursement of costs and incentive awards.[6] Plaintiff faced significant risk as the case moved forward. Though Plaintiff had defeated Defendants' demurrer to the complaint, Plaintiff had not yet filed a motion for class certification. In addition, Defendants indicated that they intended to file a motion for summary judgment. Defendants also sought to limit the class to only those tenants in the apartment complex in Rancho Cucamonga where Plaintiff Moulton lived. If Defendants had prevailed on that argument, the size of the class would have been dramatically reduced. Furthermore, Defendants sought to offset any recovery for Plaintiff and the class by seeking the recovery of its costs to collect late payments from its tenants. Defendants indicated that those offsets likely exceeded the amount of the late fees collected during the class period. By settling, Plaintiff avoids those risks as well as the risk of trial and an appeal and ensures a recovery for all class members.

b. Stage Of The Proceedings

This Settlement was negotiated after hard-fought litigation and comprehensive discovery, including a deposition. This factor also supports final approval.

c. Experienced Class Counsel Recommend Approval Of The Settlement

The Settlement is also fully supported and recommended by experienced Class Counsel, who have vigorously prosecuted the case here. Class Counsel have carefully gauged the risks involved with this case and are in the best position to evaluate those risks at this stage of the litigation. *See 7-Eleven,* 85 Cal. App. 4th at 1152; *Lyons v. Marrud, Inc.* (S.D.N.Y. June 6, 1972) 1972 WL 327, at *2 ("Experienced and competent counsel have assessed these problems and

[6] The estimated amount remaining for distribution to Class Members was calculated as follows. RG/2 estimates the cost of notice and administration at $67,561. Montague Decl. ¶ 19. Class Counsel have $27,804.47 in costs and expenses. *See* Fisher Decl. at ¶ 20. The proposed Plaintiff's incentive award is $5,000. These amounts total $100,365.47. After deducting that sum and the requested $1,000,000 attorneys' fees, $1,899,634.53 remains for distribution to Class Members.

probability of success on the merits. . . and [t]he parties' decisions regarding the respective merits of their positions has an important bearing on this case."). "Counsels' opinions warrant great weight both because of their considerable familiarity with this litigation and because of their extensive experience in similar actions." *In re Washington Public Power Supply System Securities Litigation* (D. Ariz. 1989) 720 F.Supp. 1379, 1392 aff'd, 955 F.2d 1268; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 622 ("Attorneys, having an intimate familiarity with a lawsuit after spending years in litigation, are in the best position to evaluate the action, and the Court should not without good cause substitute its judgment for theirs.").

d. *The Settlement Enjoys The Support Of The Class Members*

As discussed above, the Notice Administrator provided notice to 36,005 Class Members. *See* Montague Decl. ¶ 6. However, to date, no Class Members have objected and only one person has sought to be excluded from the Settlement. *Id.* ¶¶ 16. Such nominal opposition to the Settlement is a strong indication that the Class overwhelmingly supports the Settlement and favors approval of it as fair. *See 7-Eleven,* 85 Cal. App. 4th at 1153. The Court should grant final approval to the Settlement.

IV. CONCLUSION

The Settlement in this matter is fair, adequate, and reasonable. Plaintiff therefore requests that this Court grant final approval and enter judgment on the forms submitted herewith.

Dated: February 14, 2025

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