Damion D. D. Robinson, State Bar No. 262573
DIAMOND McCARTHY LLP
355 South Grand Avenue, Suite 2450
Los Angeles, California 90071
Tel. (424) 278-2335
Fax (424) 278-2339
damion.robinson@diamondmccarthy.com

Jimmie Davis Parker, SBN 252023
**Law Office of Jimmie Davis Parker**
4241 Arden Way
San Diego, CA 92103
Tel. (619) 887-3300
Email: JDParker@gmail.com

Attorneys for Plaintiffs Xin Chen, Brian Chiang, Kierney Waldron and the Class and Subclasses



**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

XIN CHEN, an individual; and BRIAN CHIANG, an individual; individually and on behalf of all others similarly situated;

Plaintiffs,

vs.

GHP MANAGEMENT CORPORATION, a California corporation, *et al.*

Defendants.

KIERNEY WALDRON; ROES 1 through 100 inclusive; individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

GHP MANAGEMENT CORPORATION, a California corporation, *et al.*

Defendants.

**Lead Case No.: BC 713402**

**(**Consolidated Case No. 19STCV03883)

*Assigned for All Purposes to:*
The Hon. Elihu M. Berle, Dept. 6

**PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND SETTLEMENT NOTICE;**

**MEMORANDUM OF POINTS AND AUTHORITIES;**

**STATEMENT RE: CLASS NOTICE**

[Filed concurrently:
1. Compendium of Declarations;
2. Proposed Order]

Date: August 2, 2023
Time: 11:00 a.m.
Dept.: 6 (Spring Street)

Action Filed: July 13, 2018
Trial Date: None Set

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on August 2, 2023 at 11:00 a.m., or as soon thereafter as the matter may be heard by the Honorable Elihu M. Berle in Department 6 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Xin Chen, Brian Chiang, and Kierney Waldron (collectively, "Plaintiffs") will and hereby do move, unopposed, for preliminary approval of the proposed class action settlement with Defendants GHP Management Corporation, et al. (collectively, "Defendants") and approval of class notice.

This Motion is made pursuant to Code of Civil Procedure § 382 and California Rules of Court, rule 3.769, on the grounds that: (a) the proposed class settlement is fair, reasonable, and adequate, and in the best interests of the class members and has been approved by all parties and counsel; (b) the defined settlement class meets all of the criteria for class certification and is consistent with the Class previously certified by the Court; and (c) the proposed form and manner of notice are the best practicable under the circumstances.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities and Statement Re: Class Notice; the accompanying Declarations of Damion Robinson, Jimmie Davis Parker, Richard Scott Lysle, Julie Green, and Larry Berliner, and exhibits thereto; the parties' briefing and evidence in connection with Plaintiff's Motion for Class Certification, which is incorporated herein by reference; the other records and files herein; and such other matters as the Court may consider at the time of hearing.

Dated: June 30, 2023

Respectfully submitted,

By: s/ Damion Robinson
Damion D. D. Robinson
DIAMOND McCARTHY LLP

Attorneys for Plaintiffs Xin Chen and Brian Chiang and the Class and Subclasses

By: s/ Jimmie Davis Parker
Jimmie Davis Parker

Law Office of Jimmie Davis Parker, APC

Attorneys for Plaintiff Kierney Waldron and the Class and Subclasses

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

The proposed settlement represents more than a 100% recovery to class members. Class members are overwhelmingly likely to receive more than their total damages, even after fees, costs, and service awards. This reflects a resounding victory for the class, achieved after nearly five years of hard-fought litigation, comprehensive investigation, and extensive settlement negotiations with the help of two well-respected mediators. All the factors for settlement approval are satisfied.

Plaintiffs Xin Chen, Brian Chiang, and Kierney Waldron challenged Defendant's unlawful withholding of tenant security deposits and failure to provide statutory disclosures. This practice affected over 30,000 tenants across Southern California. After significant discovery, the Court certified a main class and two subclasses in August 2021. Through ongoing negotiations, which have now spanned three years, the parties settled in principle in December 2021 with the help of mediator Honorable Dickran M. Tevrizian (Ret.).

After entering the original settlement, due to potential discrepancies in the damages and class composition data, the parties conducted a comprehensive data analysis of Defendants' tenant accounting databases. Rather than increase the potential damage range, this in-depth analysis reflected that the damage range is slightly lower than previously estimated. Nonetheless, the parties have agreed to honor the settlement with slight modifications to address the Court's feedback at the last preliminary approval hearing and to more closely tailor payments to class composition.

The settlement is in the best interests of the class. It provides for over $12,500,000 in financial recovery, including $10,000,000 in cash. The cash portion alone represents over 135% of actual damages classwide. At standard payment acceptance rates, class members are likely to receive repayment in full plus a premium. Defendants have also agreed to a consent judgment, mandating full compliance with California's deposit disclosure requirements, providing future benefits to the tenants of over 15,000 residential units.[1]

The settlement is entitled to a presumption of fairness. It was reached through arms-length

[1] "Defendants" refers to GHP Management Corporation and affiliates identified in the Settlement Agreement attached as **Exhibit 1**.

negotiations after hard fought litigation and substantial investigation and discovery. It bears none of the features that require enhanced scrutiny. It is not a nominal or "coupon" settlement, nor does it provide for "claims made" procedures. Former tenants will simply receive a check with their share of the sizeable cash fund. The parties have agreed to provide broad notice in three languages, including through mailers, email, publication in the L.A. Times, and a class website.

The settlement is fair, adequate, and reasonable both procedurally and substantively. Plaintiffs respectfully request that the Court: (a) preliminarily approve the settlement; (b) direct class notice as provided in the parties' Class Action Settlement Agreement (the "Settlement Agreement"); and (c) set a hearing for final approval.

## II. BACKGROUND

### A. Background of this Case

The class is comprised of former tenants of 24 apartment complexes across Southern California managed by GHP Management Corporation ("GHP") and owned by the other named Defendants. GHP is one of the largest landlords in Southern California.

Plaintiffs allege that Defendants violated Civil Code § 1950.5 by failing to provide tenants with mandatory disclosures before making deductions from their security deposits. Civil Code § 1950.5(g) requires Defendants to (a) reasonably describe all in-house repair and cleaning charges; and (b) provide tenants with bills, invoices, or receipts reflecting outside charges. Plaintiffs claim that Defendants systematically failed to provide these disclosures and assessed improper charges.

Plaintiffs bring claims for violation of Civil Code § 1950.5, breach of lease, conversion, and unfair business practices under Business & Professions Code § 17200. Each claim turns on the same issue—*i.e.*, Defendants' withholding of deposits without required disclosures. The central legal and factual disputes are (a) the consequences of Defendants' failure to provide the disclosures under Civil Code § 1950.5(g) and *Granberry v. Islay Investments* (1995) 9 Cal.4th 738; (b) whether Defendants' notices, if any, complied with section 1950.5(g); and (c) whether Defendants' failure to comply was in bad faith. Plaintiffs contend that Defendants failure to provide the disclosures required a full return of deposits, and that a showing of bad faith would preclude Defendants from deducting any charges and subject them to double damages. Civ. Code § 1950.5(*l*). Defendants

have zealously disputed Plaintiff's contentions over the five-year history of this case.

**B. The Pleadings**

Plaintiff Xin Chen filed the lead case, *Chen v. GHP Management Corporation, et al.*, Case No. BC713402 on July 13, 2018. She and Brian Chiang filed a First Amended Complaint on January 31, 2019. On February 7, 2019, Plaintiff Kierney Waldron filed a related action styled *Waldron v. GHP Management Corporation, et al.*, Case No. 19STCV03883. The two actions are consolidated. Decl. of Damion Robinson ("Robinson Decl.") ¶ 3.

Defendants filed Demurrers and Motions to Strike, which the Court denied. *Id.* ¶ 5.

On September 1, 2021, Defendants moved for leave to file a Cross-Complaint against 4,700 class members. The Court denied Defendants' Motion and Defendants appealed. *Id.* ¶ 6.

**C. Plaintiffs' Investigation and Discovery Efforts**

Plaintiffs obtained extensive formal and informal discovery over the course of this case. They began seeking discovery in early 2019 and continued these efforts through and after class certification in August 2021 and the initial settlement in December 2021. *Id.* ¶ 7.

In connection with an early mediation in July 2019, Defendants disclosed a sampling of 50 tenant "move-out files." Plaintiffs' counsel identified what they believed was a uniform or near-uniform failure to comply with section 1950.5. Defendants also provided preliminary information about class size (total tenants) and amount in controversy (deposit withholdings). *Id.* ¶¶ 8-9.

With the assistance of a statistician, Plaintiffs then obtained and analyzed a sampling of approximately 500 "move-out files." The file sampling included move-outs from 21 of Defendants' complexes[2] across the class period of 2014 through the sampling date. Counsel and Plaintiffs' expert performed a statistical analysis, identifying approximately a 75% defect rate in Defendants' move-out disclosures. *Id.* ¶¶ 10-12.

After receiving this sampling, Plaintiffs also obtained a further sampling of "proof of payment" information for 50 selected tenant files, such as accounting ledgers and cancelled checks. After extensive briefing and an IDC, Plaintiffs also performed an on-site inspection at two of

[2] It excluded the "Lorenzo" complex, which houses students at USC who rent individual rooms rather than apartments, and two other complexes that were only recently opened.

Defendants' complexes to check the accuracy of the sampling. *Id.* ¶¶ 13-14.

Further, Plaintiffs served several thousand document requests and interrogatories to Defendants, ultimately reaching agreement that GHP would respond on behalf of the group. Through this discovery, Plaintiffs obtained (a) the named Plaintiffs' complete tenant files; (b) hundreds of pages of operating procedures; (c) forms of tenant disclosures and leases; (d) training materials; and (e) billing documents from two of Defendants' primary vendors. All told, Plaintiffs obtained over 13,000 pages of documents from Defendants and third parties. *Id.* ¶¶ 15-16.

On January 13, 2020, the Court authorized a "*Belaire* Notice" to the approximately 500 former tenants. After receiving contact information, Plaintiffs' counsel contacted each of them and interviewed those willing to speak. Through this effort, Plaintiffs secured 16 declarations of class members in support of certification. *Id.* ¶ 18.

Plaintiffs also deposed four Persons Most Qualified of Defendants, on overlapping certification and merits issues, as well as two of Defendants' main vendors. Defendants took the depositions the named Plaintiffs as well as several class members.[3] *Id.* ¶¶ 19-21.

**D. Class Certification**

Plaintiffs filed comprehensive class certification briefing on April 26, 2021, which is incorporated by reference. The Court granted certification on August 4, 2021. *Id.* ¶¶ 22-24.

**E. The Parties Engage in Over Two Years of Settlement Discussions**

The parties worked through two mediators. They held an initial mediation on July 25, 2019 with the Honorable Richard A. Stone (Ret.). *Id.* ¶¶ 25-26. Shortly before Plaintiffs moved for certification in March 2021, they held another session with the Honorable Dickran M. Tevrizian (Ret.). While they were unable to reach agreement, Judge Tevrizian stayed in contact with counsel for several months and negotiations continued through and after certification. *Id.* ¶¶ 27-28.

After the Court granted certification, Defendants made Code of Civil Procedure § 998 offers to settle the entire case for $6,000,000 or $3,000,000 per subclass. Plaintiffs disputed the validity of the offers. *Id.* ¶ 29. They then proposed a settlement bracket through Judge Tevrizian. *Id.* ¶ 30.

[3] Discovery necessitated significant Court intervention, including multiple IDCs.

Defendants responded by proposing a last, best, and final settlement offer of $10,000,000 cash. With Judge Tevrizian's encouragement, Plaintiffs accepted the offer in December 2021. *Id.* Counsel for all parties then spent several months negotiating a detailed term-sheet and long-form settlement documents. *Id.* ¶¶ 31-32 & Ex. B.

**F. The Parties' Comprehensive Data Analysis**

Plaintiffs moved for preliminary approval of the prior settlement on June 1, 2022. On July 15, Defendants reported that the class size and damages data on which the settlement was based was potentially inaccurate. Plaintiffs withdrew from the prior settlement, served discovery relating to the class and damages data, and sought appointment of a referee. *Id.* ¶¶ 33-34.

The parties ultimately agreed to have two teams of experts analyze Defendant's tenant databases to verify the class composition and damages range. Defendants retained the accounting firm of Green Hasson & Janks (GHJ) and Plaintiffs engaged three database (Microsoft .SQL) experts, led by Larry Berliner of Standpoint IT. *Id.* ¶¶ 35-36; *see also* Berliner Decl. ¶ 5. After a series of discussions and refinements, all parties' experts have concluded that the final data analysis is sufficiently accurate and reliable. Robinson Decl. ¶¶ 37-40; Berliner Decl. ¶¶ 7-14.

**G. Class Counsel's Experience**

As the Court recognized in certifying the class, Plaintiffs' counsel is experienced in complex and class litigation. As set forth in more detail in the accompanying declarations counsel ranges in experience from 15 to 49 years and has handled a wide array of complex litigation. Robinson Decl. ¶¶ 42-46 & Exs. D–G; Decl. of Jimmie Davis Parker ¶¶ 3-4; Decl. of Richard Scott Lysle ¶¶ 2-4.

## III. SETTLEMENT TERMS

A complete copy of the Class Action Settlement Agreement ("Settlement Agreement") is attached as **Exhibit C** to the Robinson Declaration with its exhibits attached as Exhibits C-1 to C-5.

**A. Settlement Class**

The Settlement Class mirrors the class certified by this Court with minor refinements. The Settlement Class definition is as follows:

> All former tenants of Defendants who moved out during the Class Period from whom Defendants withheld more than $125.00 of their security deposits other than for Unpaid Rent and Utilities (as defined in the Agreement).

The definition includes customary exclusions for Defendants and their employees, the Court and its staff, minors and non-lessees, tenants subject to eviction,[4] and tenants who have previously settled. Settlement Agreement at p. 6, § 2.1. The "Class Period" is defined as July 13, 2014 through June 30, 2022, the date tenant accounting data was last pulled. *Id.* at p. 3.

**B. Scope of Class Release**

Settlement Class members who do not opt out will release the claims asserted in the operative pleadings. Settlement Agreement, at p. 16 § 13.1; *id.* at p. 5. The release will become effective upon the first settlement payment to the class. *Id.* at. p. 16, § 13.1.[5] Until that time, the settlement funds will be held by an independent escrow agent. *Id.* at p. 10, § 9.1; *see also* Ex. C-5.

There are no "claims made" procedures, the Settlement Agreement does not contain a Civil Code § 1542 waiver, and there are no confidentiality provisions.

**C. Monetary Terms**

Defendants will make an "all in" cash payment of $10,000,000, inclusive of payment to the class, fees and costs, administration costs, and service awards. Settlement Agreement, p. 10 § 9.1. Defendants have also agreed to release all claims against former tenants for repair and cleaning above their deposits—*i.e.*, the claims asserted in the proposed Cross-Complaint. This amounts to estimated debt relief of more than $2,500,000. *Id.*, p. 14 § 9.12–9.13.

The net settlement funds will be allocated on a weighted-average basis to the Settlement Class based on the amount Defendants withheld from deposits for repair and cleaning. *Id.*, p. 11 § 9.3.1. Specific provisions are included for situations involving co-tenants (roommates) and individuals who had a portion of their deposits withheld for rent or utility charges. *Id.*, p. 12 § 9.4.

Plaintiffs' counsel will seek fees totaling 33% of the cash portion of the settlement. *Id.*, p. 15 § 11. The fees are calculated on a "common fund" basis with a lodestar cross-check, representing a multiplier of roughly 2.5x. Robinson Decl. ¶ 62. To date, counsel have incurred

[4] Because tenants' deposits are generally approximately one third of one month's rent, tenants who were evicted will not meet the class definition.

[5] The effective date of the release was another of the Court's concerns at the prior hearing, which has been addressed in the revised settlement.

approximately $150,000 in hard costs and administration costs are anticipated to be $160,000.[6] *Id.* ¶ 63; *see also* Decl. of Julie Green ("Green Decl."), Ex. B. Plaintiffs also seek service awards of $10,000 per named Plaintiff, representing 0.1% of the total cash recovery. Robinson Decl. ¶ 64.

Because the payments reflect a return of tenant deposits, rather than payment of wages or other income, no tax allocations are provided. *Id.* ¶ 65.

### D. Forward-Looking Relief

In addition to the monetary relief, Defendants have agreed to entry of a judgment providing:

***Future Disclosures***. That they will comply fully with the statutory disclosure requirements of Civil Code § 1950.5(g) going forward. Settlement Agreement, p. 14 ¶ 10.1 & Ex. C-4 at p. 4.

***Credit Reporting***. Defendants represent that they do not report excess repair and cleaning charges to reporting agencies. To the extent any such charges have been reported, Defendants will not challenge class members' effort to dispute those charges. Settlement Agreement, p. 14 § 11.2.

The parties have not quantified the monetary value of this relief and do not rely on it to support the requested attorney's fees or service awards.

### E. Settlement Administration

The parties have selected CPT Group, Inc. ("CPT") as the class administrator. CPT is one of the country's leading administrators. The Court approved CPT earlier in this case with respect to the "*Belaire* Notices." *See generally* Green Decl.; Robinson Decl. ¶¶ 66-67.

## IV. THE SETTLEMENT SHOULD BE APPROVED

### A. Legal Standard

The Court has "broad discretion" to evaluate a class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *see also 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1166-67. The process is designed to ensure that absent parties' rights "have been given due regard by the negotiating parties." *Officers for Justice v. Civil Service Com'n of Cty. & Cnty. of S.F.* (9th Cir. 1982) 688 F.2d 615, 624.

The settlement must be "fair, adequate, and reasonable." *Dunk*, *supra*. At this stage, the

[6] If the settlement is not ultimately approved, Plaintiffs' counsel has agreed to share the administration costs equally with Defendants.

Court merely decides whether it is in "the reasonable range of approval." *Berger v. Property I.D. Corp.* (C.D. Cal. 2008) 2008 WL 11342785, at *1 (citation omitted). Relevant considerations include the strength of the case, the risk, expense, and complexity of continued litigation, the risk of maintaining certification, the settlement amount, the extent of discovery taken and the stage of the case, and "the experience and views of counsel." *Dunk*, *supra*. "The inquiry 'must be limited 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[.]" *Id.* (quoting *Officers for Justice*, *supra*).

The determination is "an amalgam of delicate balancing, gross approximations, and rough justice." *Officers for Justice*, *supra*, at p. 625. "[I]t must not be overlooked that voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation." *Id.*; *see also Cellphone Term. Fee Cases* (2009) 180 Cal.App.4th 1110, 1125 ("policy favors generally the compromise of complex class action litigation").

**B. <u>The Settlement Is the Product of Serious, Informed, Non-Collusive Negotiation</u>.**

Where experienced counsel reaches a settlement after thorough investigation and negotiation, it is presumed reasonable. *Dunk*, *supra*, 48 Cal.App.4th at 1802. Courts give "due regard" to the "consensual agreement between the parties." *Id.* at 1801; *see also Officers for Justice*, *supra*, 688 F.2d at p. 625. "[T]he competency and integrity of counsel and the involvement of a neutral" carry "considerable weight." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.

The parties' settlement was reached by experienced counsel with the assistance of two highly qualified mediators after negotiations spanning three years. The parties exchanged thousands of pages of discovery and conducted multiple depositions. They then conducted a comprehensive analysis of Defendants' data to verify the accuracy of the damage range and class composition. During negotiations, Plaintiff's counsel forcefully advocated for the class, increasing the settlement from initial "nuisance value" proposals to an eight-figure cash payment.

**C. The Settlement Is Fair to the Class, Providing $12,500,000 in Monetary <u>Consideration and Forward-Looking Relief</u>.**

Parties must provide "basic information about the nature and magnitude of the claims in

question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar*, *supra*, 168 Cal.App.4th at 133. This requires an "understanding of the amount … in controversy and the realistic range of outcomes." *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 409 (citing *Kullar*, *supra*, at 120). Mathematical precision is not required, *id.*, and the Court need not "decide the merits of the case or to substitute its evaluation of the most appropriate settlement." *Kullar*, *supra*., at 133. The Court need only "satisfy itself that the class settlement is within the 'ballpark[.]'" *Id.*

**1. The Monetary Terms Are Fair and Reasonable.**

The main benefit of the settlement is that it provides for a more than a 100% return of relevant deposit withholdings. Rather than litigate over the validity of the withholdings, Defendants have simply agreed to pay all the tenants back in full with a premium.

**a. The Settlement Reflects Over 135% of Damages.**

Based on the parties' comprehensive analysis, the total amount of estimated deposit withholdings for relevant repair and cleaning charges subject to Civil Code § 1950.5(g) is $7,359,930.79 for the class of approximately 33,879 former tenants. *See* Robinson Decl. ¶ 68 & Ex. I. This represents maximum likely damages without considering offsets for any repair or cleaning charges. Plaintiffs contend that if they could demonstrate bad faith classwide, they would also be entitled to discretionary double damages and interest. *See* Civ. Code § 1950.5(*l*).

Defendants' position has not waivered, however, that the maximum recovery is not the total amount of withholdings. Defendants maintain that the maximum recovery is this total ***minus a substantial offset*** for repair and cleaning expenses actually incurred. In other words, Defendants contend that Plaintiffs and the class may only recover the invalid or unreasonable repair and cleaning charges. This could potentially result in a 50% or larger discount. For purposes of settlement, Defendants have agreed to forgo any such claims or offsets.

The total consideration of $12,500,000 is not merely in the "ballpark." It is an unqualified win. The cash payment alone represents over 135% of damages. Even if every class member cashed their check, each would receive over 85.5% recovery after all fees, costs, service awards, and administration fees. Robinson Decl., Ex. J. Given ordinary acceptance rates, each participating

class member is overwhelmingly likely to receive well over 100% of their money back. *Id.* Few class actions are settled on such favorable terms.

**b. The Settlement Is Justified by the Risks of Further Litigation.**

While Plaintiff's are confident in their position—which led to the large settlement in the first instance—they are also cognizant of the substantial risks.

As an initial matter, there is a meaningful risk that even if Plaintiffs prevail on their theory that Defendants violated Civil Code § 1950.5, the total damages could be reduced significantly. Based on expert analysis, the tenant file sampling disclosed a roughly 75% failure rate in providing statutory disclosures, assuming that all relevant file materials were sent to departing tenants. *See* Robinson Decl. ¶ 71 & Ex. K. Plaintiffs contend that they were not sent. If a jury finds otherwise, however, this could reduce the recovery by 25% as a starting point. A trier of fact could also disagree about whether all the discrepancies identified by Plaintiffs were actual violations of the Civil Code, which would also reduce damages.

The primary risk, however, is Defendants contention that, even if they failed to provide proper disclosures, they are entitled to deduct provable repair and cleaning charges on a tenant-by-tenant basis. While Plaintiffs disagree, if Defendants' argument were adopted, it would create risk to the merits and certification, add complexity and create practical difficulties, and substantially increase the expenses on both sides. It could also reduce damages significantly.

While Plaintiffs believe that many of Defendants' move-out charges were bogus, they are not naïve to the fact that some level of repair and cleaning was likely necessary for many units. If Defendants were allowed to deduct these charges, it would reduce the overall damages to well below the settlement amount. Thousands of class members could potentially recover nothing, even if Plaintiffs prevailed on their primary theories. Robinson Decl. ¶¶ 74-76.

Further, litigating offsets creates practical problems. Courts have provided little guidance on how to prove offsets classwide—an issue that Defendants focused on in opposing certification. *See Peviani v. Arbors at California Oaks Property Owner, LLC* (2021) 62 Cal.App.5th 874.[7] As the

[7] *Peviani* appears to be the only published decision to seriously address the issue since *Granberry* was decided more than 25 years ago.

Court noted at certification, Plaintiffs would be required to propose a manageable way of calculating class damages, potentially taking offsets into account, either through statistical analysis or a special master. Not only does this create risk as to certification, but it would be time consuming and costly, especially given the average deposit of $500 to $600. Robinson Decl. ¶¶ 77-79.

Plaintiffs' theory is that Defendants are not entitled to litigate the validity of the charges if their failure to provide the statutory disclosures was not in good faith. *See Granberry*, *supra*, 9 Cal.4th 738, 749-50; Civ. Code § 1950.5(*l*). Proving bad faith, however, is inherently difficult. Moreover, Defendants have argued that Plaintiffs are not only required to show a bad faith failure to make disclosures, but also that the *deductions themselves* were in bad faith. If this position were accepted, it would also pose significant practical and substantive issues. These open issues create additional risk on the merits and certification. The settlement eliminates all such risks.

**2. The Class Release Is Narrowly Tailored.**

Following the Court's guidance, the releases are limited to claims in the operative pleadings.

**3. A 33% Fee Award Is Reasonable and Appropriate.**

Plaintiffs will submit a separate Motion for attorney's fees of 33% of the cash recovery on behalf of the five sets of counsel who represented Plaintiffs. This is a standard award in class litigation.[8] *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (citation omitted). In common fund cases, the percentage method is strongly preferred. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 492-94. Courts have consistently awarded one-third where, as here, the case resolves after lengthy litigation and post-certification. *See*, *e.g.*, *Laffitte*, *supra*; *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379; *Stanley Donen Films, Inc. v. Twentieth Century Fox Film Corp.* (L.A. Super. Ct. Apr. 9, 2018) Case No. BC499181, 2018 WL 2881500 (Berle, J.).

This case warrants a similar award. Counsel has borne the entire risk and substantial cost of this litigation for five years. It involved unsettled, hotly contested issues, hard-fought discovery, and extensive motion work. The outcome is extraordinary for a case of this type.[9]

[8] Considering the $2,500,000 in debt relief, the percentage drops to 26.4%.

[9] Pursuant to *Marks v. Spencer* (2008) 166 Cal.App.4th 219, 228-29, lead counsel for Chen and Chiang have a fee-splitting arrangement with Edward L. Wei, Esq., who referred the matter. As will

A lodestar cross-check also supports the award, confirming that the proposed fee is well within the range of reason. *Laffitte*, *supra*, at 505. On a lodestar basis, the fee will equate to a multiplier of approximately 2.5 or less depending on the work remaining to be done. This is well within the reasonable range of two to four times. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255, *disapproved on other grounds in Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260; *see also Stanley Donen Films, Inc.*, *supra*, 2018 WL 2881500 (approving 2.74 multiplier on cross-check); *Natural Gas Anti-Trust Cases* (San Diego Super. Ct. Dec. 11, 2006) Case No. 4221, 2006 WL 5377849, at *4 (noting courts have "applied multipliers of between 4 and 12 to counsel's lodestar"). The multiplier is consistent with the work performed, the result, and counsel's contingent risk. *See Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33.

**4. The Service Awards Are Reasonable.**

Courts routinely approve service awards "to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk … and, sometimes, to recognize their willingness to act as a private attorney general." *Cellphone Fee Term. Cases* (2010) 186 Cal.App.4th 1380, 1393-94 (citation omitted). The proposed awards of $10,000 are reasonable.

The representatives did real work. They compiled significant evidence of Defendants' misconduct prior to filing, responded to multiple rounds of discovery, sat for depositions, participated in mediation, and were actively involved in settlement and other matters. Robinson Decl. ¶ 64. Plaintiffs Chen and Chiang also took on the risk of acting as representatives when Defendants had threatened collection against them, claiming that they owed amounts more than their total deposits. *See*, *e.g.*, *Cellphone Fee Termination Cases*, *supra* ($10,000 award); *Bolton v. U.S. Nursing Corp.* (N.D. Cal. 2013), 2013 WL 5700403, at *6 ($10,000 award on $1.7 million settlement); *Stanley Donen Films*, *supra*, 2018 WL 2881500.

**D. <u>This Case Involves a Certified Class and Meets the Certification Criteria.</u>**

The Court has already certified a class. The Settlement Class is nearly identical to the

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be shown in the Motion for Attorney's Fees, Mr. Wei also performed significant work on the case. The fee split was fully disclosed at the outset of representation and approved by the named plaintiffs. It does not impact the overall fee request and will come out of any fees awarded to lead counsel.

certified class with minor modifications for consistency with Civil Code § 1950.5, ease of administration, and to include all affected tenants. The Court has broad discretion to refine a class definition at any time. *See Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916; *Franchise Tax Bd. LLC Tax Refund Cases* (2018) 25 Cal.App.5th 369, 390-91.

The Settlement Class definition modifies the certified class in two primary ways. ***First***, the definition excludes unpaid rent, utilities, parking, lost keys, and similar charges in determining whether tenants meet the $125 withholding threshold for membership. This is necessary for consistency with Civil Code § 1950.5(g)(4)(A), which bases the $125.00 threshold for statutory disclosures on charges "for repairs and cleaning." ***Second***, the definition clarifies that tenants will not be excluded if they have merely "pursued" claims against Defendants without resulting in a final resolution. Tenants who still have live claims should not be excluded.

Further, the Settlement Class does not include subclasses. There was a 100% overlap between the Main Class and Subclasses, and much overlap among the Subclasses, rendering subclasses unnecessary for settlement purposes.

The Settlement Class meets all the requirements of certification, consistent with the Court's certification order. *See* Cal. R. Ct., rule 3.769(d)(1); *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. There are approximately 30,000 members, identifiable from Defendants' records. *See Harper v. 24 Hour Fitness, Inc.* (2008) 167 Cal.App.4th 966, 976-77. As the Court already determined, this case turns on common legal and factual questions, and Plaintiffs' claims are typical. The Court has also found lead counsel competent to represent the class and the named Plaintiffs are aware of their duties. Robinson Decl. ¶¶ 47-48.

### E. <u>The Parties Have Adopted Best Practices for Notice and Administration.</u>

#### 1. Class Members Will Receive the Best Notice Practicable.

The Court has "virtually complete discretion as to the manner of giving notice." *7-Eleven Owners*, *supra*, 85 Cal.App.4th 1135, 1164 (citation omitted). The notice must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." *Id.* Courts apply a "practical approach" to "determine what forms of notice will adequately address due process concerns." *Noel v. Thrifty*

*Payless, Inc.* (2019) 7 Cal.5th 955, 982. The notice must have a "reasonable chance of reaching a substantial percentage" of the class. *Id.* at 983; *Wershba*, *supra*, 91 Cal.App.4th 224, 251.

The notice procedures ensure that substantially all class members will receive notice in one or more forms, including regular mail, email, publication in the L.A. Times, and online. Settlement Agreement, pp. 7-8 § 4; *see also Wershba*, *supra*. A majority of class members will receive notice. *See Phillips Petrol. Co. v. Shutts* (1985) 472 U.S. 797, 812-13.

The proposed notice also allows class members to obtain additional information by contacting the Administrator or visiting a dedicated website. Settlement Agreement, p. 7 § 4.2. The website will contain a complete copy of the settlement and key pleadings, as well as up-to-date information about the final approval hearing. It will also include notice in Spanish and Chinese.[10]

Finally, the text of the notice is appropriate and has been approved by all parties. It includes a fair and neutral explanation of the settlement and opt out and objection procedures. *See Wershba*, *supra*, 91 Cal.App.4th at 252 (notice "must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members").

**2. The Class Administrator Is Qualified.**

CPT Group is experienced and qualified to act as a settlement administrator. It has served as a class action administrator for nearly 40 years and is among the leading administrators in the country. *See* Green Decl, Ex. A. CPT Group's bid for administration is reasonable and includes a nearly 20% discount to standard rates. *Id.*, Ex. B.

**3. The Other Features of Settlement Administration Are Appropriate.**

**a. The Opt Out and Objection Procedures Are Fair.**

The Settlement Agreement and notice permit class members to opt out or object within 60 days of the notice date. Consistent with the Los Angeles Superior Court guidelines, members may either opt out or object simply by sending written notice to CPT Group.[11] Any member desiring to be heard may also object in person at the hearing. Settlement Agreement, p. 8 § 5.

[10] The mailed notice also contains prominent legends in Spanish and Chinese, indicating that versions are available in these languages on the website.

[11] Members whose notices are returned will receive additional time.

**b. The Payment Procedures and Cy Pres Distribution are Proper.**

The payment mechanics will result in payment of the vast majority of the settlement to participating members. The settlement includes two rounds of payments. The first will be sent to all participating members. The unclaimed portion will be distributed on a weighted-average basis among those who cashed their first checks. Settlement Agreement, p. 13 §§ 9.6–9.9. The settlement also includes a $300,000 holdback to be used by the Class Administrator to address any issues or disputes regarding the payment allocation. *Id.*, p. 12 § 9.5.

Any remaining unclaimed amounts will be paid to Public Counsel. *Id.*, p. 13 § 9.10. Prior to final approval, the parties will submit a statement of the total amount payable to all class members and will request a status conference date to comply with the requirements for reporting on unclaimed amounts and amending the judgment to direct a *cy pres* distribution. *See* Code Civ. Proc. § 384(b). Public Counsel is an appropriate organization as it provides civil legal services to indigent clients and maintains tenants' rights and homelessness programs. *See* Robinson Decl. ¶¶ 87-88 and Ex. M.

## V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval and issue a Preliminary Approval Order in the form submitted herewith.

Dated: June 30, 2023

Respectfully submitted,

By: s/ Damion Robinson
David W. Affeld
Damion D. D. Robinson
David Markevitch

Affeld Grivakes LLP

Attorneys for Plaintiffs Xin Chen and Brian Chiang and the Class and Subclasses

Dated: June 30, 2023

Respectfully submitted,

By: s/ Jimmie Davis Parker
Jimmie Davis Parker

Law Office of Jimmie Davis Parker, APC

Attorneys for Plaintiff Kierney Waldron and the Class and Subclasses

**STATEMENT RE: CLASS NOTICE**

Plaintiffs respectfully submit this Statement Regarding Class Notice pursuant to California Rules of Court, rule 3.766(b).

1. A notice to the Settlement Class is necessary.

2. Settlement Class members may exclude themselves from this action by giving written notice to the Settlement Administrator of their election to opt out.

3. Notice will be given within 14 days of the date of Preliminary Approval.

4. To the extent that the Court grants final approval of the Settlement, the costs of class notice will be paid from the settlement proceeds. To the extent that the Court does not grant final approval, Plaintiffs and Defendants have agreed to bear the costs equally.

5. The Settlement Administrator, CPT Group, has proposed to administer the settlement for a flat fee of $160,000, reflecting approximately a 20% discount to its standard rates.

Dated: June 30, 2023

Respectfully submitted,

By: s/ Damion Robinson
David W. Affeld
Damion D. D. Robinson
David Markevitch

Affeld Grivakes LLP

Attorneys for Plaintiffs Xin Chen and Brian Chiang and the Class and Subclasses

Dated: June 30, 2023

Respectfully submitted,

By: s/ Jimmie Davis Parker
Jimmie Davis Parker

Law Office of Jimmie Davis Parker, APC

Attorneys for Plaintiff Kierney Waldron and the Class and Subclasses