

1 Damion D. D. Robinson, State Bar No. 262573
DIAMOND McCARTHY LLP
2 355 South Grand Avenue, Suite 2450
Los Angeles, California 90071
3 Tel. (424) 278-2335
Fax (424) 278-2339
4 damion.robinson@diamondmccarthy.com

5 Jimmie Davis Parker, SBN 252023
Law Office of Jimmie Davis Parker
6 4241 Arden Way
San Diego, CA 92103
7 Tel. (619) 887-3300
Email: JDParker@gmail.com

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

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**
13

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

16 Plaintiffs,

17 vs.

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

20 Defendants.

21 KIERNEY WALDRON; ROES 1 through
22 100 inclusive; individually, and on behalf of
all others similarly situated,

23 Plaintiffs,

24 vs.

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

27 Defendants.
28

Lead Case No.: BC 713402

(Consolidated Case No. 19STCV03883)

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

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed concurrently with
1. Compendium of Declarations;
2. Proposed Order;
3. Proposed Judgment]

Date: December 13, 2023

Time: 9:00 a.m.

Dept.: 6 (Spring Street)

Action Filed: July 13, 2018

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on December 13, 2023 at 9:00 a.m., or as soon thereafter
3 as the matter may be heard before the Honorable Elihu M. Berle in Department 6 of the Los
4 Angeles Superior Court, located at 312 North Spring Street, Los Angeles, California 90012,
5 Plaintiffs Xin Chen, Brian Chiang, and Kierney Waldron (collectively, “Plaintiffs”) will and
6 hereby do move for final approval of the proposed class action settlement with Defendants GHP
7 Management Corporation, et al. (collectively, “Defendants”) consistent with the Court’s order
8 granting preliminary approval.

9 This Motion is made pursuant to Code of Civil Procedure section 382 and California
10 Rules of Court, rule 3.769, on the grounds that: (a) the proposed class settlement is fair,
11 reasonable, and adequate, in the best interests of the class members, and has been approved by
12 all parties and counsel; (b) the defined settlement class meets all of the criteria for class
13 certification and is consistent with the Class previously certified by the Court; and (c) class
14 members have been provided the best practicable notice, which satisfies due process.

15 This Motion is based on this Notice of Motion and Motion; the attached Memorandum of
16 Points and Authorities; the accompanying Compendium of Declarations; the parties’ briefing
17 and evidence in connection with Plaintiffs’ Motion for Class Certification and Motion for
18 Preliminary Settlement Approval, which is incorporated by reference; the other records and files
19 herein; and such other matters as the Court may consider at the hearing.

20 Dated: October 16, 2023

Respectfully submitted,

21 By: s/ Damion Robinson
22 Damion D. D. Robinson

23 Diamond McCarthy LLP

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

26 By: s/ Jimmie Davis Parker
27 Jimmie Davis Parker

28 Law Office of Jimmie Davis Parker, APC

Attorneys for Plaintiff Kierney Waldron
and the Class and Subclasses

TABLE OF CONTENTS

1

2

3 I. INTRODUCTION 1

4 II. BACKGROUND 2

5 A. Claims and Pleadings 2

6 B. Investigation and Discovery 2

7 C. Class Certification 3

8 D. Settlement Negotiations 3

9 E. Comprehensive Analysis of Class Data 3

10 F. Preliminary Approval 4

11 G. Class Notice 4

12 III. SUMMARY OF SETTLEMENT TERMS 5

13 A. The Proposed Settlement Class 5

14 B. Relief Provided to Class Members 5

15 1. Monetary Relief 5

16 2. Injunctive / Forward Looking Relief 5

17 3. Distribution Mechanics 6

18 C. Narrow Release 6

19 D. Fees, Litigation Expenses, and Service Awards 6

20 IV. ARGUMENT 7

21 A. The Settlement Class Meets the Criteria for Certification 7

22 1. Standard for Class Certification 7

23 2. The Settlement Class Is Numerous and Ascertainable 7

24 3. There Is a Well-Defined Community of Interest 8

25 4. This Class Action Is Superior to Individual Litigation 9

26 B. The Proposed Settlement Meets the Standard for Final Approval 10

27 1. Legal Standard for Final Approval 10

28 2. The Settlement Is Entitled to a Presumption of Fairness 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The Settlement Is Fair and Reasonable11

4. The Settlement Is Supported by the Informed Views of
Counsel.....14

5. The Cy Pres Distribution Is Appropriate.....14

C. Class Members Received Appropriate Notice.....15

V. CONCLUSION7

TABLE OF AUTHORITIES

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp.,
(2000) 85 Cal.App.4th 1135..... 15

Carter v. City of L.A.,
(2014) 224 Cal.App.4th 808..... 10

Cartt v. Superior Court,
(1975) 50 Cal.App.3d 960..... 15

Cellphone Term. Fee Cases,
(2009) 180 Cal.App.4th 1110..... 10

Cellphone Term. Fee Cases,
(2010), 186 Cal.App.4th 1380..... 10, 11

Chavez v. Netflix, Inc.,
(2008) 162 Cal.App.4th 43..... 15

Classen v. Weller,
(1983) 145 Cal.App.3d 27..... 8

Dunk v. Ford Motor Co.,
(1996) 48 Cal.App.4th 1794fn.19 8, 10

Flores v. Southcoast Auto. Liquidators, Inc.,
(2017) 17 Cal.5th 841..... 9

Granberry v. Islay Investments,
(1995) 9 Cal.4th 738..... 9, 12, 13

Harper v. 24 Hour Fitness,
(2008) 167 Cal.App.4th 966..... 8

Hendershot v. Ready to Roll Transp., Inc.,
(2014) 228 Cal.App.4th 1213..... 7

Hernandez v. Restoration Hardware,
(2018) 4 Cal.5th 260..... 8

Hicks v. Kaufman & Broad,
(2001) 89 Cal.App.4th 908..... 8

In re Microsoft I-V Cases,
(2006) 135 Cal.App.4th 706..... 14

1	<i>In re Syncor ERISA Litig.</i> ,	
2	(9th Cir. 2008) 516 F.3d 1095	10
3	<i>In re Tobacco II Cases</i> ,	
4	(2009) 46 Cal.4th 298.....	7
5	<i>Jaimez v. Daiohs USA</i> ,	
6	(2010) 181 Cal.App.4th 1286.....	8
7	<i>Kullar v. Foot Locker Retail, Inc.</i> ,	
8	(2008) 168 Cal.App.4th 116.....	10, 11
9	<i>McGhee v. Bank of Am.</i> ,	
10	(1976) 60 Cal.App.3d 442.....	9
11	<i>Munoz v. BCI Coca-Cola Bottling Co. of L.A.</i> ,	
12	(2010) 186 Cal.App.4th 399 (citing <i>Kullar</i>).....	11
13	<i>Noel v. Thrifty Payless</i> ,	
14	(2019) 7 Cal.5th 955.....	7, 8, 15
15	<i>Officers for Justice v. Civil Serv. Com'n of Cty. & Cnty. of S.F.</i> ,	
16	(9th Cir. 1982) 688 F.2d 615	10
17	<i>Peviani v. Arbors at Calif. Oaks Prop. Owner, LLC</i> ,	
18	(2021) 62 Cal.App.5th 874.....	13
19	<i>Richmond v. Dart Indus., Inc.</i> ,	
20	(1981) 29 Cal.3d 462.....	9
21	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> ,	
22	(2004) 34 Cal.4th 319.....	9
23	<i>State of Calif. v. Levi Strauss & Co.</i> ,	
24	(1986) 41 Cal.3d 460.....	9
25	<i>Vasquez v. Superior Court</i> ,	
26	(1971) 4 Cal. 3d 800.....	9
27	<i>Wershba v. Apple Computer</i> ,	
28	(2001) 91 Cal.App.4th 224.....	8, 15
	<u>Rules</u>	
	Cal. R. Ct., rule 3.766	15
	Cal. R. Ct., rule 3.769	10

1 **Other Authorities**

2 Manual for Complex Litigation (4th Ed.) § 21.222 7

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The parties' settlement merits approval. It was reached after more than five years of
4 hard-fought litigation and three years of negotiations involving two mediators. It is not only
5 fair and reasonable but reflects an unqualified victory. The cash payment is over 135% of
6 damages. The parties have given class members ample notice in multiple forms.

7 As the Court will recall, this case challenged the unlawful withholding of apartment
8 security deposits by Defendant GHP Management Corporation ("GHP"), one of the largest
9 landlords in Southern California, and its affiliates (collectively, "Defendants"). The Court
10 certified a class and two subclasses in August 2021. In January 2022, the parties reached a
11 settlement in principle for Defendants to pay \$10 million in cash and provide an estimated \$2.5
12 million in debt relief to former tenants. After a series of false starts with the prior settlement,
13 Plaintiffs' counsel and experts conducted a comprehensive analysis of Defendants' accounting
14 data to verify the accuracy of the class composition and damages. The parties then renegotiated
15 the settlement. The Court granted preliminary approval on September 1 after minor
16 modifications to the settlement and class notice.

17 The settlement was reached after extensive, arms-length negotiations. It is decidedly in
18 the best interest of the class. Plaintiffs are confident that they have extracted every available
19 dollar. The cash portion of the settlement is over **135% of damages** without crediting
20 Defendants with any deductions for claimed repair and cleaning charges. At normal payment
21 acceptance rates, even after fees, expenses, and service awards, class members will still receive
22 more than 100% of their maximum damages. In other words, we expect every class member to
23 have full reimbursement of amounts deducted for cleaning and repairs *after* payment of
24 attorneys' fees and costs. This is not merely a fair compromise. It is better than class members
25 would have done in individual litigation if they had won every single time. It represents among
26 the largest (if not the largest) settlements in a case of this type in California.

27 Consistent with the Preliminary Approval Order, the parties have undertaken a diligent
28 and substantial effort to notify the more than 33,000 class members. The professional

1 administrator, CPT Group, Inc. (“CPT”), has mailed notice to all class members, emailed an
2 additional notice to over 21,000 of them who had emails on file, and published notice in the
3 L.A. Times. It maintains a dedicated class website and toll-free number. Plaintiffs’ counsel has
4 also actively responded to inquiries from class members through a dedicated email account.

5 Because the settlement is fair, reasonable, and adequate, and in the best interests of the
6 class, Plaintiffs respectfully request that the Court grant final approval, enter the proposed Final
7 Approval Order and Judgment, and direct payment to class members consistent with the terms
8 of the Settlement Agreement. By separate motion, Plaintiffs also respectfully request that the
9 Court approve the disbursement of fees, litigation expenses, and service awards.

10 **II. BACKGROUND**

11 Because the background of this case was fully briefed in connection with Plaintiffs’
12 Motion for Preliminary Settlement Approval, they respectfully incorporate their briefing by
13 reference and provide a summary.

14 **A. Claims and Pleadings.**

15 The class is comprised of former tenants of 26 apartment complexes across Southern
16 California managed by GHP and owned by the other Defendants. Plaintiffs allege that
17 Defendants violated Civil Code section 1950.5 by unlawfully withholding tenant security
18 deposits while also failing to provide mandatory, statutory disclosures required by law to justify
19 those withholdings. Plaintiffs brought claims for violation of Civil Code section 1950.5, breach
20 of lease, conversion, and unfair business practices. Robinson Decl. ¶ 2.

21 Plaintiffs Xin Chen and Brian Chiang filed their operative First Amended Complaint on
22 January 31, 2019. Plaintiff Kierney Waldron filed her Complaint on February 7, 2019. The
23 two cases were related and consolidated by stipulation. *Id.* ¶ 3.

24 Defendants filed Demurrers and Motions to Strike, which the Court overruled.
25 Defendants also sought leave to file a class-action Cross-Complaint, which the Court denied.
26 Defendants appealed this denial. *Id.* ¶ 4.

27 **B. Investigation and Discovery**

28 Plaintiffs took comprehensive discovery before entering the settlement, including

1 serving thousands of written discovery requests, taking four Person Most Qualified (“PMQ”)
2 depositions and two vendor depositions, and conducting a statistical sampling of nearly 500
3 complete tenant files with the assistance of an expert statistician. Plaintiffs also obtained high-
4 level statistical data concerning the number of class members and estimated deposit
5 withholdings. Plaintiffs contacted nearly 500 tenants who consented to disclosure of their
6 information in response to the *Belaire* Notice. Discovery was hard fought, and the parties
7 participated in multiple IDCs with substantial briefing. *Id.* ¶¶ 5-19.

8 **C. Class Certification**

9 Plaintiffs moved for class certification on April 26, 2021. The Court certified a class and
10 two subclasses and appointed lead counsel on August 4, 2021. *Id.* ¶¶ 20-22 & Ex. 1.

11 **D. Settlement Negotiations**

12 The parties’ settlement negotiations began in 2019 and continued through mid-2023.
13 They held an initial mediation on July 25, 2019 with the Honorable Richard A. Stone (Ret.) of
14 Signature Resolutions. The initial mediation was unsuccessful. *Id.* ¶ 24.

15 After substantial discovery, the parties held a further mediation in March 2021 before the
16 Honorable Dickran M. Tevrizian (Ret.) of JAMS. This session occurred shortly before Plaintiffs
17 moved for certification. While they were unable to reach agreement, Judge Tevrizian stayed in
18 contact with counsel for several months and negotiations continued. *Id.* ¶ 25.

19 After the Court granted certification, Defendants served Code of Civil Procedure § 998
20 offers to settle the entire case for \$6,000,000. Plaintiffs disputed the validity of the offers in a
21 class setting and responded by proposing a settlement bracket. Defendants then made a “last,
22 best, and final settlement offer” of \$10,000,000 in early December 2021. *Id.* ¶¶ 26-27.

23 Plaintiffs accepted this offer with Judge Tevrizian’s encouragement. The parties then
24 negotiated a comprehensive term sheet in December and January 2022. *Id.* ¶¶ 27-28 & Ex. 2.

25 **E. Comprehensive Analysis of Class Data**

26 After negotiating long-form settlement agreements, Plaintiffs moved for preliminary
27 approval on June 1, 2022. On July 15, 2022, in response to an inquiry from Plaintiffs’ counsel,
28 Defendants reported that the class size and damages data on which the settlement was based

1 was potentially materially inaccurate. Plaintiffs withdrew from the settlement. *Id.* ¶¶ 30-31.

2 The parties then conducted a comprehensive analysis of Defendants’ tenant accounting
3 data to verify the accuracy of the class composition and damages calculation. Plaintiffs and
4 Defendants each retained a team of experts. The experts, as well as counsel, have analyzed the
5 data extensively and concluded that the current data is sufficiently accurate and reliable to
6 support the settlement. *Id.* ¶¶ 32-34 & Ex. 3; *see also* Berliner Decl. ¶ 13.

7 The data analysis showed that the class damages were slightly less than previously
8 estimated. Nonetheless, the parties were able to renegotiate a settlement on the same material
9 terms as they had previously. Plaintiffs are confident that there was no reasonable prospect of
10 increasing the settlement amount. Robinson Decl. ¶ 36.

11 **F. Preliminary Approval**

12 Plaintiffs again moved for preliminary approval on June 30, 2023. On August 2, 2023,
13 the Court directed a series of revisions to the settlement agreement and Class Notice. The
14 parties made these revisions by way of “Addendum No. 1.” *Id.* ¶ 38 & Ex. 5.

15 The Court held a further hearing on August 24, 2023, and indicated that it was
16 tentatively inclined to grant approval, subject to updates to the Class Notice and Preliminary
17 Approval Order. Plaintiffs submitted the updated Notice and Order on August 30, 2023. The
18 Court issued its Order Granting Preliminary Approval of Class Action Settlement on September
19 1, 2023. *Id.* ¶ 39 & Ex. 6 (“Preliminary Approval Order”).

20 **G. Class Notice**

21 On September 10, 2023, CPT published a notice in the L.A. Times. CPT also posted a
22 class website, www.GHPCClassAction.com, with information about the settlement and approval
23 process, copies of key filings, and copies of the class notice in English, Spanish, and Mandarin.
24 CPT and class counsel have set up dedicated email addresses for class member inquiries, which
25 are being actively monitored. CPT also maintains a toll-free number for class member
26 questions. *Id.* ¶¶ 42-44 & Ex. 7; *see also* Garcia Decl. ¶¶ 4-6 & Exs. 1-3.

27 As provided in the Preliminary Approval Order, CPT mailed notice to all class members
28 (over 33,000) and sent a further notice via email to 21,000 of them on September 14, 2023. The

1 notices contain prominent legends in Spanish and Chinese directing class members to additional
2 information available on the website. Garcia Decl. ¶¶ 4-7 and Exs. 1-5.

3 To date, no class members have objected or opted out. Garcia Decl. ¶ 8.

4 **III. SUMMARY OF SETTLEMENT TERMS**

5 **A. The Proposed Settlement Class**

6 The Settlement Class is defined as follows:

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

10 Robinson Decl., Ex. 4 (“Settlement Agreement”) at p. 6, § 2.1. The term “Unpaid Rent and
11 Utilities” is defined to include charges other than the repair, cleaning, and maintenance
12 governed by Civil Code § 1950.5(g). *Id.*, p. 5. The “Class Period” is defined as the period from
13 July 13, 2014 (four years before the filing date) through June 30, 2022 (the date of the last
14 collection of tenant data). *Id.*, p. 4. The class definition also includes customary exclusions for
15 Defendants and their employees, the Court and its staff, minors, non-lessees, and tenants subject
16 to eviction¹ or who have settled their claims. *Id.*, p. 6, § 2.1.

17 **B. Relief Provided to Class Members**

18 **1. Monetary Relief.**

19 Defendants have agreed to make a \$10,000,000 “all in” cash payment. Defendants have
20 also agreed to waive all claims against class members for repair and cleaning charges above
21 their withheld deposits. The estimated debt relief is more than \$2,500,000 in addition to the
22 cash payment. Settlement Agreement, p. 14 §§ 9.12–9.13. The cash payment has been placed
23 in an escrow account pursuant to Court-approved instructions. Robinson Decl. ¶ 40.

24 **2. Injunctive / Forward Looking Relief**

25 Defendants have agreed to a consent judgment requiring them to comply with the
26

27 ¹ Because tenants’ deposits are generally approximately one third of one month’s rent, tenants who
28 were evicted will not meet the class definition and may be subject to claim or issue preclusion
stemming from their eviction proceedings.

1 disclosure requirements of Civil Code § 1950.5(g) going forward. Settlement Agreement, p. 14
2 § 10.1. They have represented that they do not report repair or cleaning charges to credit
3 reporting agencies and have agreed not to interfere with tenants' efforts to remove any
4 previously reported charges from their credit reports. *Id.*, p. 14 § 11.2. The parties have not
5 attempted to quantify the value of this relief and do not rely on it in supporting their request for
6 fees, litigation expenses, or service awards.

7 **3. Distribution Mechanics**

8 After fees, costs, and service awards, the remaining settlement fund will be distributed to
9 all class members on a weighted-average basis based on the withholdings from their respective
10 deposits for relevant charges. *Id.*, p. 11 § 9.3.1. Special provisions are included for units with co-
11 tenants (*i.e.*, family members or roommates), allowing each co-tenant to independently opt out
12 or object, and to allocate the remaining payment among participating members of the household.
13 *Id.*, p. 12 § 9.4. The settlement also includes a \$300,000 cautionary holdback to address any
14 late-discovered class members and disputes over the amounts of payments. *Id.*, p. 12 § 9.5.

15 Any uncashed settlement checks will be cancelled 180 days after issuance. *Id.*, p. 13 §
16 9.8. The unclaimed balance, and the remainder of the holdback, will be distributed to those class
17 members who accepted the first payment on a weighted-average basis.² *Id.*, p. 13 § 9.9.

18 Any unclaimed portion of the settlement fund after the second payment will be
19 distributed to Public Counsel as a *cy pres* distribution. *Id.*, p. 13 § 9.10.

20 **C. Narrow Release**

21 Class members who do not opt out will release Defendants from the claims asserted in
22 the operative pleadings. *Id.*, p. 16 § 13.1; *id.* at p. 5 (definitions). The release is limited to claims
23 accruing during the Class Period. *See* Robinson Decl., Ex. 5. It will become effective on the
24 first settlement payment. Settlement Agreement, p. 16 § 13.1.

25 **D. Fees, Litigation Expenses, and Service Awards.**

26 The settlement provides, subject to Court approval, for the following disbursements:

27 _____
28 ² Minor adjustments to the second payment will be made to reflect the use of the cautionary
holdback and any resolution of disputes relating to settlement payments.

- 1 • \$3,300,000 for attorney fees.
- 2 • Up to \$200,000 for reasonable and necessary litigation expenses.
- 3 • Up to \$175,000 for settlement administration based on CPT Group’s flat-fee budget.
- 4 • \$10,000 per named Plaintiff for service awards.

5 *Id.*, p. 15 § 11. Plaintiffs are filing a separate motion for approval of fees, costs, and awards.³

6 **IV. ARGUMENT**

7 **A. The Settlement Class Meets the Criteria for Certification**

8 The “settlement class” is largely identical to the Main Class certified by the Court in
9 August 2021. As detailed at the preliminary approval stage, it is subject to minor refinements
10 for consistency with Civil Code § 1950.5 and ease of administration. The Settlement Class
11 meets all the class-certification criteria.

12 **1. Standard for Class Certification**

13 Class actions are authorized “when the question is one of a common or general interest,
14 of many persons, or when the parties are numerous, and it is impractical to bring them all before
15 the court.” Code Civ. Proc. § 382. Certification is appropriate where there is (1) “a sufficiently
16 numerous, ascertainable class” with (2) a “well-defined community of interest,” and (3)
17 “certification will provide substantial benefits to litigants and the courts.” *In re Tobacco II*
18 *Cases* (2009) 46 Cal.4th 298, 313. A “community of interest” is shown where: (a) there are
19 “predominant questions of law or fact;” (b) the claims of class representatives are typical; and
20 (c) the class representatives will adequately represent the class. *Id.*

21 **2. The Settlement Class Is Numerous and Ascertainable.**

22 The class is sufficiently numerous at over 33,000 members. *See* Robinson Decl., Ex. 3,
23 p. 18; *Hendershot v. Ready to Roll Transp., Inc.* (2014) 228 Cal.App.4th 1213, 1222-23.

24 A class is ascertainable where “members can be ascertained by reference to objective
25 criteria.” Manual for Complex Litigation (4th Ed.) § 21.222; *see Noel v. Thrifty Payless* (2019)
26 7 Cal.5th 955, 980 (“defined ‘in terms of objective characteristics and common transactional

27 _____
28 ³ As set forth in Plaintiffs’ accompanying Motion for Approval of Attorney Fees, Litigation Expenses, and Service Awards, the litigation and administrative expenses are substantially less than these amounts.

1 facts”) (quoting *Hicks v. Kaufman & Broad* (2001) 89 Cal.App.4th 908, 915). A class may be
2 defined by “a set of common characteristics sufficient to allow a member ... to identify
3 himself.” *Harper v. 24 Hour Fitness* (2008) 167 Cal.App.4th 966, 977 (citation omitted).

4 The class is defined by objective criteria – *i.e.*, Defendants’ former tenants who had
5 more than \$125.00 withheld from their security deposits for repair and cleaning charges. The
6 nature and dollar amount of charges is identifiable based on Defendants’ tenant accounting
7 data. Class members have been identified through the parties’ robust data analysis.

8 **3. There Is a Well-Defined Community of Interest.**

9 **a. Common Questions Predominate.**

10 In assessing predominance, courts consider “whether the theory of recovery advanced ...
11 is likely to prove amenable to class treatment.” *Jaimez v. Daihns USA* (2010) 181 Cal.App.4th
12 1286, 1298, *overruled on other grounds in Noel, supra*, 7 Cal.5th 955. Predominance is subject
13 to “lesser ... scrutiny” where a case is settled. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
14 1794, 1807 at fn.19.

15 Predominance is satisfied here. As the Court determined at certification, common
16 questions relating to Defendants’ failure to provide statutory disclosures predominate over
17 individual questions. *See* Robinson Decl., Ex. 1, pp. 5-7. “Defendants’ alleged failure to
18 provide required disclosures could be established with common proof of a classwide policy
19 and/or practice.” *Id.* at p. 7. This is equally true with respect to the settlement class.

20 **b. Plaintiffs’ Claims Are Typical.**

21 Typicality is satisfied where the named plaintiffs have claims similar to those of the
22 class. *See Classen v. Weller* (1983) 145 Cal.App.3d 27, 46. They need not be identically
23 situated. *Id.*; *see also Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 238,
24 *disapproved on other grounds in Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260.
25 Plaintiffs’ claims here, however, are identical to those of the class. Defendants failed to provide
26 them with required statutory disclosures, such as the “bill, invoice, or receipt,” documenting
27 vendor charges. Civ. Code § 1950.5(g)(2)(B). Defendants withheld the entire deposits of
28 Plaintiffs Xin Chen and Brian Chiang, and a substantial portion of that of Plaintiff Kierney

1 Waldron. See Decls. of Chen, Chiang, and Waldron; see also Robinson Decl., Exs. 15, 16.

2 **c. The Representatives and Counsel Are Adequate.**

3 As the Court has already determined, the named Plaintiffs and their counsel adequately
4 represent the class. A representative is adequate if his or her “attorney is qualified to conduct
5 the proposed litigation” and his or her “interests are not antagonistic to the interests of the
6 class.” *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; see also *Richmond v. Dart*
7 *Indus., Inc.* (1981) 29 Cal.3d 462, 470-71 (“only a conflict that goes to the very subject matter
8 of litigation will defeat a party’s claim to representative status”). There is no conflict between
9 the named Plaintiffs and class members. They are identically situated, and no class members
10 have expressed antagonism towards this litigation. The seven attorneys representing Plaintiffs
11 and the class are experienced in complex and class litigation as set forth in their Declarations.

12 **4. This Class Action Is Superior to Individual Litigation.**

13 California law has long embraced consumer class actions as “an essential tool for the
14 protection of consumers against exploitative business practices.” *State of Calif. v. Levi Strauss*
15 *& Co.* (1986) 41 Cal.3d 460, 471; see also *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 808
16 (noting that individual actions are “often impracticable because the amount of individual
17 recovery would be insufficient to justify bringing a separate action”) *superseded on other*
18 *grounds, see Flores v. Southcoast Auto. Liquidators, Inc.* (2017) 17 Cal.5th 841. Courts
19 consider whether class litigation is superior to “numerous separate actions,” considering that
20 many class members may be left without recourse if they are required to proceed individually.
21 See *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 339 n.10; see also
22 *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cla.App.4th 1225, 1230.

23 A class action is far superior to individual lawsuits, especially considering the large
24 settlement achieved for the class and the vast number of members. It is self-evident that
25 resolving claims of over 33,000 tenants in one fell swoop is superior to litigating 33,000 small
26 claims cases. The difficulties and disincentives facing tenants seeking individual recovery are
27 well recognized. See *Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 745-46. Because
28 the settlement results in more than a 100% refund, it eliminates the need for individual litigation

1 (or any litigation) of the legitimacy of Defendants’ repair and cleaning charges.

2 **B. The Proposed Settlement Meets the Standard for Final Approval.**

3 **1. Legal Standard for Final Approval**

4 A class action settlement requires final approval following notice to class members and a
5 hearing on objections. Cal. R. Ct., rule 3.769(e)-(g). The Court must assure itself “that the
6 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
7 parties” and “taken as a whole, is fair, reasonable, and adequate to all concerned.” *Carter v. City*
8 *of L.A.* (2014) 224 Cal.App.4th 808, 820. Fairness analysis reflects “an amalgam of delicate
9 balancing, gross approximations, and rough justice.” *See Officers for Justice v. Civil Serv.*
10 *Com’n of Cty. & Cnty. of S.F.* (9th Cir. 1982) 688 F.2d 615, 625.

11 Courts do not “attempt to decide the merits of the case or to substitute [their] evaluation
12 of the most appropriate settlement for that of the attorneys.” *Kullar v. Foot Locker Retail, Inc.*
13 (2008) 168 Cal.App.4th 116, 133. They decide whether “the class settlement is within the
14 ‘ballpark’ of reasonableness.” *Id.* Relevant considerations include the strength of the case, the
15 risk, expense, and complexity of further proceedings, the risk of maintaining certification, the
16 settlement amount, the extent of discovery and stage of the case, and “the experience and views
17 of counsel.” *Dunk, supra*, 48 Cal.App.4th at 1802.

18 Courts have “broad discretion” in evaluating a settlement. *Id.* at 1801. They are guided
19 by the strong policy favoring settlement of complex class litigation. *See Officers for Justice,*
20 *supra*, at 624 (“voluntary conciliation and settlement are the preferred means of dispute
21 resolution”); *Cellphone Term. Fee Cases* (2009) 180 Cal.App.4th 1110, 1125. “[T]here is a
22 strong judicial policy that favors settlements, particularly where complex class litigation is
23 concerned.” *In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101 (citation omitted).

24 **2. The Settlement Is Entitled to a Presumption of Fairness.**

25 A settlement is presumed to be fair and reasonable when it is the product of “arms-length
26 bargaining” between experienced counsel following sufficient investigation and discovery.
27 *Cellphone Term. Fee Cases* (2010), 186 Cal.App.4th 1380, 1389. “[T]he competency and
28 integrity of counsel and the involvement of a neutral” carry “considerable weight.” *Kullar,*

1 *supra*, 168 Cal.App.4th at 129.

2 In reviewing the fairness of a class action settlement, due regard
3 should be given to what is otherwise a private consensual agreement
4 between the parties. The inquiry must be limited to the extent
5 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.

6 *Cellphone Term. Fee Cases, supra.*, 186 Cal.App.4th at 1389 (quotations omitted).

7 The parties' settlement is the product of multiple rounds of exhaustive negotiations
8 between counsel with the assistance of two highly regarded mediators. The parties reached the
9 settlement in principle only after extensive discovery and a successful Motion for Class
10 Certification. Even after the settlement in principle, they continued to negotiate, and Plaintiffs'
11 counsel continued to pursue the interests of the class. Plaintiffs were prepared to walk away
12 from the settlement due to discrepancies in the class data. Only after thoroughly vetting that
13 data through a team of experts did Plaintiffs resume discussions. Plaintiffs' counsel has
14 scrupulously protected the interests of the class at each stage. Robinson Decl. ¶ 46.

15 **3. The Settlement Is Fair and Reasonable.**

16 Parties must provide "basic information about the nature and magnitude of the claims in
17 question and the basis for concluding that the consideration being paid for the release of those
18 claims represents a reasonable compromise." *Kullar, supra*, 168 Cal.App.4th at 133. This
19 requires an "understanding of the amount ... in controversy and the realistic range of outcomes."
20 *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 409 (citing *Kullar*).
21 Mathematical precision is not required. *Id.*

22 **a. The Settlement Amount Exceeds Class Damages.**

23 Reflecting the efforts of skilled counsel, the \$10 million cash payment is not only
24 substantial but reflects over **135% of damages** for non-compliance with Civil Code § 1950.5(g).
25 Robinson Decl. ¶¶ 47-49 & Ex. 8. This is more than a "reasonable compromise" by any metric.
26 Based on the data analysis performed by the experts, Defendants withheld approximately
27 \$7,359,930.79 in covered repair and cleaning charges. *See* Robinson Decl., Ex. 3, p. 15. Aside
28 from potential double damages, *see* Civ. Code § 1950.5(l), and punitive damages, the \$7.36

1 offset claims. Proving classwide bad faith and equitable defenses is inherently risky.⁵

2 If Defendants were allowed to litigate offsets, it could result in a substantial reduction in
3 damages. While Plaintiffs contend that many of the move-out charges asserted by Defendants
4 were bogus, they are cognizant of the fact that landlords often incur legitimate repair and
5 cleaning expenses when tenants move out. Even if a portion of the asserted charges is legitimate
6 and recoverable, it would substantially reduce damages.

7 Other factors could also reduce damages. A jury could find that certain of the uniform
8 disclosure violations identified by Plaintiffs are not actually violations – *e.g.*, that describing
9 repairs solely as “maintenance” is a reasonable description under Civil Code section 1950.5(g).
10 This would not only reduce damages but could result in the exclusion of many class members.
11 Robinson Decl. ¶ 53. Defendants have also asserted that they incurred move-out expenses above
12 and beyond the deposits of many class members. These class members could recover nothing,
13 even if Plaintiffs prevailed on their primary theories. Finally, Plaintiffs’ statistical analysis
14 showed a roughly 75% failure rate in complying with section 1950.5(g), assuming that all
15 disclosures in tenants’ file were sent out. *See Kelly Decl.* Plaintiffs dispute whether defendants
16 sent out the disclosures. Nonetheless, a jury could find otherwise, reducing damages by 25%.

17 Finally, the prospect of litigating offsets adds complication, complexity, and expense.
18 There is little guidance about how to litigate offsets on a classwide basis. *See Peviani v. Arbors*
19 *at Calif. Oaks Prop. Owner, LLC* (2021) 62 Cal.App.5th 874 (discussing ways in which class
20 plaintiffs could prove reasonableness of charges).⁶ Plaintiffs proposed a combination of
21 methods, including the elimination of uncorroborated charges, statistical sampling, and special
22 masters, which they contend would result in a manageable trial. These methods, however, are
23 complex and would be expensive, especially with a class of over 33,000. They would entail
24 reviewing voluminous records and conducting numerous depositions or special master hearings

25 _____
26 ⁵ Defendants have also argued that “bad faith” referred to in *Granberry* and section 1950.5(l) means
27 the bad faith *withholding of the deposit*, rather than the bad faith failure to comply with the
disclosure requirements. While Plaintiffs disagree, this creates a further risk.

28 ⁶ *Peviani* appears to be the only published decision to seriously address the issue since *Granberry*
was decided more than 25 years ago.

1 to obtain a statistical sample. Special master proceedings could become extremely expensive in
2 a case of this size and might eventually lead to a finding that the matter is unmanageable.
3 Robinson Decl. ¶ 56. The settlement eliminates this cost and uncertainty.

4 **c. Risk of Maintaining Certification.**

5 Plaintiffs are confident that they would be able to maintain certification through trial and
6 present a manageable trial plan. Defendants have consistently maintained, however, that the
7 need to litigate individual offsets precludes class treatment at trial. There is some risk of
8 maintaining class status. Robinson Decl. ¶ 57.

9 **4. The Settlement Is Supported by the Informed Views of Counsel.**

10 As detailed above, the parties participated in extensive discovery, including a robust file
11 sampling, several depositions, and collection of over 13,000 pages of documents. They then
12 participated in a comprehensive review of Defendants’ accounting databases using two teams of
13 experts. The settlement is the product of extensive investigation and discovery.

14 Counsel for Plaintiffs and the class has significant experience in class, representative, and
15 other complex litigation and the ability and wherewithal to litigate this case to a conclusion if
16 necessary. They entered the settlement only after assuring themselves that no better settlement
17 is possible, and that the settlement is in the best interests of the class.

18 No class members have objected or opted out. Garcia Decl. ¶ 8.

19 **5. The *Cy Pres* Distribution Is Appropriate.**

20 The *cy pres* distribution to Public Counsel will “further the purposes of the underlying
21 class action.” Code Civ. Proc. § 384(a); *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706,
22 722. Counsel will request that any funds be used for Public Counsel’s tenants’ rights and
23 homelessness programs. Robinson Decl. ¶ 71 & Ex. 14. The distribution also comports with
24 Code of Civil Procedure section 384(b).

25 The Settlement Agreement ensures that the *cy pres* distribution will occur only after class
26 members have had every opportunity to accept payments, and the cost of additional distributions
27 is unwarranted. CPT will issue two rounds of payments to class members with the second round
28 distributed among those who accept the first. This ensures that substantially all the funds will be

1 distributed to class members.

2 **C. Class Members Received Appropriate Notice.**

3 Trial courts have “virtually complete discretion” as to form and manner of notice.
4 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 57 (quoting *7-Eleven Owners for Fair*
5 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164). Class notice must “fairly
6 apprise the class members of the terms of the proposed compromise and of the options open to
7 dissenting class members.” *Wershba, supra*, 91 Cal.App.4th at 251-52 (citation omitted).

8 The notice must be “reasonably calculated to apprise the class members of the pendency
9 of the action.” Cal. R. Ct., rule 3.766(f). It must have “a reasonable chance of reaching a
10 substantial percentage of class members.” *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960,
11 974. “[T]rial courts [are] urged to exercise pragmatism and flexibility.” *Id.* at 970 n.16; *see also*
12 *Noel, supra*, 7 Cal.5th 955, 982. Where the class is very large, more flexible forms, such as
13 publication or email, may suffice on their own. *See Wershba, supra.*; Cal. R. Ct., rule 3.766(f).

14 Plaintiffs and CPT have followed the notice procedures approved by the Court. After
15 being provided the class list, CPT performed its own data analysis to ensure that it had complete
16 and usable contact information.⁷ On September 14, it mailed notice to 33,322 class members
17 and sent a further email notice to 21,792 who had email address on file. In addition, CPT
18 published a notice in the L.A. Times and has continued to maintain the class website. Plaintiffs’
19 counsel has also actively monitored a dedicated email address for class members and has
20 responded to several inquiries. *See generally* Garcia Decl.; Robinson Decl. ¶¶ 40-45.

21 **V. CONCLUSION**

22 The settlement is fair and reasonable and is decidedly in the best interests of the class.
23 Reasonable and adequate notice has been provided. Plaintiffs respectfully request that the
24 Court grant final approval, enter the Final Approval Order and Judgment, and direct that the
25 Settlement Agreement be carried out.

26 _____
27 ⁷ CPT removed a small percentage of duplicate entries, which appears to result from the same tenant
28 living in multiple units over time and being listed separately for each unit, as well as a small number
of co-tenants who were listed more than once for unknown reasons. Removal of these duplicate
entries has resulted in a minor reduction in the total number of class members.

1 Dated: October 16, 2023

Respectfully submitted,

2 By: s/ Damion Robinson
3 Damion D. D. Robinson

4 Diamond McCarthy LLP

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

7 By: s/ Jimmie Davis Parker
8 Jimmie Davis Parker

9 Law Office of Jimmie Davis Parker, APC

10 Attorneys for Plaintiff Kierney Waldron
11 and the Class and Subclasses

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28