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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF LOS ANGELES

15  
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17 HERNANDEZ, MICHAELA VIVANT,  
MARJAN SVETKO, PEI EN CHONG  
18 SAMPSON, individually and on behalf of all  
others similarly situated,

19 Plaintiffs,

20 v.

21 DOUGLAS EMMETT, INC., a Maryland  
22 Corporation; BARRINGTON PACIFIC, LLC,  
a California limited liability company;  
23 DOUGLAS EMMETT MANAGEMENT,  
LLC, a Delaware limited liability company;  
24 and DOES 1–50, inclusive,

25 Defendants.

Case No. 20STCV03962

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Assigned to the Hon. David S. Cunningham

Date: February 20, 2024  
Time: 11:00 a.m.  
Dept.: 11

Action Filed: Jan. 30, 2020  
Trial Date: not set

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a class action settlement on behalf of leaseholders  
3 at the Barrington Plaza Apartments, 11740 Wilshire Boulevard, Los Angeles, California, as of  
4 January 29, 2020. On behalf of the Class, plaintiffs James Wedel, Charles McWhales, Simon  
5 Mashian, Fausto Hernandez, Michaela Vivant, Marjan Svetko, and Pei en Chong Sampson  
6 (collectively, “Plaintiffs”) allege that defendants Douglas Emmett, Inc.; Douglas Emmett  
7 Management, LLC; Barrington Pacific, LLC; and Universal Protection Service, LP (collectively,  
8 “Defendants”) knew of safety defects at Barrington Plaza, then covered up and/or failed to disclose  
9 those safety defects. They further allege Defendants knew that if residents were made aware of these  
10 safety defects, they would not have paid Barrington Plaza’s rent prices.

11 After approximately four years of contested litigation, the parties were able to reach a  
12 settlement that is now presented to the Court for preliminary approval. The Settlement Agreement is  
13 attached as **Exhibit 1** to the Declaration of Erick Kuylman (“Kuylman Decl.”), filed herewith. The  
14 Settlement proposes a class comprised of all leaseholders at the Barrington Plaza Apartments, 11740  
15 Wilshire Boulevard, Los Angeles, California, as of January 29, 2020 (the “Class”). The Settlement  
16 creates a common fund of \$1,250,000, which will cover attorneys’ fees, litigation expenses, service  
17 award(s), settlement administration (including class notice), and monetary payments to Class  
18 members. Class members are not required to file a claim in order to participate in the Settlement. The  
19 monetary settlement amount is non-reversionary. To the extent any settlement checks are not cashed,  
20 remaining settlement funds will be paid to the California Controller’s Unclaimed Property Fund in  
21 the name of the Class Member. This is a fair and equitable settlement that merits approval.

22 Plaintiffs request that the Court grant preliminary approval and conditionally certify the Class;  
23 designate Plaintiffs as Class Representatives; designate Warren Terzian LP and Geragos & Geragos,  
24 APC as Class Counsel; designate CPT Group, Inc. as the Settlement Administrator; and schedule a  
25 final approval hearing approximately 150 days after entry of preliminary approval.

26 **II. DUNK/KULLAR ANALYSIS**

27 **A. Summary of the Case**

28 The Complaint in this action, filed on January 30, 2020, stems from the second large fire in

1 less than seven years at Barrington Plaza high-rise apartments that Defendants own and manage.  
2 (Third Amended Complaint (“TAC”) ¶¶ 5–7.) A 2013 fire revealed that Barrington Plaza did not  
3 have sprinklers, working fire alarms, smoke detectors, pressurized stair wells, a proper evacuation  
4 plan for residents, floor wardens, and employees who could assist with evacuation. (*Id.* ¶¶ 5, 19–26.)  
5 Defendants did not fix these defects and hid their failure to fix these defects from residents, causing  
6 them to enter into and renew expensive leases under the guise that the complex was safe when it  
7 wasn’t. (*Id.* ¶¶ 6, 27–29.) A second large fire in January 2020 revealed that the same defects still  
8 existed. (*Id.* ¶¶ 7, 30.) The same fire-safety issues Defendants tried to hide resurfaced. (*Id.* ¶ 31.)

9 Plaintiffs asserted claims for fraudulent concealment, breach of implied warranty of  
10 habitability, negligence, negligence per se, negligent training and supervision, negligent hiring, unjust  
11 enrichment, and unfair competition. The gravamen of the complaint is that Defendants abdicated their  
12 responsibility to provide safe housing and hid known fire hazards. These lease agreements were  
13 entered into fraudulently. At bottom, no reasonable renter would have entered into these lease  
14 agreements for these prices had they known they were agreeing to live in a high-rise apartment that  
15 not only did not have sprinklers but also did not have working fire alarms and smoke detectors.  
16 Defendants deny the allegations in the operative complaint, deny any and all liability for the causes  
17 of action alleged, and deny any failure to comply with applicable laws.

#### 18 **B. Summary of the Investigation and Discovery Conducted**

19 Plaintiffs’ counsel conducted their own independent research, including researching  
20 applicable Los Angeles housing and fire codes, reviewing past incident reports and life-safety  
21 violations related to Barrington Plaza, serving public records requests, and researching fire safety  
22 best and reasonable practices. (Kuyلمان Decl. ¶ 3.) Plaintiffs’ counsel also communicated with over  
23 30 class members to determine each of their observations and experiences surrounding the 2023 fire.  
24 (*Id.* ¶ 4.) Culling this information aided in the Settlement of this case. (*Id.*) Plaintiffs’ counsel also  
25 interviewed several potential experts to determine how damages could best be quantified. (*Id.* ¶ 5.)  
26 Plaintiffs’ counsel’s analysis was not informed by a data sample. (*Id.* ¶ 6.)

27 Significant written discovery has been performed. (*Id.* ¶ 7.) Over the course of four years of  
28 litigation, Plaintiffs served three sets of written discovery, including multiple interrogatories,

1 demands for inspection, and requests for admission. (*Id.*) Defendants responded in kind,  
2 supplemented certain responses, produced thousands of documents, and served their own discovery—  
3 to which Plaintiffs responded. (*Id.*) Discovery disputes ensued, which required filing informal  
4 discovery conference statements, motions to compel, and motions seeking sanctions. (*Id.* ¶ 8.)  
5 Plaintiffs also took the deposition of a representative for defendants Douglas Emmett Management,  
6 LLC and Barrington Pacific, LLC. (*Id.* ¶ 9.)

7         Prior to agreeing to settle the case, Plaintiffs’ counsel looked at the following specific  
8 documents: (1) resident leases, (2) Los Angeles City and Housing Code notices and inspection  
9 reports, (3) notices sent and received from tenants, (4) fire investigation reports, (5) emails sent and  
10 received by Barrington staff members and Douglas Emmitt, Inc. officers, (6) Barrington safety  
11 manuals, (6) resident complaints, (7) reductions in rent for loss of use of amenities, and (8) documents  
12 regarding the importance of sprinklers, danger of fire in high-rises, and elevated fire risks from pro-  
13 smoking policies. (*Id.* ¶ 10.) Counsel for the Plaintiffs have investigated the law, as applied to the  
14 facts discovered regarding the alleged claims of Plaintiffs and potential defenses thereto, and the  
15 potential damages claimed by Plaintiffs. (*Id.* ¶ 11.) There have been numerous conference calls and  
16 email exchanges between Plaintiffs’ counsel and Defendants’ counsel. (*Id.* ¶ 12.)

17         **C. Summary of Settlement Negotiations**

18         The parties held a private mediation on April 7, 2023, before Hon. Daniel J. Buckley (Ret.).  
19 (*Id.* ¶ 13.) The case did not settle, but mediation gave rise to serious and substantive settlement  
20 discussions that took place over the ensuing months. (*Id.*) Ultimately, the mediator made a mediator’s  
21 proposal to which all parties agreed. (*Id.*) The parties executed a Term Sheet on October 31, 2023.  
22 (*Id.* ¶ 14.) A settlement was reached on January 9, 2024. (*Id.*) The settlement terms are memorialized  
23 in the written Settlement Agreement submitted herewith. (*Id.*, Ex. 1 (“Agreement”).)

24         **D. Summary of the Risks, Expenses, Complexity, and Duration of Further  
25 Litigation if Settlement Is Not Approved**

26         If Settlement is not approved, there is a significant risk of protracted litigation. Defendants  
27 vigorously deny any liability on the merits. Although their demurrer was largely overruled, the Court  
28 did not address Defendants’ argument that Plaintiffs and the putative class did not sustain an injury.

1 There are significant risks and potential weaknesses: the documentary record suggests that all alarms  
2 were triggered (even though the percipient witnesses conflict on that), there is no legal requirement  
3 for installing sprinklers and there were potentially *de facto* prohibitions on installing them, and certain  
4 residents refuse to vacate the Barrington Plaza to allow the defendants to install sprinklers.  
5 Defendants will also likely argue that they did not conceal the lack of fire safety measures, and certain  
6 documents may support that. Plus, all of the Barrington Plaza's fire safety measures were ultimately  
7 approved by the City.<sup>1</sup>

8 Even if liability is established, there are risks associated with damages. Given that several  
9 Barrington Plaza tenants refused to vacate the premises to allow the defendants to install sprinklers,  
10 a jury may possibly find that there are either no or minimal overcharge damages.

11 Further litigation would require a great deal of time and expense by both parties, would  
12 consume a significant amount of the Court's time, and would present both parties with the risk of an  
13 adverse outcome, both at trial and on appeal. For the Class members, an adverse outcome could mean  
14 no recovery at all. That risk is eliminated by the instant Settlement, which guarantees a prompt and  
15 material monetary recovery. This consideration weighs in favor of Court approval.

16 **E. Summary of the Risks of Achieving and Maintaining Class Action Status**

17 Defendants would likely contend that class certification would not be appropriate. Without  
18 limitation, Defendants will likely argue that even if there were damages, individualized issues  
19 substantially predominate over common questions. They will point to various individualized factors  
20 that impact a renter's decision to enter a lease.

21 Plaintiffs believe that they would likely be able to certify a damages class action on all causes  
22 of action, but they cannot be 100% certain of that. Thus, Defendants' argument presents the risk that,  
23 absent a settlement, putative class members could be foreclosed from participating in or benefiting  
24 from this class action. In that event, those individuals would face the daunting task of commencing  
25 their own lawsuit in order to assert a claim of relatively small value, with the attendant expense, delay,  
26 and risk of loss that would entail. This class settlement is by far the better resolution, and any Class  
27

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<sup>1</sup> To be clear, Plaintiffs have responses to all these issues. But they are nonetheless material issues.

1 Member who thinks otherwise may opt out.

2 **F. Consideration Received in Exchange for Release and in Light of Value of**  
3 **Claims Is Reasonable.**

4 “[T]he trial court must determine that the settlement was not the product of fraud,  
5 overreaching or collusion, and that the settlement is fair, reasonable and adequate to all concerned.”  
6 *Reed v. United Teachers L.A.*, 208 Cal. App. 4th 322, 337 (2012). In reviewing the fairness of a class  
7 action settlement, “[d]ue regard . . . should be given to what is otherwise a private consensual  
8 agreement between the parties. The inquiry must be limited to the extent necessary to reach a reasoned  
9 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the  
10 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
11 concerned.” *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1145  
12 (2000) (internal quotation marks omitted). “[A] presumption of fairness exists where: (1) the  
13 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient  
14 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and  
15 (4) the percentage of objectors is small.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802  
16 (1996). The first three elements of the presumption exist here (as the settlement was secured through  
17 a mediation before a retired Superior Court judge), whereas the fourth element can be addressed only  
18 at final approval.

19 Plaintiffs submit that the proposed settlement in this case is fair, reasonable, and in the best  
20 interests of the Class. Given that a settlement has been reached, it is neither necessary nor appropriate  
21 for the Court to attempt to decide issues of law or fact that underlie the dispute. *7-Eleven*, 85 Cal.  
22 App. 4th at 1146 (citations omitted). Nevertheless, the number and nature of contested issues support  
23 the conclusion that the proposed Settlement is fair and reasonable.

24 The Settlement creates a common fund of \$1,250,000, which will cover attorneys’ fees,  
25 litigation expenses, service award(s), settlement administration (including class notice), and monetary  
26 payments to Class members. That means roughly \$720,500 is available to pay Class members, after  
27 fees and costs. Based on Defendants’ records, and the parties’ current assumptions, the average  
28 (mean) payout to each Class Member is estimated to be approximately \$1,000. In exchange, Class



1 members agree to release Defendants from any and all claims alleged, and damages sought in the  
2 Complaint (“Plaintiffs’ Release”). (Agreement, Section 5.2.) The Complaint does not seek damages  
3 for personal injury or property loss, and therefore the release does not apply to any personal injury or  
4 property loss claims brought in any other cases. Plaintiffs’ Release does not extend to any claims or  
5 actions to enforce this Agreement or based on occurrences outside the Class Period. (*Id.*)

6 The maximum amount of realistic recovery (assuming the plaintiffs can establish liability,  
7 which faces the risks already identified) for each claim based on the operative complaint is estimated  
8 as follows. The damages theory for all causes of action is that if the truth about Barrington Plaza’s  
9 fire safety measures and fire history (most of which is not public or not easily available) were made  
10 known to Plaintiffs and the class, they never would have rented, or they would have paid substantially  
11 less. Therefore, the damages are the amount the Class was overcharged for their leased units at  
12 Barrington Plaza.

13 The total amount of rent paid by the class is estimated to be around \$80 million. Assuming  
14 Plaintiffs prevailed on liability, a realistic range of recovery is probably \$4 million (5%) to \$16  
15 million (20%). (Kuylman Decl. ¶ 15.) Three reasons underlie this estimate. *First*, recent news reports  
16 indicate that the defendants are trying to install sprinklers at the Barrington Plaza, but several  
17 residents are refusing to leave. (*Id.* ¶ 16.) While not conclusive, that is a relevant datapoint suggesting  
18 a minimal overcharge (\$4 million or 5% of total rent paid). (*Id.*)

19 *Second*, the jury would likely comprise Los Angeles renters. (*Id.* ¶ 17.) So they would likely  
20 be very familiar with current market prices. (*Id.*) That familiarity may cause them to recognize that a  
21 20% discount is substantial and would cause many people to rent the units. (*Id.*) (Of course, the jury  
22 may also conclude that no one would stay there if they knew the truth, such that rent was overcharged  
23 by 100% and damages are \$80 million. But that does not seem realistically possible. (*Id.*))

24 *Third*, LA City Rent Adjustment Commission Regulations establish suggested valuations for  
25 certain lost housing services. LA City Rent Adjustment Commission Regulations at 415.02,  
26 [https://housing2.lacity.org/wp-content/uploads/2021/02/RAC-410-Reduction-in-Housing-](https://housing2.lacity.org/wp-content/uploads/2021/02/RAC-410-Reduction-in-Housing-Services.pdf)  
27 [Services.pdf](https://housing2.lacity.org/wp-content/uploads/2021/02/RAC-410-Reduction-in-Housing-Services.pdf). (*Id.* ¶ 18.) For example, for lost air conditioning, the regulations suggest a reasonable  
28 monthly value of \$58–115. That works out to about 2.5–5% of a monthly rent of \$2,500. (*Id.*) Jurors

1 who think the harm from the noncompliant fire measures to be minimal would likely similarly track  
2 this figure. (*Id.*)

3 That said, the above estimates assume that Plaintiffs prevail on liability. Defendants will  
4 strongly contest that and argue that their fire safety measures were compliant and were approved by  
5 the City. Therefore, in light of the claims and defenses, and the ultimate recovery for the class, the  
6 consideration being paid to Class members is fair and reasonable.

7 **G. The Requested Attorneys’ Fees and Costs Are Reasonable.**

8 Class Counsel seeks \$417,500 in attorneys’ fees and up to \$70,000<sup>2</sup> in incurred litigation  
9 costs. Class Counsel will split the total fees awarded: 75% to Warren Terzian LLP, and 25% to  
10 Geragos & Geragos, APC. (*Id.* ¶ 19.) Plaintiffs gave written approval of this fee-splitting arrangement  
11 when they signed their engagement agreements. (*Id.*) The requested attorneys’ fees are 33.4% of the  
12 total settlement (\$1,250,000) under a “common fund” or “percentage” method. The California  
13 Supreme Court approves of this method and held that it was a “valuable tool” for awarding fees in  
14 class actions. *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016) (“The recognized  
15 advantages of the percentage method-including relative ease of calculation, alignment of incentives  
16 between counsel and the class, a better approximation of market conditions in a contingency case . . .  
17 convince us the percentage method is a valuable tool.”).

18 Class Counsel has borne, and continues to bear, the entire risk and cost of litigation associated  
19 with this class action on a pure contingency basis. Litigation has gone on for approximately four  
20 years. Class Counsel has incurred over 1,400 hours of lawyer time litigating this case, as well as  
21 substantial costs. (Kuylman Decl. ¶ 20.) This time includes: analyzing over a thousand pages city  
22 codes, citations, and reports; litigating numerous discovery issues, which included filing 10 motions  
23 related to discovery or sanctions and holding at least 5 hearings and conferences related to that;  
24 opposing a demurrer; analyzing tens of thousands of pages of documents produced by the defendants;  
25 preparing for and taking a deposition of Douglas Emmett Management and Barrington Pacific’s  
26 corporate representative; researching, analyzing, and drafting a motion for class certification (which

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28 \_\_\_\_\_  
<sup>2</sup> Plaintiffs’ respective firms are in the process of calculating the total amount incurred.

1 ultimately was not filed); conducting an external investigation (including public records requests and  
2 interviewing dozens of potential witnesses); and preparing for and attending mediation and  
3 negotiating settlement. (*Id.*) And they will continue to spend time on this case after preliminary  
4 approval (*e.g.*, answering questions from class members; addressing workweek disputes, preparing  
5 the final approval motion, etc.). (*Id.*)

6 Accordingly, Plaintiffs respectfully request the Court to preliminarily approve the unopposed  
7 request for attorneys' fees and costs which are well within established guidelines.

8 **H. The Enhancement Award Is Reasonable.**

9 Plaintiffs are each entitled to an enhancement award for his or her service as a class  
10 representative and the associated risk in assuming that role. *See Staton v. Boeing Co.*, 327 F.3d 938,  
11 977 (9th Cir. 2003) (discussing appropriateness of enhancement awards); *Rodriguez v. West Publ.*  
12 *Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Plaintiffs devoted significant time and work in this  
13 litigation. They actively communicated with counsel, provided documents, responded to written  
14 discovery, and were valuable participants in the strategy for, and success of, reaching a settlement.  
15 (Kuylman Decl. ¶ 21.) They also risked intrusive discovery, and the payments to class members will  
16 benefit hundreds of California renters. (*Id.*)

17 In evaluating an enhancement award, all relevant factors should be considered including (1)  
18 the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety  
19 and personal difficulties encountered by the class representative; (3) the amount of time and effort  
20 spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or  
21 lack thereof) enjoyed by the class representative from the litigation. *Van Vranken v. Atl. Richfield*  
22 *Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995); *see also Staton*, 327 F.3d at 977 (court should consider  
23 all "relevant factors including the actions the plaintiff has taken to protect the interests of the class,  
24 the degree to which the class has benefitted from those actions, . . . the amount of time and effort the  
25 plaintiff expended in pursuing the litigation[,] . . . and reasonable fears of workplace retaliation").

26 Here, Class Counsel requests, and Defendants do not oppose, a \$28,000 total enhancement  
27 award for the seven Plaintiffs. (*Id.* ¶ 22.) This amount is 3.7% of the total payout available to the  
28 Class. (*Id.*) Each enhancement award (\$4,000 per each Plaintiff) compared to each Class member's

1 recovery (\$1,000) represents a ratio of 4:1. (*Id.*) This request is warranted as it falls well within a  
2 reasonable range, and it is supported by the underlying factors. *See Nwabueze v. AT & T Inc.*, No. C  
3 09-01529 SI, 2013 WL 6199596, at \*11–12 (N.D. Cal. Nov. 27, 2013) (awarding enhancement award  
4 which was approximately 5% of the total settlement amount); *Rodriguez v. SGLC Inc.*, No. 2:08-CV-  
5 1971-MCE-KJN, 2014 WL 229221, at \*2 (E.D. Cal. Jan. 17, 2014) (approving FLSA settlement  
6 where roughly 7% of \$118,537.00 was designated as class representative enhancements).

7 Accordingly, Plaintiffs respectfully request the Court to preliminarily approve the unopposed  
8 enhancement fee because the amount is reasonable, and Plaintiffs went beyond the expected services  
9 of a class representative.

### 10 **III. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**

11 The Court may make an order approving certification of a provisional settlement class after  
12 the preliminary settlement hearing. Cal. Rules of Court, Rule 3.769(d). For settlement purposes,  
13 courts use a less stringent standard for certification of classes. *Global Minerals & Metals Corp. v.*  
14 *Superior Court*, 113 Cal. App. 4th 836, 859 (2003). “The reason for this is that no trial is anticipated  
15 in a settlement class case, so the case management issues inherent in the ascertainable class  
16 determination need not be confronted.” *Id.*; *see also 7-Eleven*, 85 Cal. App. 4th 1161–62 (2000)  
17 (affirming certification of class action for settlement purposes only). Accordingly, this Court has  
18 discretion to certify Plaintiffs’ class for settlement purposes only.

19 The requirements under California Code of Civil Procedure section 382 are all met for the  
20 purposes of certifying this case for settlement purposes:

#### 21 **A. Numerosity**

22 The members of the Class are so numerous that a joinder of all members would be  
23 impracticable. The total number of potential Class members is 712.

#### 24 **B. Typicality**

25 Plaintiffs’ claims for damages are typical of the members of the Class, and the evidence and  
26 the legal theories regarding Defendants alleged wrongful conduct are substantially the same for the  
27 Plaintiffs and all of the Class members.

28

1           **C.     Ascertainability**

2           The Class is ascertainable. The Class definition identifies groups of unnamed class members  
3 by describing a set of common characteristics sufficient to allow a member of that group to self-  
4 identify as having a right to recover based on the description. Class members’ identities, lease  
5 payments, and total amount of rent paid can be ascertained through Defendants’ rent rolls.

6           **D.     Community of Interest**

7           A well-defined community of interest in questions of law or fact involving and affecting all  
8 members of the Class exists, and common questions of law or fact that are substantially similar and  
9 predominate over questions that may affect only individual Class members. Class-wide damages can  
10 be calculated by a simple formula: (total rent paid by each Class Member / total rent paid by all Class  
11 members) x total amount awarded to the Class.

12           There are significant common questions of law and fact, and they can be answered by the trier  
13 of fact in a consistent manner such that all those similarly situated are similarly treated in the  
14 litigation. The most significant issues in this litigation that are common to the class. They include  
15 whether Defendants knew or should have known of the defective conditions at Barrington and failed  
16 to correct said conditions; whether Defendants knew that the Barrington was in such a nature that if  
17 not maintained, serviced, and inspected, would likely cause severe injuries to residents and guests;  
18 and whether Defendants concealed the nonfunctionality of fire alarms and smoke detectors.

19           **E.     Adequacy**

20           Plaintiffs and their counsel have prosecuted this action vigorously. Plaintiffs have retained  
21 competent counsel experienced in class action litigation to ensure such protection. (Kuylman Decl.  
22 ¶ 23.) The attorneys handling this action specialize in class action litigation or have class action  
23 litigation experience. (*Id.*) The law firm of Warren Terzian LLP and Geragos & Geragos, APC have  
24 served as lead or co-lead class counsel in prior certified class actions. (*Id.* ¶ 24.) Warren Terzian LLP  
25 was appointed as lead or co-lead class counsel in two cases (*id.* ¶ 24), and Geragos & Geragos, APC  
26 was appointed as lead or co-lead class counsel in 13 cases (*id.* ¶ 25).<sup>3</sup>

27  
28 \_\_\_\_\_  
<sup>3</sup> A detailed listing of each case name and number is listed in the Kuylman Decl. attached hereto.

1 Plaintiffs have agreed to fairly and adequately protected the interests of the Class members.  
2 (*Id.* ¶ 26.) And they have done so throughout the life of this case. They have responded to detailed  
3 questions from counsel, provided key documents, participated in drafting the operative complaint,  
4 reviewed and responded to detailed discovery requests, and provided information to aid in settling  
5 the case. (*Id.*)

6 **F. Superiority**

7 A class action is superior to other available means for the fair and efficient adjudication of  
8 this controversy. Joinder of all members of the proposed class is impractical. Class treatment will  
9 permit a large number of similarly situated persons to prosecute their common claims in a single  
10 forum simultaneously for settlement purposes without the unnecessary duplication of effort and  
11 expense that numerous individual actions would engender.

12 **IV. SUMMARY OF SETTLEMENT TERMS**

13 Subject to Court approval, the proposed Settlement provides the following:

14 1. For settlement purposes only, the parties stipulate to conditional certification of a  
15 Class defined as follows: All leaseholders at the Barrington Plaza Apartments, 11740 Wilshire  
16 Boulevard, Los Angeles, California, as of January 29, 2020. (Agreement, Section 1.4.) This Class  
17 encompasses approximately 712 Class members. (*Id.* ¶ 27.) The Class members can be identified  
18 from Defendants' records. (*Id.*)

19 2. The parties propose that the law firms of Warren Terzian LLP and Geragos & Geragos,  
20 APC be appointed as Class Counsel; that James Wedel, Charles McWhales, Simon Mashian, Fausto  
21 Hernandez, Michaela Vivant, Marjan Svetko, and Pei en Chong Sampson be appointed as the Class  
22 Representatives; and that CPT Group, Inc. ("CPT") be the Settlement Administrator. (Agreement,  
23 Sections 1.5, 1.11, 7.1.)

24 3. The aggregate monetary consideration is \$1,250,00 (the "Gross Settlement Amount").  
25 (Agreement, Section 3.1.) The Administrator will disburse the entire Gross Settlement Amount  
26 without asking or requiring Participating Class members to submit any claim as a condition of  
27 payment. (*Id.*) None of the Gross Settlement Amount will revert to Defendants. (*Id.*)

28 4. Class members will receive notice through a combination of email, mail, and the

1 Settlement Website. (Agreement, Section 7.3.) The Court-approved Class Notice will be emailed to  
2 the last-known email address of each Class Member, as reflected in Defendants’ records. For any  
3 individuals with respect to whom Defendants’ records do not reflect an email address, the Settlement  
4 Administrator will mail a copy of the Class Notice via first class U.S. Mail, postage prepaid. Prior to  
5 such mailing, the Settlement Administrator will run the last-known addresses through the U.S. Postal  
6 Service’s National Change of Address (“NCOA”) database. (*Id.*) If any mailed Class Notice is  
7 returned as undeliverable, the Settlement Administrator will run a “skip-trace” search attempt to  
8 locate a valid address. (*Id.*, Section 3.2.3.) In addition, if any emailed notices are bounced back as  
9 undeliverable, the Settlement Administrator will mail the Class Notice to those Class members. (*Id.*)  
10 The Settlement Administrator will also establish a Settlement Website that will include the Class  
11 Notice. (*Id.*) Notice will be provided only in English; Defendants confirmed that is their primary  
12 method of communication with all tenants. (*Id.*)

13         5.       Class members have the right to request exclusion (opt out) from the Settlement.  
14 (Agreement, Section 7.4.) Class members who opt out will not receive any consideration under the  
15 Settlement and will not be bound by any provision of the Settlement. (*Id.*)

16         6.       Class members who do not opt out are referred to as the Participating Class members  
17 and will be entitled to receive a proportionate share of the Net Settlement Amount. (*Id.*, Section 1.24.)  
18 Class members are not required to submit a claim in order to participate in the Settlement. (Kuyلمان  
19 Decl. ¶ 28.)

20         7.       The Settlement authorizes Class Counsel to request an award of attorneys’ fees of up  
21 to 33.4% of the Settlement Amount (i.e. up to \$417,500); reimbursement of actual litigation expenses  
22 not to exceed \$70,000; and service awards to Plaintiff and/or other Class members who provided  
23 assistance to Class Counsel not to exceed \$28,000 in the aggregate. (Agreement, Section 3.2.) CPT’s  
24 quote for settlement administration services is a flat fee of up to \$15,000. (Kuyلمان Decl. ¶ 29, Ex.  
25 2.) Based on the foregoing, the maximum deduction for attorneys’ fees, litigation expenses,  
26 enhancement awards, and administration expenses would be \$530,500. (Kuyلمان Decl. ¶ 30.) That  
27 would result in a Net Settlement Amount of \$719,500. (*Id.*)

28         8.       Each Participating Class Member’s proportionate share will be determined following

1 the Effective Date, when the judgment is final. At that point, Defendants will produce to the  
2 Administrator and to Class Counsel a native electronic database or spreadsheet of all Class members,  
3 including the leaseholder's name, mailing address, email address, telephone number, unit number,  
4 dates of tenancy, monthly rent price, and total rent paid by that Class Member. (Agreement, Section  
5 4.1.) The Settlement Administrator will compute the settlement payment attributable to each Class  
6 Member by: (1) summing the total amount of rent paid by a Participating Class Member; (2) dividing  
7 that number by the total amount of rent paid by all Class members; and (3) multiplying the resultant  
8 number by the Net Settlement Amount. In other words, the mathematical formula is: Individual Class  
9 Payment = [total rent paid by Participating Class Member / total rent paid by all Class members] x  
10 the Net Settlement Amount. (*Id.*, Section 3.24.)

11       9. As soon as practicable after Effective Date, the Administrator will mail checks for all  
12 Individual Class Payments, the Administration Expenses Payment, the Class Counsel Fees Payment,  
13 the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. (*Id.*,  
14 Section 4.3.)

15       10. Although the actual Distribution Amount for each Participating Class Member will be  
16 determined as of the Effective Date, an average amount can be estimated as follows. If there are no  
17 opt outs, and if the Net Settlement Amount is as set forth above in paragraph IV.7, the average  
18 payment or credit to Class members will be approximately \$1,000 (specifically, \$1,010.53).  
19 (Kuyلمان Decl. ¶ 31.) This amount is conservative as it allows a cushion in case fees run higher. (*Id.*)

20       11. For any Class Member whose Individual Class Payment check is uncashed and  
21 cancelled after the void date, the Administrator shall transmit the funds represented by such checks  
22 to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby  
23 leaving no "unpaid residue." (Agreement, Section 4.3.3.)

24       12. Provided that the Effective Date occurs, and provided that Defendants have paid the  
25 full Settlement Amount, Plaintiffs and all Class members who have not timely requested exclusion  
26 from the Settlement will be deemed to release and discharge Defendants from any and all claims  
27 alleged, and damages sought in the Complaint ("Plaintiffs' Release"). The Complaint does not seek  
28 damages for personal injury or property loss, and therefore the release does not apply to any personal



1 injury or property loss claims brought in any other cases. Plaintiffs' Release does not extend to any  
2 claims or actions to enforce this Agreement or based on occurrences outside the Class Period.  
3 (Agreement, Section 5.1.)

4 **V. THE PROPOSED CLASS NOTICE SHOULD BE APPROVED**

5 The proposed Class Notice, Exclusion Form, and Objection Form are attached to the  
6 Settlement Agreement as **Exhibits A, B, and C**, respectively. The primary method of notice is by  
7 email, with first class mail as a backup method if either (1) Defendants' records do not contain an  
8 email address for some reason or (2) the email notice is bounced back as undeliverable. (Agreement,  
9 Section VII.B-C.) Class Counsel submits that email is the preferred notice method for this case  
10 because email was the standard method of communication between Defendants and the Class  
11 members. (Kuyلمان Decl. ¶ 32.) In addition, to the extent Class members may have moved during  
12 the past few years, they are likely to have retained the same email address. (*Id.*) Notice will be  
13 provided in English because that is the primary language that Defendants communicated with Class  
14 members. (*Id.*) Therefore, email in English is the method best calculated to provide individualized  
15 notice, consistent with due process.

16 **VI. PROPOSED SCHEDULE OF FURTHER PROCEEDINGS**

17 If the Court grants preliminary approval, Plaintiffs respectfully submit the following proposed  
18 schedule of relevant dates, consistent with the Settlement Agreement:

<b>Proposed Deadline</b>	<b>Event</b>
14 days after entry of Court's Order granting Preliminary Approval	Deadline for Defendants to provide the Class List (including Class Member name, address, email, and telephone number information) to the Settlement Administrator
14 days after entry of Court's Order granting Preliminary Approval	Deadline for Settlement Administrator to email the Court-Approved Class Notice to Class members for whom an email address is available, mail the Summary Class Notice to Class members for whom an email address is not available, and establish the settlement website ("Notice Date")
14 days after Notice Date	Deadline for Settlement Administrator to mail the Class Notice to last known address of any

1		Class members for whom an email notice was bounced back as undeliverable
2	60 days after Notice Date	Last day for Class members to sign and submit a completed Exclusion Form to the Settlement Administrator
3	60 days after Notice Date	Last day for Class members to sign and submit a completed Objection Form to the Settlement Administrator
4	60 days after Notice Date	Last day for Class members to sign and submit a completed Objection Form to the Settlement Administrator
5	16 Court days prior to Final Approval Hearing	Deadline for Plaintiffs to file Motion for Final Approval of Settlement, including Class Counsel's request regarding attorneys' fees, litigation expenses, and service awards
6	16 Court days prior to Final Approval Hearing	Deadline for Plaintiffs to file Motion for Final Approval of Settlement, including Class Counsel's request regarding attorneys' fees, litigation expenses, and service awards
7	10 days prior to Final Approval Hearing	Deadline for parties respond to any objections to the Settlement
8	10 days prior to Final Approval Hearing	Deadline for parties respond to any objections to the Settlement
9	To be set by the Court [approximately 150 days after entry of Preliminary Approval]	Final Approval Hearing
10	To be set by the Court [approximately 150 days after entry of Preliminary Approval]	Final Approval Hearing
11	To be set by the Court [approximately 150 days after entry of Preliminary Approval]	Final Approval Hearing
12	To be set by the Court [approximately 150 days after entry of Preliminary Approval]	Final Approval Hearing

13 **VII. CONCLUSION**

14 The proposed Settlement provides for material and prompt monetary benefits to Class  
15 members, and is the result of informed, extensive, and arm's-length negotiations conducted by  
16 counsel experienced in class action litigation. Accordingly, Plaintiffs respectfully request that the  
17 Court find that the Settlement is fair, adequate, and reasonable for the Class members, grant  
18 preliminary approval, and authorize the parties to proceed with class notice. A proposed Preliminary  
19 Approval Order is submitted herewith.

20  
21  
22 Dated: January 9, 2024

Respectfully submitted,

**WARREN TERZIAN LLP  
GERAGOS & GERAGOS, APC**

23  
24   
25 Erick Kuylman  
26 Counsel for Plaintiffs