

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

SUFFOLK, ss.

EASTERN HOUSING COURT  
CIVIL ACTION NO.: 16H84CV001026

PHOEBE FLEMMING, )  
Individually, and o/b/o those similarly situated, )  
 )  
Plaintiff )  
v. )  
 )  
GREYSTAR MANAGEMENT SERVICES, L.P, )  
 )  
Defendant )

**ASSENTED-TO MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

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Pursuant to Mass. R. Civ. P. 23(c), Plaintiff Phoebe Flemming, individually and on behalf of the Class, (the “Plaintiff” or “Named Plaintiff”) respectfully requests the Court’s preliminary approval of a proposed settlement that resolves the above-captioned class action lawsuit. A copy of the settlement agreement is attached as Exhibit A. The Plaintiff also seeks approval of and authorization to mail a notice of the settlement to Class members in substantially the form attached as Exhibit B. Plaintiff further requests that the Court order a final class action settlement fairness hearing for final approval of the settlement approximately ninety (90) days from the date preliminary approval is granted.

## **BACKGROUND**

### **I. OVERVIEW OF CLAIMS AND PROCEDURAL BACKGROUND**

Plaintiff brought this Action on December 14, 2016, on behalf of all similarly situated persons who were tenants of the Defendant in Massachusetts from that date until the present. The Complaint alleged six counts: I) Violation of Ch. 186 §15B by charging: a) pet fees; b) “re-letting” fees; c) late fees before rent was thirty (30) days overdue; and d) attorney fees on tenants without a court order; II) Violation of Ch. 186 §14; III) Infliction of Emotional Distress; IV) Constructive Fraud; V) Violation of Ch. 93A for knowingly imposing the illegal lease provisions; and VI) Attorney fees.

The Court granted Partial Summary Judgment in Plaintiff’s favor on February 5, 2019. Specifically, the Court granted summary judgment to Plaintiff under Count I (pet fees, re-letting fees and buy-out fees, improperly imposed late fees, and attorney fees) and Count V (violation of 93A as to the same fees) and awarded attorney fees. Judgment entered as to the Plaintiff’s individual claims under those counts on August 21, 2020.

On September 20, 2019, this Court certified a Class of tenants who: (i) were parties to a lease with Defendant during the time period of December 16, 2012 through the present which contained the illegal lease provisions on which the Court granted summary judgment; and (ii) had been prematurely charged late rent fees during the time period of December 16, 2012 until the present. The Defendant appealed Plaintiff’s individual judgment and the Court’s class certification decision. On October 28, 2021, the Appeals Court vacated the Judgment except those portions of counts I and V relating to the late fees on October 28, 2021. The Appeals Court likewise vacated

the Court's class certification decision, except as to tenants who were prematurely charged late fees.<sup>1</sup>

Following the Appeals' Court's decision, only Counts I and V remain, and they are limited to claims for the imposition of late rent fees prior to rent being thirty days late. Likewise, the Class remains certified only as to tenants who were charged late rent fees by Defendant before rent was at least thirty (30) days overdue and paid such charges. Each such person is referred to herein as a "Class Member" or "Settlement Class Member."

On March 24, 2023, the Court entered Judgment for \$7,761 to Ms. Flemming for her individual claims. The case was scheduled for an evidentiary hearing to assess class-wide damages on June 9, 2025.

**II. THE SETTLEMENT RESULTED FROM SIGNIFICANT ARMS' LENGTH NEGOTIATION WITH THE BENEFIT OF FULL DISCOVERY AND NINE YEARS OF LITIGATION.**

The parties reached this Settlement after approximately twenty hours of telephone calls, emails, and follow up exchanges between counsel. Prior to these negotiations, the parties exchanged extensive written discovery, including voluminous data concerning approximately twenty-five thousand individual tenants and the fees they paid. And of course, the parties' counsel have had the experience of litigating this case for nine years, including through an Appeal, and are intimately familiar with each side's strengths and weaknesses.

Armed with ample discovery and experience with/knowledge of the case, the parties were able to fully evaluate the benefits of the settlement (discussed below) versus risks and potential delays of further litigation. The risk of further delaying recovery to the Class is a particularly important consideration here. Indeed, the case is now in its ninth year and the need for resolution

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<sup>1</sup> On January 14, 2022, the Supreme Judicial Court denied further review.

is clear. If the case proceeds to a damages assessment, the Class risks the Court not agreeing that all of the identified fees are compensable, which could significantly reduce the Class's recovery. In addition, the Class risks Defendant appealing the decision and delaying the case for many more months. Collectively, these considerations, along with others, make settlement an attractive alternative for the Class.

### **III. PROPOSED SETTLEMENT TERMS**

The complete terms of the proposed Class-wide settlement are detailed in the agreement attached as Exhibit A (the "Settlement Agreement," the terms of which are referred to as the "Settlement"). Plaintiff will highlight, below, some of the Settlement's key provisions:

#### **A. The Settlement of \$3,000,000 Nearly One and a Half the Damages.**

The parties have agreed to settle the Class's late rent fee claims for three-million dollars (\$3,000,000). For comparison purposes, based on Defendant's data, Plaintiff's best-case estimate of the total late rent fees charged during the Class period are \$2,037,320. Thus, the total settlement amount represents 1.47 or nearly one and a half the actual damages. The damage multiple stems from the prejudgment interest that has accrued on the Class's damages.<sup>2</sup> Statutory prejudgment interest on those improper late rent charges is \$1,715,604.<sup>3</sup> Thus, the amount needed to make the Class whole for the improper late charges paid and interest accrued is \$3,752,924. The proposed Settlement therefore represents approximately 80% of the expected judgment. This is a tremendous result for the Class.

There is also a provision in the Settlement that virtually ensures that every claimant will be made whole – receiving a settlement payment equal to all of the improper late rent fees they paid

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<sup>2</sup> The Court's summary judgment decision found that Plaintiff was not entitled to multiple damages for the 93A violations at issue. As such, the Class was unable to negotiate on a damage's multiplier under G.L. c. 93A, § 9.

<sup>3</sup> Based on a stop date of 12/1/24, pursuant to the parties' negotiations.

plus statutory prejudgment interest. Indeed, the Settlement Agreement calls for Class Members who timely cash their settlement checks to receive a second payment, assuming there is money left over after the deadline to cash the first settlement check expires. This should result in each Class Member who timely cashes their first settlement check receiving a combined settlement payment equal, or nearly equal to the late rent fees they were improperly charged plus statutory prejudgment interest. This is an ideal outcome for the class.

**B. Distribution of Settlement Proceeds**

Plaintiff proposes distributing the \$3,000,000 Gross Settlement Amount as follows:

Distributions to Class Members	At least \$1,835,000
Service Award to Class Representative	\$25,000
Attorneys' Fees	\$1,050,000
Claims Administration Costs	Up to \$80,000
Dispute Fund	\$10,000

As described in the proposed notice (attached as Exhibit B), assuming the Settlement is finally approved, the Class's share of proceeds will be distributed to Class Members on a *pro rata* basis, in proportion to their Actual Loss (i.e., impermissible fees paid, plus prejudgment interest). Class Members shall receive their initial *Pro Rata* Payments without having to submit a claim form or otherwise "opt in" to the Settlement Class. The Administrator shall send each Class Member a check for their *Pro Rata* payment within fourteen days of the Effective Date, as defined in Section II.A of the Settlement Agreement. Thus, the claim rate should be maximized.

Class Members will be given sixty (60) days from the date of *Pro Rata* payment to cash their checks. After the expiration of the 60-day cashing period for *Pro Rata* Payment, the

Administrator shall send a second check to each Class Member who timely cashed or deposited their *Pro Rata* Payment. Assuming adequate funds remain for distribution, the second round of checks will be equal to the difference between the amount of each such Class Member's *Pro Rata* Payment and their Actual Loss (i.e., the late fees incurred, plus prejudgment interest). Thus, these checks will make Class Members who cash their initial, *Pro Rata* Payment whole or close to it. The second round of checks will be distributed within thirty (30) days after the expiration of the 60-day cashing period for the *Pro Rata* payments.

In the event unclaimed funds remain sixty (60) days after mailing of the Class's *second* settlement checks, a Residual Fund will be created. Any such residual funds will be allocated/distributed *cy pres* to Greater Boston Legal Services ("GBLS"), pursuant to Mass.R.Civ.P. 23. Ten thousand dollars from the Gross Settlement will be used to establish a "Dispute Fund," which shall be used to resolve any disputes that arise concerning Class Member payments or other unanticipated issues. The Settlement Administrator shall return any undistributed money from the Dispute Fund to GBLS after three years.

### **C. Binding Effect on Class Members.**

Upon final approval, all Class Members: (i) will automatically be eligible for a Settlement allotment, as described herein; (ii) will be bound by the terms and conditions of the Settlement Agreement, the Final Approval Order, the Judgment, and the release set forth in the Settlement Agreement; and, (iii) unless they filed a timely objection in accordance with the procedures set forth in the Notice of Proposed Class Action Settlement, will be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the Settlement.

## ARGUMENT

### **I. STANDARD**

Approval of a class action settlement is a two-step process. First, the Court makes a preliminary finding of the proposed settlement's fairness. See Manual for Complex Litigation § 21.632 (4th ed. 2004) ("Manual"); see also Alba Conte & Herbert Newberg, Newberg on Class Actions § 11.25 at 38-39 (4th ed. 2002) ("Newberg"). Second, if the settlement falls within the range of possible approval and there are no grounds to doubt its fairness, the Court should direct notice be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement. See Manual, § 21.632.

The standard governing consideration of requests for preliminary approval is less stringent than the standard governing requests for final approval. In re Mass. Smokeless Tobacco Litig., No. CIV.A. 03-5038-BLS1, 2008 WL 1923063, at \*3 (Mass. Super. Ct. Apr. 9, 2008) (Gants, J.) ("preliminary approval means simply that notice of the proposed settlement will be sent to Class members, who will then be given the chance to be heard at the hearing regarding final approval."); In re Traffic Executive Ass'n, 627 F.3d 631, 634 (2d Cir. 1980) (court need only find "probable cause to submit the [settlement] to class members and hold a full-scale hearing as to its fairness.").

Requests for class action settlement approval should be reviewed against the backdrop of the well-established public policy in favor settlement, moreover. See Williams v. First Nat'l Bank, 216 U.S. 582, 595 (1900); Durett v. Housing Auth. Of Providence, 896 F.2d 600, 604 (1st Cir. 1990); Hotel Holiday Inn de Isla Verde v. N.L.R.B., 723 F.2d 169, 173 (1st Cir. 1983) (settlement agreements "will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits"). This is especially so in the context of complex class action litigation. See, e.g., Lazar v. Pierce, 757 F.2d 435, 440 (1st Cir. 1985) ("Last, we should point to

the overriding public interest in favor of the voluntary settlement of disputes, particularly where class actions are involved”). In light of these considerations, the Massachusetts Supreme Judicial Court has explained that judges should assess a class action settlement with deference to the litigants and their counsel’s judgment:

The essence of a settlement is compromise... Because settlement of a class action, like settlement of any litigation, is basically a bargained for exchange between the litigants, the judiciary’s role is properly limited to the minimum necessary to protect the interests of the class and public. [A] Judge should not substitute their own judgment as to the optimal settlement terms for the judgment of the litigants and their counsel.

Sniffin v. Prudential Ins. Co. of Am., 395 Mass 415, 421 (1985) (citation omitted).

## **II. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

The fundamental issue for class action settlement approval is whether, regarded as a whole, the settlement is fair, reasonable, adequate, and not a product of collusion. *See, e.g., Sniffin*, 395 Mass. at 420-22; Fortin v. Ajinomoto U.S.A., Inc., No. 022345C, 2005 WL 3739852, at \*1 (Mass. Super. Ct. Dec. 15, 2005) (Gants, J.); In re New England Mut. Life Ins. Co. Sales Practices Litig., 204 F.R.D. 6, 9 (D. Mass. 2001) (approving settlement “within the range of possible approval”).

As discussed below, the Settlement readily meets these criteria.

### **A. The Settlement is Presumptively Fair because it Was the Product of Arms’ Length Bargaining with the Benefit of Discovery**

“If the parties negotiated at arm’s length and conducted sufficient discovery, the [trial] court must presume the settlement is reasonable.” Bezdek v. Vibram USA, Inc., 809 F.3d 78, 82 (1st Cir. 2015) (quotations omitted); Newberg on Class Actions § 11.41; *see Sniffin*, 395 Mass. at 421 (“Judge[s] should not substitute their own judgment as to the optimal settlement terms . . .”).

The Settlement easily meets that benchmark and must be presumed fair. Indeed, the parties only settled after significant discovery was produced and months of negotiations. Further the case has been litigated for nine years and has already been appealed. There can be no suggestion of anything but zealous advocacy by both parties. These factors - the time and effort spent on negotiations, and the quantity and quality of information exchanged - all militate in favor of preliminary approval of the Settlement. *See Berenson v. Faneuil Hall Mktplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987) (proposed class settlement reached after meaningful discovery and arm's length negotiation, conducted by capable counsel, was presumptively fair).

In sum, the Settlement was vigorously negotiated and should be presumed to have resulted in a fair and reasonable result.

**B. The Amount of the Settlement is Objectively Fair and Reasonable**

Additionally, courts consider the amount of the settlement compared to the amount at issue in the case and the plaintiffs' likelihood of succeeding. *See Roberts v. TJX Cos.*, No. 13-cv-13142-ADB, 2016 WL 86677312, \* 7 (D. Mass. Sept. 30, 2016); *Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 76 (D. Mass. 1999); *Berenson.*, 671 F. Supp. at 822-23 (D. Mass. 1987).

Here, the total amount of the Settlement is fair, reasonable and adequate in light of the risks the Named Plaintiff and Class faced and the potential damages available. Indeed, Plaintiff's estimates of the Class's actual damages, plus statutory prejudgment interest, is \$3,752,924. The settlement amount thus represents eighty percent of the Class's total potential recovery in this matter. Furthermore, even after attorneys' fees, costs, incentive fees and administrative costs, the class members who participate in the settlement will likely be "made whole", (i.e. receive very close to (if not all of) the late rent fees they were improperly charged plus statutory prejudgment interest).

The result is particularly strong when compared to risks and delays faced through continued litigation. As noted above, the Class risks a lesser recovery and second appeal, and the attendant lengthy delays should it proceed to a damages assessment hearing.

### **III THE PROPOSED \$25,000 FOR AN INCENTIVE PAYMENT TO MS. FLEMMING IS FAIR**

The Settlement calls for a service payment of \$25,000 to Ms. Flemming for her significant efforts as the Class Representative. This payment is fair and reasonable under applicable precedent and in light of her significant contributions to the Class.

Courts recognize that incentive payments serve an “important function in promoting class actions.” *In re Relafen Antitrust Litigation*, 231 F.R.D. 52, 82 (D. Mass. 2005) (internal citation omitted); see *Sheppard v. Consolidated Edison Co. of NY, Inc.*, No. 94-CV-0403(JG), 2002 WL 2003206, at \*2 (E.D.N.Y. Aug. 1, 2002) (collecting cases approving incentive payments).

Incentive bonuses of up to \$25,000 to \$50,000, and sometimes even higher, are commonplace. See, e.g., *Del Valle v. Town Fair Tire, et al.*, Worcester Civ. A. No. 1985CV01393 (Mass. Super. Ct. 2020) (approving \$25,000 incentive payments for lead plaintiff); *Cerulo et. al. v Herbert G. Chambers, et. al.*, Middlesex Civ. A. No. 1681-cv-03749 (Mass. Super. Ct. 2020) (same); *Rasmus v. Bank of New York Mellon*, Suffolk Civ. A. No. 1684-CV-00377 (Mass. Sup. Ct. 2019) (\$35,000 incentive payment for lead plaintiff); see also *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 189 (S.D.N.Y. 1997) (surveying cases and noting incentive payments ranging up to \$50,000 as of 1997) (citations omitted).

Here, Ms. Flemming played an important role in resolving the matter by being the only representative on this case for nine years. She also participated in discovery and provided all of the initial information about the Defendant necessary to prosecute the case. Ultimately, Plaintiff's persistent (over *nine years*) to see the Class's claims through (when she could have walked away

with her individual judgment many years ago) is the primary reason the Class was able to achieve this Settlement. In light of these facts, it is only fair that she receives an incentive payment of \$25,000.

**IV THE REQUESTED ATTORNEYS' FEE IS FAIR AND REASONABLE AND SUPPORTED BY APPLICABLE PRECEDENT**

The proposed distribution of the Settlement proceeds provides for thirty five percent (35%) share for attorneys' fees. The Named Plaintiff supports this payment, and the Defendant does not contest it. In addition, the Notice of Settlement will inform Class Members that 35% of the Settlement proceeds would be used to pay for attorneys' fees.

In Reniere v. Alpha Management Corp. 2014 WL 7009753 (Mass.Super.), the trial court stated that:

Where a fee "award is provided for by statute and is assessed against the party having no contractual relationship with the attorney involved, the standard of reasonableness depends not on what the attorney usually charges but, rather, on what his services were objectively worth" in the market for similar legal services. [cite omitted by counsel] This same "standard of reasonableness" applies to attorneys' fees claimed under G.L. c. 93A. See *Honsi v. C.H. Babb Co., Inc.*, 10 Mass.App.Ct. 474, 481 (1980). Evidence of a lawyer's so-called standard, normal, or customary rates "are of little aid to a court in establishing the actual market [rate] for the legal services provided here,"

Class Counsel single-handedly litigated this case from its commencement to a judgment, which provided the class substantial leverage in negotiations. Class Counsel invested significant time and resources into this case to reach this point. Indeed, he invested hundreds of hours of his time over nine years to obtain that judgment.

Among other tasks, Class Counsel: drafted the demand letter, conducted dozens of hours of legal research on the legality of the Defendant's numerous lease provisions and class actions, drafted two rounds of discovery and several motions to compel, responded to discovery, drafted, argued, and prevailed on a motion for partial summary judgment, sought and obtained class certification, drafted jury instructions, drafted several pre-trial memorandums, drafted a motion

to lift the stay, opposed the defendant's motion for relief from judgment and its motion to decertify the class, drafted an appellate brief and appeared before the Appeals Court, spent dozens of hours and several months reviewing approximately 25,000 transactions from 4413 tenants calculating damages and pre-judgment interest, spent approximately seven months negotiating a settlement and exchanging drafts of the settlement agreement, renegotiated for several weeks after IOLTA expressed concerns about the initial agreement, drafted the motion for preliminary approval, proposed order, and the notice to the class, met with the class administrator, and made no less than thirteen court appearances, either in person or by Zoom.

As a result of Class Counsel's efforts: (1) Plaintiff obtained class certification; (2) Plaintiff obtained summary judgment as to her individual claims; and (3) a critical claim was upheld on appeal. But for Class Counsel's extensive, nine-year investment of time in this matter, the settlement would have been less favorable, if it would have occurred at all.

Additionally, Class Counsel has extensive experience with landlord /tenant litigation. He has been practicing in the field since 2008 and has represented over 200 tenants in suits against their landlords, both as a legal services attorney and one in private practice. He has previously obtained two six-figure judgments against landlords in individual cases and filed several successful appeals. Class Counsel is well versed in the law in this field and his experience has provided the Class with a high degree of expertise that clearly contributed to a favorable resolution in this case. Finally, it should be noted that Class Counsel accepted this case on a contingent fee arrangement and invested his time without any promise of compensation.

As will be detailed below, an attorneys' fee of thirty-five percent (35%) of the Settlement to compensate Class Counsel for his service to the Class is fair, reasonable and supported by

precedent. Indeed, both parties recognize that it is not unusual for some class action attorneys to receive 40% of the settlement.

**A. An Attorney's Fee Equal to 35% of the Settlement Fund Is Supported by Precedent.**

As the United States Supreme Court has recognized, awarding fees from a common fund based on a percentage thereof is the favored practice for class action settlements because it spreads the fees over those who benefitted from the suit and to encourage early settlement:

[T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole... Jurisdiction over the fund involved in the litigation allows a court to prevent ... inequity by assessing attorneys' fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit.

Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (citations omitted); see also Blum v. Stenson, 465 U.S. 886, 900 n. 16 (1984); In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig., 56 F.3d 295 (1st Cir. 1995) (awarding attorneys' fees of \$68 million out of a \$220 million settlement fund). In Thirteen Appeals, the First Circuit endorsed the percentage or recovery approach because it: (1) is results-oriented, and hence, promotes the more efficient use of attorney time; and (2) better reflects the market value of counsel's services. Id. at 307. The Thirteen Appeals Court noted that other Circuits have *required* the use of percentage awards in common fund cases. Id. (citing Camden Condo. Ass'n v. Dunkle, 946 F.2d 768, 771 (11th Cir. 1991)); Swedish Hosp. Corp. v. Shahala, 1 F.3d 1261, 1271-1272 (D.C. Cir. 1993); see also Report of Third Circuit Task Force, Court Awarded Attorneys' Fees, 108 F.R.D. 237, 255 (1985); and Federal Judicial Center, Awarding Attorneys' Fees and Managing Fee Litigation, 63-64 (1994).

Federal Courts have on occasion awarded class counsel 40% of the settlement proceeds. Frank v. Eastman Kodak Co., 228 F.R.D. 174, 188 (W.D.N.Y. 2005).

Massachusetts Courts have consistently approved a one-third percentage of fund attorneys' fees award as reasonable in class actions. See, e.g., Landry v. Transworld Systems, Inc., Worcester C.A. No. 1885-cv-01452 (Mass. Sup. Ct. 2023) (awarding 1/3<sup>rd</sup> of \$1,563,720.00 settlement); Malebranche, et al. v. Colonial Automotive Group, et. al. Suffolk C.A. No. 16-3479-BLS2 (Mass. Super. Ct. 2021) (awarding 1/3 of a \$6.4 million common fund); Daniel Dupuis, et al. v. Herbert Chambers, et al., Middlesex C.A. No. 1681CV03665 (Mass. Super. Ct. 2020) (awarding 1/3 of a \$21 million common fund); Del Valle v. Town Fair Tire, et al., Worcester C.A. No. 1985CV01393 (Mass. Super. Ct. 2020) (awarding 1/3<sup>rd</sup> of \$3.2 million fund); Meier v. Mastec North Am., Inc., Hampden C.A. No. HDCV2013-00488-A (Mass. Super. Ct. 2016).<sup>4</sup>

In this case, the parties have agreed to 35% as a compromise between the often used 33% and the 40% rate received by some class action attorneys. The rate also reflects the unusual length of this case, and the fact that counsel had to respond to an appeal on the motion for summary judgment.

## **B. Public Policy Considerations Favor Awarding 35% of the Fund**

In addition to the precedent favoring 35% of Fund fee award, there are several public policy reasons that make such an award particularly appropriate here.

First, Class Counsel accepted this case on a contingent fee basis. Contingent fee arrangements play a vital role in making legal services available to individuals who cannot afford

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<sup>4</sup> The U.S. District Court in Massachusetts also routinely approves a one-third share of funds for attorneys' fees in employment and other class actions. See, e.g., Matamoros v. Starbucks, D. Mass. Civ. A. No. 08-10772-NMG (Docket Nos. 159 and 169) (2013) (awarding one-third of \$23.5 million fund in Massachusetts tips law case); Crenshaw v. Texas Roadhouse, Inc., D. Mass. Civ. A. No. 11-10549-JLT (Docket Nos. 53 and 56) (awarding one-third of \$5 million fund in tips and minimum wage case) (2012); Cutter v. Health Mkts. Inc., D. Mass. Civ. A. No. 10-11488-JLT (2012) (awarding one-third of fund in independent contractor misclassification case); see also Roberts, 2016 WL 8677312 (awarding one-third of \$4.75 million fund); Chalverus v. Pegasystems, Inc., C.A. No. 97-12570-WGY (D. Mass. Dec. 19, 2000) (awarding one-third of more than \$5 million fund); In re Copley Pharm., Inc., Sec. Litig., C.A. No. 94-11897-WGY (D. Mass. Feb. 8, 1996) (awarding one-third of \$6.3 million fund).

hourly rates. Courts have recognized that counsel should be rewarded for making the legal system accessible to those individuals and bearing 100% of the risk of doing so. See, e.g., Comm. Care Alliance v. Astrazeneca Pharms., No. Civ. A. 05-0269 BLS2, 2013 WL 628236, \* 2-3 (Mass. Super. Ct. Aug. 5, 2013) (“the lawyer who does not charge for his services until and unless he recovers for his client has essentially made a loan of his time: where there is a high risk that loan will ‘default’ (i.e. there will be no recovery), *the interest rate must be high enough to compensate the lawyer accordingly.*”) (emphasis added by counsel); see also Hensley v. Eckerhart, 461 U.S. 424, 448 (1983) (noting that “attorneys who take cases on contingency, thus deferring payment of their fees until the case has ended and taking upon themselves the risk that they will receive no payment at all, generally receive far more in winning cases than they would if they charged an hourly rate.”).

Providing individuals access to contingent fee representation is particularly important in the context of the landlord-tenant laws at issue here. Indeed, it is well settled that M.G.L. c. 186, § 15B was “designed to afford ‘a wronged tenant easy and inexpensive means of securing [] repayment ... with penalty awards in appropriate cases.’” Kaara v. Kuk Yim, 86 Mass. App. Ct. 714, 723-24 (2014) (quoting Jinwala v. Bizzaro, 24 Mass.App.Ct. 1, 6, 505 N.E.2d 904 (1987)); see also Hampshire Village Assocs. v. District Court of Hampshire, 381 Mass. 148, 152-53 (1980) (G.L. c. 186, § 15B manifests the legislature’s “concern for the welfare of tenants in residential property who, as a practical matter, are generally in inferior bargaining positions and find traditional avenues of redress relatively useless; i. e., the legal expense of chasing [a violation] would be more than the [damages available].”); Lincoln St. Realty Co. v. Green, 374 Mass. 630, 632 (1978) (“Statutory authorization to award attorney’s fees to the prevailing party in certain types of actions primarily serves the interrelated purposes of encouraging private enforcement of particular laws chosen by the Legislature, deterring illegal conduct in connection with these laws, and punishing those who violate

these laws”); *c.f. Reiter v. Sonotone Corp.*, 442 U.S. 330, 344 (1979) (recognizing that, in the antitrust context (where public interests are also at stake), “private suits provide a significant supplement to the limited resources available to [government agencies] for enforcing laws and deterring violations.”)

Second, awarding fees from a common fund “directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of the litigation.” *Frank*, 228 F.R.D. at 188 (granting 40% fee request).

Third, awarding fees from a common fund recognizes that firms may spend years developing the case law in a particular field and obtaining favorable decisions, all of which contributes to early resolution of later cases. *See, e.g., In re Giant Interactive Group Inc. Sec. Litig.*, 2011 WL 5244707, \*10 (S.D.N.Y. Nov. 2, 2011) (“The Court finds [th]at public policy supports the award of a 33% fee in this case, the better to ‘attract well-qualified Plaintiff’s counsel who are able to take a case to trial, and who defendants understand are able and willing to do so.’”) (quoting *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005)). Here, as detailed above Class Counsel has extensive experience litigating landlord tenant cases, having spent seventeen years in this field obtaining favorable decisions and contributing significantly to the development of the law in this area, including clarifying whether monthly pet fees are legal. Class Counsel has developed a solid reputation in the landlord /tenant field based on his history of diligent representation and successful results. Because of all of that previous work, which entailed substantial investments of time and resources, Class Counsel was able to litigate this case far more effectively than a firm with no prior experience.

Lastly, a thirty-five percent award to class counsel serves the public policy purpose of deterring similar landlords from engaging in illegal behavior in the future. In sum, given the duration and difficulty of this case, and the significant precedent of approving one-third recovery for attorneys’

fees in class action cases in Massachusetts, and the strong public policy considerations, the Court should find that a 35% recovery in this case is reasonable and fair.

**V. THE PROPOSED NOTICE TO CLASS MEMBERS APPROPRIATE AND SHOULD BE APPROVED**

Pursuant to Mass. R. Civ. P. 23(c) notice of the Settlement may “be given in such manner as the court directs.” Plaintiff proposes that said notice be provided in the form of the Notice of Proposed Class Action Settlement, a draft of which is attached hereto as Exhibit B (the “Notice”). If the Court grants preliminary approval, within thirty (30) days of said approval, the Administrator, Optime Administration, LLC (“Optime”), will mail to all Class Members, via First-Class United States Mail, postage prepaid, the Court-approved Notice.<sup>5</sup> Class Members will be given at least forty-five (45) days from the mailing of the Notice to submit a written objection to Optime (which will forward copies to counsel of record and the Court).

The form and manner of the proposed Notice satisfies the requirement of due process, moreover. Indeed, the proposed Notice alerts and informs all known and reasonably identifiable Class Members of the: (a) pending Action; (b) nature of the claims and defenses; (c) identity of the settling Defendants; (d) terms of the settlement and distribution; (e) fact that final approval of the proposed Settlement will result in dismissal and waiver of the claims of individual Class Members; (f) date and time of the fairness hearing; and (g) Class Members’ right to file any comments or objections to the Settlement and to appear and be heard at the Court’s formal fairness hearing, along with information about the procedure and deadlines for doing so. The

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<sup>5</sup> Optime will take commercially reasonable steps to obtain the correct address and re-send the Notice to any Class Member for whom a notice is returned as undeliverable.

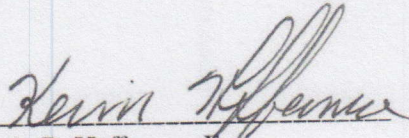
Notice also fulfills the requirement of neutrality in Class notices, as all of the foregoing are summarized in a neutral, informative and coherent manner.

**CONCLUSION**

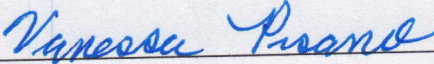
For the reasons set forth above, the Plaintiff respectfully requests that this Court:

(1) grant preliminary approval of the Settlement and the proposed plan of distribution as fair, reasonable, and adequate; (2) authorize Optime to mail the proposed Notice of Settlement, in the form attached as Exhibit B, to the Class; (3) schedule a final Settlement fairness and approval hearing date for approximately ninety (90) days from the date of preliminary approval. A proposed order to that effect is attached to this motion as Exhibit C.

Respectfully Submitted this Second Day of June 2025

  
Kevin R. Heffernan, Esq.

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 (Signed by Attorney Heffernan with assent)

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

EASTERN HOUSING COURT  
CIVIL ACTION NO. 16CV1026

PHOEBE FLEMMING, individually, and o/b/o of  
those similarly situated,

*Plaintiff,*

v.

GREYSTAR MANAGEMENT SERVICES, L.P.,

*Defendant.*

**CLASS ACTION SETTLEMENT AGREEMENT**

This Settlement Agreement and Release (the “Agreement, “Settlement Agreement,” or “Settlement”) is entered into by and between Plaintiff Phoebe Flemming (“Plaintiff” or “Flemming”), on behalf of herself and the Settlement Class, and Defendant Greystar Management Services, L.P. k/n/a Greystar Management Services, LLC<sup>1</sup> (“Defendant” or “Greystar”) in the above-captioned case (the “Action”). Plaintiff and Defendant are each referred to as a “Party” and are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof and subject to the approval of the Court.

**I. FACTUAL BACKGROUND AND RECITALS**

A. On December 16, 2016, Plaintiff filed a class action complaint (“Complaint”) against Defendant, which is pending in the Eastern Housing Court, Suffolk County, Massachusetts, Civil Action No. 16H84CV001026. The Complaint asserted six (6) causes of action against Defendant for: (1) violations of M.G.L. c. 186, § 15B (security deposit statute); (2) breach of quiet enjoyment in violation of M.G.L. c. 186, § 14; (3) infliction of emotional distress; (4) constructive fraud; (5) violations of M.G.L. c. 93A; and (6) attorneys’ fees.

B. On June 8, 2018, Greystar moved for summary judgment on all counts of Plaintiff’s complaint. On June 20, 2018, Plaintiff filed a partial motion for summary judgment as to her class claims for purported violations of the Massachusetts Security Deposit Statute, G.L. c. 186, § 15B (Count I), G.L. c. 186, § 14 (quiet enjoyment) (Count II), and the Consumer Protection Act, G.L. c. 93A (Count V).

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<sup>1</sup> Effective June 23, 2023, Greystar Management Services, L.P. was converted to Greystar Management Services, LLC.

C. On February 5, 2019, the Court entered an order denying Greystar's motion for summary judgment and allowing Plaintiff's motion for partial summary judgment, in part, as to her class claims for alleged violations of G.L. c. 186, § 15B (Count I) and G.L. c. 93A (Count V).

D. On or about January 3, 2020, the Parties filed a Joint Stipulation of Dismissal with Prejudice as to Plaintiff's individual claims only ("Stipulation"). As such, as of the date of the filing of the Stipulation, all that remained pending in the Action was the Plaintiff's class claims under G.L. c. 186, sec. 15B (Count I) and c. 93A (Count V).

E. On September 21, 2020, Defendant appealed the Housing Court's decision on Plaintiff's class action claims for alleged violations of G.L. c. 186, sec. 15B (Count I) and c. 93A (Count V).

F. On October 28, 2021, the Massachusetts Appeals Court issued a decision that reversed the Housing Court's order and judgment in Plaintiff's favor and class certification on all but one count, the alleged violations of G.L. c. 186, sec. 15B (Count I) and c. 93A (Count V) relating to residents who paid late fees that were charged before thirty (30) days of rent being late.

G. Following the completion of class discovery and the exchange of extensive data relating to the late fees at issue in this Action, the Parties began discussing the potential for a class-wide settlement relating to the remaining class claim for late fees. After considerable arms-length negotiations, the Parties were able to reach agreement on the terms of a class-wide settlement in which the Parties agree to resolve all matters between them relating to the imposition of late fees, including the remaining late fee claim in this Action and as set forth herein.

H. The Parties have agreed to settle the Action on the terms and conditions set forth herein in recognition that the outcome of the Action is uncertain and that achieving a final result through continued litigation would require substantial additional risk, potential discovery, time, and expense.

I. Despite Defendant's belief that it is not liable for and has meritorious defenses to the late fee damages alleged in the Action, Defendant desires to settle the Action and thus avoid the expense, risk, exposure, and inconvenience of continued litigation of any action or proceeding relating to the matters being fully settled and finally resolved in this Settlement Agreement. Neither this Settlement Agreement, nor any settlement negotiation or discussion thereof, is or may be deemed to be or may be used as an admission of or evidence of any wrongdoing or liability.

J. Following arms-length negotiations, the Parties now seek to enter into this Settlement Agreement. Plaintiff and Class Counsel have conducted an investigation into the facts and the law regarding the remaining late fee claim in this Action and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class, recognizing (a) the existence of complex and contested issues of law and fact; (b) the risks inherent in continued litigation; (c) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not

settled by voluntary agreement; (d) the magnitude of the benefits derived from the contemplated Settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (e) the Plaintiff's and Class Counsel's determination that the Settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

K. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that, subject to the approval of the Court, the Action be settled and compromised, and that the Releasors release the Released Parties of the claims released herein, without costs as to Defendant, the Released Parties, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided for in this Agreement, on the following terms and conditions.

## II. AGREEMENT, RELEASES AND PROMISES

### A. DEFINITIONS

As used herein, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

1. “**Action**” or “**Litigation**” shall mean the class action lawsuit captioned *Phoebe Flemming v. Greystar Management Services, L.P.*, Civil Action No. 16H84CV001026, pending in the Eastern Housing Court, Suffolk County, Massachusetts.

2. “**Administrative Expenses**” shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing Notice, communicating with the Settlement Class Members, disbursing payments to the proposed Settlement Class Members, and tax reporting. In no event will Administrative Expenses exceed \$100,000.00.

3. “**Agreement**” or “**Settlement Agreement**” shall mean this settlement agreement.

4. “**Actual Loss**” shall mean the total actual, documented loss, incurred by each Class Member, which is comprised of each Class Member's Impermissible Late Fees and calculated pre-judgment interest, as represented in the applicable Late Fee Spreadsheets.

5. “**Class Counsel**” or “**Plaintiff's Counsel**” shall mean attorney Kevin R. Heffernan of the Law Office of Kevin R. Heffernan, Ltd.

6. “**Class Representative**” shall mean the named plaintiff in the Action, Phoebe Flemming.

7. “**Court**” shall mean the Eastern Housing Court, Suffolk County, Massachusetts, and the Honorable Judge Maria Theophilis or any judge sitting in her stead.

8. “**Defendant**” shall mean Greystar Management Services, L.P. k/n/a Greystar Management Services, LLC.

9. “**Defendant’s Counsel**” shall mean Hinshaw & Culbertson LLP.

10. “**Effective Date**” shall mean thirty (30) days following entry of the Final Approval Order by the Court, provided no notice of appeal is filed; or, if a notice of appeal is filed, three (3) business days after an appellate court finally disposes of such appeal (including any motions or petitions for re-hearing or further appellate review), in a manner that has the effect of affirming the Final Approval Order in its entirety.

11. “**Escrow Account**” shall mean the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to Class Counsel and Defendant at a depository institution insured by the Federal Deposit Insurance Corporation. Any interest earned on the Escrow Account shall inure to the benefit of the Settlement Class as part of the Settlement Payment, if practicable. The Settlement Administrator shall be responsible for all tax filings with respect to the Escrow Account.

12. “**Fee Award**” shall mean the amount of attorneys’ fees to Class Counsel as agreed to by the Parties as part of this Settlement Agreement and as approved by the Court to be paid out of the Settlement Fund as discussed in Section II.F.1 of this Agreement.

13. “**Final Approval Hearing**” shall mean the hearing before the Court where Plaintiff will request a final judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving a Service Award to the Class Representative.

14. “**Final Approval Order**” or “**Final Approval**” shall mean an order entered by the Court giving final approval of the Agreement. The Final Approval Order is further described in Section II.D of this Agreement.

15. “**Impermissible Late Fees**” shall mean the late fees that were charged by Greystar on behalf of its property owner clients before thirty (30) days of rent being late and that were paid by Class Members during the Settlement Class. For settlement purposes, the Parties have agreed that the Impermissible Late Fees are those listed in the Late Fee Spreadsheets.

16. “**Late Fee Spreadsheets**” shall mean the excel spreadsheets that contain all of the Class Members and Impermissible Fees at issue in this Action as agreed to by the Parties, and that constitute the Class List for the purposes of this Settlement pursuant to Section II.E.2 of this Agreement. The Parties represent and agree that all Class Members and Impermissible Fees at issue in this Action are confined and/or limited to the contents of the Late Fee Spreadsheets. The Late Fee Spreadsheets have the following filenames: (1) Yardi Data (Class List); (2) OneSite Data (Class List); (3) Entrata Data (Class List); (4) Regency Place and Heights Data (Class List); (5) LaSalle Data (Class List); and (6) TruAmerica Data (Class List). Parties’ counsel will confirm their agreement to the authenticity of the Late Fee Spreadsheets via e-mail contemporaneous to the execution of this Agreement.

17. “**Notice**” shall mean the notice of this Settlement and Final Approval Hearing, which is to be disseminated to the Settlement Class in the manner set forth in this Agreement, and in a format substantially similar to that attached hereto as Exhibit A, or in such other, similar form as the Court approves.

18. “**Notice Date**” shall mean the date upon which the Notice is first disseminated to the Settlement Class, which shall be a date no later than thirty (30) days after entry of Preliminary Approval.

19. “**Parties**” shall mean Plaintiff and Defendant, collectively.

20. “**Plaintiff**” shall mean Phoebe Flemming on behalf of herself and the Settlement Class.

21. “**Preliminary Approval**” shall mean the Court’s order preliminarily approving the Agreement, and approving the form and manner of the Notice. The Parties shall submit the proposed order attached hereto as Exhibit B with their motion for preliminary approval.

22. “**Released Claims**” shall mean any and all class claims asserted in the Plaintiff’s Complaint relating to any allegedly impermissible fees or charges for late payments of rent that were charged by Greystar on behalf of its property owner clients and that were paid by Class Members during the Settlement Class period, including but not limited to, Plaintiff’s class claims for purported violations of G.L. c. 186, § 15B (security deposit statute) (Count I) and the Consumer Protection Act, G.L. c. 93A (Count V). This includes all demands, actions, causes of action, suits, liens, debts, obligations, damages, liabilities, and judgments of any kind, nature, or amount, whether in tort, contract, or otherwise, whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, incidental damages, punitive and exemplary damages, interest costs, expenses and fees (including reasonable attorney’s fees), which were or could have been raised in the Action relating to any allegedly impermissible fees or charges for late payment of rent that were charged by Greystar on behalf of its property owner clients and that were paid by Class Members during the Settlement Class period.

23. “**Released Parties**” or “**Releasees**” shall mean Greystar Management Services, L.P. k/n/a Greystar Management Services, LLC, any and all property owners of any of the properties managed by Greystar during the Settlement Class Period that are the subject of this Action, Chubb Insurance Group (the “Released Parties” or “Releasees”), and all of their affiliates, subsidiaries, parents, present or former heirs, executors, estates, administrators, predecessors, successors, assigns, , holding companies, investors, divisions, associates, employers, employees, agents, representatives, consultants, independent contractors, directors, managing directors, owners, board members, officers, partners, principals, members, attorneys, vendors, accountants, fiduciaries, financial and other advisors, investment bankers, insurers, reinsurers, employee benefit plans, underwriters, shareholders, members, lenders, auditors, investment advisors, and any and all present and former companies, firms, trusts, corporations, officers, directors, and/or other individuals or entities in which the Released Parties have a controlling interest or which are

affiliated with any of them, or any other representatives of any of these persons and entities, as well as all persons acting by, through, under or in concert with any of these persons or entities.

24. “**Residual Fund**” shall mean funds that remain in the Settlement Fund (including all checks disbursed to Class Members for *Pro Rata* Payments and/or Supplemental Payments that are uncashed for any reason with the Cashing Period) for sixty (60) days after the Settlement Administrator makes all required Supplemental Payments under this Agreement shall be designated as a Residual Fund.

25. “**Plaintiff Releasing Parties**” shall mean Phoebe Flemming and her present or past heirs, executors, estates, administrators, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

26. “**Class Member Releasing Parties**” shall mean Settlement Class Members other than Phoebe Flemming and their respective present or past heirs, executors, estates, administrators, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

27. “**Settlement Administrator**” shall mean, subject to Court approval, Optime Administration, LLC, the entity selected and approved by the Parties to administer the Settlement.

28. “**Settlement Class**” or “**Class**” or “**Class Member(s)**” shall mean: Plaintiff, and all persons who: (i) currently reside, or previously resided in a unit at any of the properties managed by the Defendant and located in the Commonwealth of Massachusetts from December 16, 2012 to the present; (ii) were charged late rent fees by Defendant before rent was at least 30 days overdue; and (iii) paid such late fee charges. Excluded from the Settlement Class are (1) any judge or magistrate presiding over this action and members of their families, (2) Defendant, Defendant’s subsidiaries, parent, predecessors, and any entity in which the defendant or its parents have a control and interest, and that entity’s current or foreign employees, officers and directors, (3) persons whose claims in this matter have been finally adjudicated on the merits in a separate proceeding or otherwise released, (4) Class counsel and Defendant counsel; and (5) the legal representative, successor or assigns of any such excluded persons.

29. “**Settlement Fund**” shall mean the gross settlement fund of Three Million Dollars (\$3,000,000.00) which shall be used to pay: (1) monetary relief to Settlement Class Members; (2) Administrative Expenses; (3) the Fee Award; and (4) the Service Award to Plaintiff.

30. “**Net Settlement Fund**” shall mean the total Settlement Fund reduced by the Fee Award, Service Award to the Plaintiff, and Administrative Expenses as outlined herein. The Net Settlement Fund shall be used to pay monetary relief to Settlement Class Members.

31. “**Service Award**” shall have the meaning ascribed to it as set forth in Section II.F of this Agreement.

## B. SETTLEMENT RELIEF

### 1. Establishment of Settlement Fund

a. On the first business day after the Effective Date, Defendant shall transfer to the Settlement Administrator, the total sum of \$3,000,000.00, which the Settlement Administrator will hold in the Escrow Account and use to create a Settlement Fund. Provided that Final Approval of this Agreement is granted by the Court without material change, material amendment, or material modification, the Settlement Fund will be used to satisfy all claims for Settlement Class Members in exchange for a comprehensive release and the covenants set forth in this Agreement, including, without limitation, a release of all Released Parties from the claims released herein, and dismissal of the Action with prejudice.

b. The funds provided by or on behalf of Defendant will be maintained by an escrow agent as a Court approved Qualified Settlement Fund pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be controlled by the Settlement Administrator.

c. The Settlement Fund represents the total extent of the Defendant's monetary obligations under the Settlement Agreement. Defendant's contributions to the Settlement Fund shall be fixed under this Section and final. Defendant and the other Released Parties shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund.

### 2. Settlement Payments to Settlement Class Members

#### a. Settlement Payments:

i. Initial Pro Rata Distribution. Each Settlement Class Member shall receive a *pro rata* payment based on their Actual Loss as represented in the applicable Late Fee Spreadsheets ("*Pro Rata* Payment"). Specifically, each Class Member shall receive a *pro rata* share of the Net Settlement Fund. The *pro rata* share is calculated by dividing each Class Member's Actual Loss by the total, cumulative amount of all Class Members' Actual Losses, multiplied by the Net Settlement Fund.

ii. Supplemental Distribution. Class Members who cash or deposit their initial *pro rata* settlement checks within sixty (60) days of issuance, or seventy-five (75) days of issuance if granted a grace period in accordance with Section II.B.2.a.iii below, shall receive a supplemental payment ("Supplemental Payment") (collectively, Supplemental Payment with *Pro Rata* Payment, the "Settlement Payments") for the difference between the *Pro Rata* Payment and the Class Member's Actual Loss, subject to the availability of money in the Settlement Fund. If, and only if, there are insufficient funds in the Net Settlement Fund to pay all of the eligible Class Members the full amount of the required Supplemental Distributions, all eligible Class Members shall receive a *pro rata* payment based on their Actual Loss and the total, cumulative Actual Loss of the other Class Members who cashed their initial *Pro Rata* Payment checks within sixty (60) days of issuance, and the remaining balance of the Net Settlement Fund.

No Class Member shall receive more than One Hundred Percent (100%) of their total Actual Loss as referenced in the applicable Late Fee Spreadsheets.

iii. Cashing Period. All Settlement Payments will state on the face of the check that the check will expire and become null and void unless cashed within sixty (60) days after the date of issuance. The Parties and their counsel shall have no liability for lost or stolen settlement checks, for forged signatures on settlement checks, or for unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Settlement Class Member reports a lost or destroyed check within the sixty (60) day period, the Settlement Administrator shall issue a stop order on the original check and issue a new check. If a check is reported as lost or stolen during the final fifteen (15) days of the 60-day period, the Class Member making such report will receive an additional 15-day grace period to cash a replacement check, but in no event will a check issued remain valid beyond seventy-five (75) days after the date the original check was issued.

b. Settlement Fund Distribution Process:

i. Class Members shall receive their initial *Pro Rata* Payments without having to submit a claim form or otherwise “opt in” to the Settlement Class.

ii. The Settlement Administrator shall send each Class Member a check for their *Pro Rata* payment via First Class U.S. Mail within ten (10) business days from receipt of the settlement payment contemplated by Section II(B)(1)(a)

iii. After the expiration of the 75-day Cashing Period for *Pro Rata* Payment, the Settlement Administrator shall send each Class Member who cashed or deposited their *Pro Rata* Payment within the 60-75 days a check for their respective Supplemental Payment within thirty (30) days after the expiration of the Cashing Period.

iv. The Settlement Administrator shall be responsible for making all reporting and filings with respect to amounts payable to Class Members required pursuant to any federal, state, or local tax law or regulation hereunder.

v. Plaintiff and all other Class Members will be solely responsible for all of their respective taxes, interest, penalties, or other amounts due with respect to any payment received pursuant to the Settlement.

c. Residual Fund:

i. All unclaimed funds that remain in the Settlement Fund (including all checks disbursed to Class Members for *Pro Rata* Payments and/or Supplemental Payments that are uncashed for any reason within the Cashing Period) sixty (60) days after the Settlement Administrator makes all required Supplemental Payments under this Agreement shall be designated as a Residual Fund (“Residual Fund”). One Hundred Percent (100%) of the Residual Fund shall be distributed *cy pres* to Greater Boston Legal Services (“GBLS”) as a charitable donation within ninety (90) days of the Supplemental Distribution payments being distributed.

## C. RELEASES

1. **Class Representative's Release.** Upon the Effective Date, and in consideration of the settlement relief described herein, the Plaintiff Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Judgment shall have, fully, finally, and forever, released, relinquished and discharged the Released Parties of any and all of the Released Claims, as defined above in Section II.A.22 above.

2. **Settlement Class Member Release.** Upon the Effective Date, and in consideration of the settlement relief described herein, the Class Member Releasing Parties, and each of them shall be deemed to have released and by operation of the Final Judgment shall have fully finally and forever, released, relinquished and discharged the Released Parties from any and all of the Released Claims, as defined in Section II.A.22 above.

## D. PRELIMINARY AND FINAL APPROVAL OF SETTLEMENT PROCEDURES

1. **Preliminary Approval.** Promptly after execution of this Settlement Agreement, Class Counsel shall prepare a Motion for Preliminary Approval and submit it to Defendant for its joinder and/or assent. The Motion for Preliminary Approval shall be submitted with this Settlement Agreement to the Court and shall seek entry of an order granting Preliminary Approval, which shall include, among other provisions, a request that the Court:

a. Preliminarily approve this Settlement Agreement for purposes of disseminating Notice to the Settlement Class;

b. Approve the form and contents of the Notice and the method of its dissemination to members of the Settlement Class;

c. Set dates for Class Members to provide objections to this Agreement, which date will be at least forty-five (45) days from the mailing of the Notice to Class Members, no later than seventy-five (75) days from the Preliminary Approval Order, and at least fifteen (15) days before the Final Approval Hearing; and

d. Schedule a Final Approval Hearing to review comments and/or objections regarding this Settlement Agreement, to consider its fairness, reasonableness, and adequacy, to consider the application for a Fee Award and incentive award to the Class Representative, and to consider whether the Court shall issue a Final Judgment approving this Settlement Agreement, and dismissing the Action with prejudice. Plaintiff's Motion for Preliminary Approval will suggest that the Final Approval Hearing be ninety (90) days from the Preliminary Approval Order.

Class Counsel will allow Defendant's Counsel at least five (5) days to review and propose any revisions to the Motion for Preliminary Approval. The Parties agree to cause their respective counsel to work together in good faith to resolve all comments regarding the Motion for Preliminary Approval. Defendant's assent to that Motion shall not unreasonably be withheld or delayed.

2. **Final Approval.** After the Notice process is completed, Class Counsel shall move for entry of the Final Approval and Final Judgment, which shall include, among other provisions, a request that the Court:

a. find that it has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement Agreement;

b. approve the Settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel and the Settlement Administrator to implement and consummate the Settlement according to its terms and conditions; and declare the Settlement to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all Settlement Class Members and Releasing Parties;

c. find that the Notice implemented pursuant to the Settlement Agreement (1) constitutes the best practicable notice under the circumstances, (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and (4) fulfills the requirements of due process rights under Massachusetts Civ. R. P. 23;

d. dismiss the Action on the merits and with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

e. incorporate the Releases set forth above, make the Releases effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

f. without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Agreement and the Final Judgment, and for any other necessary purpose; and

g. incorporate any other provisions, consistent with the material terms of this Agreement, as the Court deems necessary and just.

No later than fifteen (15) days before the Final Approval Hearing, Plaintiff's counsel will serve a Motion for Judgment and Final Approval on Defendant for its joinder and/or assent. The Parties agree to cause their respective counsel to work together in good faith to resolve all comments regarding the Final Approval Motion. Defendant's assent to that Motion shall not unreasonably be withheld or delayed.

3. **Cooperation.** The Parties understand and agree that the Settlement set forth in this Agreement is subject to Court approval pursuant to Mass. R. Civ. P. 23(c). The Parties agree to, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to obtain timely approval of this Agreement and accomplish events required by this Agreement within the

deadlines set herein and/or in accordance with any schedule set by the Court. The Parties further agree that if the Court does not approve this Agreement, then for a period of thirty (30) days after the Court's denial, they shall in good faith attempt to negotiate a substitute agreement with terms that conform as closely to this Agreement as possible but that are otherwise acceptable to the Parties and the Court. If the Parties are unable to negotiate such a substitute agreement, then either party may terminate this Agreement, in which case the Agreement shall be null and void, and the Parties shall be restored to their respective positions in accordance with Section II.H, below.

## **E. SETTLEMENT ADMINISTRATION**

### **1. Settlement Administrator's Duties**

a. Dissemination of Notices. The Settlement Administrator shall disseminate the Settlement Class Notice as attached as Exhibit A to this Settlement Agreement.

b. Maintenance of Records. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with reports concerning Notice, administration, and implementation of the Settlement.

2. Class List. The Parties agree that Class Counsel shall provide the Settlement Administrator with approved copies of the Late Fee Spreadsheets, which shall constitute the class list for the purposes of this Settlement Agreement ("Class List"), within ten (10) days of the Preliminary Approval Order. Defendant represents that the information contained in the Class List includes all available information within its possession relating to the Class Members, including Class Member's name, last known address, email address and/or telephone number. The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity and mailing addresses of all persons strictly confidential. The Settlement Administrator shall not share the Class List or any personal information obtained therefrom with any other party or attorney. The Class List may not be used for any purpose other than effectuating this Settlement

3. Notice. Within ten (10) days of Preliminary Approval, the Settlement Administrator shall send Notice via the best practicable method using U.S. mail and/or e-mail substantially in the form approved by the Court to all persons in the Settlement Class to the last known physical and/or electronic mailing address. To the extent that a mailing is returned the Settlement Administrator shall follow up through commercially reasonable and practicable means that the Settlement Administrator deems appropriate, including, but not limited to, the National Change of Address Database ("NCOA") and/or skip tracing to identify the current location of such individual. The Settlement Administrator shall promptly re-mail the Settlement Notice to any newly found addresses. If after this mailing the Notice is returned as undelivered, then the notice mailing process shall end for that Class Member. All notice and administration costs will be paid from the Settlement Fund.

4. **Objection to Class Settlement:**

a. Settlement Class Members who wish to object to the Settlement must do so in writing. To be considered, a written objection must be mailed to the Settlement Administrator via First-Class United States Mail, postage prepaid, and be received by the Settlement Administrator by a date certain at least forty-five (45) days from the mailing of the Notice to the Settlement Class Member. The written objection must include the words, "I object to the settlement in the Greystar Class Action Settlement," or something similar as well as all reasons for the objection. Any reasons not included in the written objection will not be considered, except as otherwise permitted by the Court. The written objection must also include the name, current address, address of the apartment(s) they rented from Defendant and last four digits of the Settlement Class Member's telephone number. The Settlement Administrator will stamp the date received on the original and send copies of each objection to Class Counsel and Defendants' Counsel by email and overnight delivery no later than three (3) business days after receipt thereof. The Settlement Administrator will also file the date-stamped originals of any and all objections with the Court at least seven (7) days before the Final Approval Hearing. An objection that does not fully comply with this provision will be invalid, except as otherwise permitted by the Court.

b. A Settlement Class Member who files objections to the Settlement ("Objector") also has the right to appear at the Final Approval Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear or speak at the Final Approval Hearing must state his or her intention to do so in writing on his or her written objections at the time he or she submits his or her written objections by including the words, "I intend to appear and speak at the fairness hearing," or something similar. If an Objector does not fully comply with this paragraph, the Objector may not appear and speak at the Final Approval Hearing. An Objector may withdraw his or her objections at any time. Except as otherwise permitted by the Court, no Settlement Class Member may be heard at the Final Approval Hearing unless he or she has filed a timely objection that complies with all procedures provided in this paragraph and the previous paragraph. Except as otherwise permitted by the Court, no Settlement Class Member may present an objection at the Final Approval Hearing based on a reason not stated in his or her written objections.

c. The Parties may file with the Court written responses to any filed objections no later than three (3) business days before the Fairness Hearing for Final Approval.

d. This Section shall be strictly applied and enforced. Failure to comply with its terms shall render a purported objection ineffective and waived.

5. **Allocation.**

a. The Settlement Administrator shall make all Settlement Payments to Settlement Class Members pursuant to and in compliance with Section II.B.2 above.

b. The Settlement Administrator shall send to Class Counsel, on behalf of the Plaintiff, the Service Award for Plaintiff as Class Representative as approved by the Court in the

manner set forth in Section II.F.2 below. This amount will be paid to the Plaintiff as 1099 income and the Plaintiff is liable for any tax consequences relating to this settlement.

c. The Settlement Administrator shall send to Class Counsel the Fee Award as approved by the Court in the manner set forth in Section II.F.1 below.

d. The Settlement Administrator shall notify the Parties that all payments contemplated by Section II.E.4.a-c have been made within three (3) business days of the last such payment. The Settlement Administrator will provide Counsel for the Parties with bi-weekly reports regarding the status of administration of this Settlement, including, without limitation, the portion of the Settlement Fund that has not been cashed following the date such check was originally issued.

## **F. INCENTIVE AWARD AND CLASS COUNSEL'S FEE AWARD AND PLAINTIFF'S SERVICE AWARD**

1. **Service Award.** The parties agree that Plaintiff will propose (and Defendant will not contest) that Service Award of Twenty Five Thousand Dollars (\$25,000.00) to Plaintiff. Plaintiffs' proposed Service Award will be presented in assented to or joint motions for approval. This amount is subject to the Court's approval and shall be deducted from the Settlement Fund and not paid on top of the Settlement Fund.

a. The Service Award shall be paid solely from the Settlement Fund by check written by the Settlement Administrator within ten (10) business days of the Service Award being approved by the Court and/or Settlement Fund being funded, whichever is later.

2. **Claims Administration Fees.** The parties agree that Plaintiff will propose (and Defendant will not contest) that one hundred thousand dollars (\$100,000) of the Settlement Fund be set aside for payment of the Settlement Administrator's fees. In the event the Settlement Administrator's fees are less than \$100,000.00, any amounts unspent by the Settlement Administrator shall be made available for Supplemental Distributions. If amounts unspent by the Settlement Administrator remain after Supplemental Distributions, they shall be added to the Residual Fund.

a. In no event will Defendant's liability for payments to Class Members, attorneys' fees, expenses, and costs, including the Fee Award, Administrative Expenses, and/or a Service Award exceed the Settlement Fund. Defendant shall have no financial responsibility to pay any amounts under this Settlement Agreement outside of the settlement payment to fund the Settlement Fund, as contemplated by Paragraph II.B.1.

3. **Dispute Fund.** The Parties agree that Plaintiff will propose (and Defendant will not contest) that \$10,000 of the Settlement Fund shall be held back and placed in a set off fund, which shall be used to resolve any dispute about late-filed claims or other unanticipated issues (the "Dispute Fund"). All disputes shall be resolved by the Settlement Administrator and Class Counsel in their discretion, but subject to review by the Court, if requested by any aggrieved party. Any

amount in the Dispute Fund shall be held in an interest bearing account by the Settlement Administrator for three (3) years. The Settlement Administrator shall deliver any funds remaining in the Dispute Fund to GBLS at the conclusion of three (3) years, in accordance with Section II.B.2.c.

4. **Fee Award.** The parties agree that Plaintiff will propose (and Defendant will not contest) that Thirty-Five Percent (35%) of the Settlement Fund (\$1,050,000.00) be paid to Class Counsel as Attorney's Fees. Plaintiffs' proposed Attorney's Fee award will be presented in assented to or joint motions for approval. This amount is subject to the Court's approval and shall be deducted from the Settlement Fund and not paid on top of the Settlement Fund. Within ten (10) business days after the Fee Award is approved by the Court, or the Settlement Fund being funded, whichever is later, the Settlement Administrator shall pay to Class Counsel from the Settlement Fund the amount awarded by the Court in the Fee Award.

## **G. TERMINATION OF THE SETTLEMENT AGREEMENT**

1. **Termination.** The Settlement is conditioned upon Preliminary Approval and Final Approval of the Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments, or modifications are agreed to in writing between the Parties). All exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, any Party may elect to terminate and cancel this Settlement Agreement if the Parties are unable to negotiate a substitute agreement with terms that conform as closely to this Agreement as possible but that are otherwise acceptable to the Parties and the Court within after occurrence of any of the following events:

- a. The Court refuses to grant Preliminary Approval of this Agreement even after the renegotiation process of this Agreement;
- b. The Court refuses to grant Final Approval of this Agreement in any material respect; or
- c. The Court refuses to enter a Final judgment in this Action in any material respect.

2. **Effect of Disapproval or Termination.** In the event the Settlement Agreement is not approved or does not become Final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Action. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into.

3. **Court's Decision as to Allocation.** Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award to Class Counsel set forth above

or the Service Award to the Class Representative, regardless of the amounts awarded, shall not prevent this Settlement from becoming effective, nor shall it be grounds for termination of this Agreement.

## **H. MISCELLANEOUS PROVISIONS**

1. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.

2. The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking entry of an order granting Preliminary Approval of this Agreement and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

3. Each signatory to this Agreement represents and warrants (a) that he, she, or it has all requisite power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated herein, (b) that the execution, delivery and performance of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory, and (c) that this Settlement Agreement has been duly and validly executed and delivered by each signatory and constitutes its legal, valid and binding obligation.

4. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims.

5. The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and understand fully this Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

6. Whether the Effective Date occurs or this Settlement is terminated, neither this Settlement Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

b. is, may be deemed, or shall be used, offered, or received against Plaintiff or the Settlement Class, or each or any of them as an admission, concession, or evidence of, the deficiency or strength of any claims asserted in the Action, the amount of Plaintiff's and/or the Class's damages, attorney's fees and/or costs, and/or the reasonableness of the settlement amount or the Fee Award;

c. is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

d. Notwithstanding the foregoing, this Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Settlement Agreement and/or settlement may be used in any proceedings as may be necessary to effectuate and/or enforce the provisions of this Settlement Agreement. Moreover, if this Settlement Agreement is finally approved by the Court, any party or any of the Released Parties may file this Settlement Agreement and/or the Final Judgment in any action that may be brought against such party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim.

7. The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

8. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Settlement Agreement.

9. All of the exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference.

10. This Settlement Agreement and its exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

11. Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

12. Plaintiff represents and warrants that she has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that they are fully entitled to release the same.

13. Each counsel or other person executing this Settlement Agreement, any of its exhibits, or any related settlement documents on behalf of any party hereto, hereby warrants and represents that such person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

14. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

15. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Settlement Agreement.

16. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

17. This Settlement Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

18. This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another.

19. Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel.

**Plaintiff and Class**

**Representative**

Dated: ~~6/2~~ 6/2, 2025  
Phoebe Flemming

Phoebe Flemming

**Counsel for the Plaintiff  
and the Class**

Dated: ~~6/2~~ 6/2, 2025  
Kevin R. Heffernan

Kevin R. Heffernan, BBO

No. 671439

858 Washington Street, STE

301

Dedham, MA 02026

(617) 477-9810

Kevin@lawheffernan.com

**Authorized Representative**

**for Defendant**

Dated: \_\_\_\_\_, 2025

Michael Clow, Senior Vice

President

**Counsel for Defendant as to**

**form**

Dated: \_\_\_\_\_, 2025

Maura K. McKelvey,  
Vanessa V.

BBO No. 600760  
Pisano, BBO No. 679649

HINSHAW &  
CULBERTSON LLP  
53 State Street, 27th Floor  
Boston, MA 02109

**Plaintiff and Class Representative**

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Phoebe Flemming

**Counsel for the Plaintiff and the Class**

Dated: \_\_\_\_\_, 2025

\_\_\_\_\_  
Kevin R. Heffernan, BBO No. 671439  
858 Washington Street, STE 301  
Dedham, MA 02026  
(617) 477-9810  
Kevin@lawheffernan.com

**Authorized Representative for Defendant**

Dated: June 2, \_\_\_\_\_, 2025

  
\_\_\_\_\_  
Michael Clow, Senior Vice President

**Counsel for Defendant as to form**

Dated: June 2 \_\_\_\_\_, 2025

*Vanessa V. Pisano*  
\_\_\_\_\_  
Maura K. McKelvey, BBO No. 600760  
Vanessa V. Pisano, BBO No. 679649  
HINSHAW & CULBERTSON LLP  
53 State Street, 27th Floor  
Boston, MA 02109  
617-213-7000 | 617-213-7001 (facsimile)  
Email: mmckelvey@hinshawlaw.com  
vpisano@hinshawlaw.com

Exhibit B

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Phoebe Flemming v. Greystar Management Services, L.P.*, Civil Action No. 16H84CV001026, pending in the Eastern Housing Court, Suffolk County, Massachusetts

If you currently rent or previously rented a unit in Massachusetts managed Greystar Management Services, L.P. k/n/a Greystar Management Services, LLC between December 16, 2012 to the present, a proposed Class Action Settlement may affect your rights.

*This is a Court-authorized notice of a proposed class action settlement. This is not a solicitation from a lawyer. You have NOT been sued. **You may be entitled to receive a payment under a class action settlement.***

***Please read this Notice carefully.***

*Your legal rights may be affected – Even if you do nothing.*

This Notice describes a proposed settlement (the “Settlement”) of the class action lawsuit entitled *Phoebe Flemming v. Greystar Management Services, L.P.*, Civil Action No. 16H84CV001026, pending in the Eastern Housing Court, Suffolk County, Massachusetts (the “Litigation”). This Notice is being sent to you by Order of the Eastern Housing Court, Suffolk County, Massachusetts (the “Court”), which has preliminarily approved the Settlement. The Settlement will resolve all claims for improper late rent charges that were, or which could have been, asserted in this Litigation on an individual, class, or representative basis.

You have received this Notice because the Defendant Greystar Management Services, L.P. k/n/a Greystar Management Services, LLC’s (“Defendant” or “Greystar”) records indicate you (i) currently rent, or previously rented, a unit at a property managed by Defendant and located in the Commonwealth of Massachusetts from December 16, 2012 to the present; (ii) were charged late rent fees by Defendant before rent was at least thirty (30) days overdue; and (iii) paid such charges.

The following table summarizes your options in responding to this Notice and the result of you exercising each option. These options are described in more detail below.

<b>SUMMARY OF LEGAL RIGHTS AND OPTIONS</b>	
<b>OPTION</b>	<b>RESULT</b>
Do nothing	Receive a payment from the proceeds of the Settlement. Give up your right to bring your own claim for improper late rent charges.
Object	Write to the Settlement Administrator at the address below by <b>[date]</b> and explain the objections you have to the Settlement.
Attend hearing	Request to speak to the Court about the fairness of the Settlement provided you have submitted a written objection.  <i>Note that while anyone may attend the Final Approval Hearing (discussed, below), if you intend to be heard at the Final Approval Hearing, either in person or through an attorney of your choice, your objection must include a written notice which identifies and provides contact information for the person who intends to appear and be heard by the Court</i>

### **CRITICAL DATES**

**[OBJECT DEADLINE]**: The last date to mail any written objections to the Settlement.

**[HEARING DATE]**: The date of the Court hearing to determine whether the proposed Settlement is fair, reasonable and adequate and should be approved by the Court.

### **WHAT IS THIS LAWSUIT ABOUT?**

The Massachusetts Security Deposit Statute, M.G.L. c. 186, Section 15B, prohibits a landlord from imposing interest or penalties for late rent payments until the rent is at least thirty (30) days overdue. This Litigation involves claims that Defendant violated M.G.L. c. 186, Section 15B by charging late fees before rent was at least thirty (30) days overdue to residents in the Massachusetts properties it managed. Defendant denies any violations of the law and denies all liability and/or denies that the Class is entitled to any relief whatsoever.

After a thorough investigation into the facts and circumstances, the parties to the Litigation have agreed to a proposed settlement of the claims for improper late rent fees. The Plaintiff, Phoebe Flemming (“Plaintiff”), and her counsel believe that this Settlement is fair and is in the best interests of the Class.

## **WHAT DO YOU NEED TO KNOW ABOUT THIS SETTLEMENT?**

### **Who is included in the Settlement?**

You are entitled to participate in this Settlement if you: (i) currently rent, or previously rented, a unit in any of the properties managed by Defendant located in the Commonwealth of Massachusetts from December 16, 2012 to the present; (ii) were charged late rent fees by Defendant before rent was at least thirty (30) days overdue; and (iii) paid such charges. Each such person is referred to herein as a “Class Member” or “Settlement Class Member.” Collectively, all such people are referred to herein as the “Class” or “Settlement Class.”

### **What are the benefits of the Settlement to me?**

If the proposed Settlement is approved by the Court, you will receive a payment by check. Defendant has agreed to create a Settlement Fund for the Settlement Class Members. Your payment will be calculated as a portion of the Net Settlement Fund (the Settlement Fund reduced by the award for attorneys’ fees and costs, the payment to the named Plaintiff, the dispute fund and the costs of administering the Settlement). Your individual settlement payment will be calculated on a *pro rata* basis based upon the total amount of late rent fees you were charged before your rent was 30 days overdue, divided by the total amount of such late rent fees charged to the Settlement Class cumulatively, multiplied by the Net Settlement Fund, in accordance with the Settlement Agreement and Release of Claims, which has been preliminarily approved by the Court. A copy of the Settlement Agreement and Release of Claims can be obtained from the Class Counsel as set forth below in the section entitled “Additional Information.”

If not all settlement checks are cashed, any Class Members who cash their settlement check *may* receive a second settlement payment, subject to the availability of money in the Settlement Fund. The maximum amount of any such second payment would be the amount necessary to make each such Class Member’s total settlement payment equal to the total amount of late rent fees they were charged before their rent was 30 days overdue, plus 12% interest per *annum* from the date the fee was charged.

### **What is the Total Settlement Amount?**

If this Settlement is approved, the Defendant has agreed to pay a total of \$3,000,000 (the “Settlement Fund”).

### **What Distributions Will Be Made From the Settlement Other than Payments to Class Members?**

Class Counsel, who have pursued this case on behalf of Plaintiff and all others similarly situated, will ask the Court for: (1) an award of attorneys’ fees in the amount of thirty-five percent (35.00%) of the Settlement Fund – one million, fifty-thousand dollars (\$1,050,000) – for their work pursuing the Litigation. Class Counsel believes that the amounts for costs and attorneys’ fees requested are fair and reasonable, but the amounts are subject to the Court’s approval. Defendant will not oppose Class Counsel’s request for these amounts.

The Named Plaintiff, Phoebe Flemming, will also ask the Court for a \$25,000 service payment for her service as a class representative and for taking part in the Litigation for the Settlement Class's benefit. This payment is to reimburse Ms. Flemming for any lost pay or time attributable to their time spent assisting in the investigation and otherwise for risks incurred and services rendered to Class Members and assisting Class Counsel. Plaintiff and Class Counsel believe that this is a fair and reasonable service award, but the award (and the amount thereof) are subject to the Court's approval. The Defendant will not oppose Plaintiff's requests.

The Parties will also set aside \$100,000 for the costs of administering this Settlement. The administration cost payment is subject to the Court's approval. Defendant will not oppose this requests.

If money is left over following all required distributions, the Parties have also agreed to allocate \$10,000 for a Dispute Fund to resolve possible disputes about whether Class Members have been properly paid.

**When will I receive my Settlement Payment?**

The Settlement Payments will be paid within [15] days after both final Court approval of the Settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the Settlement. Within 105 days after the first settlement checks are mailed, each Class Member who cashed their first settlement check *may* receive a second check *if* money remains in the Net Settlement Fund.

All settlement checks will become void within sixty (60) days of issuance. The earliest the first Settlement Payment could occur is in [DATE].

**Settlement Administrator:**

The Court has appointed Optime Administration, LLC, to act as an independent qualified Settlement Administrator to process this settlement, to resolve any dispute concerning a Settlement Class Member's eligibility to participate in the Settlement and his or her share of the Settlement proceeds, and to make payments to Participating Class Members. The fees and costs of the Settlement Administrator shall be paid from the Total Settlement Fund.

Optime, The Settlement Administrator is also available to answer any questions you may have about the Settlement, this notice, and/or settlement payments. It may be reached at the following address:

Greystar Settlement Administrator  
c/o Optime Administration  
PO Box 3206  
Brockton, MA 02304  
Toll Free – (844) 625-7313 Ext. 3  
Fax – (781) 287-0381  
Email – [GreystarSettlement@optimeadmin.com](mailto:GreystarSettlement@optimeadmin.com)

## **WHO IS REPRESENTING THE CLASS?**

The Court has decided that the following attorneys are qualified to represent you and all other Settlement Class Members:

Kevin R. Heffernan, BBO No. 671439  
858 Washington Street, STE 301  
Dedham, MA 02026  
(617) 477-9810  
Kevin@lawheffernan.com

Attorney Heffernan is called “Class Counsel.” You do not have to pay Class Counsel or anyone else to participate. Class Counsel’s fees and expenses will be deducted from the common fund.

You do not need to hire your own attorney because Class Counsel is working on your behalf. You do, however, have the right to have your own attorney, but you will be required to pay his or her fees. If you have questions or desire additional details, you may call, email or correspond with Class Counsel.

## **WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**

You have two options: (1) do nothing and receive the Settlement Payments described herein if the Settlement is approved by the Court; or (2) object to the Settlement by following the procedure outlined below.

**(A) Do Nothing and Receive Settlement Payments if Approved by the Court:** You do not need to do anything to remain a member of the Settlement Class and receive the Settlement Payments detailed above, if they are approved by the Court. As a member of the Settlement Class, you will be bound by all terms of any settlement and judgment finally approved by the Court. **You will not need to file a claim form to receive compensation under the proposed settlement.** If the Court grants approval of the Settlement, you will receive your first Settlement Payment within the timeframe detailed above.

**(B) Objection to Settlement:** You can object to the terms of the Settlement before the Court considers it for final approval.

- **Objection procedures.** Settlement Class Members who wish to object (“Objector”) to the settlement must do so in writing. To be considered, a written objection must be mailed to the Settlement Administrator via First-Class United States Mail, postage prepaid, and be received by the Settlement Administrator **by [a date certain at least forty-five (45) days from the mailing of the Notice to the Settlement Class Member. (“Objection Deadline”)]** The written objection must include the words, “I object to the settlement in the Greystar Class Action Settlement,” or something similar as well as all reasons for the objection. The written objection must also include the name, address and telephone number(s) of the Settlement Class Member. You also may request in writing to appear at the Fairness Hearing on **[FINAL APPROVAL HEARING DATE]**.

- **Right to be heard at the fairness hearing.** A Settlement Class Member who files objections to the settlement also has the right to appear at the Final Approval Hearing either in person or through counsel hired by the Objector, at the Objector’s sole cost and expense. An Objector who wishes to appear or speak at the Final Approval Hearing must state his or her intention to do so in writing on his or her written objections at the time he or she submits his or her written objections by including the words, “I intend to appear and speak at the fairness hearing,” or something similar. Objectors may withdraw their objections at any time. Except as otherwise permitted by the Court, no Settlement Class Member may be heard at the Final Approval Hearing unless he or she has filed a timely objection that complies with all procedures provided in this paragraph and the previous paragraph. Except as otherwise permitted by the Court, no Settlement Class Member may present an objection at the Final Approval Hearing based on a reason not stated in his or her written objections.

The Settlement Administrator’s address is:

Greystar Settlement Administrator  
c/o Optime Administration  
PO Box 3206  
Brockton, MA 02304  
Toll Free - (844) 625-7313 Ext. 3  
Fax - (781) 287-0381  
Email - [GreystarSettlement@optimeadmin.com](mailto:GreystarSettlement@optimeadmin.com)

**If you do not submit a written objection that is received by **OBJECT DEADLINE**, you may not be able to make any objection to this Settlement.**

### **WHAT IS THE EFFECT OF THE SETTLEMENT?**

Upon final approval of the Court, all Settlement Class Members will be deemed to have, and by operation of the Final Approval Order will have, forever released and discharged Defendant of and from any and all claims for late rent charges imposed before rent was 30 days overdo that were or could have been raised in the Litigation. Importantly, under M.G.L. c. 186, Section 15B and M.G.L. c. 93A, you could potentially be entitled to multiple damages for any/all late rent charges that were found to be imposed improperly if the Defendant’s conduct were found to be willful. The above release includes any such claims for triple damages.

The release will extend to Defendant, together with its agents, assigns, affiliates, principals, heirs, successors and other related parties/entities listed in the Settlement Agreement. This release shall not include, however, claims for breaches of the Settlement Agreement and/or any other terms of final approval ordered by the Court.

If you are a Settlement Class Member, upon Court approval of the Settlement, you will be deemed to have entered into this release and to have released the above-described claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Litigation will continue.

**Upon final approval by the Court of this Settlement, you will be subject to this Settlement, any judgment dismissing the Litigation and the release described above even if you do nothing.**

**FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing in the Eastern Housing Court, Courtroom [Courtroom #], 24 New Chardon St., Boston, Massachusetts MA 02108 on [HEARING DATE], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees, as well as Plaintiff's requests for Service Payments. The hearing may be continued without further notice to the Settlement Class. You have the option to attend the hearing, but it is not necessary for you to appear at this hearing unless you have timely filed an objection with the Court and wish to speak to the Court in person about your written objection.

You may contact Class Counsel prior to the hearing should you have any questions about the hearing and/or to confirm that the date/time/location have not changed.

**WHERE IS ADDITIONAL INFORMATION AVAILABLE?**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed Settlement Agreement, which is on file with the Court and available from the Settlement Administrator and/or Class Counsel. The pleadings and other records in the Litigation, may be examined: online by visiting [www.masscourts.org](http://www.masscourts.org) and looking up the Litigation; or at any time during regular businesses at the following address:

Eastern Housing Court  
24 New Chardon St.,  
Boston, Massachusetts 02114

If you have any questions about the Litigation, the Settlement and/or your legal rights with regard thereto, you should also feel free to contact Class Counsel:

Kevin R. Heffernan, BBO No. 671439  
858 Washington Street, STE 301  
Dedham, MA 02026  
(617) 477-9810  
[Kevin@lawheffernan.com](mailto:Kevin@lawheffernan.com)

**WHO SHOULD I CONTACT IF I HAVE QUESTIONS ABOUT MY SETTLEMENT PAYMENT?**

The Settlement Administrator is available to answer any questions you may have about the Settlement Payment.

Greystar Settlement Administrator

c/o Optime Administration  
PO Box 3206  
Brockton, MA 02304  
Toll Free – (844) 625-7313 Ext. 3  
Fax – (781) 287-0381  
Email – [GreystarSettlement@optimeadmin.com](mailto:GreystarSettlement@optimeadmin.com)

**PLEASE DO NOT TELEPHONE THE COURT, ANY COURT PERSONNEL, DEFENDANT OR DEFENDANT’S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. ANY QUESTIONS SHOULD BE DIRECTED TO CLASS COUNSEL (NOT DEFENDANT’S COUNSEL) OR THE SETTLEMENT ADMINISTRATOR LISTED HEREIN BY ORDER OF THE COURT.**

**Exhibit C**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

EASTERN HOUSING COURT  
CIVIL ACTION NO. 16CV1026

PHOEBE FLEMMING, individually, and o/b/o of  
those similarly situated,

*Plaintiff,*

v.

GREYSTAR MANAGEMENT SERVICES, L.P.,

*Defendant.*

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT, DIRECTING NOTICE TO THE CLASS,  
AND SCHEDULING FAIRNESS HEARING**

The Court, having reviewed the Assented-To Motion for Preliminary Approval of Class Action Settlement (the “Motion”), hereby **GRANTS** the Motion and preliminarily approves the proposed class action settlement and the proposed distribution of settlement funds as fair, reasonable and adequate. The Court further finds and orders as follows:

- a. The Court preliminarily finds and concludes that the Settlement Agreement (“Settlement”), attached to the Motion as Exhibit A, resulted from good faith, arms’ length negotiations between the parties, and the Settlement was agreed to only after counsel for Plaintiff Phoebe Fleming (“Fleming”) conducted investigation and discovery of the facts relevant to the claims asserted in the Action. The Court concludes, moreover, that the Settlement falls within the range of reasonableness and otherwise meets the requirements for preliminary approval. Accordingly, the Court preliminarily finds and concludes that the Settlement is

fair, reasonable, adequate, and in the best interests of the Settlement Class, and preliminarily approves the Settlement and adopts the terms of the Settlement for the purpose of this Order.

- b. The Court approves, in form and content, the Notice of Proposed Class Action Settlement attached as Exhibit B to the Motion (the “Settlement Notice”), and finds that the giving of notice in the manner specified therein meets the requirements of due process.
- c. The Court hereby appoints Optime Administration, LLC (“Optime”) as the Settlement Administrator, and authorizes Optime to mail the Settlement Notice to the Settlement Class.
- d. Within ten (10) calendar days of this Preliminary Order, Class Counsel will provide Optime a list of all Settlement Class Members and their last known addresses, and a copy of the Settlement Notice as approved by the Court.
- e. Within ten days of this Order, Optime shall send the Settlement Notice, as approved by the Court, to all Class Members, via First Class U.S. mail and/or electronic mail, using the most current mailing addresses presently available to the Defendant.
- f. If any Settlement Notice is returned to Optime without a forwarding address, Optime shall undertake commercially reasonable efforts to search for the correct address and shall promptly re-mail the Settlement Notices to any newly-found addresses.
- g. A Final Approval Hearing is scheduled for \_\_\_\_\_.

[INSERT DATE NO EARLIER THAN 90 days from the date preliminary approval granted].

SO ORDERED,

Dated: \_\_\_\_\_

\_\_\_\_\_  
MARIA THEOPHILIS  
ASSOCIATE JUSTICE

**EXHIBIT D - PROPOSED TIMELINE OF ADMINISTRATION OF FUNDS**

<b><u>EVENT</u></b>	<b><u>DATE</u></b>	<b><u>AGREEMENT PAGE NUMBER</u></b>
Court's Preliminary Approval of Settlement		
All Notices Sent to Class	10 days after Preliminary Approval	9
Deadline for Class Members to Object To Settlement	At least 45 days after Notice sent but no later Than 75 days after Preliminary approval/ At least 15 days before Final Approval Hearing	9,12
Administrator sends objections to Class Counsel	3 days after receipt	12
Administrator files objections with court	7 days before Final Approval Hearing	12
Parties file responses to objections	At least 3 days before Final Approval Hearing	12
Court's Final Approval Hearing	90 Days after Preliminary Approval Order	10
Court's Final Approval Order		
Effective Date	30 days after Final Approval Order	4
Defendant transfers Settlement Fund To the Administrator	1 day after Effective Date	7
Administrator disburses Service Award	10 business days after court approval of Service Award, or funding of Settlement Fund, whichever is later	13
Administrator disburses Fee Award to Class Counsel	10 business days after court approval of Fee Award,	14

	or funding of Settlement Fund, whichever is later.	
Administrator issues Initial <i>Pro Rata</i> Distribution	Ten Days after Receipt of Settlement Funds From Defendant	7
Administrator issues Supplemental Distribution	75 days after Initial Distribution	7-8
Residual Fund Established	60 days after Supplemental Distribution	8-9
<i>Cy Pres</i> Distribution to GBLS	30 days after Residual Fund Established	8
Dispute Fund Established	30 days after Residual Fund Established	13-14
Balance of Residual Fund Returned To Defendant	30 days after Residual Fund Established	8
Balance of Dispute Fund disbursed To GBLS	3 years after establishment of the Dispute Fun	13-14

