
COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. DAR- _____

ESSEX, SS.

APPEALS COURT No. 2024-P-1084

MATTHEW ORTINS, and another,
on behalf of themselves and others similarly situated,

v.

LINCOLN PROPERTY COMPANY, and others

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT

APPLICATION FOR DIRECT APPELLATE REVIEW

Douglas W. Salvesen
BBO #550322
Yurko Partners, P.C.
One Tech Drive, #205
Andover, MA 01810
(617) 381-4404
DSalvesen@YurkoPartners.com

October 11, 2024

Attorneys for Massachusetts IOLTA Committee

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REQUEST FOR DIRECT APPELLATE REVIEW

The Appellant Massachusetts IOLTA Committee requests that the Supreme Judicial Court grant direct appellate review of this appeal, which would allow the Court to provide needed guidance on how trial courts are to review proposed class actions settlements to ensure that the rights of absent class members are protected.

The need for such guidance is plain from the facts of this case. At the time the Proposed Settlement Agreement was negotiated, the Superior Court had already entered summary judgment against the Defendants. The Superior Court found as “unrebuttable facts” that the Defendants had violated the Massachusetts Security Deposit Law and owed \$400 to each tenant who had rented one of their 6,500 apartment units between 2010 and 2018. The Defendants’ liability under the Superior Court’s summary judgment decision was approximately \$4.16 million.

Under the Proposed Settlement Agreement, and as a result of the Superior Court’s failure to properly consider its terms, payments to all Class Members will be less than \$55,000.

On its face, the Proposed Settlement Agreement purports to create a \$4.16 million settlement fund. However, payments under the Agreement are reduced to a mere \$55,000 because the parties included an unnecessary and burdensome “claims made” hurdle that Class Members must clear to receive any payment. The Superior Court naïvely approved the “claims made” process based on the parties’

absurd assurances that 95%-97% of the settlement funds would be claimed by Class Members. In fact, less than 5% of the Class Members have returned the claim forms mailed to them.

Although a scant portion of the \$4.16 million of the settlement fund will have been claimed by Class Members directly, there should be millions of dollars of residual funds which belong to the absent Class Members and must be paid to charitable organizations or to the Massachusetts IOLTA Committee in accordance with Mass. R. Civ. P. 23(e). However, in return for the Defendants' agreement not to the contest Plaintiff Class Counsel's request for a \$1 million attorney fee award, the Class Counsel agreed that nearly all residual funds will be retained or paid back to the Defendants. The Superior Court's erroneous approval of this violation of Rule 23 was compounded by its failure to ensure that the Massachusetts IOLTA Committee received notice of the proposed settlement as required by the Rule.

The Superior Court's approval of the Proposed Settlement Agreement was plainly an abuse of its discretion and is clear legal error. The Superior Court would have greatly benefited from appellate guidance. Fifteen years ago, Justice Gants noted that there is "no controlling Massachusetts authority setting the appropriate standard for preliminary approval of a settlement." In re Massachusetts Smokeless Tobacco Litig., No. 03-5038-BLS1, 2008 WL 1923063, at *3 (Mass. Super. Apr. 9, 2008). Moreover, in the fifty years since Sniffin v. Prudential Co. of America,

395 Mass. 415, 421 (1985), in which this Court adopted the standard used by the Seventh Circuit for final approval of class action settlement agreements, both the Seventh Circuit and the federal courts generally now require that courts consider specific listed factors when presented with a class action settlement. This Court should allow direct appellate review and do likewise.

PRIOR PROCEEDINGS

In July 2014, Plaintiffs Matthew Ortins and Olivia Savarino filed their class action complaint. The complaint, as amended in September 2017, asserted that Defendants' practice of charging rental application fees and rekey fees at twenty-seven apartment complexes they owned or managed violated the Massachusetts Security Deposit Law, G.L. c. 186, § 15B, and G.L. c. 93A.

In October 2017, the Superior Court certified a class and appointed Plaintiffs Ortins and Savarino as class representatives.

In August 2019, the Superior Court entered summary judgment against the Defendants finding as an "unrebuttable fact" that they had unlawfully charged each Class Member a \$250 application fee and a \$150 rekey fee in violation of the Security Deposit Law. A trial was scheduled on the remaining issue of whether the Defendants' violations were knowing and willful under Chapter 93A.

In July 2020, the parties filed a Joint Motion seeking preliminary approval of a proposed settlement of the class action. The parties failed to provide the Massa-

chusetts IOLTA Committee (‘IOLTA Committee’) with notice of the hearing as required by Mass. R. Civ. P. 23. In December 2020, following three hearings, the Superior Court granted preliminary approval. In July 2021, following a fairness hearing, the settlement was approved.

In November 2023, the parties filed a Joint Motion for Order Approving Final Distribution of Unclaimed Settlement Funds to Designated Cy Pres Recipients. For the first time, notice of the hearing was provided to the IOLTA Committee which filed an Objection.

In April 2024, following a hearing, the Superior Court concluded that “the Settlement Agreement was reached, and approved, in violation of Mass. R. Civ. P. 23(e), which requires that notice be provided to the IOLTA Committee regarding residual funds, and prohibits the return of any such funds to defendants.” Nevertheless, the Court “reluctantly” allowed the Joint Motion.

On May 24, 2024, judgment entered and this appeal followed.

STATEMENT OF THE FACTS

A. The Superior Court Found As Unrebuttable Facts That The Defendants Violated The Security Deposit Law By Requiring Plaintiff Class Members To Pay Application And Rekey Fees And That Each Class Member Was Entitled To \$400 In Damages.

In 2013, Plaintiffs Matthew Ortins and Olivia Savarino applied to rent an apartment in a building owned by Defendant Salem Station, LLC and managed by Defendant Lincoln Property Company (“Lincoln”). The Defendants charged Ortins and Savarino a \$250 application fee and a \$150 rekey fee. Under the Massachusetts Security Deposit Law, G.L. c. 186, § 15B, landlords are not allowed to charge application fees and may only charge for the actual cost of changing locks.

In the ensuing class action on behalf of tenants of the 6,500 apartment units managed by Defendant Lincoln, the Superior Court found on summary judgment that between July 2010 and March 2018 the tenants were each charged \$400 in illegal application and rekey fees. The Superior Court scheduled a trial in December 2019 solely for the purpose determining whether these violations of Massachusetts law were “knowing and intentional,” thus entitling the Plaintiff Class Members to double or treble damages under G.L. c. 93A.

B. The Proposed Settlement Agreement

A week before the scheduled trial, the parties notified the Superior Court that they had agreed on proposed terms of a settlement. The significant terms of the Proposed Settlement Agreement include the following:

- Plaintiff Class Representatives Matthew Ortins and Olivia Savarino will each receive a payment of \$40,000.
- Current and former tenants will receive twice the amount of any amount paid for application and/or rekey fees according to a list provided by the Defendants.¹ A Settlement Administrator will mail each person on the list a claim form at their last known address. To receive a payment, the Class Member must sign the claim form and mail it back. Payments will be made 180 days after the entry of a final judgment.
- On paper, the Defendants will create a \$4.16 million Settlement Fund for payments to Class Members. However, the Defendants are only required to make an initial payment of \$800,000 and then to provide only such additional funds as needed to cover submitted claims.
- The first \$100,000 of any residual funds remaining of the Settlement Fund after the payment to all Class Members who submit a claim will be paid to World T.E.A.M. Sports, a New York-based not-for-profit organization that brings adaptive and able-bodied athletes together in athletic events. All of the remaining residual funds are to be returned to the Defendants.
- Upon approval of the Proposed Settlement Agreement, each Class Member shall be deemed to release the Defendants and sixty-five investors and related parties.
- Plaintiff Class Counsel will apply for an attorney fee award of \$1 million. The Defendants agree not to oppose the fee application.

¹ At the summary judgment stage, the Plaintiff Class Counsel had convinced the Superior Court to reject this same list as unreliable.

C. The Parties Failed To Provide Notice To The IOLTA Committee As Required By Rule 23(e).

Rule 23(e)(3) of the Massachusetts Rules of Civil Procedure provides that no compromise of a class action may be approved unless the IOLTA Committee is given notice of the proposed settlement to allow it to be heard on whether it may be a recipient of any or all of the residual funds. Nevertheless, the parties failed to notify the IOLTA Committee of any of the three hearings on the Joint Motion for Preliminary Approval or of the July 2021 fairness hearing.

D. Hearings On Parties' Joint Motion For Preliminary Approval

At each of the three hearings on the Joint Motion for Preliminary Approval, counsel for the parties repeatedly assured the Superior Court that virtually all of the \$4.16 million settlement fund would be paid out to Class Members. For instance, at the initial hearing Defendants' counsel specifically stated – three times – that she expected that 95%-97% of the settlement fund would be disbursed either to the Class Members or to the *cy pres* recipient.²

Even with these representations, the Superior Court noted that the payment of a significant portion of the \$4.16 million Settlement Fund back to the Defendants would be an “unwarranted windfall” and that it would reject the settlement as

² As discussed below, counsels' representations were absurd. Participation in a “claims made” settlements average less than 10%.

unfair and unreasonable. The Superior Court suggested that the amount of any payments from the \$4.16 million settlement back to the Defendants be capped at \$500,000. The Superior Court further stated that its approval of an attorney fee award was also linked to the total settlement amount received by Class Members. The Superior Court indicated that it was open to an attorney fee award of up to forty percent (40%) of “actually paid out money to claimants or to the cy-pres” recipients.

Finally, the Superior Court stated that the payment of a portion of the residual funds to an “unrelated charity,” like the World T.E.A.M. Sports, was improper. The Superior Court suggested that the parties either identify a charitable organization that aligned with the goals of the litigation or have the residual funds paid to the IOLTA Committee.

Over two subsequent hearings, the parties agreed to replace World T.E.A.M. Sports with two charitable organizations with ties to housing issues. They also agreed to cap the amount of the residual funds that could be returned to the Defendants at \$500,000.

With those revisions, the Superior Court preliminarily approved the Proposed Settlement Agreement. A fairness hearing was scheduled for July 8, 2021.

E. Fairness Hearing For Proposed Settlement

Four months before the July 2021 fairness hearing, the Claims Administrator had mailed notices of the hearing and claim forms to 5,074 Class Members.³ At the time of the fairness hearing, the Claims Administrator had received completed claim forms from only 205 Class Members – a response rate of less than 5%.

Though the notice and claims process had obviously failed, the parties sought to spin it as a success. The parties stated that because the Post Office had returned only 1,146 of the 5,074 notices as undeliverable, the other 3,506 notices had been received by Class Members. The parties told the Superior Court that this represented a “70% return rate.” The parties further also represented that their “best estimate” was that \$2.8 million of the \$4.16 million Settlement Fund would now be paid out to Class Members. That calculation assumed that each of the 3,506 Class Members would file a Proof of Claim form and receive \$800.

These representations to the Superior Court were misleading in two important respects.

First, there is no basis for the parties’ assertion that that a notice had been received by a Class Member simply because it had not been returned. The Post

³ At the preliminary approval stage, the parties had repeatedly represented to the Superior Court that the number of Class Members exceeded 10,000. However, the parties sent notices and Proof of Claim forms to only 5,074 of them.

Office delivers mail as addressed regardless of whether the addressee actually lives there. See FAQs on the U.S. Postal Service’s website at <https://faq.usps.com/s/article/Refuse-unwanted-mail-and-remove-name-from-mailing-lists> (“Mail is delivered to residential or business addresses even if the name on the mailpiece is different than the known residents”). The fact that a notice was sent to a Class Member and was not returned does not mean that the Class Member received it.

Second, the parties’ statement that their “best estimate” was that \$2.8 million would be paid out to Class Members was knowingly false. The total payout to Class Members would be \$2.8 million only if the parties assumed that each of the 3,506 Class Members would be paid \$800. However, there was no reason for the parties to make any assumptions about the amounts Class Members would be paid. Under the Proposed Settlement Agreement, a Class Member would be paid only twice whatever the amount was that appeared on the list provided to the Claims Administrator. The amount that the overwhelming majority of the Class Members could claim under the Proposed Settlement Agreement was significantly less than \$800.⁴

The evident purpose of the parties’ misrepresentations was to grossly inflate the value of the settlement to the Class Members in order to gain the approval of

⁴ Of the 220 Class Members who responded to the notice and filed claims, only 6 received payments of \$800.

the Superior Court and to ensure that the Superior Court approved the \$1 million attorney fee request. Both were approved in July 2021.

The Proposed Settlement Agreement approved by the Superior Court provided that payments to Class Members and to the Plaintiff Class Counsel would be made no sooner than 270 days after the entry of a final judgment. However, payments to 220 Class Members, a partial payment to one of the *cy pres* recipients, and the payment of the \$1 million attorney fee award were made prior to the entry of a final judgment.

F. Hearing On Joint Motion To Approve Final Distribution

On November 13, 2023, the parties filed a Joint Motion for Order Approving Final Distribution of Unclaimed Settlement Funds to Designated Cy Pres Recipients. In the Joint Motion, the parties stated that \$51,336.88 had been paid out to 220 Class Members. Accounting for the administration costs, there was \$727,353.95 of residual funds remaining from the Defendants' \$800,000 initial deposit. From these residual funds, two charitable organizations were to receive \$124,266.56 each. Another \$2,400.00 was to be distributed between thirteen class members who had filed late claims. The remaining \$500,000.00 of the residual funds was to be returned to the Defendants.

The IOLTA Committee received notice of the Joint Motion and filed an Objection to the proposed final distribution of residual funds.

Following a hearing, the Superior Court agreed with the IOLTA Committee that “the [Proposed] Settlement Agreement was reached, and approved, in violation of Mass. R. Civ. P. 23(e), which requires that notice be provided to the Massachusetts IOLTA Committee (‘IOLTA Committee’) regarding residual funds, and prohibits the return of any such funds to defendants.” Despite finding that the settlement violated Massachusetts law and that the IOLTA Committee had not received the prior notice required by Rule 23(e), the Superior Court “reluctantly” allowed the Joint Motion.

This appeal followed.

ISSUES OF LAW RAISED BY THE APPEAL

1. Whether the approval of a class action settlement that potentially includes residual funds without providing notice to the Massachusetts IOLTA Committee violates Mass. R. Civ. P. 23.
2. Whether the Proposed Settlement Agreement was unfair, unreasonable, and inadequate where it provided significantly less relief to the class than the Superior Court had already found on summary judgment.
3. Whether the Proposed Settlement Agreement which requires class members to go through an unnecessary “claims made” process to receive compensation is unfair, unreasonable, and inadequate.
4. Whether Mass. R. Civ. P. 23 requires that class action settlement funds not received by absent class members be distributed to charitable organizations or to the Massachusetts IOLTA Committee.

ARGUMENT

I. THE PROPOSED SETTLEMENT AGREEMENT IS NOT “FAIR, REASONABLE, OR ADEQUATE”.

Under the relief granted by the Proposed Settlement Agreement, Class Members would each receive twice the amount they paid application and/or rekey fees from a \$4.16 million Settlement Fund. At first glance, the Defendants’ liability under the Agreement appears similar to the multi-million judgment the Plaintiff Class already was assured of receiving prior to trial. However, the parties appear to have colluded to create a settlement structure that violates Rule 23 and ensures that the Defendants will pay only a fraction of that liability.

As explained below, the Superior Court’s approval of the Proposed Settlement Agreement as “fair, reasonable, and adequate” is clearly erroneous and must be reversed where it:

- effectively halves the number of Class Members who may receive settlement payments by limiting notice of the settlement to those individuals appearing on a list prepared by the Defendants;
- ensures that only a tiny percentage of that smaller number will receive compensation by requiring a meaningless “claims made” process that burdens otherwise deserving Class Members with red tape;
- eliminates millions of dollars of the Defendants’ liability to absent Class Members who do not file claims, thereby also artificially reducing the amount of the residual funds; and
- provides that \$500,000 of the residual funds be paid back to the Defendants in violation of Rule 23.

In return for these concessions, which handed back to the Defendants damages already established by the Superior Court, Class Counsel received a promise from Defendants not to oppose his request for a \$1 million attorney fee award.

As a result, only 220 Class Members will receive any payments. The total aggregate payment to them will be less than \$55,000. The average payment will be \$250 and not the \$400 established by the Superior Court. Of the millions of dollars not claimed by the thousands of absent Class Members, which amounts are part of the residual funds, less than \$300,000 will be paid to charitable organizations. The rest will be either retained or paid back to the Defendants in violation of Rule 23.

A. The Proposed Settlement Agreement Eliminates Thousands Of Individuals From The Class For No Apparent Purpose.

The Superior Court had certified a Plaintiff Class consisting of all individuals who paid application fees and rekey fees. The Superior Court had also found as an “unrebuttable fact” that between 2010 and 2018 the Defendants had charged every current and former tenant in one of their 6,500 apartment units \$400 in such in violation of Massachusetts law. Given normal turnover rate of rental units as determined by the U.S. Census Bureau, there would be approximately 10,400 individuals in the Plaintiff Class.

Although the Proposed Settlement Agreement adopted the Superior Court’s definition of the Plaintiff Class, the Agreement effectively limited the Class to the

5,331 individuals whose names and last known addresses appeared on a list provided by the Defendants. Notably, the Superior Court had previously rejected this list as unreliable. Moreover, there is no provision in the Proposed Settlement Agreement for any public notice for individuals who may be Class Members but are not on the Defendants' list. Consequently, the parties effectively reduced the size of the Class from 10,400 to 5,331.

B. The Proposed Settlement Agreement Requires A Meaningless “Claims Made” Process Solely To Circumvent Rule 23.

The Proposed Settlement Agreement includes a “claims made” process that required Class Members to sign and return a form mailed to them by the Claims Administrator.

While such a process may be necessary where the class members' contact information is unknown or where additional information is needed, that is not the case here. Plainly, the identities and addresses of the Class Members who appear on the Defendants' list are already known to the parties. Even the amount that each Class Member is entitled to receive as damages under the Agreement is known – since that amount is also on the Defendants' list.

There is no purpose to the “claims made” process other than to reduce the amount of the residual funds. See Sullivan v. DB Invs., Inc., 667 F.3d 273, 329 n.60 (3d Cir. 2011) (en banc) (claims rates in class action settlements “rarely” exceed 7%); Sylvester v. CIGNA Corp., 369 F. Supp. 2d 34, 52 (D. Me. 2005)

(claims-made settlements “regularly yield response rates of 10 percent or less”); Rouse v. Language Line Services, Inc., No. 22-cv-0204, 2023 WL 6200072, at *3 (W.D. Mo. Sept. 22, 2023) (“claims made” provisions are “disfavored” because “they reduce participation rates, driving down the compensation received by absent class members”).

In another recent class action case, the Superior Court rejected a proposed settlement agreement that required a “claims made” process. It found that provision was “a meaningless and unwarranted burden” that rendered the proposed agreement inadequate and unfair, specifically stating:

“[T]he Court finds that imposition of the proposed Claim Form Requirement on the class members would subject them to a meaningless and unwarranted burden. Where, as here, the names and addresses of the qualifying class members already are known, there is ‘no need for [a] claim[s] process.’ ... The only ‘benefit’ to be gained by imposing such a requirement in this case would be to potentially reduce [the defendant’s] total settlement outlay to something less than it has agreed to pay. But that is not, in the estimation of this Court, an ‘adequate’ or ‘fair’ reason to burden the otherwise deserving class members with additional and unnecessary red tape.”

Marks v. Realty Associates Fund X, L.P., No. 1884CV00056, 2021 WL 1513847, at *2 (Super. Ct. Feb. 2, 2021). In this case, the “claims made” process also renders the Proposed Settlement Agreement unfair, unreasonable, and inadequate.

C. The Relief Granted To Class Members Who Do Not Return Claim Forms, Which Should Be Part Of The Residual Funds, Is Improperly Retained By The Defendants.

Pursuant to Rule 23(e), the residual funds in a class action settlement is that portion of the relief granted to Class Members that remains unclaimed or undistributed after the settlement process is complete. See Rule 23(e)(1). In this case, the “relief granted” by the Proposed Settlement Agreement is easily calculable. The Defendants’ list specifies the exact amounts that Class Members paid as application and/or rekey fees. The “relief granted” under the Agreement is twice the aggregate of the listed amounts. The residual funds is whatever remains from that amount after the payment of all approved Class Member claims and administrative expenses.

The parties have sought to reduce the residual funds artificially by their chosen funding structure. The Proposed Settlement Agreement provides that Defendants are required to make an initial deposit of \$800,000 and, thereafter, to contribute only such additional amounts as needed to pay submitted claims. The effect is to allow the Defendants to retain virtually all of the relief granted to the absent Class Members who do not submit meaningless claim forms. That provision, together with the “claims made” process effectively capped the amount that the Defendants would have to pay as claims or as residual funds at \$800,000.

This provision is contrary to Rule 23 and renders the Proposed Settlement Agreement unfair, unreasonable, and inadequate.

D. The Proposed Settlement Agreement Provides That Up To \$500,000 Of The Residual Funds Are To Be Paid Back To The Defendants In Violation Of Rule 23.

The terms of the Proposed Settlement Agreement provide that the first \$500,000 of the residual funds are to be paid back to the Defendants with any amounts above \$500,000 to be split between two charitable organizations.

It is plain from the hearing transcripts that the Superior Court understood that, though \$500,000 might revert to the Defendants, the rest of the \$4.16 million settlement would be paid to Class Members or be part of the residual funds. However, as explained above, the parties structured the Agreement so that it was extremely unlikely that the Defendants would be required to pay more than \$800,000 into the settlement fund. Returning \$500,000 to the Defendants of the \$727,353.95 that is currently part of the residual funds would clearly be unfair, unreasonable, and inadequate.

The residual funds are the property of absent Class Members who, for whatever reason, have not received the settlement payment owed to them. If these funds are paid back to the Defendants, the Defendants will benefit from their violations of the law, undermining the deterrent effect of the action. See American Law Institute, Principles of the Law of Aggregate Litigation § 3.07 cmt. b

(reversion to defendants “undermine[s] the deterrence function of class actions and the underlying substantive-law basis of the recovery by rewarding the alleged wrongdoer”).

Rule 23 does not permit the return of any of the residual funds to the Defendants. Rule 23(e)(2) expressly requires that residual funds remaining from a class action settlement be paid either to nonprofit organizations that support projects consistent with the objectives of the underlying claims and “that will benefit the class or similarly situated persons” or to the IOLTA Committee. The provision in the Proposed Settlement Agreement returning any of the residual funds to the Defendants violates Rule 23(e).⁵

II. THE SUPERIOR COURT FAILED TO RECOGNIZE THE COLLUSIVE NATURE OF THE PROPOSED SETTLEMENT AGREEMENT THAT BENEFITS THE PLAINTIFF CLASS COUNSEL AT THE EXPENSE OF THE ABSENT CLASS MEMBERS.

A settlement of a class action is unlike the settlement of an ordinary litigation. Parties in an ordinary litigation can bargain away only their own rights. In a class action, the class representatives and class counsel can negotiate the rights of absent class members. There is always the danger that they will bargain away those rights to maximize their own interests. Because of this, the court acts as a fiduciary

⁵ In its April 4, 2024 Decision, the Superior Court agreed. It concluded that Rule 23(e) “prohibits the return” of residual funds to the Defendants.

for the class to ensure, among other things, that the class counsel did not collude with the defendants to pursue their own self-interests to the detriment of the class. E.g., Ponzio v. Pinon, 87 F.4th 487, 494 (11th Cir. 2023) (“At the end of the day, the district court acts ‘as a fiduciary for the class’”).

Signs of collusion include: (1) a disproportionate distribution of the settlement fund to class counsel; (2) the negotiation of a “clear sailing provision”; and (3) an arrangement for funds not awarded to revert to defendants rather than to be added to the settlement fund. E.g., Lackawanna Chiropractic P.C. v. Tivity Health Support, LLC, No. 18-CV-00649-LJV, 2019 WL 7195309, at *6 (W.D.N.Y. Aug. 29, 2019).

Not at all surprisingly, the Proposed Settlement Agreement appears to be a collusive settlement. The \$1 million attorney fee award to Plaintiffs’ Class Counsel is wildly disproportionate to the amounts received by the Class Members. The fee award is 1800% greater than the \$55,000 that would be paid out to Class Members, and more than 300% greater even if the payments to the *cy pres* recipients are included. Compare In re Bluetooth Headset Products Liab. Litig., 654 F.3d 935, 942 (9th Cir. 2011) (“courts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award”) (citations omitted). The Proposed Settlement Agreement includes a “clear sailing” arrangement by which the Defendants agreed not to oppose the Class Counsel’s attorney fee award request. Finally, most of the

millions of dollars of relief granted to the absent Class Members will either be retained by the Defendants or revert back to them.

Despite these obvious indications that the Proposed Settlement Agreement was collusive, the Superior Court failed to scrutinize it in any real way and accepted the parties' incredibly inaccurate representations as to the amounts that would actually be paid out to Class Members. The Superior Court's approval of a settlement in which less than 3% of the Class Members will receive any compensation where the Defendants, who have already been adjudged liable for millions of dollars of damages, will be permitted to retain money belonging to the Class, is clear error.

STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review of the issues raised by this appeal is appropriate for the following reasons:

First, this appeal involves several “novel questions of law which should be submitted for final determination to the Supreme Judicial Court.” Mass. R. App. P. 11(a)(1). To resolve this appeal, the Court must determine, among other things, the following issues which all affect, directly or indirectly, the amount of the residual funds required to be paid to the IOLTA Committee:

- Whether an unnecessary “claims made” procedure to distribute the relief granted by a class action settlement agreement to members of a class action renders the settlement unfair, unreasonable, and inadequate;
- Whether Rule 23 prohibits class action defendants from retaining and/or receiving some or all of the relief granted to absent class members in a class action settlement agreement;
- Whether a proposed settlement agreement that has the hallmarks of a collusive settlement should be subject to stricter scrutiny to ensure the interests of absent class members are fully protected; and
- Whether class action defendants can misappropriate the residual funds in a class action settlement simply by refusing to provide the notice to the IOLTA Committee required under Rule 23.

This appeal appears to be one of the first from an approval of a class action settlement since Sniffin v. Prudential Co. of America, 395 Mass. 415, 421 (1985), which should not be surprising. By their nature, class action settlements generally do not often generate often appellate cases. Although, conceivably, an individual

class member who objects to a settlement may pursue an appeal, the same structural barriers that discourage that class member from litigating the underlying case on her own likewise deter her from pursuing an appeal. This appeal presents the Court with the opportunity to provide needed guidance to the courts on how to determine whether proposed settlements are fair, reasonable, and adequate.

Second, the issues on appeal are “of such public interest that justice requires a final determination by the full Supreme Judicial Court.” Mass. R. App. P. 11(a)(3).

It is beyond cavil that class action lawsuits have broad social and economic significance. They provide access to courts in a society that depends on private litigation for the enforcement of a variety of laws and public policies. They serve the important public purpose of securing justice for a class of under-represented people with similar claims. They are powerful tools that help ensure that the individuals and entities that harm the public are held responsible for the costs of such harm.

In order for class actions to serve their important public purpose the Court should provide additional guidance on the factors that a trial court should consider when presented with a proposed settlement. As evidenced by this case, the standard adopted by the Court forty years ago in Sniffin v. Prudential Co. of

America, supra, does not provide sufficient guidance or stress the importance of the trial court's role as guardians for the absent class members.

The federal courts, like most state courts, have adopted more comprehensive factors for the trial court to consider, some of which include (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed. See, e.g., Moses v. New York Times Co., 79 F.4th 235, 242 (2d Cir. 2023) (listing factors); Kim v. Allison, 8 F.4th 1170, 1178 (9th Cir. 2021); (same); Ponzio v. Pinon, 87 F.4th 487, 494 (11th Cir. 2023) (same). See also Fed. R. Civ. P. 23(e)(2) (Committee Notes on Rules - 2018 Amendment) (Rule 23(e)(2) was amended to identify specific factors “to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal”).

This Court should accept direct review of this appeal to similarly update its guidance and ensure that trial courts sufficiently protect the rights of absent class members.

CONCLUSION

For the foregoing reasons, the Massachusetts IOLTA Committee respectfully requests that the Court grant its application for direct review.

Respectfully Submitted,

/s/ Douglas W. Salvesen

Douglas W. Salvesen (BBO #550322)
YURKO PARTNERS, P.C.
One Tech Drive, Suite 205
Andover, MA 01810
(617) 381-4404
DSalvesen@YurkoPartners.com

Attorneys for Massachusetts IOLTA Committee

Date: October 11, 2024

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure

I, Douglas W. Salvesen, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to the requirements of Rules 11, 16, 18,, 20, and 21 of the Massachusetts Rules of Appellate Procedure.

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. App. P. 11(a) because the Argument section contains 1999 words in 14-point Times New Roman font.

/s/ Douglas W. Salvesen

Douglas W. Salvesen

CERTIFICATE OF SERVICE

Pursuant to Mass. R. App .P. 13(d), I hereby certify, under the penalties of perjury, that on October 11, 2024, I have made service of this Application upon the attorney of record for each party by the Electronic Filing System on:

Jeffrey Turk, Esq.
Turk & Milone, LLP
10 Forbes Road, Suite 400W
Braintree, MA 02184

Orestes Brown, Esq.
Bailey Buchanan, Esq.
Metaxas Brown Pidgeon LLP
10 Elm Street, Second Floor
Danvers, MA 01923

/s/ Douglas W. Salvesen

Douglas W. Salvesen

ADDENDUM

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Memorandum of Decision and Order on Joint Motion for Order Approving Final Distribution of Unclaimed Settlement Funds to Designated Cy Pres Recipients (April 4, 2024).....	95



**COMMONWEALTH OF MASSACHUSETTS
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Docket Report**

1477CV01122 Ortins, Matthew et al vs. Lincoln Property Company et al

CASE TYPE: Contract / Business Cases	FILE DATE: 07/14/2014
ACTION CODE: A99	CASE TRACK: F - Fast Track
DESCRIPTION: Other Contract Action	
CASE DISPOSITION DATE: 05/24/2024	CASE STATUS: Closed
CASE DISPOSITION: Disposed by Court Finding	STATUS DATE: 07/14/2014
CASE JUDGE:	CASE SESSION: Civil C

DCM TRACK

Tickler Description	Due Date	Completion Date
Service	10/12/2014	08/16/2016
Rule 15 Served By	11/11/2014	08/16/2016
Rule 12/19/20 Served By	11/11/2014	08/16/2016
Answer	11/11/2014	08/16/2016
Rule 12/19/20 Filed By	12/11/2014	08/16/2016
Rule 15 Filed By	12/11/2014	08/16/2016
Rule 12/19/20 Heard By	01/10/2015	08/16/2016
Rule 15 Heard By	01/10/2015	08/16/2016
Judgment	05/04/2016	07/22/2022
Under Advisement	06/29/2017	07/12/2017
Under Advisement	10/11/2017	07/03/2017
Discovery	12/31/2018	07/22/2022
Rule 56 Served By	01/31/2019	02/26/2019
Rule 56 Filed By	02/28/2019	02/26/2019
Final Pre-Trial Conference	03/22/2019	02/26/2019
Final Pre-Trial Conference	04/26/2019	02/26/2019
Under Advisement	07/18/2019	07/22/2019
Status Review	05/11/2020	07/31/2020
Status Review	05/02/2022	07/22/2022
Under Advisement	04/20/2024	04/09/2024
Review Appeals Filed	09/18/2024	09/11/2024
Notice of Appeal Filed	10/22/2024	05/24/2024
Notice of Appeal Filed	12/03/2024	09/11/2024

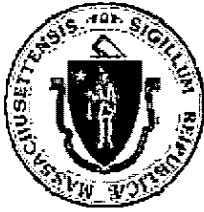
PARTIES

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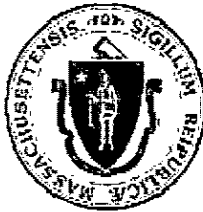
**COMMONWEALTH OF MASSACHUSETTS
ESSEX COUNTY
Docket Report**

Plaintiff Ortins, Matthew	Attorney Keith Lawrence Sachs DDSK Law LLC DDSK Law LLC 900 Cummings Center Suite 210U Beverly, MA 01915 Work Phone (978) 338-6620 Added Date: 03/03/2017	634025
	Attorney Orestes G Brown Metaxas Brown Pidgeon LLP Metaxas Brown Pidgeon LLP 10 Elm St 2nd Floor Danvers, MA 01923 Work Phone (978) 927-8000 Added Date: 12/23/2016	566431
	Attorney Bailey Buchanan Nowak Metaxas Brown Pidgeon LLP Metaxas Brown Pidgeon LLP 10 Elm St 2nd Floor Danvers, MA 01923 Work Phone (978) 927-8000 Added Date: 12/23/2016	651966
	Private Counsel Eitan Y Goldberg Brown and Goldberg, PC Brown and Goldberg, PC 380 Main St Haverhill, MA 01830 Work Phone (978) 469-1972 Added Date: 07/14/2014	663703



**COMMONWEALTH OF MASSACHUSETTS
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<p>Plaintiff Savarino, Olivia</p> <p>Salem, MA 01970</p>	<p>Attorney 634025 Keith Lawrence Sachs DDSK Law LLC DDSK Law LLC 900 Cummings Center Suite 210U Beverly, MA 01915 Work Phone (978) 338-6620 Added Date: 03/03/2017</p> <p>Attorney 566431 Orestes G Brown Metaxas Brown Pidgeon LLP Metaxas Brown Pidgeon LLP 10 Elm St 2nd Floor Danvers, MA 01923 Work Phone (978) 927-8000 Added Date: 12/23/2016</p> <p>Attorney 651966 Bailey Buchanan Nowak Metaxas Brown Pidgeon LLP Metaxas Brown Pidgeon LLP 10 Elm St 2nd Floor Danvers, MA 01923 Work Phone (978) 927-8000 Added Date: 12/23/2016</p> <p>Private Counsel 663703 Eitan Y Goldberg Brown and Goldberg, PC Brown and Goldberg, PC 380 Main St Haverhill, MA 01830 Work Phone (978) 469-1972 Added Date: 07/23/2014</p>
<p>Defendant Lincoln Apartment Management, LP</p>	<p>Attorney 562152 Jeffrey Craig Turk Turk and Milone, LLP Turk and Milone, LLP 10 Forbes Rd Suite 320W Braintree, MA 02184 Work Phone (781) 356-4200 Added Date: 09/19/2017</p>



**COMMONWEALTH OF MASSACHUSETTS
ESSEX COUNTY
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Defendant Lincoln Property Company Dallas, TX 75201	Private Counsel 562152 Jeffrey Craig Turk Turk and Milone, LLP Turk and Milone, LLP 10 Forbes Rd Suite 320W Braintree, MA 02184 Work Phone (781) 356-4200 Added Date: 09/03/2014 Attorney 704275 Christelle J Jean-Felix Casey Lundregan Burns, P.C. Casey Lundregan Burns, P.C. 71 Washington St 2nd Floor Salem, MA 01970 Work Phone (978) 741-3888 Added Date: 09/08/2020
Defendant Salem Station LLC Boston, MA 02109	Private Counsel 562152 Jeffrey Craig Turk Turk and Milone, LLP Turk and Milone, LLP 10 Forbes Rd Suite 320W Braintree, MA 02184 Work Phone (781) 356-4200 Added Date: 09/03/2014 Attorney 704275 Christelle J Jean-Felix Casey Lundregan Burns, P.C. Casey Lundregan Burns, P.C. 71 Washington St 2nd Floor Salem, MA 01970 Work Phone (978) 741-3888 Added Date: 09/08/2020
Other interested party Massachusetts IOLTA Committee	Attorney 550322 Douglas W Salvesen Yurko Partners, P.C. Yurko Partners, P.C. One Tech Drive Suite 205 Andover, MA 01810 Work Phone (617) 381-4404 Added Date: 12/18/2023



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ESSEX COUNTY
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EVENTS				
Date	Session	Event	Result	Resulting Judge
10/27/2014	Civil C	Status Review	Held as Scheduled	
11/19/2014	Civil C	Status Review	Held as Scheduled	
07/09/2015	Civil C	Status Review	Canceled	Cornetta
08/18/2015	Civil C	Final Pre-Trial Conference	Held as Scheduled	Cornetta
01/21/2016	Civil C	Motion Hearing	Rescheduled	Cornetta
01/21/2016	Civil D	Motion Hearing	Rescheduled	Wall
07/07/2016	Civil C	Rule 56 Hearing	Rescheduled	Lu
08/18/2016	Civil C	Rule 56 Hearing	Rescheduled	Lu
04/11/2017	Civil A	Motion Hearing	Canceled	Brennan
04/20/2017	Civil C	Final Pre-Trial Conference	Canceled	Wall
05/30/2017	Civil A	Motion Hearing to Compel	Held - Under advisement	Tabit
			Held as Scheduled	Tabit
06/06/2017	Civil C	Final Pre-Trial Conference	Rescheduled	Tabit
06/06/2017	Civil A	Hearing on Class Action Certification	Held as Scheduled	Tabit
10/31/2017	Civil C	Final Pre-Trial Conference	Not Held	Tabit
10/31/2017	Civil C	Conference to Review Status	Not Held	Barry-Smith
02/08/2018	Civil C	Motion Hearing	Not Held	Tucker
03/01/2018	Civil C	Hearing: Sanctions	Held as Scheduled	Tucker
03/20/2018	Civil C	Hearing: Sanctions	Rescheduled	Tucker
03/21/2018	Civil C	Hearing: Sanctions	Held as Scheduled	Tucker
03/27/2018	Civil C	Hearing: Sanctions	Held as Scheduled	Tucker
10/04/2018	Civil C	Conference to Review Status	Held as Scheduled	Frison
02/26/2019	Civil C	Motion Hearing	Held as Scheduled	Lu
04/23/2019	Civil C	Final Pre-Trial Conference	Canceled	Barrett
06/18/2019	Civil C	Rule 56 Hearing	Decision rendered	Barrett
			Held - Under advisement	Barrett
07/22/2019	Civil C	Motion Hearing for Reconsideration	Decision rendered	Lu
12/05/2019	Civil C	Final Trial Conference	Canceled	Lu
12/05/2019	Civil C	Final Pre-Trial Conference	Canceled	Lu
12/09/2019	Civil C	Jury Trial	Canceled	Lu



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08/25/2020	Civil C	Hearing on Proposed Settlement	Held as Scheduled	Lu
09/08/2020	Civil C	Hearing on Proposed Settlement	Rescheduled	Lu
09/16/2020	Civil C	Hearing on Proposed Settlement	Held as Scheduled	Lu
10/15/2020	Civil C	Trial Assignment Conference	Held as Scheduled	Lu
11/17/2020	Civil C	Conference to Review Status	Held via Video/Phone	Lu
07/08/2021	Civil C	Hearing on Class Action Certification	Held via Video/Phone	Lu
02/15/2024	Civil C	Motion Hearing	Rescheduled	Howe
03/21/2024	Civil C	Motion Hearing	Decision rendered Held - Under advisement	Howe Howe

FINANCIAL SUMMARY

	Fees/Fines/Costs/Charge	Assessed	Paid	Dismissed	Balance
Total		26.10	26.10	0.00	0.00



**COMMONWEALTH OF MASSACHUSETTS
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INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
07/14/2014	1	Complaint & civil action cover sheet filed	
07/14/2014		Origin 1, Type A99, Track F.	
07/14/2014	2	Plaintiff Matthew Ortins's MOTION for appointment of special process server name	
07/14/2014		Motion (P#2 ALLOWED (David Lowy, Justice) Notices mailed 7/14/2014	
08/15/2014	3	SERVICE RETURNED (summons): Salem Station LLC, service made on 7/24/2014 in hand to Bernardo Montanez, c/o Corporation Service Company, 84 State Street, Boston, MA 02109 (agent in charge service) (filed in Salem 08/13/2014)	
08/15/2014	4	SERVICE RETURNED (summons): Lincoln Property Company, service made on 7/24/2014 in hand to Danette Pena, CT Corporation Services, 155 Federal Street, Boston, MA 02110 (agent in charge service)	
09/03/2014	5	ANSWER: Lincoln Property Company(Defendant) (filed in Salem 09/02/2014)	
09/03/2014		ANSWER: Salem Station LLC(Defendant)	
07/10/2015		The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 07/10/2015 09:20:08	
08/18/2015	6	Plaintiff Matthew Ortins, Olivia Savarino's Assented to Motion to continue / reschedule an event 08/18/2015 02:00 PM Final Pre-Trial Conference	
08/18/2015		Endorsement on Motion to continue / reschedule an event (#6.0): DENIED	Cornetta
08/20/2015	7	ORDER: Substitute Docket Form 1) discovery shall close on 11/30/15 2) hearing on the issue of class certification on 1/21/16 @2pm	Cornetta
08/20/2015		The following form was generated: Notice to Appear for hearing on Issue of Class Certification Sent On: 08/20/2015 10:47:27	
01/14/2016		The following form was generated: Notice to Appear Sent On: 01/14/2016 15:46:20	
01/20/2016	8	Plaintiff Matthew Ortins, Olivia Savarino's Assented to Motion to extend tracking deadline(s) and continue class certification hearing	
01/21/2016		Endorsement on Motion to extend tracking deadline(s) (#8.0): ALLOWED	Wall
04/12/2016	9	Plaintiff in a Crossclaim Lincoln Property Company's Motion for summary judgment, MRCP 56	



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04/12/2016	9.1	Lincoln Property Company's Memorandum in support of Motion for summary judgment
04/12/2016	9.2	Defendant Lincoln Property Company's Statement of material facts
04/12/2016	9.3	Plaintiff Matthew Ortins, Lincoln Property Company's Response to Motion for summary judgment
04/12/2016	9.4	Matthew Ortins, Lincoln Property Company, Salem Station LLC's Memorandum in support of response to Defendant's Motion for summary judgment
04/12/2016	9.5	Affidavit of compliance with Superior Court Rule 9A Applies To: Turk, Esq., Jeffrey Craig (Attorney) on behalf of Lincoln Property Company (Defendant)
04/12/2016	10	Plaintiff in a Crossclaim Salem Station LLC's Motion to dismiss all counts and/or for summary judgment and to deny class certification
04/12/2016	10.1	Salem Station LLC's Memorandum in support of Motion to dismiss and/or for summary judgment and to deny class certification
04/12/2016	10.2	Defendant Salem Station LLC's Statement of material facts
04/12/2016	10.3	Plaintiff Matthew Ortins, Olivia Savarino's Response to Defendant's Motion for summary judgment pursuant to Mass. R. Civ. P. 56(C)
04/12/2016	10.4	Matthew Ortins, Olivia Savarino's Memorandum in support of Plaintiff's Mass. R. Civ. P. 56(f) response to Defendant's Motion for summary judgment
04/15/2016		The following form was generated: Notice to Appear Sent On: 04/15/2016 10:35:15
06/15/2016		The following form was generated: Notice to Appear Sent On: 06/15/2016 13:17:18
08/05/2016		Endorsement on Motion for a summary judgment (#9.00): No Action Taken Lu The hearing on this motion is canceled. Plaintiff is granted until 11/1/2016 to complete all discovery. A future date will be scheduled.
12/23/2016		Attorney appearance On this date Orestes G Brown, Esq., Bailey Buchanan Nowak, Esq. added for Plaintiffs Matthew Ortins, and Savarino, Olivia
02/03/2017	11	Defendant(s) Lincoln Property Company motion filed for protective order
02/03/2017	11.1	Matthew Ortins, Olivia Savarino's Memorandum in support of Plaintiffs' opposition to Defendant Lincoln Property Company's Motion for protective order



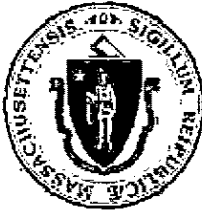
**COMMONWEALTH OF MASSACHUSETTS
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02/03/2017	11.2	Affidavit of compliance with Superior Court Rule 9A	
		Applies To: Gonzalez, Esq., Eduardo A. (Attorney) on behalf of Lincoln Property Company (Defendant)	
02/16/2017	12	Plaintiff Matthew Ortins, Olivia Savarino's Motion to Amend the Tracking Order and Extend Discovery to Allow Parties to Complete Depositions Previously and Timely Noticed	
02/16/2017	12.1	Opposition to Plaintiffs' Motion to Amend the Tracking Order filed by Lincoln Property Company, Salem Station LLC	
02/16/2017	12.2	Plaintiff Matthew Ortins, Olivia Savarino's Reply to Defendants' Opposition to Motion to Amend the Tracking Order	
02/16/2017	12.3	Rule 9A list of documents filed.	
02/16/2017	12.4	Rule 9A notice of filing	
02/24/2017		Endorsement on Motion to Amend The Tracking Order and Extend Discovery to Allow Parties to Complete Depositions Previously and Timely Noticed. (#12.0): ALLOWED Upon review, Motion ALLOWED, limited however to those depositions already noticed prior to the expiration of the most recently extended discovery deadline. Those previously noticed depositions shall be concluded by or before April 21, 2017.	Lauriat
03/01/2017		Endorsement on Motion for protective order (#11.0): ALLOWED Allowed w/o Prejudice. Class certification not yet being heard or determined, the requested discovery is presently limited to the property in which the named plaintiffs are involved.	Lauriat
03/16/2017		The following form was generated: Notice to Appear Sent On: 03/16/2017 10:41:54	
03/20/2017		The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 03/20/2017 11:59:22	
03/21/2017	13	Plaintiff Matthew Ortins, Olivia Savarino's EMERGENCY Motion to compel production of documents from the defendant Lincoln Property Company	
03/21/2017	13.1	Matthew Ortins, Olivia Savarino's Memorandum in support of their emergency motion to compel production of documents from defendant Lincoln Property Company	
03/21/2017	14	Plaintiff Matthew Ortins, Olivia Savarino's EMERGENCY Motion to compel production of documents and A MRCP 30(b)(6) Deponent from the defendant Salem Station, LLC	
03/21/2017	14.1	Matthew Ortins, Olivia Savarino's Memorandum in support of their motion to compel production of documents and A Mass.R. Civ.P.30(b)(6) designee of the defendant Salem station, LLC	



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03/21/2017	14.2	General correspondence regarding plaintiffs' counsel certification of compliance with Superior Court Rule 9C Related to its motions to compel filed against the name defendants	
03/21/2017	14.3	General correspondence regarding plaintiffs' counsel certification of exigency for filing their Emergency motions to compel document production from defendants and request for hearing	
03/21/2017		Matthew Ortins, Olivia Savarino's Appendix of Exhibits Plaintiffs' Omnibus Appendix of exhibits for plaintiffs' motions to compel document production from defendants Lincoln Property company and Salem Station LLC.	
03/22/2017		Endorsement on Motion to compel production of documents from the defendant Lincoln Property Company (#13.0): DENIED as emergency motions (papers #14 and 14). May be served and refiled pursuant to rule Rule 9A.	Lauriat
04/10/2017	15	Opposition to Defendants' Emergency motion to file opposition improperly excluded from Plaintiffs' Superior court Rule 9A filing filed by	
04/10/2017	15.1	Affidavit of Counsel in support of Emergency Motion to File Opposition	
04/10/2017	16	Plaintiff, Defendant Matthew Ortins, Olivia Savarino, Lincoln Property Company, Salem Station LLC's Joint Motion to allow defendants Time to produce responsive documents in advance of plaintiffs' taking depositions previously and timely noticed and after hearing on plaintiffs' motion to compel.	
04/10/2017	17	Rule 9A list of documents filed.	
04/10/2017	18	Rule 9A notice of filing re: Emergency Motions to Compel Production of Documents (papers 13 and 14)	
04/10/2017	19	Affidavit of compliance with Superior Court Rule 9A re: Emergency Motions to Compel Production of Documents (papers 13 and 14) Applies To: Ortins, Matthew (Plaintiff)	
04/10/2017		Endorsement on Motion to extend discovery to allow defendants time to produce responsive documents in advance of plaintiffs' taking depositions (#16.0): ALLOWED after review, joint motion is Allowed. depositions previously noticed be completed no later than May 21,2017. Parties to appear as scheduled for final pretrial conference on April 20,2017.	Tabit
04/18/2017		Endorsement on Motion to File Opposition Improperly Excluded From Plaintiff's Superior Court 9A filing (#15.0): ALLOWED Motion ALLOWED. Opposition to be included, in 9A package submitted by plaintiff.	Tabit
04/18/2017	20	Plaintiff Matthew Ortins, Olivia Savarino's Joint Motion to continue / reschedule an event 04/20/2017 02:00 PM Final Pre-Trial Conference	



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04/18/2017		Endorsement on Motion for Continuance of April 20, 2017 Pre-Trial Conference (#20.0): ALLOWED Continued to 6/6/17 @ 2:00 PM	Wall
04/18/2017		The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 04/18/2017 13:57:15	
04/21/2017	21	Opposition to EMERGENCY Motion to compel production of documents from the defendant Lincoln Property Company (P#13) filed by Lincoln Property Company	
04/21/2017	22	Opposition to EMERGENCY Motion to compel production of documents and A MRCP 30(b)(6) Deponent from the defendant Salem Station,LLC (P#14) filed by Salem Station LLC	
05/02/2017		The following form was generated: Notice to Appear Sent On: 05/02/2017 16:27:43	
05/18/2017		General correspondence regarding File sent to Salem for hearing on Motions to Compel Production of Documents scheduled on 5/30/2017	
05/30/2017		Matter taken under advisement The following event: Motion Hearing to Compel scheduled for 05/30/2017 02:00 PM has been resulted as follows: Result: Held - Under advisement	Tabit
05/30/2017		Event Result: The following event: Final Pre-Trial Conference scheduled for 06/06/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Court Order	Tabit
05/30/2017		The following form was generated: Notice to Appear Sent On: 05/30/2017 14:51:43	
06/01/2017		The following form was generated: Notice to Appear Sent On: 06/01/2017 15:06:28	
06/02/2017		The following form was generated: Notice to Appear Sent On: 06/02/2017 09:49:21	
06/02/2017	24.1	Lincoln Property Company, Salem Station LLC's Memorandum in opposition to supplemental memorandum of law in opposition to plaintiff's emergency motion to compel production of documents from the defendant, Lincoln Property Company	
06/02/2017	23	Plaintiff Matthew Ortins, Olivia Savarino's Motion for Class Certification	



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06/02/2017	24.2	Affidavit of affidavit of Greg Marchand	
06/02/2017	23.1	Matthew Ortins, Olivia Savarino's Memorandum in support of plaintiff motion for class certification	
06/02/2017	23.2	Opposition to 23 filed by	
06/02/2017	23.3	Brief filed: Reply plaintiffs' reply memorandum in response to defendants' opposition to plaintiffs' motion for class certification	
		Applies To: Ortins, Matthew (Plaintiff)	
06/02/2017	23.4	Rule 9A list of documents filed.	
		List of Papers	
		Applies To: Ortins, Matthew (Plaintiff)	
06/02/2017	23.5	Rule 9A notice of filing	
		Applies To: Ortins, Matthew (Plaintiff)	
06/02/2017	24	Plaintiff Matthew Ortins, Olivia Savarino's Motion to supplement the record in support of its motions to compel production of documents from defendants Lincoln Property Company And Salem Station LLC	
06/06/2017		Matter taken under advisement The following event: Hearing on Class Action Certification scheduled for 06/06/2017 02:00 PM has been resulted as follows: Result: Held - Under advisement	Tabit
06/29/2017	25	ORDER: Plaintiffs' Proposed Discovery Order Relevant To Lincoln Property Company, Salem Station, LLC And Lincoln Apartment Management, LP	Karp
06/29/2017	25.1	Opposition to To Plaintiff's Proposed Order filed by	
06/29/2017	25.2	Brief filed: Reply To Defendants Lincoln Property Company's And Salem Station, LLC's Opposition To Plaintiffs' Proposed Order	
		Applies To: Ortins, Matthew (Plaintiff); Savarino, Olivia (Plaintiff)	
06/29/2017	25.3	Rule 9A notice of filing	
06/29/2017	25.4	Rule 9A list of documents filed.	
06/30/2017	26	ORDER: ORDER OF THE COURT RELEVANT TO LINCOLN PROPERTY COMPANY, SALEM STATION, LLC AND LINCOLN APARTMENT MANAGEMENT, LP (additional submissions in connection with Order to be filed in Lawrence Superior Court with a courtesy copy to Judge Tabit in Middlesex Superior Court)	Tabit
07/03/2017		Endorsement on motion to (#25.0): Lincoln Property Company, Salem Station, LLC and Lincoln Apartment Management, LP. Other action taken 06-30-17. After review, the court attaches it's discovery order. Tabit, J.	Tabit



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07/07/2017	27	CORRECTED ORDER: OF THE COURT RELEVANT TO LINCOLN PROPERTY COMPANY, SALEM STATION, LLC & LINCOLN APARTMENT MANAGEMENT, LP	Tabit
08/30/2017		The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 08/30/2017 14:21:59	
09/19/2017	28	Plaintiffs, Defendants Matthew Ortins, Olivia Savarino, Lincoln Property Company, Salem Station LLC, Lincoln Apartment Management, LP's Stipulation to amended complaint to join Lincoln Apartment Management, LP as a defendant	
09/19/2017	29	Amended: First amended complaint filed by Matthew Ortins, Olivia Savarino	
09/21/2017	30	Lincoln Property Company, Salem Station LLC's MOTION for reconsideration of Court Order dated 06/30/2017 re: paper #26.0.	
09/21/2017	30.1	Opposition to to Defendants' Motion for Reconsideration of the Order of the Court relevant to Lincoln Property Company, Salem Station, LLC and Lincoln Property Apartment Management, LP, and memorandum of law in support of Plaintiff's opposition and request for sanctions filed by Matthew Ortins, Olivia Savarino	
09/21/2017	30.2	Affidavit of compliance with Superior Court Rule 9A Applies To: Turk, Esq., Jeffrey Craig (Attorney) on behalf of Salem Station LLC (Defendant)	
09/21/2017	31	Orestes G Brown, Esq. Matthew Ortins, Olivia Savarino's Memorandum in support of Plaintiffs' Motion for Class Certification. (Paper MNo. 23)	
09/26/2017		The following form was generated: Notice to Appear for Conference to Review Status (10/31/17) Sent On: 09/26/2017 12:14:25	
09/26/2017	32	ORDER: Memorandum and Decision on Defendants' Motion for Reconsideration of the Court's Discovery Order Denied. ORDER: The defendants shall produce all documents responsive to this court's 6/30/17 order and the court's 7/7/17 corrected order by 10/5/17. The court takes no further action at this time.	Tabit
10/06/2017	33	Received from Defendant Lincoln Property Company: Answer with claim for trial by jury Received from Defendant Salem Station LLC: Answer with claim for trial by jury Received from Defendant Lincoln Apartment Management, LP: Answer with claim for trial by jury	
10/31/2017	35	Defendants Lincoln Property Company, Salem Station LLC, Lincoln Apartment Management, LP's Supplemental, Memorandum in Opposition to plaintiff's motion for class certification	



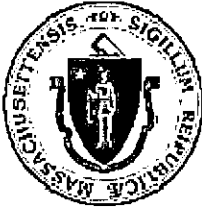
**COMMONWEALTH OF MASSACHUSETTS
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10/31/2017	34	ORDER: Memorandum and Order on Plaintiffs' Motion for Class Certification the plaintiffs' motion for class certification is ALLOWED. The court hereby certifies a class consisting of: All individuals who paid rental application fees and lock and key fees to Lincoln Property Company or Lincoln Property Apartment Management, LP in the Commonwealth of Massachusetts. The class includes all tenants or perspective tenants of Jefferson, at Salem Station, who paid such fees. The court appoints Matthew Ortins and Olivia Savarino and class representatives and their counsel, Orestes G Brown, Keith L Sachs and Bailey Buchanan, of Metaxas Brown Pidgeon LLP as class counsel. Judge: Tabit, Hon. Salim	Tabit
11/01/2017		Endorsement on Supplemental, Memorandum in Opposition to plaintiff's motion for class certification (#35.0): Other action taken On 10/31/17 this court entered on plaintiffs' motion for class certification. This opposition was received the same day. The court has considered the opposition and finds nothing that persuades the court to reconsider its decision and orders of 10/31/17 Judge: Tabit, Hon. Salim	Tabit
12/28/2017	36	Plaintiff Matthew Ortins, Olivia Savarino's Motion for sanctions against all Defendants with supporting memorandum of law in excess of twenty pages	
01/03/2018		Endorsement on Motion for leave to file Motion for Sanctions against all Defendants (#36.0): DENIED without prejudice for failure to comply with Superior Court Rule 9A. Judge: Tucker, Hon. Richard T	Tucker
01/08/2018	37	Affidavit of compliance with Superior Court Rule 9A Applies To: Nowak, Esq., Bailey Buchanan (Attorney) on behalf of Ortins, Matthew (Plaintiff)	
01/09/2018	38	Plaintiffs Matthew Ortins, Olivia Savarino's Motion for sanctions for Defendants' refusal to comply with the Court's Orders dated June 30, 2017, as corrected, July 7, 2017 and September 26, 2017	
01/09/2018	38.1	Affidavit of compliance with Superior Court Rule 9A Applies To: Nowak, Esq., Bailey Buchanan (Attorney) on behalf of Savarino, Olivia (Plaintiff)	
01/09/2018	38.2	Opposition to to Plaintiffs' Motion for Sanctions filed by Lincoln Property Company, Salem Station LLC, Lincoln Apartment Management, LP	
01/10/2018		The following form was generated: Notice to Appear Sent On: 01/10/2018 10:29:04	



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02/02/2018	39	Defendants Lincoln Property Company, Salem Station LLC, Lincoln Apartment Management, LP's Assented to Request to continue / reschedule an event 02/08/2018 02:00 PM Motion Hearing	
02/05/2018		Endorsement on Motion to continue / reschedule an event (#39.0): ALLOWED	Tucker
		Judge: Tucker, Hon. Richard T	
02/05/2018		The following form was generated: Notice to Appear Sent On: 02/05/2018 13:31:35	
03/01/2018		The following form was generated: Notice to Appear Sent On: 03/01/2018 15:36:15	
03/01/2018		The following form was generated: Notice to Appear Sent On: 03/01/2018 15:36:44	
03/02/2018	40	ORDER: INTERIM ORDER ON PLAINTIFFS' MOTION FOR SANCTIONS: ...The court defers issuing an order on the motion for sanctions at this time preferring to schedule a further hearing on this motion for March 20, 2018. It is expected that defendants will use this additional time to make further diligent searches for documents and records, both in paper and electronic form, that are responsive to plaintiffs' requests. Plaintiffs and defendants shall provide written status reports at or before the March 20th hearing. These reports shall set forth all further efforts that were made to fully comply with Judge Tabit's orders, the identity of any additional documents and records that have been produced and, if not produced, the reason for the non production. Reasons for non production shall be supported by sworn affidavit of the employee(s) who is responsible for the maintenance and retention of such records. SO ORDERED: Richard T. Tucker, Superior Court Justice Dated March 2, 2018	Tucker
		Judge: Tucker, Hon. Richard T	
03/02/2018		Endorsement on Motion for Sanctions (#38.0): Other action taken Further hearing scheduled for 3/20/18 See Order. Dated 3/2/2018	Tucker
		Judge: Tucker, Hon. Richard T	
03/16/2018		The following form was generated: Notice to Appear Sent On: 03/16/2018 09:50:49	
03/21/2018		The following form was generated: Notice to Appear Sent On: 03/21/2018 15:07:52	



**COMMONWEALTH OF MASSACHUSETTS
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04/02/2018		Endorsement on Motion for Sanctions (#38.0): Other action taken Allowed in part, see order. Dated 3/30/18	Tucker
		Judge: Tucker, Hon. Richard T	
04/02/2018	41	ORDER: on Plaintiff's Motion for Sanctions: ...The court agrees with plaintiffs, in part, and as a sanction ORDERS that the defendants be precluded from attempting to rebut at trial the following: (a) That Lincoln Property Company and Lincoln Asset Management Limited Partnership were the property managers at no less than 27 apartment complexes, totaling no less than 6500 residential units during the time period of July 8, 2010 to date (hereinafter "the Time Period"); (b) That during the Time Period, Salem Station, LLC owned and managed 266 apartment units; (c) That the defendants Lincoln Property Company, Lincoln Asset management Limited Partnership, and Salem Station, LLC charged tenants a \$250 application fee and a \$150 rekey fee on new leases executed during the Time Period; and (d) The defendants Lincoln Property Company, Lincoln Asset management Limited Partnership, and Salem Station, LLC possess no documents that establish the actual cost of new lock and key changes. Plaintiffs also seek, as a sanction, that they be permitted to produce at trial expert testimony with opinion evidence as to the number of prospective tenant applications per apartment in order to determine the number of application and rekey fees that were collected. The court declines to render this order believing that such an evidentiary ruling is better left to the trial justice, either prior to trial on an appropriate motion or during the trial on the merits. SO ORDERED. Dated March 30, 2018 Richard T. Tucker, Justice of the Superior Court	Tucker
		Judge: Tucker, Hon. Richard T	
05/09/2018	42	Plaintiff Matthew Ortins, Olivia Savarino's Motion for Attorney's fees assessment pursuant to Court's imposition of sanctions	
05/09/2018	42.1	Affidavit filed by Plaintiff Matthew Ortins, Olivia Savarino in support of Plaintiff's Motion for sanctions for Defendants' refusal to comply with the Court's Orders dated June 30, 2017, as corrected, July 7, 2017, and September 26, 2017	
05/09/2018	42.2	Opposition to to Plaintiffs' Motion for Attorneys' fees filed by Lincoln Apartment Management, LP, Salem Station LLC, Lincoln Apartment Management, LP	
05/09/2018	42.3	Plaintiff Matthew Ortins, Olivia Savarino's Reply to Plaintiffs' Motion for Attorneys' fees and costs	
05/09/2018	42.4	Rule 9A notice of filing	
05/09/2018	42.5	Rule 9A list of documents filed.	
08/02/2018		Endorsement on Motion for Attorneys' Fees Assessment Pursuant to Court's Imposition of Sanctions (#42.0): DENIED Upon review, this motion is DENIED without prejudice. This court is unwilling to approve a "black box" or near-black box attorneys' fees in this amount. The court might be willing to set a lower reasonable sum without further information if that is the party's desire.	Lu
		Judge: Lu, Hon. John T	



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08/15/2018		The following form was generated: Notice to Appear Sent On: 08/15/2018 16:01:48	
10/04/2018		Event Result: Conference to Review Status scheduled on: 10/04/2018 02:00 PM Has been: Held as Scheduled Hon. Shannon Frison, Presiding Appeared: Staff: Stefano J Cornelio, Assistant Clerk Magistrate *New Tracking Order for Discovery, Summary Judgment Motions Discovery: 12/31/18 Rule 56 Served by: 1/31/19 Rule 56 Filed by: 2/28/19 FPTC to be held by: 4/26/19 Judge: Frison, Hon. Shannon	Frison
12/21/2018	43	Plaintiff Matthew Ortins, Olivia Savarino's Motion for Attorneys' fees assessment pursuant to Court's imposition of sanctions	
12/21/2018	43.1	Opposition to to Plaintiffs' Motions for Attorney's fees filed by	
12/21/2018	44	Plaintiff Matthew Ortins, Olivia Savarino's Reply to Defendants' opposition to Plaintiffs' Motion for Attorneys' fees and costs	
12/21/2018	43.3	Rule 9A list of documents filed.	
12/21/2018	43.4	Rule 9A notice of filing	
01/03/2019	45	Plaintiff, Defendant Matthew Ortins, Olivia Savarino, Lincoln Property Company, Salem Station LLC, Lincoln Apartment Management, LP's Joint Motion to extend tracking deadline(s) and stipulation to extend discovery deadlines	
01/07/2019		Endorsement on Motion to extend tracking deadline(s) and stipulation to extend discovery deadlines (#45.0): DENIED	Lu
01/23/2019		Docket Note: No action taken on prior Motion for Summary Judgment filed by Plaintiff (#9)(See 8/5/16 docket entry). Tracking Ordered amended with 1/31/19 service date for Rule 56 motions.	
01/25/2019		The following form was generated: Notice to Appear Sent On: 01/25/2019 10:32:54	
01/25/2019	46	Plaintiffs, Defendants Matthew Ortins, Olivia Savarino, Salem Station LLC, Lincoln Apartment Management, LP's Joint Motion for Limited Extension of the tracking order for Rule 56 Motions	
01/28/2019		Endorsement on Motion to extend time for Rule 56 Motions (#46.0): ALLOWED If it is not already been done, please schedule this case for setting of a trial date at a trial assignment date or Final Pretrial Conference.	Lu



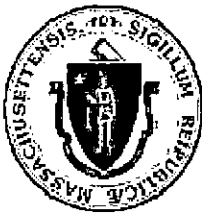
**COMMONWEALTH OF MASSACHUSETTS
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02/22/2019		The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 02/22/2019 11:48:57	
02/22/2019		The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 02/22/2019 11:51:59	
02/26/2019		Event Result:: Final Pre-Trial Conference scheduled on: 04/23/2019 02:00 PM Has been: Canceled For the following reason: By Court prior to date Comments: Trial Dates given at Motion Hearing date on 2/26/19. Hon. C. William Barrett, Presiding Appeared: Staff: Stefano J Cornelio, Assistant Clerk Magistrate	Barrett
02/26/2019		Event Result:: Motion Hearing scheduled on: 02/26/2019 02:00 PM Has been: Held as Scheduled Comments: No argument taken at hearing. To be decided on papers. Trial and FTC dates scheduled at hearing date. Hon. John T Lu, Presiding Appeared: Staff: Stefano J Cornelio, Assistant Clerk Magistrate	Lu
02/26/2019		Endorsement on Motion for Attorneys Fees Assessment (#43.0): Other action taken No view is expressed on whether these fees and costs are a duplication of fees and costs that might be recovered later.	Lu
03/18/2019	47	Defendant Lincoln Property Company, Lincoln Apartment Management, LP, Salem Station LLC's Motion for summary judgment, MRCP 56	
03/18/2019	47.1	Lincoln Property Company, Lincoln Apartment Management, LP, Salem Station LLC's Memorandum in support of Motion for Summary Judgment	
03/18/2019	47.2	Affidavit of Counsel	
03/18/2019	47.3	Defendant Salem Station LLC, Lincoln Apartment Management, LP, Lincoln Property Company's Statement of Material Facts in Support of Defendants' Motion for Summary Judgment	
03/18/2019	47.4	Plaintiff Matthew Ortins, Olivia Savarino's Response to Defendants' Statement of Material Facts	
03/18/2019	47.5	Opposition to to Defendants' Motion for Summary Judgment filed by Matthew Ortins, Olivia Savarino	
03/18/2019	47.6	Lincoln Property Company, Lincoln Apartment Management, LP, Salem Station LLC's Reply Memorandum to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment	
03/18/2019	47.7	Defendant Lincoln Property Company's Certificate of Pre Motion Filing Conference	



**COMMONWEALTH OF MASSACHUSETTS
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03/18/2019	47.8	Affidavit of compliance with Superior Court Rule 9A	
		Applies To: Turk, Esq., Jeffrey Craig (Attorney) on behalf of Lincoln Property Company (Defendant)	
03/18/2019	47.9	Rule 9A notice of filing	
03/18/2019	47.1	Rule 9A list of documents filed.	
03/18/2019	47.11	Lincoln Property Company, Salem Station LLC, Lincoln Apartment Management, LP's Appendix of Exhibits	
03/19/2019	48	Plaintiffs Matthew Ortins, Olivia Savarino's Motion for summary judgment, MRCP 56	
03/19/2019	48.1	Orestes G Brown, Esq.'s Memorandum in support of Plaintiff's Motion for Summary Judgment	
03/19/2019	48.2	Plaintiffs Matthew Ortins, Olivia Savarino's Statement of Undisputed Material Facts	
03/19/2019	48.3	Plaintiffs Matthew Ortins, Olivia Savarino's Certificate of Conference Pursuant to Superior Court Rule 9A(a)(1) and Superior Court Rule 9C(a)	
03/19/2019	48.4	Plaintiffs Matthew Ortins, Olivia Savarino's Rule 9A Index of Exhibits	
03/19/2019	48.5	Jeffrey Craig Turk, Esq.'s Memorandum in opposition to Plaintiffs' Motion for Summary Judgment	
03/19/2019	48.6	Defendants Lincoln Property Company, Salem Station LLC, Lincoln Apartment Management, LP's Response to Plaintiffs' Statement of Undisputed Material Facts	
03/19/2019	48.7	Rule 9A notice of filing	
03/19/2019	48.8	Rule 9A list of documents filed.	
03/20/2019	49	Defendants Lincoln Property Company, Lincoln Apartment Management, LP, Salem Station LLC's EMERGENCY Motion for Reconsideration, Clarification, and/or Stay	
03/20/2019	49.1	Certificate of Compliance Superior Court Rule 9A	
04/01/2019	50	Notice of docket entry received from Appeals Court	
04/02/2019		Endorsement on Motion for reconsideration (#49.0): ALLOWED The request for reconsideration is ALLOWED, . The request for any kind of stay is DENIED. Please continue with other activities on this case while this issue is resolved. Any party wishing to file an affidavit or concise legal memo should do so by 4/29/19. The court will consider whether oral argument is needed. It seems unlikely that the court will grant an evidentiary hearing on this issue.	Lu
04/29/2019	51	Opposition to #49, Defendants' Motion to Stay, Clarify or Reconsider Courts Award of Attorneys' Fees and Costs filed by Matthew Ortins	
05/06/2019	52	Notice of docket entry received from Appeals Court	



**COMMONWEALTH OF MASSACHUSETTS
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05/09/2019		The following form was generated: Notice to Appear Sent On: 05/09/2019 10:36:36	
06/18/2019		Endorsement on Motion for Defendants Lincoln Property Company, Lincoln Apartment Management, LP, Salem Station LLC's EMERGENCY Motion for Reconsideration, Clarification, and/or Stay (#49.0): Other action taken The court understands that the defendants seek oral argument on the issue of attorneys fees and costs. Please telephone or email Assistant Clerk Jonathan Higley (Middlesex room 720, 781-939-2751,) on or before July 8, 2019 with agreed dates. Judge: Lu, Hon. John T	Lu
06/18/2019		Matter taken under advisement: Rule 56 Hearing scheduled on: 06/18/2019 02:00 PM Has been: Held - Under advisement Hon. C. William Barrett, Presiding Staff: Stefano J Cornelio, Assistant Clerk Magistrate	Barrett
07/15/2019		The following form was generated: Notice to Appear Sent On: 07/15/2019 16:01:07	
07/15/2019		Docket Note: Defendants' EMERGENCY Motion for Reconsideration, Clarification, and/or Stay [#49] to be heard before Judge Lu in Middlesex Superior Court - Woburn, 200 Trade Center, Woburn, MA 01801 in Courtroom #730 on 7/22/19 @ 2 PM.	
07/16/2019		Docket Note: Case File Folders #2-#5, and Papers #49, #49.1 and #51 were provided to Judge Lu for the 7/22/19 hearing before him in Middlesex Superior Court in Woburn.	
07/22/2019		Decision rendered on matter taken under advisement: Motion Hearing for Reconsideration scheduled on: 07/22/2019 02:00 PM Has been: Decision rendered Comments: Held in Woburn Superior Court in Courtroom 730. Hon. John T Lu, Presiding Staff: Stefano J Cornelio, Assistant Clerk Magistrate	Lu
07/22/2019	53	Defendant(s) Lincoln Property Company EMERGENCY motion filed to compel	
07/22/2019		Endorsement on Motion for Attorneys fees Assessment pursuant to Court's Imposition of Sanctions (#42.0): Other action taken The court conducted an additional hearing on this motion. See Findings of Fact and Order (7/23/19)	Lu



**COMMONWEALTH OF MASSACHUSETTS
ESSEX COUNTY
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07/23/2019	54	Findings of Fact and Rulings of Law:	Lu
		Findings of Fact and Order on Plaintiffs' Request for Attorneys Fees and Costs and on the Defendants' Emergency Motion to Compel	
		Judge: Lu, Hon. John T	
08/09/2019	55	MEMORANDUM & ORDER:	Barrett
		the Parties' Cross-Motions for Summary Judgment	
		Judge: Barrett, Hon. C. William	
		Defendants' Motion for Summary Judgment (P#48) is DENIED; Plaintiffs' Motion for Summary Judgment (P#47) is ALLOWED as to liability on the claims for violation of the Security Deposit Law (Counts I and III), but DENIED, as to the claims for Chapter 93A (Counts II and IV).	
08/22/2019	56	Complaint for contempt filed.	
08/22/2019	57	Plaintiff Matthew Ortins, Olivia Savarino's Motion for Issuance of Summons on Plaintiffs' Complaint for Civil Contempt	
10/22/2019	58	SUMMARY JUDGMENT for Plaintiff(s), Matthew Ortins, Olivia Savarino against Defendant(s), Lincoln Property Company, Salem Station LLC, Lincoln Apartment Management, LP on liability only. Motion for assessment of damages must be filed by 12/05/2019 or the action will be dismissed.	Barrett
11/18/2019		The following form was generated:	
		Notice to Appear for Final Pre-Trial Conference Sent On: 11/18/2019 09:57:04	
11/18/2019	59	Defendants Lincoln Property Company, Lincoln Apartment Management, LP, Salem Station LLC's EMERGENCY Motion to continue / reschedule an event 12/05/2019 02:00 PM Final Trial Conference, 12/09/2019 09:00 AM Jury Trial	
11/22/2019	60	Opposition to Defendants' Motion to Continue the Trial Date filed by Matthew Ortins	
12/04/2019		Event Result:: Final Trial Conference scheduled on: 12/05/2019 02:00 PM Has been: Canceled For the following reason: Case Settled Comments: Parties relayed that the matter is settled and that they intend to file a Joint Motion for Preliminary Approval of a Class Settlement within 1 week. Hon. John T Lu, Presiding Staff: Stefano J Cornelio, Assistant Clerk Magistrate	Lu

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION NO.
14-01122

MATTHEW ORTINS, OLIVIA
SAVARINO, and All Others Similarly
Situating,
Plaintiffs,

vs.

LINCOLN PROPERTY COMPANY,
SALEM STATION, LLC, and
LINCOLN APARTMENT
MANAGEMENT, LP,
Defendants.

**ORDER GRANTING
PRELIMINARY CERTIFICATION & APPROVAL
OF CLASS ACTION SETTLEMENT**

The Parties having applied to this Court for an Order seeking Preliminary approval ("Preliminary Approval") of the terms of the proposed Settlement ("Settlement") in accordance with Mass. R. Civ. P. Rule 23(c) and (d);

The Court having reviewed the proposed Settlement terms, including the attached Exhibits and the proposed notice;

IT IS HEREBY ORDERED that:

1. The Court preliminarily finds and concludes that the Settlement appears to have resulted from good faith, arm's length negotiations between the Parties and that

counsel for the Plaintiffs conducted reasonable investigation and analysis of the facts relevant to the claims asserted in the complaint;

2. The Court preliminarily finds and concludes that the Settlement terms are within the range of reasonableness appropriate for a Preliminary Approval;

3. The Court preliminarily finds and concludes that counsel for Plaintiffs fairly and adequately represents the Class and Plaintiffs fairly and adequately represent the interests of the proposed Class of persons whose claims are intended to be resolved by the Settlement;

4. The Court preliminarily certifies the following Class of persons as a "Settlement Class": "All Individuals who paid rental application fees and lock and key fees to Lincoln Property Company or Lincoln Property Apartment Management, LP in the Commonwealth of Massachusetts. The class includes all tenants or prospective tenants of Jefferson, at Salem Station, who paid such fees."

5. The Court will conduct a hearing to make a final determination as to whether the proposed Settlement is fair, reasonable, and adequate and that the proposed Class Representatives fairly and adequately protect the interests of the Class ("Fairness Hearing"). The Court sets a Fairness Hearing date of ^{the 8th} day of July, 2020 in Courtroom _____ at _____ M in order to:

- (a) Determine whether the Settlement should be granted final approval by the Court as fair, reasonable, adequate and in the best interests of the Class;

(b) Determine whether a Final Judgment should be entered pursuant to the Settlement that:¹

1. All Released Claims against Defendants, as well as Fan Du, Qianlong Cliffside, LLC, Cliffside Commons, LLC, John Hancock Life Insurance Company (U.S.A.), Residence at Rivers Edge MA LLC, MIREF Hawthorne, LLC, MIREF Wellington, LLC, UBS Realty Investors LLC, North Main Street Apartments Investors, LLC, 4 Riverhurst Road Apartments Investors LLC, Edgewood North Reading Apartments Investors LLC, Villas at OC LLC, Prudential Insurance Co. of America, Villas at Old Concord, Cabot Crossing Apartments Property Owner, LLC, Federal Home Loan Mortgage Corp., Meadows Chelmsford, LLC, Regency Place II, LLC, PhilMor Real Estate Investments, LLC, PhilMor REI Chelmsford LLC, PhilMor REI Lowell LLC, Taurus CD 171 Brick Kiln Road Chelmsford MA LP, Taurus CD 171 Brick Kiln Road Chelmsford MA GP LLC, Taurus CD 165 Bowden Street Lowell MA LP, 130 Bowden Street Lowell MA GP LLC, Taurus Investment Holdings, LLC, BlackRock Realty Advisors, Inc., Acumen Real Estate IV, LLC, Acumen Real Estate VIII, LLC, Canton Woods, Balsam Place, Cabot Crossing Apartments, Cliffside Commons, Deco, Edgewood Apartments, Flanders Hill at Westborough, Hawthorne Commons, Kimball Towers, Lumiere, Jefferson at Bellingham

¹ All capitalized terms used herein and not herein defined are to be given the meaning those terms are given in the parties' Class Action Settlement Agreement (Exhibit A to the Assented To Motion For Preliminary Certification and Approval of Class Action Settlement).

Apartments, Jefferson at Salem Station Apartments, Metro Marina Bay, Mezzo Design Lofts, Ocean 650, Summit Place Investors, LLC d/b/a Summit Place, Regency Place, “Harborview at The Navy Yard”, The Estates, The Landing at Vinnin Square, The Meadows, Little River Investors, LLC d/b/a The Residences at Little River, The Ridge, The Wyeth, Tidewater at Salisbury, Townhomes of Beverly, Village Green Littleton, Villas at Old Concord, Wellington Place, West Square, Windsor Woods at Canton, “Webster”, “The Residences at River’s Edge” , being the Defendant’s Communities, and their respective beneficial owners and investors, be extinguished and released, the Settlement Class be enjoined and barred from instituting or prosecuting any action based on the matters that are the subject of the Release, and the matter be dismissed with prejudice, and,

2. The Parties ordered to comply with their respective undertakings under the Settlement including the payment by the Defendant of the Settlement amounts, the establishment of the Settlement claim fund, and the distribution of the Cash Settlement Amount and any residual funds remaining after payment of Claims and expenses as agreed to by the Parties;

(d) Determine that the appropriate Class Notice was given to the Class regarding the Fairness Hearing, the terms of the Settlement, and the right of Settlement Class Members to appear and object;

(e) Rule on the appropriateness of Class Counsel's fees and expenses and compensation to the Class Representatives;

(f) Rule on such other matters as the Court deems appropriate.

6. The Court approves in form and content the proposed Class Notice and Proof of Claim and finds that the proposed method of notifying the Class is appropriate. Class Counsel shall, not later than (7) days prior to the Fairness Hearing, file an appropriate affidavit showing compliance with their responsibilities to provide notice to the Class as approved by the Court;

7. Any Member of the Class may object to the proposed Settlement and its terms; the proposed Settlement Class certification; the proposed certification of Plaintiffs' Counsel as Class Counsel and the Plaintiffs as Class Representatives; the proposed entry of Final Judgment and Release of Claims, and dismissal of this action with prejudice; the application for approval of Attorneys' Fees and expenses and compensation to the Class Representatives; and any other matter properly before the Court regarding the action, provided that:

No person or entity other than Class Counsel or counsel for the Defendants shall be heard, and no such persons or entities shall be allowed to file papers with the Clerk without Court permission, UNLESS:

The person or entity wishing to appear or file papers, files NOT LATER THAN THIRTY (30) days prior to the Fairness Hearing, written Notice of Intent to Appear that:

a. Identifies the person or entity including name, address, telephone number;

- b. Attests that the person or entity is a member of the Class or is such person's or entity's representative and has complied with the Court's Order regarding the Notice Of Intent to Appear;
- c. States the nature of the person's or entity's objection and the specific grounds therefore in a writing that does not exceed 5 typewritten pages, double spaced in at least 12-point type;
- d. Requests permission to appear and be heard at the Fairness Hearing;
- e. The filing may include without further permission of the Court any attached documents or records that the person or entity desires the Court consider so long as such attachments do not exceed 5 pages; and
- f. A copy of such filing SHALL be served by hand or First Class Mail upon counsel for the Parties on or before the date of the filing with the Court as follows:

Names & Addresses Of Counsel Receiving Notice:

For Plaintiffs
Orestes G. Brown, Esq.
Metaxas Brown Pidgeon, LLP
900 Cummings Center, Suite 207T
Beverly, MA 01915
(978) 927-8000
obrown@metaxasbrown.com

For Defendants:
Jeffrey C. Turk, Esq.
Turk & Quijano
Ten Forbes Road, Suite 400W
Braintree, MA 02184
(781) 364-4200
jturk@tqlawfirm.com

8. Unless the Court directs otherwise, no person or entity shall be entitled to object to the approval of the Settlement and entry of Final Judgment of Dismissal; Certification of the Settlement Class, Class Counsel, and Class Representatives; approval of fees, expenses, and compensation; form of Class Notice; or any other related matter except as prescribed above. Any person or entity who does not object in the manner prescribed above shall be deemed to have waived the right to appear and object or otherwise be heard (including any right of appeal) and shall be barred from raising such objection or requesting to be heard in this matter;

9. Pending final determination of the proposed Settlement, this action is stayed and all members of the proposed Settlement Class are barred and enjoined from instituting or prosecuting any action asserting any claims that are the subject of this matter until further order of the Court;

10. The Parties' rights are reserved to modify the Settlement with the approval of the Court prior to or at the Fairness Hearing without further notice to the Class.

11. If the Settlement is approved by the Court following the Fairness Hearing, a Final Judgment shall be entered and the claims of the Class dismissed with prejudice in accordance with the terms of the Settlement as approved by the Court.

Dated:

7/30/2020

ORDERED By:

John T. Lu, J.
John T. Lu, JSC

The court has had significant
~~discussions~~ discussions with
counsel in recorded hearings
Affirmed on 12/29/2020*

retroactive to

11/17/2020.


John T. Lu

*The content of those discussions
62 are not repeated here

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION NO.
1477CV01122



MATTHEW ORTINS, OLIVIA
SAVARINO, and All Others Similarly
Situating,
Plaintiffs,

vs.

LINCOLN PROPERTY COMPANY,
SALEM STATION, LLC, and
LINCOLN APARTMENT
MANAGEMENT, LP,
Defendants.

**ORDER GRANTING CERTIFICATION & APPROVAL OF CLASS ACTION
SETTLEMENT**

The Parties having applied to this Court for an Order seeking Certification of a Settlement Class and approval ("Final Approval") of the terms of the proposed Settlement ("Settlement") in accordance with Mass. R. Civ. P. Rule 23(c) and (d);

The Court having reviewed the proposed Settlement terms including the Joint Motion for Preliminary Approval of Class Action Settlement and the Settlement Agreement¹ approved by this Court (Lu, J.) on December 30, 2020, Docket Entry No. 66, attached hereto as Exhibit A, and having conducted a Fairness Hearing at which members of the Settlement Class were permitted an opportunity to object to the terms of the proposed Settlement;

IT IS HEREBY ORDERED that:

¹ All capitalized terms used herein and not defined herein are to be given the meaning those terms are given in the parties' Class Action Settlement Agreement.

1. The Court finds and concludes that the Settlement resulted from good faith, arm's length negotiations between the Settling Parties and that counsel for the Plaintiffs conducted reasonable investigation and analysis of the facts relevant to the claims asserted in the complaint;

2. The Court finds and concludes that the amount of the Settlement and the Settlement terms are fair, reasonable, adequate, and in the best interests of the Settlement Class;

3. The Court finds and concludes that counsel for Plaintiffs fairly and adequately represent the Settlement Class and Plaintiffs fairly and adequately represent the interests of the proposed class of persons whose claims are intended to be resolved by the Settlement;

4. The Court certifies the following Class of persons as a "Settlement Class":
"All Individuals who paid rental application fees and lock and key fees to Lincoln Property Company or Lincoln Property Apartment Management, LP in the Commonwealth of Massachusetts. The class includes all tenants or prospective tenants of Jefferson at Salem Station, who paid such fees."

5. The Court certifies counsel for the Plaintiffs as Class Counsel and Plaintiffs as Class Representatives, and finds and concludes that such certifications are in the best interests of the Settling Class;

6. The Court finds and concludes that all Released Claims against Defendant and the Defendants' Communities be extinguished and released, the Settlement Class be enjoined and barred from instituting or prosecuting any action based on the matters that are the subject of the Release, and the matter be dismissed with prejudice;

7. The Court finds and concludes that the appropriate Class Notice was given to the Settlement Class regarding the Fairness Hearing, the terms of the Settlement, and the right of Settlement Class Members to appear and object;

8. The Court finds and concludes that, after multiple hearings on the issue of Class Counsel's application for attorney's fees and Class Representative fees, Class Counsel's fees and expenses and the compensation to the Class Representatives are appropriate and approved; and

9. All claims of the Settlement Class are dismissed with prejudice in accordance with the terms of the Settlement and the Parties are ordered to comply with the terms of the Settlement Agreement attached hereto as Exhibit A.

Dated:

7/12/21

ORDERED By:

Lu

, J.

Attest: J. Clerk

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is entered into this ____ day of July, 2020, by and between Plaintiffs Mathew Ortins and Olivia Savarino on behalf of themselves and all others similarly situated (“Plaintiffs”) and Defendants Lincoln Property Company, Salem Station, LLC and Lincoln Apartment Management Limited Partnership (collectively the “Defendant”) (Defendant and collectively with Plaintiffs, the “Settling Parties”). Each of the foregoing Settling Parties acting by and through their respective counsel, agree that this lawsuit, subject to Court approval, and the matters raised in the litigation are hereby settled, compromised and dismissed, on the merits and with prejudice, waiving all rights of appeal, on the terms and conditions set forth herein (the “Settlement”).

RECITALS

I. PROCEDURAL BACKGROUND

1. WHEREAS, on November 30, 2013, Plaintiffs sent demand letters to Defendant alleging violations by Defendant of Mass. Gen. Laws c. 186, § 15B (the “Security Deposit Statute”). Plaintiffs also alleged a *per se* violation of Massachusetts’ Unfair and Deceptive Practices Law, Mass. Gen. Laws c. 93A, §§ 2, 9.
2. WHEREAS, Plaintiffs demanded relief on behalf of themselves and all persons “who have been caused similar injury and are similarly situated.”
3. WHEREAS, Defendant responded to Plaintiffs’ counsel, denying liability in each case.
4. WHEREAS, Plaintiffs then filed suit against Defendant, in Essex County Superior Court Civil Action No. 12-1122 (the “Action”) alleging the violations described above.
5. WHEREAS, based upon the informal discovery and information exchanged by the Settling Parties to date, investigation, and evaluation of the facts and law

relating to the matters alleged in the pleadings, Plaintiffs and Class Counsel have agreed to settle the claims asserted in the Action pursuant to the provisions of this Agreement. In so doing, Class Counsel have considered numerous risks of continued litigation and other factors, including but not limited to the following:

- a. the expense and length of time necessary to prosecute the Action through trial;
- b. the uncertainty of outcome at trial and the possibility of an appeal by either side following trial;
- c. the substantial benefits being made available to Plaintiffs and the Settlement Class Members under the terms of this Agreement.

6. WHEREAS, weighing the above factors, as well as all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Plaintiffs and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and in the best interests of the Plaintiffs and the Settlement Class;

7. WHEREAS, Defendant expressly denies any liability or wrongdoing of any kind whatsoever. Nevertheless, Defendant considers it desirable that this Action be resolved upon the terms and conditions set forth in this Agreement in order to avoid the expense, risk, uncertainty, and interference with ongoing business operations inherent in any litigation, and to put to rest and to obtain its peace, forever, from all claims that will be barred by the releases described herein.

NOW, THEREFORE, subject to the Final Approval of the Court as required herein and by applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises and covenants contained herein, that any Released Claims against any Released

Parties shall be settled, compromised, and forever released upon the following terms and conditions:

TERMS AND CONDITIONS OF SETTLEMENT

II. DEFINITIONS

8. As used in this Agreement and in the exhibits hereto, in addition to any definitions set forth elsewhere in this Agreement, the following terms shall have the meanings set forth below:

a. **“Action”**

“Action” means the civil action filed by the Plaintiffs Mathew Ortins, Olivia Savarino and all other persons who have been caused similar injury and are similarly situated v. Lincoln Property Company, et al, Civil Action 14-1122, in Massachusetts Superior Court in Essex County.

b. **“Claims Period”**

“Claims Period” shall run for 180 (one hundred and eighty) days until 5:00 p.m. Eastern Standard Time on the 180th day after the Court enters a Final Order, as that term is defined herein.

c. **“Class Notice”**

“Class Notice” means the Court-approved notices of this Agreement that are directed to the Settlement Class Members.

d. “Class Settlement Amount” or “Cash Settlement Amount”

“Class Settlement Amount” or “Cash Settlement Amount” shall be up to Four Million One Hundred and Sixty Thousand Dollars (\$4,160,000.00), to be deposited by Defendant into the settlement fund only to the extent and as provided in Paragraph 32 below.

e. “Class Plaintiff”

“Class Plaintiff” means the named plaintiffs in the Action and all other persons who have been caused similar injury and are similarly situated which is now pending in Massachusetts Superior Court in Essex County.

f. “Class Representatives”

“Class Representatives” means the Class Plaintiffs, Matthew Ortins and Olivia Savarino, who brought the claims before this Court (as defined in 8(g) below) on behalf of themselves and all others similarly situated, including all individuals who paid rental application fees and lock and key fees to Lincoln Property Company or Lincoln Property Apartment Management, LP in the Commonwealth of Massachusetts, and all tenants or prospective tenants of Jefferson at Salem Station who paid such fees.

g. “Court”

“Court” means Massachusetts Superior Court in Essex County.

h. “Defendant”

“Defendant” means Lincoln Property Company, Salem Station, LLC and Lincoln Apartment Management, Limited Partnership

i. **“Defendant’s Communities”**

“Defendant’s Communities” means the various entities, owners, investors, and/or properties affiliated with the Defendant, which are subject to full benefit of the Release Claim under this Agreement, as defined below under section 8(r). The Defendant’s Communities shall include Fan Du, Qianlong Cliffside, LLC, Cliffside Commons, LLC, John Hancock Life Insurance Company (U.S.A.), Residence at Rivers Edge MA LLC, MIREF Hawthorne, LLC, MIREF Wellington, LLC, UBS Realty Investors LLC, North Main Street Apartments Investors, LLC, 4 Riverhurst Road Apartments Investors LLC, Edgewood North Reading Apartments Investors LLC, Villas at OC LLC, Prudential Insurance Co. of America, Villas at Old Concord, Cabot Crossing Apartments Property Owner, LLC, Federal Home Loan Mortgage Corp., Meadows Chelmsford, LLC, Regency Place II, LLC, PhilMor Real Estate Investments, LLC, PhilMor REI Chelmsford LLC, PhilMor REI Lowell LLC, Taurus CD 171 Brick Kiln Road Chelmsford MA LP, Taurus CD 171 Brick Kiln Road Chelmsford MA GP LLC, Taurus CD 165 Bowden Street Lowell MA LP, 130 Bowden Street Lowell MA GP LLC, Taurus Investment Holdings, LLC, BlackRock Realty Advisors, Inc., Acumen Real Estate IV, LLC, Acumen Real Estate VIII, LLC, Canton Woods, Balsam Place, Cabot Crossing Apartments, Cliffside Commons, Deco, Edgewood Apartments, Flanders Hill at Westborough, Hawthorne Commons, Kimball Towers, Lumiere, Jefferson at Bellingham Apartments, Jefferson at Salem Station

Apartments, Metro Marina Bay, Mezzo Design Lofts, Ocean 650, Summit Place Investors, LLC d/b/a Summit Place, Regency Place, “Harborview at The Navy Yard”, The Estates, The Landing at Vinnin Square, The Meadows, Little River Investors, LLC d/b/a The Residences at Little River, The Ridge, The Wyeth, Tidewater at Salisbury, Townhomes of Beverly, Village Green Littleton, Villas at Old Concord, Wellington Place, West Square, Windsor Woods at Canton, “Webster”, “The Residences at River’s Edge”, and their respective beneficial owners and investors and each of their respective past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, managers, officers, directors, and their respective successors, heirs and assigns partners, legal representatives, accountants, trustees, executors, administrators, alter egos, predecessors, successors, transferees, assigns and insurers.

j. “Effective Date”

“Effective Date” means the date on which a Final Order (as defined below) is entered by the Court approving this Agreement without modification unless expressly agreed to by Defendant and Class Plaintiffs.

k. “Fairness Hearing”

“Fairness Hearing” means the hearing to be conducted by the Court to finally determine the fairness, adequacy and reasonableness of this Agreement.

l. “Final Approval”

“Final Approval” means the Court’s entry of a Final Order following the Fairness Hearing.

m. “Final Order”

“Final Order” shall mean the resolution of the Action after the occurrence of each of the following events:

- (i) This Class Action Settlement Agreement is approved in all respects by the Court; and
- (ii) A Final Approval or Final Order of Settlement Approval is entered against all Class Plaintiffs and Settlement Class Members as provided in Rule 23 of the Massachusetts Rules of Civil Procedure, and the time for the filing of any appeals has expired and/or been waived or, if there are appeals, approval of the settlement and judgment has been affirmed in all respects by the appellate court of last resort to which such appeals have been taken and such affirmances are no longer subject to further appeal or review.

n. “Notice of Missing Information”

“Notice of Missing Information” means the notice sent by the Settlement Administrator to a Settlement Class Member who has submitted a Proof of Claim with incomplete or missing information that is required for the Settlement Class Member to be considered eligible for the class relief provided by this Settlement.

o. “Plaintiffs’ Counsel”

“Plaintiffs’ Counsel” means counsel of record for the Plaintiffs in the Action.

p. “Preliminary Approval”

“Preliminary Approval” means the Court’s entry of an order, substantially in the form attached hereto as Exhibit C, approving the timing, content and manner of Class Notice, conditionally certifying the class of Settlement Class Members, preliminarily approving this Agreement, and enjoining the commencement or continued prosecution by any of the Settlement Class Members of any Released Claim against the Defendant.

q. “Proof of Claim”

“Proof of Claim” means the form, in the form of Exhibit A hereto (which is incorporated herein), but which may be modified as necessary to comply with the provisions of any order of Preliminary Approval entered by the Court.

r. “Released Claim”

“Released Claim” means any claim, cross-claim, liability, right, demand, suit, matter, obligation, damage, restitution, disgorgement, loss or cost, attorney’s fee or expense, action or cause of action, of every kind and description that the Settlement Class Members had or have, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown,

asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Settlement Class Member either in the Action or in any action or proceeding in this Court or any other court or forum, regardless of legal theory or the law under which such action may be brought, and regardless of the type or amount of relief or damages claimed, against the Defendant, as well as Fan Du, Qianlong Cliffside, LLC, Cliffside Commons, LLC, John Hancock Life Insurance Company (U.S.A.), Residence at Rivers Edge MA LLC, MIREF Hawthorne, LLC, MIREF Wellington, LLC, UBS Realty Investors LLC, North Main Street Apartments Investors, LLC, 4 Riverhurst Road Apartments Investors LLC, Edgewood North Reading Apartments Investors LLC, Villas at OC LLC, Prudential Insurance Co. of America, Villas at Old Concord, Cabot Crossing Apartments Property Owner, LLC, Federal Home Loan Mortgage Corp., Meadows Chelmsford, LLC, Regency Place II, LLC, PhilMor Real Estate Investments, LLC, PhilMor REI Chelmsford LLC, PhilMor REI Lowell LLC, Taurus CD 171 Brick Kiln Road Chelmsford MA LP, Taurus CD 171 Brick Kiln Road Chelmsford MA GP LLC, Taurus CD 165 Bowden Street Lowell MA LP, 130 Bowden Street Lowell MA GP LLC, Taurus Investment Holdings, LLC, BlackRock Realty Advisors, Inc., Acumen Real Estate IV, LLC, Acumen Real Estate VIII, LLC, Canton Woods, Balsam Place, Cabot Crossing Apartments, Cliffside Commons, Deco, Edgewood Apartments, Flanders Hill at Westborough,

Hawthorne Commons, Kimball Towers, Lumiere, Jefferson at Bellingham Apartments, Jefferson at Salem Station Apartments, Metro Marina Bay, Mezzo Design Lofts, Ocean 650, Summit Place Investors, LLC d/b/a Summit Place, Regency Place, “Harborview at The Navy Yard”, The Estates, The Landing at Vinnin Square, The Meadows, Little River Investors, LLC d/b/a The Residences at Little River, The Ridge, The Wyeth, Tidewater at Salisbury, Townhomes of Beverly, Village Green Littleton, Villas at Old Concord, Wellington Place, West Square, Windsor Woods at Canton, “Webster”, “The Residences at River’s Edge”, being the Defendant’s Communities, and their respective beneficial owners and investors and each of their respective past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, managers, officers, directors, and their respective successors, heirs and assigns partners, legal representatives, accountants, trustees, executors, administrators, alter egos, predecessors, successors, transferees, assigns and insurers, arising out of or relating to the allegations in the Complaint or Defendant’s charging of application or lock and key fees in conjunction with its rental units at any of its Massachusetts communities, including but not limited to all claims that were brought or could have been brought in the Action. Nothing contained herein shall prevent any party to this Settlement Agreement from bringing an action to enforce the terms of this Settlement Agreement.

s. "Settlement Administrator"

"Settlement Administrator" means the individual appointed by the Defendant to handle the review of Proof of Claim forms, the distribution of the Class Settlement Amount to eligible Settlement Class Members, as well as the computation of all taxes on the Cash Settlement Amount, as defined in paragraph 34 below. The Settlement Administrator appointed by Defendant shall be approved by Plaintiffs, whose approval shall not be unreasonably withheld.

t. "Settlement Class"

"Settlement Class" means the class defined in paragraph 12 below.

u. "Settlement Class Member"

"Settlement Class Member" means any individual who meets the criteria of the Settlement Class.

v. "Settlement Class Counsel" or "Class Counsel"

"Settlement Class Counsel" or "Class Counsel" means Orestes G. Brown, Esq. or Metaxas Brown Pidgeon, LP

w. "Settling Parties"

"Settling Parties" means the Class Plaintiffs, all Settlement Class Members who do not exclude themselves from the Settlement, and Defendant.

9. Plaintiffs' Allegations. The Plaintiffs have certified the Action as a class action under Rule 23 of the Massachusetts Rules of Civil Procedure. Plaintiffs allege, among

other things, that Defendant violated Mass. Gen. Laws c. 186, § 15B and Mass. Gen. Laws c. 93A, §§ 2, 9.

10. Negotiations. Settlement negotiations have taken place between Plaintiffs' counsel and Defendant's counsel. The Agreement, subject to the approval of the Court, contains all of the terms of the Settlement agreed to between Defendant and Plaintiffs individually and on behalf of the Settlement Class.

11. No Admission of Liability. By entering into this Agreement, the Settling Parties agree that Defendant is not admitting any liability to the Class Plaintiff, the Settlement Class, or any other person or entity, and the Defendant expressly denies all such liability. Defendant's sole motivation for entering into this Settlement is to dispose expeditiously of the claims that have been asserted against it in the Action by settlement and compromise rather than incur the expense and uncertainty of protracted litigation. No portion of this Agreement may be admitted into evidence in any action, except as required to enforce this Agreement and/or cease or enjoin other litigation pursuant to paragraph 9 above.

12. Settlement Class Definition. The Settlement Class shall consist of the following persons, which class has been defined by the Court pursuant to the Court's Order on Class Certification entered October 30, 2018: "All Individuals who paid rental application fees and lock and key fees to Lincoln Property Company or Lincoln Property Apartment Management, LP in the Commonwealth of Massachusetts during the Class Period. The class includes all tenants or prospective tenants of Jefferson at Salem Station, who paid such fees." The Class Period shall commence on July 20, 2010 and close on the date on which this Agreement is executed.

13. Defendant's Obligations.

- a. Cash payment.** Defendant shall pay up to Four Million One Hundred and Sixty Thousand Dollars (\$4,160,000) in full settlement of claims brought by the Settlement Class as provided in Paragraph 32. As described in paragraph 14 below, Defendant shall also pay One Million Dollars (\$1,000,000) in attorneys' fees and actual expenses ("Attorneys' Fees"), \$80,000 in class representative fees, and the costs of Settlement Administration as same may be incurred.

Undistributed Settlement Funds. Unclaimed Settlement Fund amounts not to exceed \$4,160,000 will be subject to the following: The first One Hundred Thousand (\$100,000) of unclaimed amounts from the Settlement Fund will be provided to North Shore Community Development Corp and Action, Inc., in equal shares (as a Cy Pres award) and the remainder of the Settlement Fund shall be returned to the Defendant. However, in the amount that the undistributed amount in the Settlement Fund exceeds Five Hundred Thousand (\$500,000) Dollars, the amount in excess of such amount shall be provided to North Shore Community Development Corp and Action, Inc., in equal shares, as an additional donation and Cy Pres award by Defendant.

- b. Miscellaneous Obligations.** Defendant has ceased the practice of collecting the application fees and estimated lock and key fees in Massachusetts that are the subject of the Action, and will not reinstitute that practice unless and until there is a court ruling, statute, or other judicial,

legislative, or regulatory development that the Defendant believes in good faith permits such practice.

14. Application for Attorneys' Fees and Expenses. Plaintiffs' Counsel will apply to the Court for an award of Attorneys' Fees (including court costs) in the amount of One Million Dollars (\$1,000,000). Defendant will not oppose Plaintiffs' Counsel's application for an award of \$1,000,000. Subject to Court approval of the Settlement, Defendant will pay or cause to be paid to Plaintiffs' Counsel Attorneys' Fees in the amount of \$1,000,000 and such amounts will be paid outside of and in addition to the Settlement Amounts. Any fees awarded to Plaintiffs' Counsel shall be paid within five business days after the Effective Date, or in the event the Court has not yet awarded Attorneys' Fees as of the Effective Date, within five business days of such award.

Plaintiffs' Counsel will apply to the Court for fees for the proposed Class Representatives as follows, in consideration for their time and efforts on behalf of the proposed class. Such fees are reflective of the time that each individual has put in and the nature of their claim. Such fees for the proposed Class Representatives shall be paid from the Settlement Amount and shall be paid within five (5) business days after the Effective Date. Defendant will not oppose this request.

Mathew Ortins: \$40,000

Olivia Savarino: \$40,000

Defendant also will pay all Settlement Administration fees including but not limited to such reasonable fees as the Settlement Administrator charges for its services and such other fees and costs the Defendant may incur in the distribution and effectuation of this Settlement.

Such amounts shall be paid from the Settlement Amount within thirty (30) days of the close of the Claims Period.

The fees and expenses represent all of the fees, expenses, and court costs Defendant agrees to pay, if awarded by the Court, in connection with the Settlement to any Settlement Class Member or their counsel irrespective of the counsel making the application. Defendant shall not be liable for any further fees and expenses or any claim by any counsel or Settlement Class Member for additional fees or expenses relating to the allegations forming the basis of the Action.

15. Dismissal. Upon the Final payment and distribution of Defendant's obligations as provided in paragraph 13 above, Plaintiffs' Counsel shall move to dismiss the action with prejudice.

16. Administration and Cost of Settlement. Defendant will bear the responsibility for administering the Settlement described herein. All of the costs of administering the Settlement will be contributed by Defendant and paid from the Cash Settlement Amount.

III. PRELIMINARY APPROVAL

17. Motion for Preliminary Approval. Following execution of this Agreement, Class Counsel shall promptly submit this Agreement to the Court and petition the Court for an order that: (1) preliminarily approves this Agreement for purposes of issuing Class Notice; (2) approves the timing, content and manner of the Class Notice; (3) enjoins the commencement or continued prosecution by any Settlement Class Member of any Released Claim against the Defendant; (4) schedules the Fairness Hearing; and (5) makes such orders as are necessary and appropriate to effectuate the terms and conditions of the Agreement.

18. Stay of this Action. Following Preliminary Approval, all activity in the Action shall be stayed except to the extent necessary to effectuate this Agreement unless and until this Agreement is terminated pursuant to its terms and conditions.

19. Cooperation. The Settling Parties shall cooperate in good faith and undertake all reasonable actions and steps in order to accomplish the events described in this Agreement.

IV. NOTICE

20. Cost of Notice. All expenses associated with notice of this Agreement shall be paid from the Cash Settlement Amount as described in paragraph 14 above.

21. Notice to Settlement Class Members. The Plaintiffs and Defendant agree that, if the Court authorizes the Notice of Class Action, Proposed Settlement, and Hearing to be disseminated to the Settlement Class Members as provided for in this Agreement, Defendant will mail notice, via first class mail, in the form of Exhibit B attached hereto, to each Settlement Class Member as defined in paragraph 8(t) above. Prior to the mailing, Defendant will create a list of all Settlement Class Members that includes their latest billing address according to Defendant's records; Defendant will then utilize an address refreshing service to obtain the most current available address for each Settlement Class Member to the extent the address in Defendant's records can be updated. It is agreed, subject to approval of the Court, that there shall be a single mailing to each Settlement Class member as set forth herein, and there will be no obligation for re-mailing returned or non-delivered notices. Plaintiffs and Defendant agree that Defendant shall also give such additional notice to Class as the Court may require.

22. Contents of Notice. The Class Notice shall advise Settlement Class Members of their rights, including the right to object to this Agreement and the applicable

procedures for doing so, shall enclose a form by which the Settlement Class Member may make a claim, shall provide instructions for contacting Class Counsel and the Settlement Administrator in order to obtain a paper Proof of Claim form or otherwise, and shall contain other information as is agreed by the Settling Parties. The Class Notice shall advise Settlement Class Members that objections to the Agreement, and papers submitted in support of said objections, shall only be considered at the Fairness Hearing if they are submitted pursuant to the procedures set forth in paragraph 37 below. The Class Notice shall advise Settlement Class Members that the time and place of the Fairness Hearing may change. Subject to the Court's approval, a copy of the Class Notice, which will be disseminated by mail, is attached hereto as Exhibit B.

V. ELIGIBILITY FOR RELIEF

23. Eligibility. To be eligible to receive the relief identified in paragraph 36 below, Settlement Class Members must make a claim to the Settlement Administrator by completing, certifying and mailing the Proof of Claim included with the Class Notice to the Settlement Administrator, annexed as Exhibit A hereto.

24. Proof of Claim. The Proof of Claim must be postmarked no later than the last day of the applicable Claims Period. Proof of Claim forms submitted after the end of the applicable Claims Period shall be denied by the Settlement Administrator and the Settlement Administrator will not be obligated to make any payment on such claims.

25. Review of Claims. The Settlement Administrator appointed by the Defendant shall review all submitted Proofs of Claim within a reasonable time to determine each Settlement Class Member's eligibility for class relief, and the amount of such relief, if any. Copies of submitted Proofs of Claim shall be provided to Class Counsel upon request. Settlement Class Members shall be entitled to the relief identified in paragraph 35 below, unless

the Settlement Administrator has a good faith belief that one or more required fields containing material fact(s) identified in the Proof of Claim is/are fraudulent or materially inaccurate. Within sixty (60) days after the Claims Period ends, the Settlement Administrator shall submit a report to Plaintiffs' Counsel regarding all claims made, the disposition thereof, and the basis for rejection of any claims. The Settlement Administrator will also notify each claimant whose claim is rejected. Any claimant whose claim is rejected may seek reconsideration by contacting the Settlement Administrator. Completed Proofs of Claim that are timely submitted to the Settlement Administrator and which the Settlement Administrator does not believe are fraudulent or materially inaccurate, shall be deemed Accepted Proofs of Claim.

26. Incomplete Proofs of Claim. Submitted Proofs of Claim omitting required information shall be returned via first class mail by the Settlement Administrator to the Settlement Class Member's address indicated on the Proof of Claim form as part of a Notice of Missing Information. Settlement Class Members whose Proofs of Claim are returned because of missing required information shall have until the end of the Claims Period, or fifteen (15) calendar days from when the Notice of Missing Information was mailed, whichever is later, to reply to the Notice of Missing Information and provide a revised Proof of Claim that includes all required information. If a Settlement Class Member fails to respond by the end of the Claims Period of within fifteen (15) calendar days from when the Notice of Missing Information was mailed, whichever is later, or the Settlement Administrator is unable to return the submitted Proof of Claim as result of the omitted information, the Settlement Administrator will not be obligated to make any payment on such claims.

27. Proof of Claim by Individuals Not Identified by Defendant. Defendant has made a good faith effort to identify all members of the Settlement Class. Individuals who

believe they are Settlement Class Members but who were not identified as Settlement Class Members by Defendant may seek participation in the Settlement by submitting a Proof of Claim in the form annexed as Exhibit A hereto. The Proof of Claim, to be valid, must comply with the requirements set forth therein. The Proof of Claim shall be submitted by any such individual to the Settlement Administrator. Defendant will review the Proof of Claim and determine if there is sufficient evidence that the claimant is likely to fit within the Settlement Class. If, in Defendant's judgment, there is a reasonable probability that the claimant is a Settlement Class Member, the claimant will be treated as a Settlement Class Member and will receive relief in the same manner as claims of Settlement Class Members identified by Defendant. If Defendant regards the Proof of Claim as deficient, Defendant will notify the claimant and give the claimant fourteen (14) days to cure the deficiency. If Defendant continues to regard any corrected Proof of Claim as deficient, Defendant will notify Class Counsel. If Class Counsel and Defendant cannot resolve the dispute, the claim will be rejected, and the claimant will be notified of the rejection by Defendant's counsel with a copy of the notice of rejection served upon Class Counsel.

VI. OBJECTIONS

28. Receipt of Requests for Exclusion. Settlement Class Counsel shall be responsible for obtaining a United States Post Office Box, for the purpose of receiving requests for exclusion and objections that are submitted in accordance with Exhibits A and B of this Agreement. Settlement Class Counsel shall also be responsible for giving notice of the receipt of any such requests for exclusion or objections by providing complete copies to counsel for Defendant promptly.

29. Objections. Settlement Class Members shall have the right to appear and show cause, if they have any reason why the terms of this Agreement should not be given Final Approval. Any objection must be in writing, filed with the Court, with a copy delivered to Class Counsel and Defense Counsel at the addresses set forth in the Class Notice, no later than thirty (30) days before the Fairness Hearing. Settlement Class Members may object either on their own or through an attorney hired at their own expense.

If a Settlement Class Member hires an attorney to represent him or her at the Fairness Hearing, he or she must do so at his or her own expense. No Settlement Class Member represented by an attorney shall be deemed to have objected to the Agreement unless an objection signed by the Settlement Class Member also is filed with the Court and served upon Class Counsel and Defense Counsel at the addresses set forth in the Class Notice thirty (30) days before the Fairness Hearing.

Any objection regarding or related to the Agreement shall contain a caption or title that identifies it as "Objection to Class Settlement in Mathew Ortins et al. v. Lincoln Property Company et al, Essex County Superior Court Civil Action No. 14-2211" and also shall contain information sufficient to identify and contact the objecting Settlement Class Member (or his or her attorney, if any), as well as a clear and concise statement of the Settlement Class Member's objection, documents sufficient to establish the basis for their standing as a Settlement Class member, i.e., verification under oath as to the approximate date(s) and type and amount of fee(s) paid to the Defendant, the facts supporting the objection, and the legal grounds on which the objection is based. If an objecting party chooses to appear at the hearing, no later than thirty (30) days before the Fairness Hearing, a notice of intention to appear, either in person or through an

attorney, must be filed with the Court and list the name, address and telephone number of the attorney, if any, who will appear.

Class Counsel and Defendant shall have the right to respond to any objection no later than seven (7) days prior to the Fairness Hearing. The Settling Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for Plaintiffs and Defendant.

30. Court Submission. Settlement Class Counsel and Defendant's counsel will submit this Agreement and the exhibits hereto, along with such other supporting papers as may be appropriate, to the Court for Preliminary Approval of this Agreement pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure. If the Court declines to grant Preliminary Approval of this Settlement Agreement and to order notice of hearing with respect to the proposed Settlement Class, or if the Court declines to grant Final Approval to the foregoing after such notice and hearing, this Agreement will terminate as soon as the Court enters an order unconditionally and finally adjudicating that this Settlement Agreement will not be approved.

VII. SETTLEMENT RELIEF

31. Injunctive Relief. Defendant agree to cease charging application fees and estimated lock and key fees in Massachusetts except as provided in Section 13(c).

32. Settlement Fund. Defendant shall pay up to Four Million One Hundred and Sixty Thousand Dollars (\$4,160,000) (the "Cash Settlement Amount") into escrow or other separate, segregated account established by Defendant and for the benefit of Plaintiffs and the Settlement Class Members by paying an initial payment of \$800,000 into the Settlement Fund (the "Settlement Fund") and such additional amounts as may be required to fund submitted

Claims up to the amount of \$4,160,000. The initial payment due pursuant to the Cash Settlement Amount shall be paid within ten (10) calendar days after the later of (i) entry of the order granting Preliminary Approval of the Settlement, or (ii) Settlement Administrator's notification to Defendant's counsel of the wire transfer instructions, tax identification number associated with the escrow fund and physical address of the bank which will hold the escrow account. All further amounts required to fund Claims shall be paid by Defendant to the Settlement Fund within twenty days of notice from the Settlement Administrator or the Court. Prior to the Effective Date, no withdrawal or payment may be made from the Settlement Fund by any person without the prior written consent of Defendant. Defendant shall provide proof of funding and an accounting of Settlement Funds within 5 days of any written request by Class Counsel.

33. **Satisfaction of Claims.** Plaintiffs and Settlement Class Members shall look solely to the Cash Settlement Amount as satisfaction of all claims that are released hereunder. Under no circumstances will Defendant be required to pay more than the Cash Settlement Amount plus Attorneys' Fees, Class Representative Fees and Settlement Administration costs pursuant to this Agreement set forth herein. Plaintiffs and Settlement Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Order and shall be permanent, absolute and unconditional.

34. **Income on Cash Settlement Amount.** All taxes on the Cash Settlement Amount and (i) expenses and costs incurred in connection with the taxation of the Cash Settlement Amount (including, without limitation, expenses of tax attorneys and accountants) (collectively "Taxes") shall be paid out of the Cash Settlement Amount, shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Settlement

Administrator without prior order of the Court. Defendant and the Settlement Class Members shall have no liability or responsibility for the payment of any Taxes.

35. Distribution to Eligible Settlement Class Members. For each Settlement Class Member submitting an eligible Proof of Claim, the Settlement Administrator will pay to that Settlement Class Member 200% of the Settlement Class Member's application fee and or change lock fee paid to the Defendant, provided that payments to eligible Settlement Class Members may be subject to pro rata reduction if the aggregate value of claims exceeds the Class Settlement Amount. Such payment shall be made by check and mailed to the Settlement Class Member following, but no later than ninety (90) days after, the conclusion of the Claims Period.

36. Undistributed Cash Settlement Funds. If all eligible Settlement Class Members and other amounts to be paid from the Settlement Fund have been paid and funds remain in the Settlement Fund 270 days following the close of the Effective Date, the Parties shall meet and confer regarding, subject to an application to be filed by Class Counsel to the Court and the Court's approval thereof, the distribution of any remaining funds with the first One Hundred Thousand (\$100,000) Dollars being donated to the nonprofit organization identified above and the remainder of the Settlement Fund shall be returned to the Defendant. However, if the amount that the undistributed amount in the Settlement Fund exceeds Five Hundred Thousand (\$500,000) Dollars, the amount in excess of such amount shall be provided to North Shore Community Development Corp and Action, Inc., in equal shares, as an additional donation and Cy Pres award by Defendant. However, if the remainder of the Settlement Fund is insufficient to pay a Cy Pres award of One Hundred Thousand (\$100,000), the Defendant shall pay such amount in addition to the Settlement Fund.

VIII. FINAL APPROVAL

37. **Fairness Hearing.** Plaintiffs, on behalf of the parties, shall immediately file in court this Class Action Settlement Agreement, Class Action Complaint, and Motion for Preliminary Approval, and Memorandum in Support of Assented to Motion for Preliminary Approval, Class Notice, Class Claim Form and Proposed Order. Plaintiffs shall move for a Fairness Hearing to be held within 60 to 75 days, at the convenience of the Court.

The Court shall conduct a Fairness Hearing so that the Court may review any objections to this Agreement, consider the fairness, reasonableness and adequacy of this Agreement, consider Class Counsel's petition for a fee award, and consider Class Counsel's petition for Final Approval. Class Counsel will notify any individual that objects to the Agreement of the date of the Fairness Hearing, and any modifications to that date.

38. **Final Judgment.** The Settling Parties agree that the Settlement is expressly conditioned upon entry of a Final Order as defined in paragraph 8(m) above. The Settling Parties will jointly submit a proposed Final Order prior to the Fairness Hearing.

39. **Parties' Right to Set Aside Settlement.** Any Party to this agreement shall have the right to set aside or rescind this Agreement, if any of the following events occur:

- a. **Objection(s) to Settlement Sustained.** If any substantive objections to the Defendant's or Plaintiffs' Obligations in the proposed settlement are sustained;
- b. **Modification(s) by the Court.** If there are any substantive modifications to Defendant's or Plaintiffs' Obligations by the Court, by any other court, or by any tribunal, agency, entity, or person.

In the event any party sets aside the Settlement, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Settling Parties, shall not be deemed or construed to be an admission or confession by the Settling Parties of any fact, matter, or proposition of law, and shall not be used or admissible in any manner for any purpose, and all parties to the Action shall stand in the same position as existed on November 22, 2019, and as if this Agreement had not been negotiated, made, or filed with the Court. In such event, the parties to the Action shall move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Agreement.

IX. RELEASE

40. Release. Upon Final Approval, each Settlement Class Member shall be deemed to release and forever discharge the Defendant and the parties identified in paragraph 8(i) above of and from liability for any and all Released Claims, and shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim(s) against the Defendant and the parties identified in paragraph 8(i) in any court or forum. This Agreement shall be the sole and exclusive remedy for any and all Released Claims against the Defendant and the parties identified in paragraph 8(i). The Defendant shall not be subject to liability or expense of any kind to any Settlement Class Member with respect to any Released Claim.

41. Binding Effect. The Settling Parties agree that they may hereafter discover facts in addition to or different from those they believe to be true with respect to the subject matter of this Agreement. The Settling Parties agree that, notwithstanding the discovery of the existence of any such additional or different facts that, if known, would materially affect its decision to enter into this Agreement, the releases herein given shall be and remain in effect

as a full, final and complete general release of the Released Claims and the Settling Parties shall not be entitled to modify or set aside this Agreement, either in whole or in part, by reason thereof. The Settling Parties hereby waive and relinquish, to the fullest extent permitted by law, the rights and benefits of any statute which might otherwise render unenforceable a release contained in this Agreement, including but not limited to Mass. Gen. Laws c. 186, § 15B and Mass. Gen. Laws c. 93A, §§ 2, 9.

X. MISCELLANEOUS TERMS AND CONDITIONS

42. Integration Clause. This Settlement Agreement contains a full, complete, and integrated statement of each and every term and provision agreed to by and among the Settling Parties and supersedes any prior writings or agreements (written or oral) between or among the Settling Parties, which prior agreements may no longer be relied upon for any purpose. This Settlement Agreement shall not be orally modified in any respect and can be modified only by the written agreement of the Settling Parties supported by acknowledged written consideration. In the event a dispute arises between the Settling Parties over the meaning or intent of this Agreement, the Settling Parties agree that prior drafts, notes, memoranda, discussions or any other oral communications or documents regarding the negotiations, meaning or intent of this Agreement shall not be offered or admitted into evidence. Class Plaintiffs and Class Counsel acknowledge that, in entering into this Settlement Agreement, they have not relied upon any representations, statements, actions, or inaction by Defendant or its counsel that are not expressly set forth herein.

43. Headings. Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

44. **Governing Law.** To the extent not governed by the Massachusetts Rules of Civil Procedure, the contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the Commonwealth of Massachusetts.

45. **Mutual Interpretation.** The Settling Parties agree and stipulate that this Agreement was negotiated on an “arm’s length” basis between parties of equal bargaining power. Also, the Agreement has been drafted jointly by Class Counsel and counsel for Defendant. Accordingly, this Agreement shall be neutral, and no ambiguity shall be construed in favor of or against any of the Settling Parties.

46. **Notice.** Except as otherwise specifically provided herein, whenever any written notice is required by the terms of this Agreement, it shall be deemed effective on the date received, addressed as follows:

If to the Class Plaintiff or Settlement Class, to:

Orestes G. Brown, Esq.
obrown@metaxasbrown.com
Bailey Buchanan, Esq.
bbuchanan@metaxasbrown.com
Metaxas Brown Pidgeon, LP
900 Cummings Center, Suite 207T
Beverly, Massachusetts 01915
978.927.8000

If to Defendant to:

Jeffrey Turk, Esq.
Turk & Quijano, LP
10 Forbes Rd, Suite 400W
Braintree, MA 02184
Jturk@tqlawfirm.com
781-356-4200

47. **Counterpart Execution.** This Agreement may be executed in any number of counterparts and will be binding when it has been executed and delivered by the last

signatory hereto to execute a counterpart. A facsimile signature shall be deemed to constitute an original signature for purposes of this Agreement. After execution of counterparts by each designated signatory, Defendant agrees to furnish each party with a composite conformed copy of this Agreement reflecting all counterparts' signatures.

48. Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the Settling Parties hereof and their representatives, heirs, successors, and assigns.

49. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Settling Parties and their counsel mutually elect by written stipulation to be filed with the Court within twenty (20) days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Agreement.

50. Continuing Jurisdiction. Without affecting the finality of the Final Judgment, the Court shall retain continuing jurisdiction over the Action and the Settling Parties, including all members of the Settlement Class, the administration and enforcement of the Settlement, and the benefits to the Settlement Class hereunder, including for such purposes as supervising the implementation, enforcement, construction, and interpretation of this Settlement Agreement, the order preliminarily approving the Settlement, and the Final Judgment, and hearing and determining an application by Settlement Class Counsel for an award of Attorneys' Fees. Any dispute or controversies arising with respect to the interpretation, enforcement, or implementation of the Agreement shall be presented by motion to the Court. Any Party found to

be in breach of this Settlement Agreement shall be liable for the costs and reasonable attorney's fees incurred in the enforcement of this Settlement Agreement.

51. Waiver of Appeal. In the event that this Settlement Agreement receives final approval by the Court in the Action, the parties hereto waive any right to appeal from any of the orders entered in the Action, including the Certification Order, the Preliminary Approval Order or the Final Approval Order.

52. Warranty of Counsel. Class Counsel unconditionally represent and warrant that they are fully authorized to execute and deliver this Agreement on behalf of the Class Plaintiff. Jeffrey Turk, Esq. and Turk & Quijano, LLP, Ten Forbes Road, Suite 400W, Braintree, MA 02184 unconditionally represents and warrants that s/he is fully authorized to execute and deliver this Agreement on behalf of Defendant.

Defendants,
**LINCOLN PROPERTY COMPANY,
LINCOLN APARTMENT MANAGEMENT, LP,
and SALEM STATION, LLC**

By their attorneys,



Jeffrey C. Turk (BBO# 562152)
Christelle J. Jean-Felix (BBO# 704275)
TURK & QUIJANO, LLP
10 Forbes Road, Suite 400W
Braintree, MA 02184
(781) 364-4200
jturk@tqlawfirm.com
cjean-felix@tqlawfirm.com

Plaintiffs,
**MATTHEW ORTINS,
OLIVIA SAVARINO, and
ALL OTHERS SIMILARLY
SITUATED**

By their attorneys,



Orestes G. Brown (BBO# 566431)
Bailey Buchanan (BBO# 651966)
METAXAS BROWN PIDGEON
900 Cummings Center, Suite 207T
Beverly, MA 01915
(978) 927-8000
obrown@metaxasbrown.com
bbuchanan@metaxasbrown.com

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1477CV01122

MATTHEW ORTINS & others¹

vs.

LINCOLN PROPERTY COMPANY & others²

**MEMORANDUM OF DECISION AND ORDER ON
JOINT MOTION FOR ORDER APPROVING FINAL DISTRIBUTION OF
UNCLAIMED SETTLEMENT FUNDS TO DESIGNATED CY PRES RECIPIENTS**

Before the court is the parties' Joint Motion for Order Approving Final Distribution of Unclaimed Settlement Funds to Designated Cy Pres Recipients (Paper No. 69). Therein, the parties seek distribution of unclaimed settlement funds both back to defendants, and to two certain non-profit organizations, under the provisions of the prior-approved Settlement Agreement.³ However, the Settlement Agreement was reached, and approved, in violation of Mass. R. Civ. P. 23(e), which requires that notice be provided to the Massachusetts IOLTA Committee ("IOLTA Committee") regarding residual funds, and prohibits the return of any such funds to defendants.

The first notice to the IOLTA Committee of the settlement or proposed settlement of this class action occurred in December 2023, when notice of the hearing on the instant motion was provided. This fact is not disputed. The IOLTA Committee now objects to any disbursement of unclaimed funds to the defendants and asks the court "to correct" the Settlement Agreement and

¹ Olivia Savarino and all others similarly situated.

² Salem Station, LLC and Lincoln Apartment Management, LP

³ The title of the joint motion does not accurately reflect what the parties are seeking from the court. In reality, no one, not the plaintiffs and not the defendants, believe that the defendants are "cy pres recipients."

“not perpetuate” the violation for the reasons stated in its opposition and at hearing.⁴ While the defendants do not contest the lack of notice (nor do the plaintiffs), they claim that disbursement of funds to the defendants is permissible because those funds do not constitute “residual funds,” as defined in Rule 23(e)(1). The IOLTA Committee refutes that interpretation of the definition of that term.

The difficult issue before the undersigned is whether, despite the Rule 23(e) violations, the court should leave intact the Settlement Agreement and disburse the agreed-upon funds to the defendants where the court already has engaged in a deliberative and lengthy process to approve that agreement. Indeed, the motion for preliminary approval entailed three hearings before the court (Lu, J.), during which distribution of unclaimed settlement funds was a specific subject of the court’s attention, discussion, and concern. Initially, the court did not approve the non-profits that were named to receive residual funds because they had no relationship to the asserted claims and, more significantly, for purposes of this motion, it twice denied the proposed settlement agreement because it rejected the amount of unclaimed funds that would revert to the defendants as too large. Thus, it cannot be said that the issue of residuals was not prominently on the radar screen of the plaintiffs, the defendants, and the court on August 25, 2020, the date of the first hearing; on September 16, 2020, the date of the second hearing; and on July 8, 2021, the date of the third hearing. Ultimately, after the requisite revisions were made, the court (Lu, J.) approved the Settlement Agreement on July 12, 2021, notice was provided the class members, payment was made to 220 class members who submitted claim forms and were approved, leaving the unclaimed funds that are the subject of this motion.

⁴ The IOLTA Committee does not object to disbursement of funds to the two non-profit organizations named in the Settlement Agreement.

Nevertheless, the court agrees with the IOLTA Committee's interpretation of the requirements and definitions found in Rule 23(e), the public policy concerns it addresses, and the court's role to protect other class members. The court also agrees that the failure of notice, and the return of the funds to the defendants constitute violations of the rule. However, under the circumstances here, where an agreement already has been approved by the court, following a deliberative process, the IOLTA Committee does not identify, and the court has not found, any appellate or other suggested guidance on how to proceed.

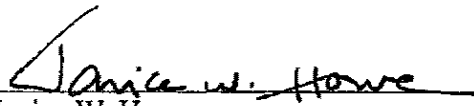
Balancing these competing concerns, and in the absence of such guidance, the court reluctantly will allow the motion. This is not a case where the judge faced with preliminary approval, then final approval of a class action settlement agreement, had only limited exposure to the papers and the details of the provisions contained therein, and held one brief hearing on the matter with no discussion of the contents. Rather, the court and the parties engaged in almost a year-long deliberative settlement and approval process, which the court, in its discretion, declines to unwind. See generally Kendall v. Hyannis Restorations, Inc., 81 Mass. App. Ct. 1118, 2012 WL 694461, at *2 (2012) (Unpublished Opinion) (discussing law of the case doctrine, and related principle that "even in the absence of a final judgment, a court or judge is not bound to reconsider a case, an issue, or a question of fact or law, once decided" [citation omitted]), and cases cited.

CONCLUSION AND ORDER

For the above reasons, the Joint Motion for Order Approving Final Distribution of Unclaimed Settlement Funds to Designated Cy Pres Recipients (Paper No. 69) is **ALLOWED**.

The Complaint (Paper No. 1) is hereby **DISMISSED**, and judgments shall enter on all claims.

Dated: April 4, 2024


Janice W. Howe
Justice of the Superior Court