IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

ARLENA CHANEY, *et al*., Plaintiffs, v. CAPITOL PARK ASSOCIATES, an Illinois limited partnership, *et al.*, Defendants.	No. 2012 CA005582 B Judge Neal E. Kravtiz Calendar 13 Next Event: Status Conference May 9, 2014

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND APPROVAL OF CLASS NOTICE

For the reasons set forth in the accompanying Memorandum of Law and exhibits, Plaintiff Yisehac Yohannes hereby moves the Court without opposition for preliminary approval of a settlement in this matter, and for approval of the proposed notice to class members.

The parties request that the status conference set for May 9, 2014 be treated as a hearing on this motion, for purposes of setting deadlines for further proceedings in connection with the settlement.

A [Proposed] Order Preliminarily Approving Settlement and Approving Class Notice ("Preliminary Approval Order") is attached. The Preliminary Approval Order is incorporated by reference into and made a part of the Settlement Agreement between the parties, and the parties therefore respectfully request that it be entered in substantially the same form as submitted.

Dated: May 2, 2014

Respectfully submitted,

/s/ *Robert O. Wilson*
Tracy D. Rezvani (Bar No. 464293)
Robert O. Wilson (Bar No. 1005987)
REZVANI VOLIN & ROTBERT P.C
1050 Connecticut Avenue NW, 10th Floor
Washington, D.C. 20036
Phone: (202) 350-4270
Fax: (202) 351-0544
trezvani@rvrlegal.com
rwilson@rvrlegal.com

Michael G. McLellan (Bar No. 489217)
FINKELSTEIN THOMPSON LLP
1077 30th Street NW, Suite 150
Washington, DC 20007
Phone: (202) 337-8000
Fax: (202) 337-8090
mmclellan@finkelsteinthompson.com

Class Counsel

CERTIFICATION PURSUANT TO CIVIL RULE 12-I

I certify that on April 28, 2014 I contacted counsel for Defendants to obtain Defendants' consent to the relief requested in this motion, which consent was granted.

/s/ *Tracy D. Rezvani*
Tracy D. Rezvani

CERTIFICATE OF SERVICE

I certify that on May 2, 2014 a true copy of the foregoing, along with all supporting papers, was filed using the Court's electronic filing system, which sent a notice of electronic filing to all counsel of record.

/s/ *Robert O. Wilson*
Robert O. Wilson

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

ARLENA CHANEY, *et al.*, Plaintiffs, v. CAPITOL PARK ASSOCIATES, an Illinois limited partnership, *et al.*, Defendants.	No. 2012 CA 005582 B Judge Neal E. Kravitz Calendar 13

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND APPROVING CLASS NOTICE

WHEREAS, on May 1, 2014, the parties to the above-entitled action (the "Action") entered into a Settlement Agreement which is subject to review under Superior Court Civil Rule 23 and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed settlement of the claims alleged in the Third Amended Complaint on the merits and with prejudice; and the Court having read and considered the Settlement Agreement and the accompanying documents; and the parties to the Settlement Agreement having consented to the entry of this Order; and all capitalized terms used herein having the meanings defined in the Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Class, as certified by the Court in its Order Granting Plaintiffs' Motion for Class Certification is hereby re-defined as follows:

> All current and former residents of the Towers who, at any time during the period of July 10, 2009 through November 15, 2013, paid to any Defendant a monthly fee for parking at the Towers.

> Excluded from the Settlement Class are Defendants, any parent, subsidiary, affiliate or sister company of Defendants, and all employees, officers or directors of Defendants, or any parent, subsidiary, affiliate or sister company at any time during the Class Period, and the legal representatives, heirs, successors, and assigns of any of the foregoing. Also excluded from the Settlement Class is any person who timely submits a valid request to be excluded from this Settlement, and any person who has previously executed a release in favor of one or more of the Defendants which release is broad enough to include the claims asserted in the Action.

2. A hearing (the "Final Fairness Hearing") pursuant to Rule 23(e) of the Superior Court Civil Rules is hereby scheduled to be held before the Court on _____, 2014, at _____ a.m./p.m. in Courtroom 219, Moultrie Courthouse, 500 Indiana Avenue NW, Washington, DC 20001, for the following purposes:

a) to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be approved by the Court;

b) to determine whether the Order and Final Judgment as provided under the Settlement Agreement should be entered, dismissing the Third Amended Complaint filed in this case, on the merits and with prejudice, and to determine whether the Releases set forth in the Settlement Agreement should be provided;

c) to consider Class Counsel's application for an award of attorneys' fees and expenses;

d) to consider the Class Representatives' application for incentive awards; and

e) to rule upon such other matters as the Court may deem appropriate.

3. The Court reserves its power to approve the Settlement Agreement with or without modification and with or without further notice of any kind.

4. The Court approves the form, substance and requirements of the Notice.

5. The Court approves the appointment of Heffler Claims Group as the Claims Administrator. The Claims Administrator shall cause the Notice substantially in the form annexed as Exhibit 1 to the Settlement Agreement, to be mailed, by first class mail, postage prepaid, on or before thirty (30) business days after entry of this Order, to all Class Members who can be identified with reasonable effort. Class Counsel shall also post a copy of the Notice on their websites. Class Counsel shall file with the Court proof of mailing of the Notice on or before the date listed below.

6. The form and content of the Notice, and the method set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Superior Court Civil Rules and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

7. Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such persons request exclusion from the Class in a timely and proper manner, as provided in the Settlement Agreement and Notice.

8. Class Members requesting exclusion from the Class shall not be entitled to receive any payment from the Settlement Fund, as described in the Settlement Agreement and Notice.

9. The Court will consider comments and/or objections to the Settlement, or the award of attorneys' fees and reimbursement of expenses, or the approval of incentive awards only if such comments or objections and any supporting papers are filed in writing with the Superior Court of the District of Columbia, Moultrie Courthouse, 500 Indiana Avenue NW, Washington, DC 20001 and copies of all such papers are served, on upon the following counsel

for the parties: Tracy D. Rezvani, Rezvani Volin & Rotbert P.C., 1050 Connecticut Avenue NW, 10th Floor, Washington, DC 20036; Michael G. McLellan, Finkelstein Thompson LLP, 1077 30th Street NW, Suite 150, Washington, DC 20007; *and* William C. Casano, Greenstein DeLorme & Luchs, P.C., 1620 L Street NW, Suite 900, Washington, D.C. 20036. All objections must contain: (i) the title of the Action; (ii) the objector's full name, address, and telephone number (and for former residents of the Towers, the apartment unit number(s) at the Towers rented by the Class Member during the Class Period), (iii) the parking space numbers of the parking space used by the Class Member as well as the period of use; (iv) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel; (v) the identity of all counsel representing the objector; (vi) the identity of all counsel representing the objector who will appear at the Final Fairness Hearing; (vii) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection; (viii) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and (ix) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative. All comments and objections must be filed with the Court and served on counsel for the parties no later than the date set forth below. No Class Member who has not filed comments or objections will be allowed to appear at the Final Fairness Hearing.

10. Pending final determination of whether the Settlement should be approved, the Class Representatives, all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Claims against any Released Party.

11. As provided in the Settlement Agreement, the Settlement Fund Custodian may release funds from the Settlement Fund to pay the Claims Administrator the reasonable fees and costs associated with giving notice to the Class and the review of claims and administration of the Settlement out of the Settlement Fund within 30 business days of invoicing of such costs, without further order of the Court.

12. If any specified condition to the Settlement set forth in the Settlement Agreement is not satisfied and Class Counsel or Defendants' Counsel elects to terminate the Settlement as provided in Paragraph 36 of the Settlement Agreement, then, in any such event, the Settlement Agreement, including any amendment(s) thereof, and this Order Preliminarily Approving Settlement and Approving Class Notice for purposes of the Settlement shall be null and void, of no further force or effect, and without prejudice to any party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity, and each party shall be restored to his, her or its respective position as it existed prior to the execution of the Settlement Agreement, except as otherwise provided in the Settlement Agreement.

13. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

14. The following deadlines are hereby established for further proceedings in this Action. The Court may adjourn any of the dates set forth below from time to time, including the date of the Final Fairness Hearing, without further notice.

June 9, 2014	Deadline for mailing of notice
July 9, 2014	Deadline for Class members to opt out of the settlement, or submit comments in support of or in opposition to the settlement or the applications for fee and expense awards or incentive awards

July 16, 2014	Deadline for motion for final approval of the proposed settlement, and the applications for fee and expense awards and incentive awards, and responses to objections
July 18, 2014	Deadline for filing proof of mailing of notice
July 30, 2014	Final Fairness Hearing

Dated: _____, 2014 _____

Hon. Neal E. Kravitz

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

ARLENA CHANEY, *et al*., Plaintiffs, v. CAPITOL PARK ASSOCIATES, an Illinois limited partnership, *et al.*, Defendants.	No. 2012 CA005582 B Judge Neal E. Kravtiz Calendar 13 Next Event: Status Conference May 9, 2014

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND APPROVAL OF CLASS NOTICE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes & Rules

Other Authorities

Pursuant to SCR-Civil 23(e), Plaintiff Yisehac Yohannes ("Yohannes")[1] respectfully submit this memorandum in support of his Unopposed Motion for Preliminary Approval of Settlement and Approval of Class Notice. Defendants Capitol Park Associates, an Illinois limited partnership ("CPA"); Capitol Park Land Corporation ("CPLC); A.I.M. Partnership No. 1, an Illinois limited partnership ("AIM"); and EJF Real Estate Services, Inc. ("EJF") (collectively "Defendants") have informed Class Counsel that they do not oppose this motion. Unless otherwise noted, capitalized terms have the meaning ascribed to them in the Settlement Agreement submitted herewith.

I. INTRODUCTION

After nearly two years of litigation, Plaintiff has reached a settlement with Defendants. Plaintiff seeks preliminary approval of the Settlement Agreement ("Settlement"), attached hereto as Exhibit A. If finally approved by the Court, the Settlement will resolve the class claims against Defendants and provide the Class with a $500,000 recovery.

For the reasons set forth below, the Court should grant preliminary approval of the Settlement, and approve of the proposed notice of settlement and plan of notice. A [Proposed] Order Preliminarily Approving Settlement and Approving Class Notice ("Preliminary Approval Order") is submitted with Plaintiff's Motion. The Preliminary Approval Order is incorporated by

[1] Plaintiff Arlena Chaney ("Chaney") does not support the proposed settlement of this action, and Class Counsel have been unable to communicate with Plaintiff John Bou-Sliman ("Bou-Sliman") regarding approval of the proposed settlement. However, based on Yohannes' support for the settlement, as well as Class Counsel's opinion—based on extensive experience in litigating class action cases—that the proposed settlement is in the best interest of the Class, Yohannes moves for preliminary approval notwithstanding the lack of unanimous support among the Class Representatives. A more detailed discussion of these issues is included in § IV(B)(3)-(4), *infra*. Accordingly, the term "Plaintiff" does not include Chaney and Bou-Sliman when used in connection with the proposed settlement or support of this Motion. The term "Plaintiffs" and "Class Representatives" do include Chaney and Bou-Sliman when used in discussion of the history of the litigation preceding the proposed settlement.

reference into and made a part of the Settlement, and the parties therefore respectfully request that it be entered in substantially the same form as submitted.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT NEGOTIATIONS

A. Background of the Litigation

This is a class action arising from Defendants' licensing of parking spaces at the Capitol Park Towers Apartments, 301 G Street SW, Washington DC ("Towers") to residents of the Towers for a monthly fee. The Class Representatives allege that Defendants' practices violated the District of Columbia business licensing and zoning regulations. The litigation asserted claims for several classes of violations of the District of Columbia Consumer Protection Procedures Act ("CPPA"), abatement of zoning violations pursuant to D.C. Code § 6-641.09, and unjust enrichment.

On July 10, 2012, the Class Representatives filed their initial Complaint against Defendants and American Rental Management Company ("ARMC"). On July 31, 2012, the Class Representatives filed an Amended Complaint as a matter of right pursuant SCR-Civil 15(a) in order to correct a typographical error in the initial Complaint. On August 21, 2012, the Class Representatives moved for leave to file a Second Amended Complaint at Defendants' request, in order to clarify the full legal names of certain Defendants. On September 13, 2012, the Court granted Plaintiffs' motion, and deemed the Second Amended Complaint filed as of that date.

On August 27, 2012, Defendants and ARMC filed an answer and motion to dismiss the Second Amended Complaint. On March 11, 2013, the Court, Johnson, J., issued an Order granting in part and denying in part the motion to dismiss, dismissing ARMC as a party to the case, and ordering that the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") be named as a party to the case.

On March 14, 2013, the Class Representatives filed their Third Amended Complaint ("TAC"), naming the DCRA as a party to the case and removing ARMC as a Defendant. In all other respects, the TAC was substantially identical to the Second Amended Complaint. Also on March 14, 2013, Defendants filed a motion for reconsideration of the Court's Order on the motion to dismiss, which the Court denied on May 20, 2013.

On June 4, 2013, the DCRA filed a motion seeking to be dismissed as a party. On July 17, 2013, the Court entered a consent Order dismissing the DCRA as a party to the case, and ordering that allegations as to the invalidity of CPA's 2012 parking facility license endorsement would no longer be entertained in the case.[2]

On September 13, 2013, the Class Representatives filed a motion for class certification, seeking certification of two largely overlapping classes: (1) a Licensing Class, composed of all current or former residents of the Towers who paid parking fees between July 10, 2009, the earliest date falling within the statute of limitations, and December 31, 2011, the last day before the effective date of CPA's parking establishment license endorsement issued by the DCRA; and (2) a Zoning Class, composed of all current or former residents of the Towers who paid parking fees between July 10, 2009 and the conclusion of the litigation. On November 15, 2013, CPA and CPLC sold the Towers, effectively mooting the Class Representatives' claims for injunctive relief and placing an end date on the Zoning Class Period. On January 31, 2014, Defendant filed a motion for summary judgment. On February 7, 2014, the Class Representatives filed a motion for partial summary judgment. On February 19, 2014, the Court granted Plaintiffs' motion for class certification.

[2] The Order was without prejudice to any legal remedies available to Plaintiffs, or any other persons, outside of this case.

B. Settlement Negotiations

The parties held informal settlement discussions on several occasions over the course of the litigation, which bore no fruit. On April 10, 2014 the parties, with the exception of Bou-Sliman, attended a mediation at the Court's Multi-Door Dispute Resolution Division, facilitated by mediator Randell Norton. The mediation lasted approximately three and a half hours. At all times during the mediation, the parties negotiated at arms' length and in good faith. After hard-fought negotiations, Plaintiff and Defendants reached an agreement in principal to settle the litigation for a lump sum settlement fund of $500,000. Chaney did not support the agreement, and Class Counsel were unable to communicate with Bou-Sliman to obtain his approval for the agreement.

III. TERMS OF THE SETTLEMENT

A. Class Definition

The Settlement contemplates a modification of the definition of the Class certified pursuant to the Court's February 19, 2014 Order Granting Plaintiffs' Motion for Class Certification. The parties request that the Class be re-defined as follows:

> All current and former residents of the Towers who, at any time during the period of July 10, 2009 through November 15, 2013, paid to any Defendant a monthly fee for parking at the Towers.
>
> Excluded from the Settlement Class are Defendants, any parent, subsidiary, affiliate or sister company of Defendants, and all employees, officers or directors of Defendants, or any parent, subsidiary, affiliate or sister company at any time during the Class Period, and the legal representatives, heirs, successors, and assigns of any of the foregoing. Also excluded from the Settlement Class is any person who timely submits a valid request to be excluded from this Settlement, and any person who has previously executed a release in favor of one or more of the Defendants which release is broad enough to include the claims asserted in the Action.

B. Monetary Consideration and Plan of Allocation

The Settlement provides for establishment of a Settlement Fund of $500,000. The proceeds from the Settlement fund are to be allocated equally among the Class Members who do not request exclusion from the Settlement after deduction of attorneys' fee and expense awards, incentive awards, and the costs of notice and settlement administration. While the final per-Class Member distribution amount is not known at this time, it is likely to be substantial.

C. Release Provisions

As of the Effective Date of the Settlement, the Releasing Parties shall be deemed to have fully released and forever discharged the Released Parties, and each of them, of and from any and all rights, claims, liabilities, action, causes of action, costs and attorneys' fees, demands, damages and remedies, known or unknown, liquidated or unliquidated, legal, statutory, declaratory or equitable, that Releasing Parties ever had, now have, or may have in the future, that result from, arise out of, are based upon, or relate to in any way to the conduct, omissions, duties or matters alleged in the Third Amended Complaint, and the Released Parties will reciprocally release Plaintiff and Class Counsel except for claims such Released Parties may have by virtue of the apartment leases any one of them may have entered into with any of the Settlement Class Members.

D. Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards

Class Counsel plans to apply for an attorneys' fee award of 33% of the Settlement Fund. Class Counsel has not yet calculated their final lodestar amount based on the hours worked in prosecuting this Action, as significant work remains should preliminary approval be granted. However, Class Counsel have already generated in excess of $500,000 in lodestar to date. As such, the proposed attorneys' fee award will represent a significant *negative* multiplier to Class

Counsel's lodestar. Class Counsel additionally plans to apply for reimbursement of their out-of-pocket expenses incurred in prosecuting the Action. Class Counsel will submit a detailed summary of their hours worked and expenses incurred in support of their application for attorneys' fees and expenses, which will be filed with the Motion for Final Approval of the Settlement.

Additionally, the Class Representatives will be applying for incentive awards of $2,500 each. These incentive awards are fair and reasonable in light of the efforts that the Class Representatives expended in assisting with the prosecution of this Action. Each Class Representative devoted substantial time and effort to the prosecution of this Action, including some or all of the following: meeting with Class Counsel to discuss case strategy and prepare to meet their obligations as Class Representatives, corresponding with Class Counsel in writing and by telephone to keep abreast of and provide input regarding the prosecution of the Action, reviewing documents and filings, answering interrogatories, compiling and producing document discovery, sitting for depositions, and participating in settlement negotiations. *See Kifafi v. Hilton Hotels Ret. Plan*, No. 98-1517 (CKK), 2013 U.S. Dist. LEXIS 163458, at *41 (D.D.C. Nov. 18, 2013) ("In deciding whether to grant incentive awards and the amounts of such awards, courts consider factors such as 'the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursing the litigation.'"); *see also Advocate Health Care v. Mylan Labs. Inc. (In re Lorazepam & Clorazepate Antitrust Litig.)*, MDL No. 1290 (TFH), 2003 U.S. Dist. LEXIS 12344, at *35 (D.D.C. June 16, 2003). [3]

[3] SCR-Civil 23 is substantially identical to Fed. R. Civ. P. 23. The Court of Appeals "looks with favor on the federal authorities interpreting an identical federal rule." *In re Estate of Bonham*, 817 A.2d 192, 196 n.6 (D.C. 2003) (collecting cases).

E. The Court's Continuing Jurisdiction

If the Settlement receives final approval, the Court will retain jurisdiction over the parties and the Class Members for all matters relating to this litigation, including the administration, interpretation, effectuation or enforcement of the Settlement Agreement and the Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class and enforcement of the injunction against prosecuting Released Claims against any Released Parties.

IV. PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT IS APPROPRIATE

A. The Settlement Approval Process

SCR-Civil 23(e) requires that before a class action is dismissed or compromised, notice of the proposed dismissal or compromise must be given in the manner directed by the Court and judicial approval must be obtained. This generally involves a two-step process: First, the Court considers and grants preliminary approval of the settlement, s*ee Boyle v. Giral*, 820 A.2d 561, 564 (D.C. 2003), which triggers notice to the class of the proposed settlement. *See* SCR-Civil 23(e); *see also Thomas v. Powell*, 247 F.3d 260, 262 (D.C. Cir. 2001). Second, the Court holds a final fairness hearing and grants final approval if it finds the settlement to be fair, reasonable, and adequate. *Boyle*, 820 A.2d at 564.

Preliminary approval is appropriate if the settlement "appears to fall within the range of possible approval and does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys." *Richardson v. L'Oreal USA, Inc.*, 951 F. Supp. 2d 104, 106 (D.D.C. 2013) (internal quotation marks omitted). Preliminary approval should be granted if there is "any reason to notify the class members of the proposed settlement and to proceed with a

fairness hearing." *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). Indeed, since preliminary approval merely provides for notice and a final fairness hearing, it should ordinarily be granted so long as there is no evidence of collusion among the parties. *See Trombley v. Nat'l City Bank*, 759 F. Supp. 2d 20, 28 (D.D.C. 2011). "Preliminary approval of a proposed settlement to a class action lies within the sound discretion of the court." *Richardson*, 951 F. Supp. 2d at 106.

B. Preliminary Approval is Appropriate

1. The Proposed Settlement Falls Within the Range of Possible Approval

By any measure, a preliminary evaluation of the proposed settlement at issue here reveals that it falls "within the range of possible approval." *Richardson*, 951 F. Supp. 2d at 106. Indeed, under the circumstances, the proposed settlement represents an excellent recovery for the Class.

As the Court is aware, the material facts of this case are largely undisputed. The parties agree that Defendants entered into Parking License Agreements with Class members and charged them monthly fees to park their cars at the Towers. The parties agree that throughout the Licensing Class Period, Defendants did not have a parking establishment license endorsement issued by the DCRA. Finally, the parties agree that during the Zoning Class Period, the sole use listed on CPA's Certificate of Occupancy for the Towers was "Apartment House," and that Defendants did not seek or receive a special exception from the Board of Zoning Adjustment ("BZA") to operate a parking garage as a principal use on a non-alley lot on the Towers premises.

The unresolved issues in this case are primarily questions of law, including (1) whether the above facts constitute violations of the District of Columbia licensing and zoning regulations; (2) if so, whether those regulatory violations give rise to liability under the CPPA and the law of unjust enrichment; and (3) the proper measure of monetary relief. Several of the central regulatory and

measure-of-relief issues present questions of first impression, with no binding Court of Appeals precedent on point, and little helpful persuasive authority available to the Court.

As such, the parties recognize that it is difficult to predict the Court's ruling on the cross-motions for summary judgment or the outcome of a trial. Moreover, any judgment at the trial court level would be highly susceptible to reversal on appeal, since the Court of Appeals would likely be applying *de novo* review to largely-untested questions of law. As such, both Plaintiff and Defendants face a high degree of uncertainty regarding the litigation's ultimate outcome; Defendants face the real possibility of an award in the millions, but Plaintiff and the Class face the equally real possibility of recovering nothing. In light of these uncertainties, the proposed $500,000 settlement fund, a fund that will bring in excess of $1000 per class member, represents not just a result "within the range of possible approval," but an extremely positive outcome for the Class.

2. There Are No Grounds to Doubt the Settlement's Fairness.

The proposed Settlement is the result of informed, arm's length, and hard-fought negotiations among the parties and their counsel overseen by a court-approved mediator. When a settlement is entered into under such circumstances, there are no "grounds to doubt its fairness." *In re Vitamins Antitrust Litig.*, No. 99-197 (TFH), 2001 U.S. Dist. LEXIS 25071, at *30 (D.D.C. July 25, 2001) (granting preliminary approval where there was "no reason to believe that the Settlement was the product of collusion" and "the proposed Settlement is based on arms' length negotiations by experienced counsel"); *see also In re Independent Energy Holdings PLC Sec. Litig.*, No. 00 Civ. 6689, 2003 U.S. Dist. LEXIS 17090, at *13 (S.D.N.Y. Sept. 29, 2003) ("[T]he fact that the Settlement was reached after exhaustive arm's-length negotiations, with the assistance

of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable."). As such, the Court should grant preliminary approval of the settlement.

3. Plaintiff Chaney's Lack of Support for the Settlement is No Barrier to Preliminary Approval

As mentioned above, Chaney does not support the proposed settlement in this matter and may or may not submit comments in accordance with the schedule set forth below. Chaney's lack of support is not dispositive as to either preliminary or final approval, because the Court's duty is to evaluate the fairness of the settlement to the interests of the Class as a whole, rather than based entirely on the wishes of the named plaintiffs. Nor does Chaney's lack of support for the settlement dictate Class Counsel's duties on behalf of the Class.

"Class counsel is required to act in the best interests of the class considered as a unit." *Thomas v. Albright*, 77 F. Supp. 2d 114, 122 (D.D.C. 1999). Class counsel is responsible for protecting those interests "even in circumstances where the class representatives—their direct clients—take a position that counsel consider contrary to those interests." *Id.* When the desires of the class representatives diverge from the best interests of the class, Class Counsel is ethically obligated to act for the benefit of the Class. *Parker v. Anderson*, 667 F.2d 1204, 1211 (5th Cir. 1982) ("The compelling obligation of class counsel in class action litigation is to the group which makes up the class."); *see also* Tracy D. Rezvani, *Class Counsel: Conflicts Between Duties to the Class Representative and to the Class*, A.B.A. ANTITRUST COMPLIANCE BULL., Nov. 2007, at 18.[4]

Under these precepts, "agreement of the named plaintiffs is not essential to approval of a settlement which the trial court finds to be fair and reasonable." *Parker*, 667 F.2d at 1211; *see also Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 334 (W.D. Pa. 1997). This is because the

[4] Available at: http://rvrlegal.com/wp-content/uploads/2013/04/ABA-Antitrust-Compliance-Bulletin.pdf.

interests of the class cannot be compromised by a class representative's "refus[al] to assent to an otherwise fair and adequate settlement in order to secure their individual demands." *Parker*, 667 F.2d at 1211. As such, the Court should give "no special deference" to Ms. Chaney's position regarding the settlement. *See In re Airline Ticket Comm'n Antitrust Litig.*, 953 F. Supp. 280, 282 n.3 (D. Minn. 1997). Indeed, multiple courts have approved class action settlements despite a lack of support from class representatives.[5]

4. Plaintiff Bou-Sliman Is Unavailable

Bou-Sliman had permitted Class Counsel to mediate and resolve the litigation under certain financial terms. These terms were considered and applied by Class Counsel during the mediation and Class Counsel believes that the Settlement Agreement will be met with Bou-Sliman's approval. *See* Declaration of Tracy D. Rezvani (attached as Exhibit B). As the Court is aware, Bou-Sliman is in France following the death of his wife and handling her estate and other family matters. *Id.* However, as of the filing of this instant motion, Bou-Sliman had not returned to the U.S. Bou-Sliman has also not communicated with Class Counsel since April 10, 2014—the date of the mediation. *Id.* Class Counsel's ability to communicate with Bou-Sliman has been significantly impacted due to the geographical separation. In an abundance of caution, Class Counsel has not entered into the Settlement Agreement under Bou-Sliman's name. Class Counsel will notify the Court promptly upon receiving any communication from Bou-Sliman

[5] *See generally In re BankAmerica Corp. Sec. Litig.*, 350 F.3d 747 (8th Cir. 2003); *Elliot v. Sperry Rand Corp.*, 680 F.2d 1225 (8th Cir. 1992); *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615 (9th Cir. 1982); *Flinn v. FMC Corp.*, 528 F.2d 1169 (4th Cir. 1975); *In re Airline Ticket Comm'n Antitrust Litig.*, 953 F. Supp. 280 (D. Minn. 1997); *Maywalt v. Parker & Parsley Petroleum Co.*, 864 F. Supp. 1422 (S.D.N.Y. 1994), *aff'd*, 67 F.3d 1072 (2d. Cir. 1995); *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825 (E.D.N.C. 1994); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610 (N.D. Cal. 1979).

regarding his views of the settlement. Class Counsel, and Yohannes, still believe that the Settlement is in the best interest of the Class.

V. THE PROPOSED NATURE AND METHOD OF CLASS NOTICE ARE CONSTITUTIONALLY SOUND AND APPROPRIATE

"In any class action maintained under subdivision (b)(3), the Court shall direct to the members of the class the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." SCR-Civil 23(c). The purpose of the notice is to "afford members of the class due process which, in the context of the rule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not be bound by any subsequent judgment." *Peters v. Nat'l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992). Notice is adequate when it "fairly appris[es] the . . . members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Pigford v. Glickman*, 185 F.R.D. 82, 102 (D.D.C. 1999) (ellipsis in original).

In this case, Plaintiff proposes to distribute a copy of the Notice to each Class member via first class mail, a widely accepted form of notice. *See Peters*, 966 F.2d at 1486 (noting that it is "beyond dispute that notice by first class mail" is adequate); *see also In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 28 (D.D.C. 2011) (finding direct mailing to be a "more than adequate" means of distributing notice). Plaintiff has identified 207 Class members from records and interrogatory responses provided by Defendants, including their last known addresses. This includes 101 Class members still residing at the Towers and 106 Class members no longer residing at the Towers. Plaintiff has retained Heffler Claims Group, a company experienced in administering settlements in class action cases, to distribute the Notice. Plaintiff is confident that the mailed notice will reach all Class members who can be located with reasonable effort.

The proposed form of mailed notice provides the following details of the Settlement to prospective Class members in a fair, concise and neutral way: (1) a summary of the claims presented in the case; (2) the terms of the settlement; (3) the right to be excluded from the class by requesting exclusion by a certain date; (4) the fact that settlement will be binding on Class members who do not request exclusion; (5) the right of class members who do not request exclusion to enter an appearance by counsel; and (6) the right to file comments or objections to the settlement and appear at the final fairness hearing, and the procedure for doing so. *See* Exhibit 1 to the Settlement Agreement (proposed Notice). The means and forms of notice proposed here constitute valid and sufficient notice to the Class, the best notice practicable under the circumstances, and comply fully with the requirements of SCR-Civil 23 and due process. *See Peters*, 966 F.2d at 1487; *Pigford*, 185 F. Supp. 2d at 102.

VI. PROPOSED SCHEDULE

Plaintiff proposes the following schedule for the settlement proceedings. Plaintiff submits that the proposed schedule allows adequate time for all aspects of the settlement approval process, including the crucial matters related to Class member participation, while still ensuring an expeditious resolution to the case:

June 9, 2014	Deadline for mailing of notice
July 9, 2014	Deadline for Class members to opt out of the settlement, or submit comments in support of or in opposition to the settlement or the applications for fee and expense awards or incentive awards
July 16, 2014	Deadline for motion for final approval of the proposed settlement, and the applications for fee and expense awards and incentive awards, and responses to objections
July 18, 2014	Deadline for filing proof of mailing of notice

July 30, 2014	Final Fairness Hearing

VII. CONCLUSION

The proposed Settlement is presumptively fair, presents no obvious deficiencies, and therefore falls within the range of possible approval. Accordingly, the Court should grant preliminary approval of the proposed Settlement and enter an order substantially in the form of the Preliminary Approval Order filed along with the Motion.

Dated: May 2, 2014

Respectfully submitted,

/s/ *Robert O. Wilson*
Tracy D. Rezvani (Bar No. 464293)
Robert O. Wilson (Bar No. 1005987)
REZVANI VOLIN & ROTBERT P.C
1050 Connecticut Avenue NW, 10th Floor
Washington, D.C. 20036
Phone: (202) 350-4270
Fax: (202) 351-0544
rwilson@rvrlegal.com
trezvani@rvrlegal.com

Michael G. McLellan (Bar No. 489217)
FINKELSTEIN THOMPSON LLP
1077 30th Street NW, Suite 150
Washington, DC 20007
Phone: (202) 337-8000
Fax: (202) 337-8090
mmclellan@finkelsteinthompson.com

Class Counsel