

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

ARLENA CHANEY, <i>et al.</i> ,  Plaintiffs,  v.  CAPITOL PARK ASSOCIATES, an Illinois limited partnership, <i>et al.</i> ,  Defendants.	No. 2012 CA005582 B  Judge Neal E. Kravtiz Calendar 13  Next Event: Final Fairness Hearing July 28, 2014
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**PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT  
AND AWARD OF ATTORNEYS' FEES, EXPENSE REIMBURSEMENTS,  
AND INCENTIVE AWARDS**

For the reasons set forth in the accompanying Memorandum of Law and exhibits, Plaintiff Yisehac Yohannes hereby moves the Court without opposition for final approval of the settlement in this matter and for approval of the requested attorneys' fees and expense reimbursements, and Class Representatives' incentive awards.

Attached is a [Proposed] Order and Final Judgment in a form substantially identical to the Order and Final Judgment incorporated by reference into and made a part of the Settlement Agreement between the parties.

Dated: July 14, 2014

Respectfully submitted,

/s/ Tracy D. Rezvani

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**CERTIFICATION PURSUANT TO CIVIL RULE 12-I**

I certify that on July 11 and 14, 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 July 14, 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/ Tracy D. Rezvani  
Tracy D. Rezvani

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION  
FOR FINAL APPROVAL OF SETTLEMENT AND AWARD OF ATTORNEYS' FEES  
AND EXPENSE REIMBURSEMENTS, AND INCENTIVE AWARDS**

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Pursuant to SCR-Civil 23(e), Plaintiff Yisehac Yohannes (“Yohannes”)<sup>1</sup> respectfully submits this memorandum in support of the Unopposed Motion for Final Approval of Settlement and Award of Attorneys’ Fees and Expense Reimbursements, and Incentive Awards (“Motion for Final Approval”). 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”) do not oppose this motion. Unless otherwise noted, capitalized terms have the meaning ascribed to them in the Revised Settlement Agreement and the Settlement Agreement Addendum (collectively “Settlement”), which is attached as Exhibit 1 hereto.

## **I. INTRODUCTION**

The Settlement was reached after nearly two years of litigation and, if finally approved by the Court, will provide the Settlement Class Members with a recovery of five hundred thousand dollars (\$500,000). The Settlement is fair, reasonable, and adequate, and the result of extensive litigation, robust discovery, and arms-length mediation and negotiations. Indeed, it represents an excellent resolution and recovery for the Settlement Class Members, particularly when measured against the risks of further litigation.

The response to the Settlement by the Class – a single objection, and opt outs by only two (2) Class Members<sup>2</sup> – further militates in favor of final approval. Moreover, the basis for the sole

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<sup>1</sup> As explained below, Class Representative Arlena Chaney (“Chaney”) has opted out of the Settlement, and Class Representative John Bou-Sliman (“Bou-Sliman”) remains unresponsive to Class Counsel’s numerous attempts to reach him. As such, the term “Plaintiff” does not include Chaney and Bou-Sliman when used in connection with the instant Motion. The term “Plaintiffs” and “Class Representatives” include Chaney and Bou-Sliman when used in discussion of the history of this Action.

<sup>2</sup> Defendants have indicated that a third individual who has expressed a desire to exclude himself from the Settlement – Johnny Barnes – is not a Class Member, having released his claims in an earlier settlement. *See* Declaration of Tracy D. Rezvani in Support of Plaintiff’s Unopposed

objection is the bare desire for a higher settlement amount and a generalized concern that the award of fees, expense reimbursements, and incentives will leave “nothing much” for the Class Members. That objection fails to address the risk of continued litigation, explain why the requested fees, expense reimbursements, or incentive awards are inappropriate, or otherwise overcome the propriety of final approval.

For the reasons set forth below, the Court should grant final approval of the Settlement and approve the fees, expense reimbursements, and incentive awards requested by Class Counsel. Plaintiff submits, along with this Motion and memorandum, a [Proposed] Order and Final Judgment in substantially identical form to the Proposed Order and Final Judgment incorporated by reference in and made a part of the Settlement, and which form is attached as Exhibit 3 to the Settlement.

## **II. SUMMARY OF THE LITIGATION AND SETTLEMENT NEGOTIATIONS**

### **A. Background of the Litigation**

This class action arises 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 Action asserts 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

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Motion for Final Approval of Settlement and Award of Attorneys’ Fees, Expense Reimbursements, and Incentive Awards, attached as Exhibit 2 hereto (“Rezvani Decl.”) at ¶8.

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 the Class Representatives' 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. Order Granting In Part Defendants' Motion To Dismiss The Amended Complaint ("March 11, 2013 Order").

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.<sup>3</sup>

On September 13, 2013, the Class Representatives filed a motion seeking certification of two classes: (1) a Licensing Class, composed of all current or former residents of the Towers who

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<sup>3</sup> The Order was without prejudice to any legal remedies available to Plaintiffs, or any other persons, outside of this case.

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 mooted 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, based upon the briefs and exhibits presented by the parties, as well as the entire record of the case, the Court granted the Class Representatives' motion for class certification, finding that the proposed class action satisfies all four of the prerequisites of Rule 23(a) plus the requirements of Rule 23(b)(2) and (b)(3). *See* Order Granting Plaintiffs' Motion for Class Certification ("Order Granting Certification"). The intervening sale of the Capitol Park Towers to a third party on November 15, 2013, rendered the certification under Rule 23(b)(2) moot as Defendants no longer had power to enact any injunctive or prospective relief.

## **B. Settlement Negotiations**

The parties held informal settlement discussions on several occasions over the course of the litigation. For example, the parties exchanged proposals in May of 2013, which led to in-person discussions in September and October 2013. These discussions did not result in a resolution of the Action. *See* Rezvani Decl. at ¶5.

On April 10, 2014 the parties, with the exception of Plaintiff Bou-Sliman, attended 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 Yohannes and Defendants reached an agreement in principal to settle the litigation for a lump sum of five hundred thousand dollars (\$500,000). Plaintiff Chaney did not support the agreement, and Class Counsel were unable to communicate with Plaintiff Bou-Sliman to obtain his approval for the agreement. Class Counsel has called and emailed Plaintiff Bou-Sliman since the mediation. Other than an email from the morning of April 10, 2014, prior to finalizing the deal at mediation, Class Counsel has not heard from Plaintiff Bou-Sliman. Rezvani Decl. at ¶¶6-7.

On May 2, 2014, Plaintiff Yohannes moved, unopposed, for preliminary approval of the Settlement and the proposed class notice. This filing provided the Court with the Settlement Agreement and Exhibits as well as a Declaration by undersigned. On May 6, 2014, Plaintiff filed a motion to seal the Settlement Agreement Addendum ("Addendum"). The Addendum contains the supplemental agreement referenced in Paragraph 36 of the Settlement, which states the number of Class Member exclusions, or "opt-outs," necessary to trigger the right of a Settling Party to terminate the Settlement. On May 8, 2014, the parties filed the Supplemental Addendum To Settlement Agreement And Class Notice, which changed the recipient of opt-outs and objections from the Clerk's Office to Heffler Claims Group LLC ("Heffler").

On May 9, 2014, the Court held a preliminary approval hearing on the unopposed motion for preliminary approval. On May 9, 2014, the Court preliminarily approved the Settlement and denied the motion to seal, finding that the Class had a right to be aware of the terms of the Addendum. In light of the Court's direction and order, on May 12, 2014, Plaintiff filed a Praecipe Lodging Revised Settlement Agreement, Revised Proposed Notice, And Settlement Agreement Addendum.



Following the preliminary approval hearing, the Court issued an Order Preliminarily Approving Settlement and Approving Class Notice (“Preliminary Approval Order”). The Preliminary Approval Order approved the form, substance and requirements of the Notice, and the appointment of Heffler as the Claims Administrator. The Court set a Final Fairness Hearing for July 28, 2014, to consider remaining matters, including: (1) whether the proposed Settlement is “fair, reasonable, and adequate, and should be approved by the Court”; (2) whether the Order and Final Judgment presented to the Court should be entered; and (3) Class Counsel’s application for attorneys’ fees, expense reimbursements, and incentive awards to Class Representatives.

### **III. TERMS OF THE SETTLEMENT**

#### **A. Class Definition**

The Settlement and the Preliminary Approval Order slightly modifies the Class certified pursuant to the Order Granting Certification, to account for the November 15, 2013 sale of the Towers, which affected the viability of the Class Representatives’ claims for prospective and injunctive relief. Plaintiff requests that the Court, consistent with the Order Granting Certification, finally modify the Classes certified on February 19, 2014 under SCR-Civil 23(c)(1) 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 required Defendants to establish a Settlement Fund of five hundred thousand dollars (\$500,000). The proceeds of the Settlement Fund will be allocated equally among the Class Members who have not excluded themselves from the Settlement, after deduction of attorneys' fees and expense reimbursements, incentive awards, and the costs of notice and settlement administration. The Class initially included 207 members. *See* Affidavit Of Claims Administrator Regarding Compliance With The Settlement Agreement And This Court's "Order Preliminarily Approving Settlement And Approving Class Notice," attached as Exhibit 3 hereto ("Heffler Aff.") at ¶6.

The list of Class Members was subsequently augmented by one current tenant, Ms. Celestina Egbuhuo, for whom no parking agreement existed, but for whom Defendants' records contained evidence that she had paid for parking during the Class Period. Heffler Aff. at ¶9; Rezvani Dec. at ¶14. Class Counsel were also contacted by one former tenant, Mr. Ramadan Mohammad, who, according to Defendants' records, paid for parking only *outside* the Class Period. Mr. Mohammad was invited to provide, but has not as of the date of this filing provided, any evidence as to payment for parking during the Class Period, and he was accordingly not included in the Class. Rezvani Decl. at ¶14.

Three (3) of the parking records were jointly owned by couples or co-habiting individuals. Each of these jointly-owned records were treated as a single Class Member for purposes of allocation of the Settlement Fund, but Heffler sought to update the addresses of each individual tenant separately. Heffler Aff. at ¶8. Defendants' records demonstrated that only one pair of co-habitators still reside together at the Towers. *Id.* However, Heffler's records and research indicate that a second pair of co-habitators had not moved out of the Towers, and that only the remaining pair of co-habitators had moved out of the Towers – but to two different addresses.

*Id.* Class Counsel proposes that the collective share of the Settlement associated with this last pair of co-habitators, who have moved out, be divided equally between the two individuals in accordance with the Settlement, and mailed to the two separate addresses.

Two Class Members requested exclusion from the Settlement: Plaintiff Arlena Chaney and Mr. Awad Mahmoud. *See* Heffler Aff. at ¶16 and Exhibit C attached thereto. A third individual, Mr. Johnny Barnes, submitted two opt-outs. *Id.* However, Defendants have indicated that Mr. Barnes cannot be a Class Member because he previously settled his claims against Defendants, including parking claims, and Class Counsel has received no information to the contrary. *See* Rezvani Decl. at ¶8 (attaching documentary basis cited by Defendants).

Despite diligent efforts, Heffler has not to date located ten (10) individuals who have moved out of the Towers. Heffler Aff at ¶15. While Class Counsel continues to work with Heffler to see if these individuals can be located, the Settlement contemplates a *cy pres* distribution of any Residual, defined in the Settlement as “any monies remaining in the Settlement Fund after the distributions are completed pursuant to Paragraph 24 of this Settlement which the Claims Administrator determines would not be feasible financially for further distribution to Settlement Class Members.” As to Settlement Funds relating to the ten individuals that Heffler cannot locate, Class Counsel suggests that such funds be held in escrow by Monument Bank until such time as Class Counsel determines that those individuals cannot be located by the Claims Administrator through reasonable efforts, or until any Residual is finally determined for distribution under ¶¶24(a), 25-27 of the Settlement.

Absent further developments, the Settlement Fund will be allocated to 208 individuals (including the three pairs of co-habitators). Based on Class Counsel’s review of the records as of the filing of the instant Motion, the allocation of Settlement proceeds to each Class Member who

has not requested exclusion from the Settlement is estimated to be approximately \$1400. Rezvani Decl. at ¶20. With regard to any additional expenses incurred in the administration and finalization of the Settlement, the parties shall move the Court for distribution from the Settlement Fund.

**C. Release Provisions**

The Settlement sets forth the mutual release Defendants and Class Members will enjoy on the Effective Date. In brief summary, as of the Effective Date of the Settlement, the Released Parties and Releasing Parties will release claims they ever had, now have, or may have in the future, that relate to the Action, and will be barred and enjoined from instituting, commencing or prosecuting such claims, except that Defendants do not release claims they may have against any Class Member by virtue of any apartment lease for an apartment at Capitol Park Towers. Paragraphs 31-35 of the Settlement Agreement set forth the full scope of the releases.

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

The Settlement authorizes Class Counsel to apply for an attorneys' fee award of 33% of the Settlement Fund. Separate and apart from any fee award, the Settlement permits Class Counsel to seek approval for reimbursement of reasonable costs and expenses incurred by Class Counsel in litigating, handling, and resolving the Action. The Settlement also allows application for incentive awards to each of the Class Representatives in an amount not to exceed \$2,500 each.

**E. The Court's Continuing Jurisdiction**

If the Settlement receives final approval, the Court will retain jurisdiction over the parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Settlement and the Order and Final Judgment, any application for fees and expenses incurred in connection with administering

and distributing the Settlement proceeds to the Settlement Class Members, the processing of any residual through *cy pres*, and enforcement of the injunction against prosecuting Released Claims against any Released Parties.

### **III. THE CLASS SHOULD BE FINALLY CERTIFIED PURSUANT TO RULE 23**

This Court has previously determined that the prerequisites for certification pursuant to Rule 23 have been met in this Action. No party or Class Member challenges the propriety of certification, and nothing in the interim between the Court's certification of the class and the parties' settlement of the Action undermines the Court's findings. Indeed, the scrutiny required for certifying a settlement class is less demanding, as courts need not consider questions regarding the manageability of the case for trial. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619 (1997). The class definition presented for final approval takes into account the factual development limiting the class period and injunctive relief.

The Court previously determined that numerosity under Rule 23(a)(1) was met based, in part, on the finding that the proposed classes "would reach forty members." Order Granting Certification at 2-3 (citing *Bynum v. District of Columbia*, 214 F.R.D. 27, 32-33 (D.D.C. 2003) (noting 40-member class is generally found to satisfy numerosity requirement). As it turns out, the reach of the Settlement in this Action extends much further, to 208 Class Members.

The commonality requirement under Rule 23(a)(2) is also satisfied. As this Court reiterated, "the commonality requirement is satisfied when the same evidence will establish the defendant's liability as to all members of the class." Order Granting Certification at 4 (citing *Ford v. ChartOne, Inc.*, 908 A.2d 72, 85-86 (D.C. 2006)). Here, "liability issues for all class members will be determined by common evidence," thus "plaintiffs' have satisfied the commonality requirement." *Id.*

The Court also found that the typicality requirement under Rule 23(a)(3) is satisfied, stating:

Here, the injuries alleged by the named plaintiffs arise from the same conduct – the defendants’ charging of fees for parking – as the alleged injuries of the absent members of the proposed class. The differences in damages suffered by the plaintiffs and the absent class members do not negate the plaintiffs’ satisfaction of the typicality requirement, as ‘differences in the amount of damages claimed, or even the availability of certain defenses against a class representative, may not render his or her claims atypical.’

Order Granting Certification at 5 (citing *Ford*, 908 A.2d at 86). Nothing has changed or been presented to the Court that would challenge the finding of typicality.

With regard to the adequacy under Rule 23(a)(4), the Court considered and rejected an array of challenges to the Class Representatives, explaining: “The court is not persuaded that the named plaintiffs have antagonistic or conflicting interests with other class members sufficient to prevent them from acting in the best interests of the classes.” Order Granting Certification at 7. The Court also rejected the challenge to Class Counsel, which rested on the argument as to the timeliness of the motion for class certification. *Id.* at 7-8 (finding that the motion was timely filed, and that the challenge “gives the court no concern about the ability and motivation of the plaintiffs and their lawyers to prosecute this case vigorously on behalf of all members of the proposed classes.”).

Also undisturbed at this settlement stage is the Court’s analysis as to predominance and superiority under Rule 23(b)(3). As the Court previously determined, Plaintiff has “established the existence of several common questions of law and fact that are susceptible to class-wide proof.” *Id.* at 10 (listing nine separate examples of common questions). The Court also found superiority, explaining, “it will be more efficient for the claims against the defendants to be litigated as a class action than as a large number of individual actions. The court is also concerned that many class

members would not find it financially worthwhile to maintain a suit on their own.” Consistent with the Court’s observation, only two (2) Class Members have chosen to opt out of the Settlement and maintain the possibility of pursuing an individual suit.

For the reasons articulated in the Order Granting Certification and reiterated above, the Court should grant final certification to the Settlement Class, as slightly modified.

#### **IV. FINAL APPROVAL OF THE SETTLEMENT SHOULD BE GRANTED**

Approval of the Settlement “lies within the discretion of this Court.” *In re Lorazepam & Clorazepate Antitrust Litig. v. Mylan Labs.*, 205 F.R.D. 369, 375 (D.D.C. 2002);<sup>4</sup> *see also Boyle v. Giral*, 820 A.2d 561, 567 (D.C. 2003) (citing abuse of discretion standard as to trial court’s approval of class action settlement, and requiring appellants to show “either that the agreement in question was so manifestly unfair as to preclude judicial approval, or that the court did not have sufficient facts before it to make an informed judgment.”) (citing *Shepherd Park Citizens Ass’n v. General Cinema Beverages, Inc.*, 584 A.2d 20, 22 (D.C. 1990)).

Courts favor the settlement of class action litigation. *See, e.g., Mayfield v. Barr*, 985 F.2d 1090, 1092 (D.C. Cir. 1993) (policy of encouraging settlements is particularly appropriate in class actions, which are often complex, protracted, and demanding of limited judicial resources). In considering approval of a class action settlement, the Court need not undertake the “detailed and thorough investigation that it would undertake if it were actually trying the case.” *Radosti v. Envision Emi, LLC*, 717 F. Supp. 2d 37, 51 (D.D.C. 2010) (citations omitted). The Court’s inquiry

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<sup>4</sup> SCR-Civil 23 is substantially identical to Fed. R. Civ. P. 23. “[Superior Court] Rule 23 is identical to Federal Rule of Civil Procedure 23 except for certain changes in subsections (c)(1) and (c)(2) ....” Comments to Super. Ct. 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). “[W]hen a federal rule and a local rule contain the same language, ‘we will look to federal court decisions interpreting the federal rule as persuasive authority in interpreting the local rule’” *Oparaugo v. Watts*, 884 A.2d 63, 69 n.1 (D.C. 2005) (citations omitted).

“is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

Courts consider the facts and circumstances of each case, identify the most relevant factors under the circumstances, and exercise their discretion in deciding whether the proposed settlement is “fair, adequate and reasonable.” *Thomas v. Albright*, 139 F.3d 227, 231 (D.C. Cir. 1998); *see also Boyle*, 820 A.2d at 567 (affirming grant of final approval for settlement distribution that is “fair, reasonable, and adequate and in the best interests of” the settlement class). This inquiry may be performed by evaluating: (1) whether the settlement is the result of arm’s length negotiations; (2) the terms of the settlement in relation to the strength of plaintiffs’ case; (3) the status of the litigation at the time of settlement; (4) the reaction of the class; and (5) the opinion of experienced counsel. *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d at 104-105 (citing *Thomas*, 139 F.3d at 227 (D.C. Cir. 1998); *In re National Student Mktg. Litig.*, 68 F.R.D. 151, 155 (D.D.C. 1974); *Osher v. SCA Realty I*, 945 F. Supp. 298, 304 (D.D.C. 1996); *Pray v. Lockheed Aircraft Corp.*, 644 F.Supp. 1289, 1290 (D.D.C. 1986); *Moore v. National Assoc. of Sec. Dealers, Inc.*, 762 F.2d 1093, 1106 (D.C. Cir. 1985); *Stewart v. Rubin*, 948 F. Supp. 1077, 1087 (D.D.C. 1996), *aff’d*, 124 F.3d 1309 (D.C. Cir. 1997); *McGuinness v. Parnes*, 1989 WL 29814, \*1 (D.D.C. Mar. 22, 1989)).

As discussed below, this Settlement meets and exceeds these factors.

**A. The Settlement Is the Product of Arm’s Length Negotiations.**

The Settlement in this Action is the result of arm’s length negotiations conducted in good faith, and not the result of collusion. No party or Class Member suggests otherwise. The Settlement followed nearly two years of litigation and discovery, and after summary judgment had been raised and briefed by all parties. The settlement was achieved, after months of failed private attempts, through the Court’s Multi-Door Dispute Resolution Division. Negotiations were



conducted by Class Counsel, who are experienced class action litigators. The principals of Rezvani Volin P.C. have more than three decades of combined class action litigation experience. See Rezvani Decl. at ¶3. Tracy Rezvani has served as lead counsel for the entirety of this litigation, and has been appointed as Co-Lead Class Counsel and as a member of Plaintiffs' Steering Committees of class actions and mass actions by courts across the country. *Id.* at ¶4. Similarly, Finkelstein Thompson LLP, which has also been involved in this litigation since its inception, has prosecuted consumer fraud and other class actions nationwide for decades, and has recovered hundreds of millions of dollars for its clients. See Declaration of Michael G. McLellan in Support of Plaintiff's Unopposed Motion for Final Approval of Settlement and Award of Attorneys' Fees, Expense Reimbursements, and Incentive Awards, attached as Exhibit 4 hereto ("McLellan Decl.") at ¶3. Michael McLellan has many years of class action experience, and is currently spearheading efforts in multiple other complex litigations. *Id.* Based on their extensive class action litigation experience, Class Counsel were well suited to evaluate and negotiate the settlement of this Action.

Such circumstances support final approval of the Settlement. "A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.*, 565 F. Supp. 2d 49, 55 (D.D.C. 2008) (citing *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d 100 at 104); *In re Lorazepam & Clorazepate Antitrust Litig.*, MDL Docket No. 1290, 2003 U.S. Dist. LEXIS 12344, at \*7 (D.D.C. June 16, 2003). "Absent evidence of fraud or collusion, [class action] settlements are not to be trifled with." *Osher v. SCA Realty I, Inc.*, 945 F. Supp. at 304 (D.D.C. 1996) (internal citation omitted). In addition, "the 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.” *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).

**B. The Settlement Represents a Significant Recovery in Relation to the Strength of Plaintiffs’ Claims and the Risk of Further Litigation.**

In judging the strength of the negotiated recovery, the Court must weigh the Class Members’ chances of prevailing at trial against the recovery procured in the Settlement. *See Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd.*, 246 F.R.D. 349, 362 (D.D.C. 2007) (“It is obvious that Plaintiffs faced significant risks in establishing both liability and damages and in continuing to trial, and that the fairness, adequacy, and reasonableness of the settlement must be viewed in light of these considerations.”); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. at 377 (“The fact that this settlement amount is less than the total estimated damages is not surprising and ultimately does not render the terms of the settlement unfair, unreasonable, or inadequate in the Court’s opinion, as several additional factors should be taken into consideration. Continued litigation of these lawsuits would undoubtedly require substantial additional pretrial preparation and expense, as the defendants have denied all liability. . . . Further litigation also entails substantial risks[.]”);

A victory at trial and upon appeal is far from certain for the Class in this matter, and Class Counsel are required to evaluate the Settlement amount in light of this reality. *See Radosti*, 717 F. Supp. 2d at 59 (“[L]iability cannot be assumed when evaluating a proposed settlement, and [defendant] has defenses to this action that it would continue to assert if the settlement is rejected. Even setting aside the facts of the case, there are practical and procedural obstacles that stand in the way of success at trial.”). Moreover, even a successful recovery in this Action would require the delay necessary to litigate the Class Members’ claims, withstand any appellate practice, and

actually recover funds from Defendants. *See Luevano v. Campbell*, 93 F.R.D. 68, 89 (D.D.C. 1981) (“Even putting aside all consideration of the risks of litigation, the delay in providing relief to the class if this case were to be litigated is a factor strongly supporting the compromise reached by the parties.”).

The risks and uncertainties of recovery in this Action further support the propriety of approving the Settlement negotiated by the parties. As the Court is aware, the material facts of this Action are largely undisputed: Defendants entered into Parking License Agreements with Class Members, and charged Class Members monthly fees to park their cars at the Towers. Throughout the Licensing Class Period, Defendants did not have a parking establishment license endorsement issued by the DCRA. During the Zoning Class Period, the sole use listed on CPA’s Certificate of Occupancy for the Towers was “Apartment House.” Plaintiffs alleged 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—and should have. Plaintiffs’ Brief In Support of Motion for Partial Summary Judgment, at 10.

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 under those counts.

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 persuasive authority available to the Court. This uncertainty makes it more difficult to predict how the Court would rule on cross-motions for summary judgment or the outcome of a trial. In addition, any judgment at the trial court level would be vulnerable on appeal, as the Court of Appeals would likely apply

*de novo* review to new questions of law. While Defendants face the possibility of a larger award to Class Members, Plaintiff and the Class face the possibility of recovering less than the Settlement – or nothing at all. In light of these uncertainties and risks, the \$500,000 Settlement Fund, which will award approximately \$1400 per class member, represents an extremely positive outcome for the Class.

**C. Class Counsel Had a Full Understanding of the Facts and Legal Risks Associated With the Case Prior to Entering into the Settlement.**

Class Counsel's belief that the Settlement is fair, reasonable, and adequate is based on extensive experience with class action litigation generally, *see* Rezvani Decl. at ¶¶3-4; McLellan Decl. at ¶¶3-4, and in-depth knowledge of the facts, circumstances, strengths and weaknesses of this particular Action. Class Counsel's pre-settlement investigation, research, and discovery were robust, providing a well-founded basis upon which Class Counsel could negotiate this Settlement. Discovery was served, documents exchanged, motions to compel and motions *in limine* filed, and eight (8) depositions of parties and non-parties taken. The cross-motions for summary judgment were fully briefed and pending *sub judice* when the parties engaged in mediation. On April 10, 2014, Class Counsel had before it all the information necessary to evaluate fully the strengths and weaknesses of this case.

**D. The Reaction of the Class Favors Final Approval.**

The reaction of the Class Members – a single objection – further militates in favor of final approval in this Action. *See Thomas*, 139 F.3d at 231-33; *In re Nat'l Student Mktg. Litig.*, 68 F.R.D. at 155; *Osher*, 945 F. Supp. at 304; *Stewart*, 948 F. Supp. at 1057. The deadline for Class Members to object to or opt out of the Settlement was July 7, 2014. As of the filing of this Motion on July 14, 2014, the Claims Administrator has received only a single objection to the Settlement and only two requests by Class Members to opt out. *See* fn 1, *supra*; Heffler Aff. at ¶16.

The sole objection, filed by Samson O. Adeboye, is based on a desire for a higher settlement amount and a generalized concern that the award of fees, expense reimbursements, and incentives will leave “nothing much” for the Class Members – but the objection fails to address the risk of continued litigation or explain why the requested fees, expense reimbursements, or incentive awards are inappropriate in this case. *See* Exhibit D to Heffler. Aff. Indeed, Mr. Adeboye’s objection is “tantamount to complaining that the settlement should be ‘better,’ which is not a valid objection.” *Browning v. Yahoo Inc.*, No. C04-01463, 2007 WL 4105971, at \*5 (N.D. Cal. Nov. 16, 2007) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)).

Plaintiff Chaney’s decision to opt out of the Class should not otherwise affect the Court’s analysis. Notably, “agreement of the named plaintiffs is not essential to approval of a settlement which the trial court finds to be fair and reasonable.” *Parker v. Anderson*, 667 F.2d 1204, 1211 (5th Cir. 1982); *see also Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 334 (W.D. Pa. 1997).<sup>5</sup> Moreover, Ms. Chaney chose to exclude herself from the Class, depriving her of standing to object to the Settlement. As such, the Court may disregard any criticisms of the Settlement in Ms.

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<sup>5</sup> Class counsel is responsible for protecting the interests of the Class “even in circumstances where the class representatives—their direct clients—take a position that counsel consider contrary to those interests.” *Thomas v. Albright*, 77 F. Supp. 2d 114, 122 (D.D.C. 1999). 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 Indeed, multiple courts have approved class action settlements despite a lack of support from class representatives. *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).

Chaney's opt-out letter. See *In re Vitamins Antitrust Litig.*, 2000 U.S. Dist. LEXIS 8931, at \*31-32 (D.D.C. March 30, 2000) (citations omitted) ("It is firmly established in this Circuit, and elsewhere, that class members who opt out of the class and are thus not parties to the settlement lack standing to object to the settlement."). The Notice plainly disclosed this consequence, stating "[y]ou may only submit comments or objections if you remain a Class Member. You may not do so if you exclude yourself from the settlement." Notice at 2.

Regardless, the basis for Ms. Chaney's decision would not militate in favor of disapproval even if it were properly before the Court. Ms. Chaney states:

The settlement offer is far too small for the owner's past illegal transgressions of operating a commercial parking garage on his commercial property without a license since the 1980s. The settlement offer does not center at all on the limitations of future parking costs for us tenants, who should not be charged in the first place, since, there is no DC Certificate of Occupancy offered by the DC Zoning office, which would allow the owner to charge for parking.

Exhibit C to Heffler Aff. Ms. Chaney's bare assertion that the settlement amount is "too small" is insufficient grounds to challenge the Settlement. *Browning*, 2007 WL 4105971, at \*5. Moreover, Ms. Chaney's criticism of the Settlement is founded in legal limitations and not factual ones. For example, Ms. Chaney expresses concern over the length of time that parking has been offered at the Towers without a license, but fails to discuss Judge Johnson's March 11, 2013 Order (a) applying the statute of limitations and limited the potential class period in the Action, and (b) dismissing ARMC. Order dated March 11, 2103. As a result of the March 11, 2013 Order, Plaintiff and Class Counsel were barred from obtaining any recovery prior to July 10, 1999, much less back to 1980. Moreover, as the Defendants no longer own or legally control the Towers, even had the Action not settled at mediation, an order of prospective relief against Defendants as to the Towers would have little or no value, as Defendants have no legal power to control how parking is operated at the Towers after November 15, 2013. Ms. Chaney, like all current resident parkers of

the Towers, has the ability to seek legal remedies against the current owners of the Towers in court or through the Board of Zoning Adjustment.

Class Representative Bou-Sliman has been unresponsive to Class Counsel's numerous attempts to contact him since April 10, 2014. Mr. Bou-Sliman authorized Class Counsel to mediate and resolve the Action under certain financial terms, which terms were considered by Class Counsel during the mediation. As Class Counsel has advised the Court, Mr. Bou-Sliman traveled to France on or around October 2013, due to the prolonged illness and subsequent death of his wife, and to handle his wife's estate and other family matters. These circumstances have significantly impacted Class Counsel's ability to communicate with Mr. Bou-Sliman. Mr. Bou-Sliman has not communicated with Class Counsel since April 10, 2014—the date of the mediation. In an abundance of caution, Class Counsel did not enter into the Settlement Agreement under Mr. Bou-Sliman's name. Notice was mailed and emailed to Mr. Bou-Sliman. Since execution of the Settlement, Class Counsel has attempted to reach Mr. Bou-Sliman by leaving a message at his home answering system and by email. To date, Class Counsel has received no communication from Mr. Bou-Sliman on this Settlement or the Action. *See Rezvani Decl.* at ¶7.

#### **E. The Opinion of Experienced Counsel**

For the reasons stated above, Class Counsel believes that the Settlement is fair, reasonable, adequate and – consistent with Class Counsel's overriding obligation – in the best interests of the Class. Courts generally “defer to the judgment of experienced counsel” in ruling on proposed class action settlements. *Stewart v. Rubin*, 948 F. Supp. 1077, 1099 (D.D.C. 1996) *aff'd*, 124 F.3d 1309 (D.C. Cir. 1997). “Although the Court will not defer blindly to the views of counsel with regard to the adequacy of a settlement, it must consider that the Settlements were reached after several months of arm's-length negotiation by experienced counsel and that both counsel and all

parties involved view the settlements as reasonable.” *In re: Vitamins Antitrust Litig.*, 305 F. Supp. 2d at 106.

**V. ATTORNEYS’ FEES, EXPENSE REIMBURSEMENTS AND INCENTIVE AWARDS ARE REASONABLE AND APPROPRIATE.**

**A. The Percentage of the Fund Method Is Appropriate for Determining Attorneys’ Fees in This Common Fund Case.**

Consistent with the Settlement, Class Counsel seeks approval of the Court for payment of attorneys’ fees based on a percentage (33%) of the Settlement Fund. Such an approach to calculating attorneys’ fees is appropriate in common fund cases such as this Action. *See Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1265 (D.C. Cir. 1993) (“The underlying justification for attorney reimbursement from a common fund, as explained by the Supreme Court in three early cases, is that unless the costs of litigation were spread to the beneficiaries of the fund they will be unjustly enriched by the attorney’s efforts.”); *see also Radosti v. Envision EMI*, 760 F. Supp. 2d 73, 77 (D.D.C. 2011) (percentage of the fund method is “favored because [it] directly align[s] the interests of the class and its counsel and provide[s] a powerful incentive for the efficient prosecution and early resolution of litigation”); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”) (citing *Trustees v. Greenough*, 105 U.S. 527, 532-537 (1881)); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 393 (1970); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 396-97 (S.D.N.Y. 1999) (citing cases). Awards of fair attorneys’ fees from a common fund also serves to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and therefore to discourage future misconduct of a similar nature. *See, e.g., Hicks v. Morgan Stanley & Co.*, 2005 U.S. Dist. LEXIS 24890, at \*27 (S.D.N.Y. Oct. 19, 2005) (“To make certain that the



public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.”) (citation omitted).

**B. The Requested Fees Are Reasonable and Appropriate.**

Class Counsel respectfully asks this Court to consider the timely, excellent result reached for the Class in the face of a fluid and uncertain legal environment. Consistent with the Settlement, Class Counsel seeks approval of the Court for payment of 33% of the Settlement Fund, or \$165,000, in attorneys’ fees. Through July 13, 2014, Class Counsel has devoted approximately 1670.70 hours of time, generating \$683,145.51 in lodestar, towards attaining a recovery for the Class and working with the Claims Administrator and Defendants on post-Settlement notice and management of the case. *See* Rezvani Decl. at ¶10; McLellan Decl. at ¶4. As such, the requested attorneys’ fees represent a significant *negative* multiplier to Class Counsel’s lodestar.

In evaluating the reasonableness of a fee request in common fund cases, the Court may examine a variety of factors, including: (1) the size of the fund created and the number of persons benefited; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs’ counsel; and (7) the awards in similar cases. *In re Lorazepam*, 2003 WL 22037741, at \*7.

As discussed above in support of the final approval of the Settlement, Class Counsel demonstrated extensive skill and efficiency in this Action, commensurate with their decades of experience in class action litigation. As also discussed above, the complexity and duration of this Action supports the requested fee, and Class Counsel devoted significant time and effort to this Action.

Class Counsel offers the following additional discussion in support of the requested fees.

1. Size of the Fund Created and Number of Persons Benefitted

The \$500,000 Settlement Fund represents a significant monetary recovery of approximately \$1400 for each Settlement Class Member. Rezvani Decl. at ¶20. Moreover, the value of the recovery that Class Members can attain as a result of this negotiated Settlement must be assessed against the value of the recovery that may be obtained months or years from now, after litigation and appeals. *See, e.g., Donovan v. Estate of Frank E. Fitzsimmons*, 778 F.2d 298, n.3 (7th Cir. 1985) (a \$2 million settlement sum today is worth the same as a \$3.6 million recovery five years from now, at a prime interest rate of 12.5%).

2. Presence or Absence of Substantial Objections by Members of the Class to the Settlement Terms and/or Fees Requested by Counsel

Class Counsel can discern no substantive objection to the requested fees. Mr. Adeboye's objection notes that, after deducting attorneys' fees, expense reimbursements, and incentive awards, "nothing much will be left for the class members." *See* Exhibit D to Heffler Aff. It is difficult to decipher whether Mr. Adeboye's concern regarding the net Settlement amount flows from a concern over the gross Settlement amount, or over the amount and propriety of the deductions from the gross Settlement Amount, or both. Even if Mr. Adeboye's objection were read as an objection as to the amount of fees, Mr. Adeboye provides no explanation or substance to support that objection and does not take into account the significant negative multiplier applied to fees incurred by Class Counsel.

3. The Risk of Nonpayment

Class Counsel have received no compensation during the course of this Action, despite having committed a substantial amount of time and expenses in order to achieve a successful result for the Class. *See* Rezvani Decl. at ¶9. Significant resources were devoted to this matter, which

impacted counsel's ability to take on other potential clients. *Id.* Any fee award or expense reimbursement to Class Counsel has always been contingent on the result achieved and on this Court's exercise of its discretion in making any award. Class Counsel bore the risk that they would receive no compensation whatsoever for their work. These risks were especially heavy in this Action, which raises legal issues of first impression. *See* discussion *supra* at 16.

Class Counsel's assumption of these risks favors entry of the requested fee award. *See Radosti*, 760 F. Supp. 2d at 78 ("The Court also finds that Class Counsel faced a significant risk of nonpayment, having taken the case on a contingency basis and expending significant resources on investigation before negotiating the settlement. Class Counsel's recovery was threatened by significant obstacles to class certification."); *Cohen v. Warner Chilcott Pub. Ltd. Co.*, 522 F. Supp. 2d 105, 123 (D.D.C. 2007) (finding significant risk of nonpayment where case was brought on contingency).

#### 4. The Awards in Similar Cases

Class Counsel's request for an award of 33% of the Settlement Fund, plus expense reimbursements, is reasonable and consistent with awards granted by D.C. courts in similar cases. *See, e.g., Wells v. Allstate Ins. Co.*, 557 F. Supp. 2d 1, 6 (D.D.C. 2008) (awarding 45% fee); *Equal Rights Ctr., v. Washington Metro. Area Transit Auth.*, Civil Action 04-00498 (HHK), 2008 U.S. Dist. LEXIS 66762, at \*25 n. 11 (D.D.C. Sept. 2, 2008) ("this court has previously held that reasonable fee awards may range from fifteen to forty-five percent"); *In re Vitamins Antitrust Litig.*, Misc. No. 99-197, MDL No. 1285, 2001 U.S. Dist. LEXIS 25067, at \*58 (D.D.C. July. 16, 2001) (awarding 33.3% fee).

Indeed, courts around the country have often awarded fees of one third or more in common fund cases like this one. *See, e.g., In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1037-1038 (8<sup>th</sup> Cir.

2002) (affirming fee award of approximately 36 percent of settlement fund); *Waters v. Int’l. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (affirming award of 33⅓% of \$40 million recovery); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358 (S.D.N.Y. 2002) (awarding 33⅓% fee from settlement valued at approximately \$11.5 million); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 434 (E.D. Pa. 2001) (awarding 33⅓% fee from \$48 million settlement); *Retsky Family Ltd. P’ship. v. Price Waterhouse LLP*, No. 97 C 7694, 2001 U.S. Dist. LEXIS 20397 (N.D. Ill. Dec 10, 2001) (awarding 33⅓% fee from \$14 million settlement); *Faircloth v. Certified Fin. Inc.*, No. Civ. 99-3097, 2001 U.S. Dist. LEXIS 6793 (E.D. La. May 16, 2001) (awarding 35% fee from \$1.6 million settlement value); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 150 (E.D. Pa. 2000) (awarding 33⅓% fee; “the award of one-third of the fund for attorneys’ fees is consistent with fee awards in a number of recent decisions within this district”).

**C. The Expenses Incurred by Class Counsel Were Reasonable and Necessary to the Effective Prosecution of this Action.**

Class Counsel requests reimbursement of \$13,845.14 in total expenses, which were reasonable and necessary to the Action. *See* Exhibit B to Rezvani Decl. These expenses included fees for deposition transcripts, expert and litigation support vendors, court filing fees, and fees for legal research.

The relatively modest amount of expense reimbursements requested by Class Counsel should be approved. “[T]here is no doubt that any attorney who has created a common fund for the benefit of the class is entitled to reimbursement of . . . reasonable litigation expenses from that fund.” *Vitamins Antitrust Litig.*, 2001 WL 34312839 at \*13; *see also Radosti*, 760 F. Supp. 2d at 79 (same).

**D. The Class Representatives Should Each Receive an Incentive Award.**

The three Class Representatives (each of whom were named as plaintiffs in the Complaint) should each receive an incentive award. “[C]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *In re Lorazepam*, 2003 U.S. Dist. LEXIS 12344, at \*35 (citations omitted). Class Counsel did not condition their willingness to seek an incentive award on a particular Class Representatives’ willingness to support the settlement, and Class Counsel seek incentive awards for *all* the representatives, not just the one supporting the Settlement. The modest incentive award – up to \$2,500 to each Class Representative – is fair and reasonable in light of the substantial time and effort that the Class Representatives expended in assisting with the prosecution of this Action, and “are small in relation to the . . . fund from which the awards will be made.” *Id.* at \*36 (citations omitted).<sup>6</sup>

Class Representatives’ collective efforts include the following: interviewed Class Counsel prior to hiring them; meeting with Class Counsel to discuss case strategy and prepare to meet their obligations as representatives of the Class; 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; preparing and sitting for depositions (Plaintiffs Chaney and Yohannes); participating in settlement negotiations (all Plaintiffs) and in mediation (Plaintiffs Chaney and Yohannes). *See Rezvani Decl.* at ¶13; *see also 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

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<sup>6</sup> Courts routinely approve far larger awards. *See, e.g. Wells v. Allstate Ins. Co.*, 557 F.Supp.2d 1, 9 (D.D.C. 2008) (awarding \$10,000 awards); *Vista Healthplan*, 246 F.R.D. at 365 (\$12,500 award); *Cohen*, 522 F. Supp. 2d at 124 (\$7,500 award); *In re Lorazepam*, 2003 WL 22037741, at \*10 (\$20,000 award); *Vista Healthplan, Inc. v. Bristol-Myers Squibb Co.*, 287 F. Supp. 2d 65, 68 (D.D.C. 2003) (\$10,000 and \$40,000 awards).

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 pursuing the litigation.’”); *see also Lorazepam*, 2003 U.S. Dist. LEXIS 12344, at \*35. Class Counsel, therefore, requests an award of up to \$2500 for each Class Representative.

## **VII. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that this Court grant final approval to the Settlement, final certification of the modified Settlement Class, approve the requested fees, expense reimbursements and incentive awards, and enter the Order and Final Judgment submitted with this Motion.

Dated: July 14, 2014

Respectfully submitted,

/s/ Tracy D. Rezvani

Tracy D. Rezvani (Bar No. 464293)

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*Class Counsel*

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

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

This Revised Settlement Agreement (the "Settlement") is entered into by and between Plaintiff Yisehac Yohannes on behalf of himself and the Class, by and through Class Counsel on the one hand, and Defendants Capitol Park Associates, an Illinois limited partnership; Capitol Park Land Corporation; A.I.M. Partnership No. 1, an Illinois limited partnership; and EJP Real Estate Services, Inc., by and through Defendants' Counsel. This Settlement is being filed pursuant to Rule 23 and 23-I of the Superior Court Rules of Civil Procedure and is subject to preliminary and final approval by the Court.

**DEFINITIONS**

As used in this Settlement, the following terms have the meaning specified below:

- a) "Action" means the civil action entitled *Chaney, et al. v. Capitol Park Associates, an Illinois limited partnership, et al.*, No. 2012 CA 005582 B, filed on July 10, 2010, in the District of Columbia Superior Court.
- b) "Claims Administrator" means the class action claims administrator agreed upon by the Settling Parties, the Heffler Claims Group.

c) "Class Counsel" means Rezvani Volin & Rotbert P.C. and Finkelstein Thompson LLP, certified to represent the Class by Order of the Court dated February 19, 2014.

d) "Class Period" means July 10, 2009, through and including November 15, 2013.

e) "Class Representatives" means Arlena Chaney, John Bou-Sliman and Yisehac Yohannes.

f) "Complaint" means the Third Amended Class Action Complaint filed in the Action.

g) "Court" means the Superior Court for the District of Columbia.

h) "Defendants" means Capitol Park Associates, an Illinois limited partnership; Capitol Park Land Corporation; A.I.M. Partnership No. 1, an Illinois limited partnership; and EJJ Real Estate Services, Inc.

i) "Defendants' Counsel" means Greenstein DeLorme & Luchs, P.C.

j) "Effective Date" has the meaning set forth in Paragraph 28 of this Settlement.

k) "Escrow Account" means an account established by Class Counsel with joint signatory authority vested in the Claims Administrator, William C. Casano, and Tracy D. Rezvani which holds the Settlement Fund. In accordance with the terms and conditions set forth in Paragraph 9, the Escrow Account shall be held at Monument Bank.

l) "Final Fairness Hearing" means the hearing in the Action for the Court to consider final approval of this Settlement and the entry of Judgment.

m) "Judgment" means the Order and Final Judgment to be entered in the Action in connection with the Settlement after the Final Fairness Hearing. The Judgment shall be substantially in the form of Exhibit 3.



n) "Notice" means the Notice of Proposed Class Action Settlement to be given to Settlement Class Members in accordance with Paragraphs 12-17 of this Settlement. The Settling Parties' proposed form of Notice is attached as Exhibit 1.

o) "Plaintiff" means Yisehac Yohannes.

p) "Preliminary Approval Order" means the Order Preliminarily Approving Settlement and Approving Class Notice. The Settling Parties' proposed form of Preliminary Approval Order is attached hereto as Exhibit 2. An additional copy of the Preliminary Approval Order will be attached to Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Approval of Class Notice.

q) "Released Claims" means all claims and other matters released in and by Paragraphs 31-34 of this Settlement.

r) "Released Parties" means Defendants and their parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and all of the directors, officers, members, partners, shareholders, employees, agents, and attorneys of those entities.

s) "Releasing Parties" means Plaintiff and the members of the Settlement Class who do not opt out of the Settlement, and each of their respective spouses, executors, representatives, heirs, predecessors, successors, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants by the entirety, co-borrowers, agents, attorneys, and assigns, and all those who claim through them or who assert claims on their behalf.

t) "Residual" refers to any monies remaining in the Settlement Fund after the distributions are completed pursuant to Paragraph 24 of this Settlement which the Claims Administrator determines would not be feasible financially for further distribution to Settlement Class Members.

u) "Settlement Class Members" mean all members of the Settlement Class defined in Paragraph 6 of this Settlement.

v) "Settlement Fund" means the \$500,000.00 to be paid by Defendants in connection with this Settlement.

w) "Settlement Fund Custodian" or "Escrow Agent" shall mean Monument Bank.

x) "Settling Parties" means Plaintiff and Defendants.

y) "Third Party Notice and Claims Administration Costs" mean all costs incurred or charged by the Claims Administrator in connection with the notice and claims administration process pursuant to this Settlement. This does not include any costs incurred directly by Plaintiff or any agent or representative of Plaintiff, other than the Claims Administrator. With the sole exception of the activities described in Paragraph 13 (providing data to Claims Administrator) and Paragraph 16(b) (notice on Class Counsel's website), all costs and expenses of notice and claims administration are Third Party Notice and Claims Administration Costs.

z) "Towers" means the residential complex known as Capitol Park Towers which is located at 301 G Street S.W., Washington D.C. 20024.

### **RECITALS**

1. The Action was commenced on July 10, 2010, by Arlena Chaney, Yisehac Yohannes and John Bou-Sliman, individually and on behalf of all others similarly situated.

2. In the Complaint, the Class Representatives allege that the Defendants violated District of Columbia licensing and zoning regulations by charging Towers residents monthly parking fees and allowing non-residents of the Towers to park in the Towers parking lot for a monthly fee. The Complaint contains three counts: violation of the District of Columbia Consumer Protection Procedures Act ("CPPA") (Count I); violation of District of Columbia zoning

regulations (Count II); and unjust enrichment (Count III). The Class Representatives sought both damages and injunctive relief.

3. Defendants assert that all their actions were lawful. Defendants therefore believe that the claims in the Action are without merit. Nevertheless, without any admission of any liability or wrongdoing whatsoever, Defendants desire to settle the Action and all claims asserted in or subsumed by the Action on the terms and conditions set forth herein.

4. The Class Representatives and Class Counsel believe that the claims asserted in the Action have merit. Plaintiff and Class Counsel, however, recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendants through motion practice, trial, and potential appeals. Plaintiff and Class Counsel have also taken into account the uncertain outcome and the risks of further litigation, as well as the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class, and that the Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class.

5. The Settling Parties, by and through their respective duly authorized counsel of record, hereby agree that the Action, and all matters and claims in the Complaint, and all matters and claims arising out of or related to the allegations or subject matter of the Complaint and Action, shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the below terms and conditions.

#### **TERMS OF THE SETTLEMENT**

In consideration of the complete and final settlement of the Action, and under the terms and conditions herein, the Settling Parties agree as follows:



### **Definition of Settlement Class**

6. For settlement purposes only, the Settling Parties agree that the Class definition contemplated by the Court's February 19, 2014 Order certifying a Class should 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.

### **Settlement Consideration**

7. **Monetary Consideration.** Subject to approval by the Court, the total monetary consideration to be provided by Defendants pursuant to the Settlement shall be \$500,000.00, inclusive of all attorneys' fees, costs, expenses, and incentive payments.

### **Attorneys' Fees, Costs, and Expenses**

8. Class Counsel shall seek approval of the Court for payment of not more than 33% of the Settlement Fund for attorneys' fees. Separate and apart from any fee award, Class Counsel shall seek approval of the Court for reimbursement of reasonable costs and expenses incurred by Class Counsel in litigating, handling, and resolving the Action. Defendants agree not to oppose such application(s). All attorneys' fees, costs and expenses will be paid from the Settlement Fund after the Effective Date unless otherwise provided herein. Defendants shall have no other or

further liability for the attorneys' fees, costs, and/or expenses of the Class Representatives, Class Counsel, or any Settlement Class Member.

a) Such attorneys' fees and expenses as are awarded by the Court shall be paid to Rezvani Volin & Rotbert P.C. from the Settlement Fund within 5 business days of the Effective Date.

b) Except as otherwise expressly set forth herein, the Settlement shall not be conditioned upon or subject to Court approval of an award of any particular amount of attorneys' fees, costs, or expenses to Class Counsel.

c) The Released Parties and Defendants' Counsel shall have no responsibility for and no liability whatsoever with respect to the allocation among Class Counsel and/or any other person who may assert some claim thereto of any award resulting from the fee, expense and cost motion.

#### **Establishment of the Settlement Fund**

9. a) Within ten (10) business days of the entry of the Preliminary Approval Order, Defendants shall deposit Twenty Thousand Dollars (\$20,000.00) into the Escrow Account established at Monument Bank. Monument Bank shall waive all account-level fees. The remaining Four Hundred Eighty Thousand Dollars (\$480,000.00) shall be deposited by Defendants within 5 business days of the Effective Date.

b) Monument Bank shall not disburse monies from the Settlement Fund or Escrow Account, except as provided in this Settlement, by an order of the Court, or by the joint written instructions of William C. Casano and Tracy D. Rezvani. Monument Bank shall have the right in accordance with the first sentence of this subparagraph to transfer monies from the Escrow Account to a distribution account from which checks may be written.

c) All funds held by Monument Bank shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the Court's jurisdiction, until such time as such funds shall be distributed pursuant to the Settlement or further order of the Court.

d) The Parties agree to treat the Settlement Fund at all times as a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants or their counsel with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes ("Taxes") shall be paid out of the Settlement Fund. Defendants and their counsel shall not have any liability or responsibility for the Taxes. The Settlement Fund shall indemnify and hold Defendants and their counsel harmless for Taxes (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and expenses incurred in connection with the preparation of any tax returns or compliance with tax laws shall be treated as, and considered as, Third Party Notice and Claim Administration Costs and shall be timely paid out of the Settlement Fund without prior order from the Court. Monument Bank (notwithstanding anything herein to the contrary) shall withhold from distribution to Settlement Class Members any funds necessary to pay such Taxes or expenses, with respect to any income earned by the Settlement Fund, including the establishment of adequate reserves for any Taxes and related expenses. The reserve amount shall be set by Monument after consultation with Class Counsel, Defendants' Counsel, and Heffler Claims Group. Defendants and their counsel are not responsible and shall not have any liability for the administration of the Settlement Fund. The Parties and their counsel agree to cooperate with Monument Bank and Heffler Claims Group, each



other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section.

e) In the event that the Judgment is not entered or, if it is entered, it does not become final, or it becomes final but is vacated on appeal, then upon such event the then-existing Settlement Fund, Escrow Account, and/or any distribution account (less amounts then due and owing for Third Party Notice and Claims Administration Costs) shall be returned and paid to Defendants free and clear of any further obligations pursuant to this Settlement.

#### **Incentive Awards**

10. Defendant agrees to not oppose application by Class Representatives for incentive awards to each of them in an amount not to exceed \$2,500 each. Such incentive awards are subject to approval of the Court and shall be paid by the Escrow Agent within ten (10) business days of the Effective Date.

#### **Preliminary Approval**

11. On or before May 2, 2014, by Order of the Court dated April 11, 2014, Plaintiff shall file a motion for preliminary approval in the Action, requesting that the Court:

- a) Preliminarily approve the Settlement and certify the Settlement Class for purposes of settlement only;
- b) Approve the form of Notice to be provided to the Settlement Class;
- c) Direct that Notice be provided to the Settlement Class in accordance with the Settlement and in accordance with all requirements of constitutional due process;
- d) Establish a procedure for Settlement Class Members to object to the Settlement or to exclude themselves from the Settlement Class, and set a date, not later than twenty-one (21) days prior to the date set for the Final Fairness Hearing, after which no persons shall be allowed to object to the Settlement or to exclude themselves from the Settlement Class;

e) Stay all proceedings in the Action except those related to the effectuation of the Settlement, pending final determination of whether the Settlement should be approved; and;

f) Schedule a date for the Final Fairness Hearing that is no more than ninety (90) days after the entry by the Court of the Preliminary Approval Order.

**Notice to Settlement Class Members of the Settlement**

12. Notice shall be completed no later than thirty (30) business days after entry by the Court of a Preliminary Approval Order. Based upon the Preliminary Approval Order and the date set by the Court for the Final Fairness Hearing, the Settling Parties shall fill in or substitute dates in the Notice to the extent reasonably feasible before Notice is provided to Settlement Class Members. The Notice shall satisfy all requirements of constitutional due process.

13. Class Counsel will provide the Claims Administrator with access to the names and last known addresses of all Settlement Class Members. This information will be provided in an accessible digital format.

14. Using the data provided by Class Counsel, the Claims Administrator will send the Notice to the last known mailing address, updated as discussed herein in Paragraph 15, of the Settlement Class Member by pre-sorted first class mail. The envelopes containing the Notice will contain a prominent "call out" to alert Settlement Class Members that the envelopes include important legal information.

15. For all Settlement Class Members, the Claims Administrator will check, verify and update the contact information and will then send a Notice to every updated address.

16. In addition to the individual notice provided pursuant to Paragraphs 12-15 of this Settlement, Notice shall include:

a) The establishment of an informational website where Settlement Class Members can obtain documents and other information about the Settlement.



b) A notice will also be posted on Class Counsel's websites (www.rvrlegal.com and www.finkelsteinthompson.com) throughout the notice period.

17. At least fourteen (14) days before the Final Fairness Hearing, the Claims Administrator shall provide Class Counsel with one or more declarations stating that Notice was provided in accordance with the requirements of the Preliminary Approval Order, which Class Counsel shall promptly file with the Court and serve on Defendant's Counsel.

#### **Settlement Claims Administration**

18. The duties of the Claims Administrator, in addition to any other duties that may be specifically described herein, are as follows:

- a) Check, verify, and update the addresses of Settlement Class Members and mail a copy of the Notice to each Settlement Class Member;
- b) Establish and maintain a Post Office box for request for exclusion from the Settlement Class;
- c) Process all requests for exclusion;
- d) Engage in account reconciliation, and general administration incidental to the Claims Administration;
- e) Prepare and transmit payments to Settlement Class Members pursuant to Paragraph 24;
- f) Upon request by Defendants' Counsel or Settlement Class Counsel, provide a list identifying (by the available information regarding name, address, and/or account number) those persons who have excluded themselves from the class;
- g) Every fifteen (15) days after the first Mailed Notice and periodically thereafter, provide Defendants' Counsel and Class Counsel a list identifying those persons who have excluded themselves from the Class, and copies of all documents submitted by such persons;

h) No later than five (5) days prior to the date set for the Final Fairness Hearing, provide Defendants and Class Counsel a final list identifying all persons requesting exclusion from the Settlement Class; and

i) Maintain and oversee data storage relating to the Settlement and the claims process.

**Payment of Third Party Notice and Claims Administration Costs**

19. Class Counsel shall retain the Claims Administrator. Invoices from the Claims Administrator will be paid from the Settlement Fund in accordance with Paragraph 9(b) within thirty (30) business days of the date of said invoices. It is expressly understood and agreed to by Settling Parties that neither Class Counsel, nor Settlement Class Members shall be individually responsible for any of these fees, costs, or expenses.

**Exclusion from the Settlement Class**

20. If a Settlement Class Member wishes to be excluded from the Settlement Class, he or she must timely and properly elect to exclude him or herself in accordance with the procedure for exclusion set forth in the Notice.

**Objections to Settlement**

21. Any Settlement Class Member who does not opt out of the Settlement Class may object to the Settlement by filing with the Court a timely written statement of objection. To be timely, a written statement of an objection in appropriate form must be mailed to the Clerk of the Superior Court for the District of Columbia, or other Court-appointed designee, at a courthouse location to be designated by the Court, no later than twenty-one (21) days prior to the date set in the Notice for the Final Fairness Hearing, and also served on Class Counsel, Tracy D. Rezvani, Rezvani Volin & Rotbert P.C., 1050 Connecticut Ave., N.W. 10<sup>th</sup> Floor, Washington, D.C. 20036 and Michael G. McLellan, Finkelstein Thompson LLP, 1077 30<sup>th</sup> St. NW, Washington, DC,

20007, and on Defendants' counsel, William C. Casano, Greenstein DeLorme & Luchs, P.C. 1620 L Street, N.W., Suite 900, Washington, D.C. 20036. The written statement of objection must set forth: (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 Settlement Class Member during the Class Period), (iii) the parking space number(s) for which the Member was the licensee and the period during which the space(s) was/were licensed; (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.

#### **Distribution of Settlement Fund**

22. The Third Party Notice and Claims Administration Costs shall be deducted prior to the distribution of the Settlement Funds to Settlement Class Members at such times as the Escrow Agent is presented with appropriate invoices for payment and in accordance with paragraph 9(b).

23. Court-approved attorneys' fees, costs and expenses, and incentive awards, shall be deducted from the Settlement Fund prior to the distribution to Settlement Class Members.

24. The Settlement Funds, net of (a) Third Party Notice and Claims Administration Costs (b) attorneys' fees, costs and expenses, and (c) incentive awards, shall be referred to as the Remainder. Such Remainder shall be paid to Settlement Class Members as follows within sixty (60) business days after the Effective Date of this Settlement.



a) The Settlement Fund Custodian, after any holdbacks or reserves for tax liabilities as set forth in Paragraph 9, shall, in accordance with Paragraph 9(b), pay the Remainder to the Claims Administrator, which will be responsible for payments to Settling Class Members and, if necessary, to any *cy pres* recipients for any Residual. The Remainder shall be distributed to each Settlement Class Member who does not request exclusion from the Settlement, and shall be divided equally among all such Settlement Class Members.

b) Defendants' liability to Settlement Class Members being limited to the Settlement Fund, in no event shall Defendants be required to pay any additional funds beyond those deposited in the Settlement Fund, and Class Members shall, in the aggregate, be entitled to no more than the amount remitted from the Escrow Account to the distribution account and Claims Administrator. Payments to Settlement Class Members pursuant to this Paragraph will be made by mailing checks to them at the addresses to which Notice was mailed, or to such updated addresses as Settlement Class Members provide.

#### **Cy Pres Distribution**

25. If there is a Residual, Class Counsel shall notify the Court and seek an Order permitting the Claims Administrator to distribute all such funds through a *cy pres* distribution. In addition, all funds resulting from returned or un-cashed checks shall remain in an account maintained by the Claims Administrator for one year, at which time the money will be distributed through the *cy pres* distribution. Defendants will have no obligation to make any distribution under this Paragraph.

26. The *cy pres* shall be distributed to a nonprofit organization or organizations agreed upon by Defendants and Class Counsel, and approved by the Court. Should the parties be unable to agree on recipient(s) they shall present their respective prospective recipient(s) to the Court, with any supporting materials and argument, and the Court shall decide the recipient(s).

27. The *cypres* distribution shall be paid as soon as is practicable following the Order identified in ¶25.

#### **Effective Date of Settlement**

28. The Effective Date of the Settlement shall be the later of (1) the thirty-first (31st) day after the Court has entered the Judgment substantially in the form of Exhibit 3 attached hereto; or (2) the date of the resolution of the last of any appeals of the Judgment.

#### **No Admission of Liability**

29. Defendants expressly deny any and all liability in this Action. By entering into this Settlement, Defendants are not admitting any liability whatsoever to Plaintiff, any Settlement Class Member or any other person or entity, nor are Defendants waiving any claim, counterclaim, defense, or affirmative defense, except to the extent otherwise expressly provided by this Settlement.

#### **No Admission of Lack of Merit of Claims**

30. Plaintiff expressly denies that any allegations and claims made by him in this Action are without factual or legal support, or otherwise without merit. By entering into this Settlement, Plaintiff is not admitting that Defendants are not liable to Plaintiff, any Settlement Class Member or any other person or entity, nor is Plaintiff waiving any claim, counterclaim, defense, or affirmative defense on behalf of himself or any Settlement Class Member, except to the extent otherwise expressly provided by this Settlement.

#### **Releases**

31. As of the Effective Date, the Releasing Parties, and each of them, shall be deemed to have fully released, waived, 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 facts, occurrences, conduct, omissions, duties, matters, or allegations in the Action or which could have been raised in the Action.

32. Plaintiff and other Settlement Class Members may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the claims released pursuant to the terms of this Paragraph and Paragraph 31 of this Settlement, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, they shall have waived and fully, finally, and forever settled and released any known or unknown, suspected or asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Paragraph and Paragraph 31 of this Settlement. Further, each of those individuals agrees and acknowledges that they shall be bound by this Settlement, including by the releases contained in this Paragraph and in Paragraph 31 of this Settlement, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if they never receive actual notice of the Settlement, or never receive a distribution of funds from the Settlement. The foregoing shall be construed to operate as a waiver and release of any and all provisions, rights and benefits conferred by any statute of any state or territory of the United States, or principle of common law.

33. Releasing Parties, and each of them, agree not to file or prosecute, and agree immediately to withdraw, with prejudice, any equitable or legal proceeding against any Released Party with respect to any of the Released Claims or any of the actions taken by a Released Party



that are authorized or required by this Settlement Agreement or by the Judgment. The Court shall retain jurisdiction to enforce the Judgment, releases, and agreements contemplated by this Settlement and by the Judgment.

34. As of the Effective Date, the Released Parties will release as against Class Counsel, and the Releasing Parties, 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 facts, occurrences, conduct, omissions, duties, matters, or allegations in the Action. It is expressly understood that such release by the Released Parties does not include any 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.

35. Benefit of the Parties; No Third-Party Beneficiary. This Agreement shall be binding upon and inure solely and only to the benefit of the Parties, heirs, and personal representatives, assigns, insurers, and attorneys. Other than as expressly described herein, this Agreement expressly does not confer any right upon any person or entity not a Party hereto, as a third-party beneficiary or otherwise. Specifically, the Parties do not intend to confer any rights, as a third-party beneficiary or otherwise, to UIP Invest, LLC, its parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and all of the directors, officers, members, partners, shareholders, employees, agents, and attorneys of those entities.

#### **Termination**

36. Either Settling Party may, but is not required to, terminate this Settlement by providing written notice to counsel for the opposing Party and the Court within ten days after the Settling Party receives notice of any of the following occurrences:

- a) any court rejects, modifies, amends, or declines to approve the Settlement;

or

- b) any court makes any order precluding Plaintiff or Defendants from proceeding in whole or in part with the Settlement; or

- c) the number of Class Members who properly elect to exclude themselves or “opt-out” from the Settlement in accordance with the procedures set forth in the Notice exceeds the number set forth in a Settlement Agreement Addendum executed on May 2, 2014. Class Counsel shall have the right to communicate with Class Members seeking exclusion and, if a sufficient number of them withdraw their requests for exclusion such that the remaining “opt-outs” represent a number of people smaller than the threshold number set forth in the Settlement Agreement Addendum, any notice of termination of the Settlement will be deemed withdrawn.

37. In the event of a termination in accordance with the provisions of the Settlement:

- a) The Settlement, except for this Paragraph, shall be null and void and of no further effect;

- b) The Settling Parties will be returned to their respective positions prior to the execution of this Settlement, as of the Settlement had never been entered into, except that no party shall have the obligation to repay any distributions made from the Settlement Fund prior to termination and authorized pursuant to Paragraph 9(b);

- c) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Notice, court filings, orders, and public statements relating to the Settlement, may thereafter be used as evidence for any purpose whatsoever; and



d) The fact of, and any documents, findings, decisions, or orders relating to, any failure of a court to approve the Settlement or any modification or amendment of the Settlement by a court, as well as the fact and contents of any objections which may have been filed to the Settlement, may not be used as evidence for any purpose whatsoever.

38. Nothing in the preceding Paragraph is intended or will be construed to limit a Settling Party's right to use or to offer the Settlement in evidence in any action or proceeding in any court or other tribunal to enforce or implement its terms, to support or defend the Settlement, including on any appeal from the Judgment, or to enforce or assert a claim or defense of res judicata, collateral estoppel, claim or issue preclusion, settlement, release, merger and bar, or any similar claim or defense against a Settlement Class Member.

39. In the event of a termination, the balance of the Settlement Fund, Escrow Account, and/or any distribution account shall be immediately refunded and remitted to Defendants. Defendants shall have no right to seek reimbursement from Plaintiff or Class Counsel for any funds distributed from the Settlement Fund or for money spent or costs incurred for Notice or Claims Administration as long as such was distributed in accordance with Paragraph 9(b).

#### **General Provisions**

40. This Settlement constitutes the entire agreement between and among the Settling Parties with respect to the settlement of the Action. This Settlement shall not be construed more strictly against one party than another merely because it may have been prepared by counsel for one of the Settling Parties, it being recognized that, because of the arm's length negotiations resulting in the Settlement, all Settling Parties hereto have contributed substantially and materially to the preparation of the Settlement. This Settlement supersedes all prior negotiations and agreements and may not be modified or amended except by a writing signed by Class Counsel and Defendants' Counsel.

41. Each Settling Party to the Settlement warrants that they are acting on their independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other person, other than the warranties and representations expressly made in the Settlement.

42. All of the Exhibits to the Settlement are material and integral parts hereof and are fully incorporated by reference. All captions used in the Settlement are for reference and convenience only and shall not be used in interpreting the Settlement.

43. The Settling Parties, Class Counsel, and Defendants' Counsel shall execute all documents and perform any additional acts necessary and proper to effectuate the terms of the Settlement and to obtain the benefit of the Settlement for the Settling Parties and Settlement Class Members.

44. The Settling Parties, Class Counsel, and Defendants' Counsel shall not engage in any conduct or make any statements, directly or indirectly, (a) to encourage, promote, or solicit Settlement Class Members or their counsel to request exclusion from the Settlement Class or to object to the Settlement, or (b) to facilitate, induce or cause the non-fulfillment of a condition or the occurrence of an event giving rise to a Party's right to terminate this Settlement.

45. The Settlement shall be binding upon, and shall inure to the benefit of, the Settling Parties, the Settlement Class Members, the Releasees, and the respective heirs, administrators, successors, and assigns of each of them. Except as provided in the foregoing sentence, nothing in this Settlement is intended to create any legally enforceable rights in any other person or to make any other person, including, but without limitation, an agreed-upon recipient of *cy pres* funds pursuant to Paragraph 26 of this Settlement, a beneficiary of this Settlement.

46. The Settling Parties: (i) acknowledge that it is their intent to consummate this Settlement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement.

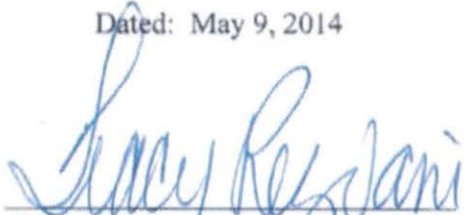
47. This Settlement shall be construed, enforced and administered in accordance with the laws of the District of Columbia without reference to its conflict of laws principles.

48. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement, and all Settling Parties and Settlement Class Members submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

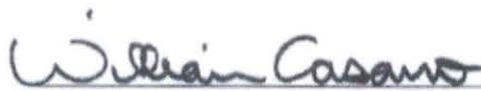
49. This Settlement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys:

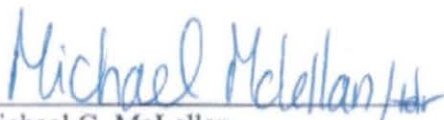
Dated: May 9, 2014



Tracy D. Rezvani  
**REZVANI VOLIN & ROTBERT P.C.**  
1050 Connecticut Avenue NW, 10th Floor  
Washington, DC 20036



William C. Casano  
**GREENSTEIN DELORME  
& LUCHS, P.C.**  
1620 L Street NW, Suite 900  
Washington, DC 20036



Michael G. McLellan  
**FINKELSTEIN THOMPSON LLP**  
1077 30th Street NW, Suite 150  
Washington, DC 20007

*Counsel for Defendants*

**List of Exhibits**

- Exhibit 1: Proposed Notice
- Exhibit 2: Proposed Preliminary Approval Order
- Exhibit 3: Proposed Order and Final Judgment

# **EXHIBIT 1**



**If You Were a Tenant of the Capitol Park Towers Apartments Who Paid a Fee to Park at the Apartments**  
**Please Read This Legal Notice Carefully. Your Rights Could Be Affected.**

The DC Superior Court has preliminarily approved a settlement in a class action lawsuit between tenants and former tenants of the Capitol Park Towers Apartments, 301 G St. SW, Washington, DC ("Capitol Park Towers"), who paid monthly fees to park their cars at the Capitol Park Towers, and the former owners and property managers of the Capitol Park Towers, Capitol Park Associates, an Illinois Limited Partnership; Capitol Park Land Corporation; A.I.M. Partnership No. 1, an Illinois Limited Partnership; and EJF Real Estate Services, Inc. (the "Defendants"). The case is titled *Chaney, et al. v. Capitol Park Associates, an Illinois limited partnership, et al.*, Case Number 2012 CA 005582 B. In a class action, one or more people ("Class Representatives") sue on behalf of themselves and all other people who have similar claims.

**This notice is only a summary.** For more information, visit [www.rvrlegal.com/Capitol\\_Park\\_Towers\\_Settlement](http://www.rvrlegal.com/Capitol_Park_Towers_Settlement) or call the number below.

**What is this lawsuit about?**

This is a lawsuit under the consumer protection laws of District of Columbia. The lawsuit alleges that, between July 10, 2009 and November 15, 2013, the Defendants charged tenants of the Capitol Park Towers Apartments monthly fees to park at the Apartments without a proper business license and without proper clearance under the DC zoning regulations. The lawsuit alleges that these practices violated the DC Consumer Protection Procedures Act and unjustly enriched the Defendants. The lawsuit sought damages of \$1,500 per violation for each class member, and other monetary relief.

**Are you a Class Member?**

You are a Class Member if you are a current or former tenant of the Capitol Park Towers who paid a monthly fee to park at the Apartments at any time between July 10, 2009 and November 15, 2013. However, you are not a Class Member if you are employed by any of the Defendants, or any company affiliated with the Defendants or if you have previously released your claims against any of the Defendants.

**What are the terms of the Settlement?**

The Defendants have agreed to pay \$500,000 to settle the case. In exchange, the claims in the lawsuit will be dismissed, and no Class Member will be allowed to file new lawsuits in the future against any of the Defendants that make the same claims, or that are based on the events covered by the lawsuit. The Defendants will not be

admitting that they did anything wrong, and the Class Representatives will not be admitting that the allegations they made in the lawsuit are wrong.

**Are you entitled to any money?**

Yes, if the Court grants final approval of the settlement. It is impossible to precisely identify the exact amount that you will receive at this time, because the settlement creates a single common fund of \$500,000. All of the costs of the litigation, including attorneys' fees and expenses, incentive awards, and the costs of administering the settlement, will be deducted from that fund prior to distribution to Class Members, and the final amount of those costs is not yet known. Based on the information available at present, it is estimated that a total of 208 Class Members will share equally in the net settlement fund.

**Attorneys' Fees and Costs**

The attorneys for the Class Representatives ("Class Counsel") will be asking for an attorney's fee award of up to 33% of the settlement fund, and for reimbursement of the out-of-pocket expenses they have paid while pursuing this lawsuit. Any award of attorneys' fees and expenses must be approved by the Court.

**Incentive Awards**

Class Counsel will also be asking for incentive awards of \$2,500 for the Class Representatives, to be paid from the settlement fund. Incentive awards are intended to compensate the Class Representatives for their time and effort they spent assisting with the lawsuit. Any incentive award must be approved by the Court.

**What are your legal rights?**

You have two options at this time:

**Remain a Class Member.** If you are a Class Member, and want to remain a Class Member, you do not have to do anything. If the settlement receives final approval, you will receive your share of the \$500,000 settlement fund. You will also give up the right to file an individual lawsuit against the Defendants that makes the same claims, or is based on the same events, as this lawsuit. If you remain a class member, you have the right to enter an appearance in this lawsuit through your attorney.

**Exclude Yourself.** If you do not want to be a Class Member, you must exclude yourself from the settlement. If you exclude yourself, you will lose your right to receive your share of the \$500,000 settlement fund if the settlement



receives final approval. However, you will keep your right to file an individual lawsuit against the Defendants that makes the same claims, or is based on the same events, as this lawsuit. To exclude yourself, you must send a letter stating you "request exclusion from the class in *Chaney, et al. v. Capitol Park Associates, L.P., et al.*, Case Number 2012 CA 005582 B," including your name, current address, the number of the parking space(s) which was licensed to you and the period which you used such space(s), and the apartment number or numbers where you resided in Capitol Park Towers between July 10, 2009 and November 15, 2013, to:

Capitol Park Towers Settlement  
c/o Heffler Claims Group  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102

You must mail your request for exclusion no later than July 7, 2014. Requests for exclusion mailed after July 7, 2014 will not be considered by the Court.

**Do you have a right to comment or object to the settlement?**

If you remain a class member, you have the right to comment on the settlement to the Court, including expressing support for the settlement. Your comments must be in writing.

You also have the right to object to the settlement if you do not think it is fair. Your objection must be in writing, and must contain the following information: (i) the name of the lawsuit; (ii) your full name, address, and telephone number (and if you no longer live at the Capitol Park Towers, your former apartment number there), (iii) the number of the parking space(s) that was licensed to you and the period during which you used such space(s), (iv) all grounds for the objection, accompanied by any legal support for the objection known to you or your counsel; (v) the identity of all counsel representing you; (vi) the identity of all counsel representing you 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 your objection; (viii) a statement confirming whether you intend to personally appear and/or testify at the Final Fairness Hearing; and (ix) your signature or the signature of your counsel. All comments and objections must be mailed to:

Capitol Park Towers Settlement  
c/o Heffler Claims Group  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102

You must also mail copies of your comments or objection to Class Counsel and Defense Counsel:

**Class Counsel:**

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

**Defense Counsel:**

William C. Casano  
*Greenstein DeLorme & Luchs, P.C.*  
1620 L Street NW, Suite 900  
Washington, DC 20036

You may only submit comments or objections if you remain a class member. You may not do so if you exclude yourself from the settlement. You must mail your comments or objections no later than July 7, 2014. Comments or objections mailed after July 7, 2014 will not be considered by the Court.

**The Final Fairness Hearing**

The Court will hold a Final Fairness Hearing on July 28, 2014 at 10:00 a.m. in Courtroom 219 at Superior Court for the District of Columbia, Moultrie Courthouse, 500 Indiana Avenue NW, Washington, DC 20001 to consider whether to grant final approval of the settlement, Class Counsel's request for attorney's fees and expenses, and the Class Representatives' request for incentive awards. If you submit written comments or objections, you may appear at the hearing in person or through your counsel, and present your views about the settlement, as well as any evidence you want the Court to consider. If you do not submit written comments or objections, or if you exclude yourself from the settlement, you will not be allowed to appear at the Final Fairness Hearing.

**This notice is intended solely to provide information about the settlement. You should not interpret it as an opinion by the Court about the merits of the claims in this lawsuit.**

**For more information visit [www.rvrlegal.com/Capitol\\_Park\\_Towers\\_Settlement](http://www.rvrlegal.com/Capitol_Park_Towers_Settlement) or call (202) 350-4270 ext. 106**

# **EXHIBIT 2**



**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

ARLENA CHANEY, <i>et al.</i> ,  Plaintiffs,  v.  CAPITOL PARK ASSOCIATES, an Illinois limited partnership, <i>et al.</i> ,  Defendants.	No. 2012 CA 005582  Judge Neal E. Kravitz Calendar 13
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**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND APPROVING CLASS NOTICE**

WHEREAS, on May 2, 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 amendments, supplements and 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:

50. The motion is GRANTED as modified herein during the May 9, 2014 hearing.

51. 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.

52. 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 July 28, 2014, at 10:00 a.m. in Courtroom 219, Moultrie Courthouse, 500 Indiana Avenue NW, Washington, DC 20001, for the following purposes:

- e) to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be approved by the Court;
- f) to determine whether the Order and Final Judgment as provided under the Revised Settlement Agreement and Addenda 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;
- g) to consider Class Counsel's application for an award of attorneys' fees and expenses;
- h) to consider the Class Representatives' application for incentive awards; and
- i) to rule upon such other matters as the Court may deem appropriate.

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

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

55. 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 Revised 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.

56. 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.

57. 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.

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

59. 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 served in writing to the Heffler Claims Group as provided in the Revised Settlement Agreement (as amended and supplemented) and as provided in the Notice. Copies of all comments and/or objections shall also be served upon 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.

60. 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.

61. As provided in the Revised 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.

62. If any specified condition to the Settlement set forth in the Revised Settlement Agreement is not satisfied and Class Counsel or Defendants' Counsel elects to terminate the Settlement as provided in Paragraph 36 of the Revised Settlement Agreement, then, in any such event, the Revised 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 Revised Settlement Agreement.

63. 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 6, 2014	Deadline for mailing of notice
July 7, 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 14, 2014	Deadline for motion for final approval of the proposed settlement, and the applications for fee and expense awards and incentive awards, responses to objections, and filing proof of mailing of Notice.
July 28, 2014	Final Fairness Hearing

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Hon. Neal E. Kravitz

# **EXHIBIT 3**

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

ARLENA CHANEY, <i>et al.</i> ,  Plaintiffs,  v.  CAPITOL PARK ASSOCIATES, an Illinois limited partnership, <i>et al.</i> ,  Defendants.	No. 2012 CA 005582 B  Judge Neal E. Kravitz Calendar 13
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**[PROPOSED] ORDER AND FINAL JUDGMENT**

On the \_\_\_\_\_ day of \_\_\_\_\_, 2014, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Settlement Agreement dated April 29, 2014 (the "Settlement") are fair, reasonable and adequate for the settlement of all claims asserted by the Class against the Defendants in the Third Amended Complaint now pending in this Court under the above caption, including the release of the Defendants and the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Third Amended Complaint on the merits and with prejudice; (3) whether to approve the plan of allocation of the Settlement Fund as fair and reasonable; (4) whether and in what amount to award Class Counsel fees and reimbursement of expenses; and (5) whether and in what amount to award incentive awards to the Class Representatives. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all Class Members who could be located with reasonable effort; and the Court having considered and determined the fairness and reasonableness of the

award of attorneys' fees, expenses, and incentive awards requested; and all capitalized terms used herein having the meanings as set forth and defined in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

64. The Court has jurisdiction over the subject matter of the Action, the Class Representatives, all Class Members, and the Defendants.

65. The Court finds that the prerequisites for a class action under Superior Court Civil Rules 23 (a) and (b)(3) have been satisfied in that: (a) the Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Class Representatives are typical of the Class Members they seek to represent; (d) the Class Representatives have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the Class Members predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

66. Pursuant to Rule 23 of the Superior Court Rules this Court hereby finally certifies this action as a class action on behalf of all current and former residents of the Capitol Park Towers Apartments, 301 G Street SW, Washington, DC 20024 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 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 or any



person who timely submitted a request for exclusion from the Settlement, each of whom are identified in Attachment A to this Order.

67. Notice of the pendency of this case as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Superior Court Civil Rules, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

68. The Settlement is approved as fair, reasonable and adequate, and the Class Members and the parties are directed to consummate the Settlement in accordance with the terms and provisions of the Settlement Agreement.

69. The Third Amended Complaint is hereby dismissed with prejudice and without costs, except as provided in the Settlement Agreement.

70. Members of the Class and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and unknown claims, (i) that have been asserted in this Action by the Class Members or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the Class Members or any of them against any of the Released Parties

which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, conduct involved, set forth, or referred to in the Third Amended Complaint against any and all of the Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, partners, agents, employees, attorneys, insurers and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest, or assigns of the Defendants (the "Released Parties"). The Released Claims are hereby compromised, settled, released, discharged and dismissed as against the Released Parties on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

71. The Released Parties are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims, that have been or could have been asserted in this litigation or any forum by the Released Parties or any of them or the successors and assigns of any of them against the Class Representatives, Class Members, or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of this litigation (the "Released Parties' Claims"). Such Released Parties' Claims specifically exclude any claims any of the Released Parties may have against any Class Member by virtue of any apartment lease for an apartment at Capitol Park Towers. The Released Parties' Claims are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

72. Neither this Order and Final Judgment, the Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

j) offered or received against the Released Parties as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Released Parties with respect to the truth of any fact alleged by any of the Class Representatives or the validity of any claim that has been or could have been asserted in this or any litigation, or the deficiency of any defense that has been or could have been asserted in this or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Released Parties;

k) offered or received against the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Released Party;

l) offered or received against the Released Party as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Released Party, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement;

m) construed against the Released Parties as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

n) construed as or received as evidence of an admission, concession or presumption against the Class Representatives or any of the Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that



damages recoverable under the Third Amended Complaint would not have exceeded the Settlement Fund.

73. The plan of allocation of the Settlement Fund is approved as fair and reasonable, and Class Counsel and the Claims Administrator are directed to administer the Settlement Agreement in accordance with its terms and provisions.

74. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Superior Court Rules as to all proceedings herein.

75. Class Counsel are hereby awarded 33% percent of the Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and \$\_\_\_\_\_ in reimbursement of expenses, which amounts shall be paid to Class Counsel from the Settlement Fund. The award of attorneys' fees shall be allocated among Class Counsel in a fashion which, in the opinion of Rezvani Volin & Rotbert P.C., fairly compensates Class Counsel for their respective contributions in the prosecution of this litigation.

76. Each Class Representative is awarded an incentive award of \$2,500.

77. In making this award of attorneys' fees and reimbursement of expenses, and the award of incentive awards to be paid from the Settlement Fund, the Court has considered and found that:

o) The Settlement has created a fund of \$500,000 in cash, \$20,000 of which is already on deposit, and the remainder of which will be deposited within 5 business days of the Effective Date as provided in the Settlement Agreement. The Class Members who have not requested exclusion from the Settlement will benefit from the Settlement created by Class Counsel;

p) Copies of the Notice were disseminated to Class Members indicating that Class Counsel were moving for attorneys' fees in the amount of up to 33% of the Settlement Fund and for reimbursement of expenses, and that the Class Representatives were moving for incentive awards, and \_\_\_\_\_ objections were filed against the terms of the proposed Settlement, the award of attorneys' fees and expenses, or the incentive awards.

q) Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

r) The action involves complex factual and legal issues and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

s) Had Class Counsel not achieved the Settlement there would remain a significant risk that the Class might have recovered less or nothing from the Defendants;

t) Class Counsel have devoted over \_\_\_\_\_ hours, with a lodestar value of \$ \_\_\_\_\_, to achieve the Settlement;

u) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with, or less than, awards in similar cases; and

v) 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.

78. Exclusive jurisdiction is hereby retained 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 this 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.

79. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

80. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Superior Court Civil Rules.

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Hon. Neal E. Kravitz



**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

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

This Settlement Agreement Addendum ("Addendum") is entered into by and between Plaintiffs Yisehac Yohannes and John Bou-Sliman, on behalf of themselves and the Class, by and through Class Counsel on the one hand, and Defendants Capitol Park Associates, an Illinois limited partnership; Capitol Park Land Corporation; A.I.M. Partnership No. 1, an Illinois limited partnership; and EJF Real Estate Services, Inc., by and through Defendants' Counsel. All capitalized terms have the meanings set forth in the Settlement.

**RECITALS**

1. On May 2, 2014, the Settling Parties executed and filed with the Court a proposed Settlement of the above-styled Action.
2. This Addendum is a supplement to Paragraph 36 of the Settlement.

**TERMS**

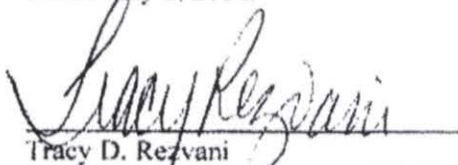
3. If the number of Class Members who properly elect to exclude themselves from the Settlement in accordance with the procedures set forth in the Notice exceeds 30, any Settling Party may terminate the Settlement in accordance with Paragraph 36(c).

4. The Settling Parties will use their best efforts to keep this Addendum confidential, including moving to file it under seal in Court proceedings related to the Settlement. If the Court denies the Motion to Seal, this Addendum will remain in effect.

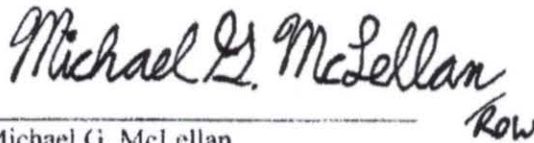
5. This Addendum is hereby incorporated into the Settlement, and is to be governed by and interpreted in conjunction with the other terms of the Settlement.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys:

Dated May 2, 2104.

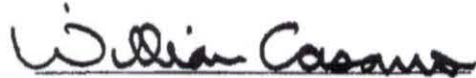


Tracy D. Rezvani  
**REZVANI VOLIN & ROTBERT P.C.**  
1050 Connecticut Avenue NW, 10th Floor  
Washington, DC 20036

 Row

Michael G. McLellan  
**FINKELSTEIN THOMPSON LLP**  
1077 30th Street NW, Suite 150  
Washington, DC 20007

*Class Counsel*



William C. Casano  
**GREENSTEIN DELORME  
& LUCHS, P.C.**  
1620 L Street NW, Suite 900  
Washington, DC 20036

*Counsel for Defendants*

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

ARLENA CHANEY, <i>et al.</i> ,  Plaintiffs,  v.  CAPITOL PARK ASSOCIATES, an Illinois limited partnership, <i>et al.</i> ,  Defendants.	No. 2012 CA005582 B  Judge Neal E. Kravtiz Calendar 13  Next Event: Final Fairness Hearing July 28, 2014
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**DECLARATION OF TRACY D. REZVANI IN SUPPORT OF PLAINTIFF'S  
UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT AND AWARD  
OF ATTORNEYS' FEES, EXPENSE REIMBURSEMENTS, AND INCENTIVE  
AWARDS**

I, Tracy D. Rezvani, declare as follows:

1. I am a shareholder in the law firm Rezvani Volin P.C. (formerly Rezvani Volin & Rotbert P.C.), Class Counsel in the above-captioned matter. I have personal knowledge of the following facts. I could and would competently testify to them if called as a witness.
2. I submit this Declaration in support of Plaintiff's Unopposed Motion for Final Approval of Settlement and Award of Attorneys' Fees, Expense Reimbursements, and Incentive Awards.
3. My partner, Richard M. Volin, and I have prosecuted class action litigation, including in the consumer protection context, for over 17 years each.
4. I have been appointed to lead counsel or steering committee membership roles on multiple occasions in class and mass actions in courts across the country. *See, e.g. In re: Science Applications Int'l. Corp. (SAIC) Backup Tape Data Theft Litig.*, MDL No. 2360

(D.D.C.); *In Re: Avandia Mktg, Sales Practices And Products Liab. Litig.*, MDL 1871 (E.D. Pa.); *In Re: Darvocet, Darvon and Propoxyphene Products Liab. Litig.*, MDL 2226 (E.D. Ky.); *In re Propecia (Finasteride) Product Liab. Litig.* MDL 2331 (E.D.N.Y.).

5. Beginning in May 2013, and continuing through the Summer of 2013, the parties exchanged written proposals and counter-proposals in an effort to resolve the Action. These communications led to in-person discussions in September and October 2013. Despite extensive efforts, the parties were unable to resolve the Action through private negotiations.

6. On April 10, 2014 the parties, with the exception of Plaintiff Bou-Sliman, attended 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 Yohannes and Defendants reached an agreement in principle to settle the Action for a lump sum of five hundred thousand dollars (\$500,000). Plaintiff Chaney did not support the agreement.

7. Mr. Bou-Sliman authorized Class Counsel to mediate and resolve the Action under certain financial terms, which terms were considered by Class Counsel during the mediation. I have been informed that Mr. Bou-Sliman traveled to France on or around October 2013, due to the prolonged illness and subsequent death of his wife, and to handle his wife's estate and other family matters. Mr. Bou-Sliman has not communicated with Class Counsel since April 10, 2014, the date of the mediation. Notice was mailed by Heffler Claims Services LLC ("Heffler") in due course. Since April 10, 2014, my former associate, Robert O. Wilson, and I have attempted to reach Bou-Sliman by email and telephone regarding the Settlement and its terms and modifications, as well as the preliminary and final approval phases of the case. I



emailed Bou-Sliman a copy of the Notice on June 4, 2014, in case his mail was not being forwarded to France. Class Counsel has not heard from Bou-Sliman since April 10, 2014.

8. Johnny Barnes, a resident of Capitol Park Towers, has requested to exclude himself from the settlement in this Action; Mr. Barnes has filed two requests, ostensibly because he has two parking spaces. Defendants have indicated that they do not believe that Mr. Barnes is a member of the Class by virtue of his prior settlement with Defendants as reflected in CPA 1194 and 1222-29, which are attached hereto as Exhibit A.

9. Class Counsel seeks thirty-three percent (33%) of the Settlement Fund, or one hundred and sixty-five thousand dollars (\$165,000) as legal fees. This percentage is just under the one-third contingency fee that the Class Representatives authorized Class Counsel to seek as compensation in this Action pursuant to their respective engagement agreements. Class Counsel have received no compensation during the course of this Action, despite having committed a substantial amount of time and expenses. Significant resources were devoted to this matter, which impacted counsel's ability to take on other potential clients.

10. The requested attorneys' fees represent a significant *negative* multiplier relative to the lodestar of Class Counsel. Based on Class Counsel's contemporaneously recorded billing records, the combined hours for Class Counsel are 1670.70 and the combined lodestar for Class Counsel, from inception through July 13, 2014, is \$683,145.51. These figures, and additional details as to lodestar and expenses, are reflected in Exhibit B, attached hereto.

11. Class Counsel filed pleadings that were later amended as facts and issues developed in the Action. Class Counsel further briefed (a) a motion to dismiss and subsequent motion for reconsideration, (b) a motion for class certification, (c) discovery motions, (d) motions *in limine* addressed to Defendants' expert, and (e) offensive and defensive motions for

summary judgment. Class Counsel engaged in extensive discovery of documents, interrogatories and requests for admission. Class Counsel also participated in eight (8) depositions of parties and non-parties. Moreover, Class Counsel mediated this case, prepared the settlement documents, presented the preliminary approval motion and this final approval motion, published and maintained settlement materials on their respective web sites, and engaged in the other necessary actions required to administer the Notice Plan and administration of the Settlement to date. In the future, Class Counsel will have to work with the Claims Administrator and Escrow Agent to ensure payments are properly made from the Settlement Fund, to ensure that all inquiries are addressed, and to approach the Court with any issues relating to the administration of the Settlement, including the expected *cy pres* distribution. At all times, Class Counsel faced unique legal issues—many of first impression in the District of Columbia.

12. Class Counsel also seeks a reimbursement of reasonable expenses. Based on contemporaneously kept business records, such expenses total \$13,845.14. *See* Exhibit B.

13. Class Counsel also seeks an incentive award on behalf of each Class Representative of up to \$2500 each. The class representatives interviewed Class Counsel prior to hiring them; met with Class Counsel to discuss case strategy and prepare to meet their obligations as representatives of the Class; corresponded with Class Counsel in writing and by telephone to keep abreast of and provide input regarding the prosecution of the Action; reviewed documents and filings; answered interrogatories; compiled and produced document discovery; prepared and sat for depositions (Plaintiffs Chaney and Yohannes); participated in settlement negotiations (all Plaintiffs) and in mediation (Plaintiffs Chaney and Yohannes).

14. I personally spoke to three individuals who called to inquire as to the Settlement. My former associate, Robert O. Wilson, responded and spoke to a fourth individual regarding the



Settlement. I also emailed with one Class Member who had questions about the terms and background of the Action and Settlement. One such individual who called me, Mr. Ramadan Mohammad, believed that he should have been a member of the Class. However, Defendants' records showed that he only paid for parking in 2006. I invited Mr. Mohammad to provide me with copies of canceled checks, parking coupons, bank statements or other indicia of payment for parking during the Class Period. As of this filing, Mr. Mohammad has not provided any such materials to me. Another individual, Ms. Celestina Egbuhuo, contacted me with a similar request to be included as a member in the Class. Research of Defendants records showed that, while no record existed that Ms. Egbuhuo had executed a Parking License Agreement, evidence did exist that she had paid for parking during the Class Period. At my request, Ms. Egbuhuo faxed me her contact information, apartment number and parking space number, which I forwarded to Heffler for inclusion in the Class List and Notice plan.

15. The Class List included three sets of couples or co-habiting individuals ("co-habitators"). These co-habiting pairs constituted one entry on the Class List, but Heffler researched both individuals in each pair for the purpose of researching addresses.

16. As discussed by Heffler in its affidavit, all three pairs of co-habitators have received Notice. The envelopes for such Notice bore the names of both individuals in each pair.

17. Heffler has submitted two invoices to date. The first invoice, attached hereto as Exhibit C, is for \$2,182.38, and reflects services performed through the initial mailing of Notice (or May 31, 2014).

18. The second invoice, attached hereto as Exhibit D, is for \$6,503.65, and reflects services rendered subsequent to June 1, 2014 – such as processing undeliverable Notice mailings, and re-noticing Class Members for whom new addresses were located through diligent

efforts. The second invoice also reflects a best estimate for the cost of distribution of the Settlement Fund to Class Members. However, a final bill will be provided to Class Counsel at the end of the processing. This final bill will be provided to the Court in connection with the final disbursement motion.

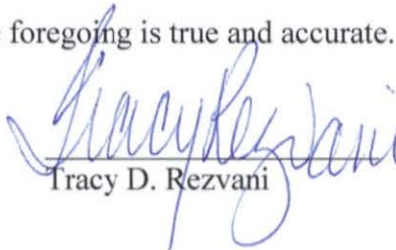
19. Monument Bank, the Escrow Agent, has waived escrow fees. However, certain bank fees will still be incurred in the processing of each settlement check through the distribution account. Such costs include \$30 for a checkbook of 150 checks (of which Heffler will need two), a processing fee of five cents (\$0.05) per check and a \$50 a month maintenance fee. Over the course of an estimated six month processing period, these charges could amount to approximately \$500.

20. If the Court grants the requested fees, expense reimbursements, and the full incentive awards to all three class representatives, and if the estimates of future expenses by Heffler and Monument Bank are accurate, then the net settlement fund will be approximately \$304,468.83. Divided by 208, the number of full Class Member shares, the full share recovery for Class Members is estimated at approximately \$1400.

21. In my experience with class action litigation, I believe that the recovery of approximately \$1400 for each Class Member in this Action reflects an excellent settlement that meets and exceeds the requirement of fair, reasonable, and adequate.

I declare under penalty of perjury that the foregoing is true and accurate.

Dated: July 14, 2014

  
Tracy D. Rezvani



Multi-Door Dispute Resolution Division

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION  
LANDLORD-TENANT COURT

SEP 11 2012

Filed In Open Court

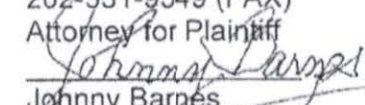
EJF REAL ESTATE SERVICES	)	
	)	
Plaintiff	)	
	)	
v.	)	2012 LTB 8823
	)	Calendar 6
JOHNNY BARNES	)	
	)	
Defendant	)	NEXT EVENT: 9/12/12 at 1:30 p.m.
	)	Mediation

DISMISSAL PRAECIPE

THE CLERK OF THE COURT will, by consent of the parties, dismiss both the claims and the counterclaims with prejudice pursuant to the terms of a settlement agreement being retained by the parties and their counsel. Said settlement agreement will not be filed with the court unless either party moves for enforcement of the agreement. Parties agree to disburse the funds in the Registry to Plaintiff. The disbursement form is being filed simultaneously with this praecipe.

DATE 9/12/12

  
Joanne Sgro 209106  
1750 K Street, N.W. #800  
Washington, D.C. 20006  
202-638-5100  
202-331-9549 (FAX)  
Attorney for Plaintiff

  
Johnny Barnes  
301 G Street, S.W. #B101  
Washington, D.C. 20024  
Defendant

Approved: \_\_\_\_\_

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**CIVIL DIVISION**

**Landlord and Tenant Branch**



EJF REAL ESTATE SERVICES, INC., :

Plaintiff, :

vs. :

Case. No. LTB 08823 2012

JOHNNY BARNES, :

Defendant. :

**ANSWER, SET-OFF, RECOUPMENT, COUNTERCLAIM**

**AND JURY DEMAND OF DEFENDANT**

Defendant, *pro se*, for his Answer to the Complaint of Plaintiff states the following:

1. The Complaint fails to state a claim upon which relief can be granted.
2. Service upon Defendant by Plaintiff was defective.
3. Defendant denies each and every claim of Plaintiff stated in the Complaint.
4. Defendant denies owing Plaintiff rent in the amount alleged by Plaintiff or in any amount.
5. Defendant asserts that this is not a non-payment of rent case. Indeed Defendant is fully prepared and able to pay an amount of rent judged to be due, if any, given the responses to Plaintiff's claims made herein by Defendant. Defendant, however, asserts that no rent, in any amount, is due.



6. Plaintiff has offered the subject property for sale and has an endorsed Agreement with a Third Party Contract Purchaser.
7. That Agreement, of course, is subject to the rights of the tenants, including Defendant, to match the offer of sale.
8. Plaintiff's acts and omissions, over a protracted period of time, have been influenced by its drive to sell the subject property and escape certain responsibilities to which it is subject.
9. Those acts and omissions, however, have affected the quality of Defendant's tenancy, and Defendant is entitled to relief as a consequence.
10. In light of Plaintiff's acts and omissions, Defendant questioned Plaintiff about rent levels, related services and the condition of the subject property. However, instead of resolving the issues raised by Defendant, Plaintiff, through its agents, commenced a pattern and practice of harassment, intimidation and retaliatory actions against Defendant, in an effort to make his tenancy uncomfortable, inconvenient, less valuable, and more burdensome and without privacy, thereby reducing the quality and quantity of services under the Lease, in violation of law.
- 11.. Defendant further asserts that Plaintiff's claims for rent are without foundation because they are grounded in retaliation; fraud and misrepresentation; violations of the Housing Code, Consumer Protection Statutes and common law, Zoning Laws; violations of common law principles of unconscionability, unjust enrichment, illegal monies received; violations of Rental Housing Statutes and their progeny; violations of the Tenant Opportunity to Purchase Act (TOPA); and violations of the District of Columbia Antitrust Act.

### SET-OFF, RECOUPMENT AND COUNTERCLAIM

12. The Lease governing the subject property is null and void and thus unenforceable due to past and ongoing actions and omissions by the Plaintiff. An illegal contract, made in violation of the statutory prohibition designed for police or regulatory purposes, is void and confers no right upon the wrongdoer, *Brown versus Southall Realty*, 237 A. 2d 834 (D.C. App. 1968).

13. Plaintiff has breached the warranty of habitability. A warranty of habitability, measured by the standards set out in the Housing regulations for the District of Columbia, is implied by operation of law. A breach of the warranty gives rise to the usual remedies for breach of contract, *Javins versus First National Realty*, 428 F. 2d 1071 (C.A.D.C. 1970), cert. denied, 400 U.S. 925 (1970). See also *Jonathon Woodner Co. versus Breeden*, 665 A. 2d 929 (D.C. App. 1995).

14. Plaintiff has breached the Lease between the parties. As with other contracts, a residential lease must be interpreted to carry out the reasonable expectations of the parties, *David C. Sobelsohn versus American Rental Management Company*, 926 A. 2d 713 (D.C. App. 2007).

15. Plaintiff has retaliated and continues to retaliate against Defendant. The promulgation of the housing code by the District of Columbia Commissioners at the direction of Congress impliedly effected just such a change in the relative rights of landlords and tenants and that proof of a retaliatory motive does constitute a defense to an action of eviction, *Edwards versus Habib*, 397 F. 2d 687 (C.A.D.C. 1968).

16. The First Amendment gives express recognition to the right of the people to petition the Government for a redress of grievances. *U.S. Const., Amend. I.*



17. Plaintiff has caused miserable, disreputable and uninhabitable conditions at the subject premises. Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may spoil a community as an open sewer may ruin a river, *Berman versus Parker*, 348 U.S. 26 (1954). See also *Frank versus State of Maryland*, 379 U.S. 360 (1959).

18. Defendant has been constructively evicted by Plaintiff. Constructive eviction occurs when residential rental property is in an uninhabitable condition. The uninhabitable condition makes the property unsuitable to live in. When residential real property is uninhabitable, it creates a condition under which the tenant has been "constructively evicted;" the facts and circumstances are such that the tenant is unable to have full use and possession of the rental property and thus, in reality, has been "evicted."

19. Defendant has been partially constructively evicted by Plaintiff. Partial constructive eviction occurs when the Landlord deprives the tenant of use of part of the premises and the Tenant is forced to abandon that part of the premises.

20. As a Respondent in an unresolved Tenant Petition Complaint, challenging the rent levels of the subject housing accommodation, the rent level of the subject property is not what Plaintiff alleges and may well be far below.

21. Plaintiff has operated a parking garage and lot without a license and has illegally charged and increased the cost of parking for Defendant and other tenants in violation of the D.C.

Consumer Procedure and Protection Act and relevant Zoning Laws and Regulations.

22. Plaintiff has been unjustly enriched by demanding and collecting rent money from Defendant for which Plaintiff was not due.

23. Plaintiff has illegally demanded and received monies for rent from Defendant for which Plaintiff was not due.

24. Plaintiff has and continues to invade and violate the privacy of Defendant and other tenants of the subject housing accommodation.

25. Plaintiff fraudulently, through the use of misrepresentations, induced and caused Defendant to rely upon Plaintiffs representations to the detriment of Defendant.

26. Plaintiff has ignored its basic responsibility to maintain even minimal standards of the subject rental property. The need to maintain basic, minimal standards of housing, to prevent the spread of disease and of that pervasive breakdown in the fiber of a people which is produced by slums and the absence of the barest essentials of civilized living, has amounted to a major concern of American Government. *Edwards versus Habib*, 397 F. 2d 687 (1968).

27. Plaintiff has failed and refused, in many instances, to comply with the Tenant Opportunity to Purchase Act (TOPA) and has put at peril Defendant's ability to exercise his rights under that law.

28. Plaintiff, in coordination and collaboration with others, has sought to prevent developers, other than the Third Party Contract Purchaser, from offering or proposing to offer bids and assistance to Defendant and other tenants of the subject property in furtherance of exercising their Tenant Opportunity to Purchase (TOPA) rights, thereby discouraging and depressing

competition in violation of the District of Columbia Antitrust Act.

WHEREFORE, the premises considered, Defendant hereby requests:

1. Judgment for Defendant on the Complaint of Plaintiff.
2. Judgment for Defendant on his claim for Set-Off, Recoupment and Counterclaim in an amount which to the Jury and the Court seems, just, reasonable and fair, including both compensatory and punitive damages.
3. Judgment for the Defendant on the unresolved Tenant Petition Complaint, challenging the rent levels of the subject housing accommodation.
4. A finding by the Jury and the Court that Defendant has been constructively evicted and/or partially constructively evicted from the subject rental unit as a result of the acts or omissions of Plaintiff and that Defendant's obligation to pay rent in whole or in part is suspended for a time period consistent with the Jury's and Court's factual findings.
5. A finding by the Jury and the Court that Plaintiff has violated the D.C. Consumer Procedure and Protection Act and relevant Zoning Laws in the District of Columbia.
6. A finding of unjust enrichment and illegal monies received for parking, for which Plaintiff lacks the requisite licenses and permits, by Plaintiff, resulting in at least treble damages for Defendant.
7. An Order from the Court prohibiting Plaintiff, its agents and employees from further retaliating against Defendant in any manner, nature or form.

8. An Order from the Court prohibiting Plaintiff, its agents and employees from further invading the privacy of Defendant.
9. An Order from the Court prohibiting Plaintiff, its agents or employees from representing to other potential Housing Providers or to any credit reporting agencies that Defendant does not pay rent or is not a worthy tenant.
10. An Order from the Court directing Plaintiff not to interfere with the ongoing TOPA process at the subject property and to refrain from discouraging and depressing open competition among developers.
11. Such other and further relief as to the Jury and Court seems just and proper.

**VERIFICATION**

I declare under penalty of perjury that the factual allegations made in the foregoing Answer, Set-Off, Recoupment, Counterclaim and Jury demand are true to the best of my information, knowledge and belief.

Executed this 3rd day of May 2012.

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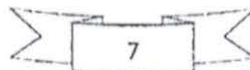
\_\_\_\_\_  
**Johnny Barnes**

301 "G" Street, S.W. - Apartment B101

Washington, D.C. 20024 - (202) 882-2828

**JURY DEMAND**

**Pursuant to the Rules of this Court, Defendant hereby demands a trial by Jury of Twelve (12) persons.**



**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Answer, Set-Off, Recoupment, Counterclaim and Jury Demand of Defendant was hand delivered to Attorney Joanne Sgro, Counsel for Plaintiff, on this 3rd day of May 2012.

151

**Johnny Barnes**





## EXHIBIT B

### Class Counsel Lodestar and Expenses Inception through July 13, 2014

	Rezvani Volin P.C.	Finkelstein Thompson LLP
<b>FEES</b>		
Total Hours	588.00	1,082.70
Total Lodestar	\$300,981.01	\$382,164.50
<b>TOTAL HOURS</b>		<b>1670.70</b>
<b>TOTAL LODESTAR</b>		<b>\$683,145.51</b>
<b>EXPENSES</b>		
Computerized Research (Lexis, Westlaw, Pacer)	\$343.67	\$2,201.77
Delivery Service (FedEx, Courier, etc.)		\$408.68
Document Fee		\$93.10
Experts*	\$2,000.00	
Filing Fees	\$637.85	\$827.80
Litigation Support	\$62.50	
Meals	\$125.26	
Photocopying		\$1,375.50
Postage	\$4.75	\$47.90
Scanning		\$340.00
Service of Process		\$317.00
Telephone	\$7.23	\$12.85
Transcripts	\$1,853.05	\$2,354.29
Local Travel (Taxi, Metro, Parking)	\$286.70	\$545.24
Expense Subtotals	\$5321.01	\$8,524.13
<b>EXPENSE TOTALS</b>		<b>\$13,845.14</b>

\* This reflects the fee for Bello, Bello & Associates, LLC under SCR-Civil 26(b)(4)(C), which Class Counsel, on behalf of the Class, will pay upon receipt of settlement funds. There may be an additional fee owed to Class expert Thorn Pozen reflecting the difference between what was billed by him to the Class and what was paid by Defendants under SCR-Civil 26(b)(4)(C). The Class will know whether a differential is owed to Mr. Pozen prior to the Final Fairness Hearing.





June 13, 2014

Tracy Rezvani, Esquire  
**Rezvani Volin & Rothbert PC**  
1050 Connecticut Ave., N.W.  
10<sup>th</sup> Floor  
Washington, DC 20036

Re: *Chaney v. Capitol Park Towers*

**INVOICE**

For services rendered and expenses incurred for the Administration of Settlement from April 1, 2014 through May 31, 2014:

Set up, format and proof the notice:	\$ 200.00
Submit file to NCOA:	65.00
Perform Lexis/Nexis searches of 'moved' tenants: (109 @ \$0.75):	81.75
Submit unlocated 'moved' tenants to locator service: (31 @ \$0.75):	23.25
Print, address and deliver notices to Post Office (176 @ \$0.50):	88.00
Project Management (5.00 hours @ \$150.00):	750.00
Staff (6.00 hours @ \$75.00):	450.00
Clerical / Data Entry (3.00 hours @ \$60.00):	180.00
Technical Consulting (1.50 hours @ \$150.00):	225.00
Out of pocket costs:	
Postage:	84.88
Photocopies:	<u>34.50</u>
<b><u>Total Due:</u></b>	<b><u>\$2,182.38</u></b>

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1515 Market Street, Suite 1700 ■ Philadelphia, PA 19102 ■ 215.665.8870 ■ Fax 215.665.0613

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California | New Jersey | New York | Oklahoma | Oregon

[www.HefflerClaims.com](http://www.HefflerClaims.com)



July 11, 2014

Tracy Rezvani, Esquire  
**Rezvani Volin & Rothbert PC**  
1050 Connecticut Ave., N.W.  
10<sup>th</sup> Floor  
Washington, DC 20036

Re: *Chaney v. Capitol Park Towers*

**INVOICE**

For services rendered and expenses incurred for the Administration of Settlement from June 1, 2014 through distribution:

Process undeliverable notices: (20 @ \$0.75):	\$ 15.00
Project Management (5.00 hours @ \$150.00):	750.00
Staff (6.00 hours @ \$75.00):	450.00
Clerical / Data Entry (3.00 hours @ \$60.00):	180.00
Technical consulting (1.50 hours @ \$150.00):	225.00
Partner review (1.00 hour @ \$230.00):	230.00
Opt outs (4 @ \$5.00):	20.00
Out of pocket costs:	
Postage: (34 additional notices @ \$0.48)	16.32

Estimated Services for Distribution:

Distribution Postage (206 checks @ \$0.48):	98.88
Processing and Printing checks (206 checks @ \$1.25)	257.50
Scanning and Image Storage:	5.00
Process Checks as Undeliverable (includes data entry) (25 @ \$0.75)	18.75
Print and Mail returned checks to address from USPS (15 @ \$1.00):	15.00
Monthly reconciliation of account for 6 months:	900.00
Staff/Management Hours to Complete Administration (10 hours @ \$100.00)	1,000.00
Prepare and file 1120-SF to IRS:	1,750.00
Out of pocket costs:	
Research Locator Service:	465.00
Postage: (Estimated 15 remails/reissues @ \$0.48)	7.20
Photocopies:	100.00

**Total Due:** **\$6,503.65**

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1515 Market Street, Suite 1700 ■ Philadelphia, PA 19102 ■ 215.665.8870 ■ Fax 215.665.0613

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California | New Jersey | New York | Oklahoma | Oregon

**[www.HefflerClaims.com](http://www.HefflerClaims.com)**



ARLENA CHANEY, et al.,

Plaintiffs,

v.

CAPITOL PARK ASSOCIATES, an  
Illinois limited partnership, et al.,

Defendant.

IN THE SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
CIVIL DIVISION

No. 2012 CA 005582 B

Judge Neal E. Kravitz  
Calendar 13

**AFFIDAVIT OF CLAIMS ADMINISTRATOR REGARDING COMPLIANCE WITH THE SETTLEMENT  
AGREEMENT AND THIS COURT'S "ORDER PRELIMINARILY APPROVING SETTLEMENT AND  
APPROVING CLASS NOTICE"**

I, Edward J. Sincavage, being first duly sworn according to law, depose and say as follows:

1. I am a Partner for Heffler Claims Group, LLC (f/k/a Heffler Claims Administration), an affiliate of Heffler, Radetich & Saitta, L.L.P., Certified Public Accountants ("Heffler"). Our business address is 1515 Market Street, Suite 1700, Philadelphia, PA 19102. Our main telephone number is (215) 665-8870. I am over twenty-one years of age and am authorized to make this declaration on behalf of Heffler and myself.
2. Heffler has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities, employment wage and hour, consumer class action settlements, as well as Securities & Exchange Commission and Government Enforcement actions. We have provided notification and/or claims administration in more than 750 cases.
3. Heffler was engaged and appointed by mutual agreement of the Settling Parties to provide notification and administration services in the above-captioned matter pursuant

to the Settlement Agreement. In its Order Preliminarily Approving Settlement and Approving Class Notice, the Court approved the appointment of Heffler as Claims Administrator. Our duties include: (i) overseeing the mailing of notice to the Settlement Class; (ii) setting up a mailing address to receive opt-outs, undeliverable mail, and other communications about the Settlement; (iii) issuing payments to Class Members who do not opt-out of the settlement; and (iv) such other tasks as Class and Defendant's Counsel mutually agree or the Court orders or requests Heffler to perform.

4. On or about May 12, 2014, Heffler set up the mailing address of Capitol Park Towers Settlement c/o Heffler Claims Group; 1515 Market Street, Suite 1700; Philadelphia, PA 19102 to receive, opt-outs, undeliverable mail, and other communications about the Settlement.
5. On or about May 12, 2014, Heffler received text for the Notice. Drafts of the Notice to be typeset, printed and mailed to Class Members were prepared by Heffler and approved by the Settling Parties. An exemplar of the Notice is attached hereto as Exhibit A.
6. On or about May 12, 2014, Heffler received a list of potential Class Members ("the Class List")(Exhibit B). The Class List contained data for 207 Class Members, including their first name, last name, move-out status and date, and last known address.
7. The Class List indicated that 102 Class Members still reside in the Towers and the remaining 105 Class Members have moved out.
8. The Class List also contained three pairs of "co-habitors" who each share(d) a single parking space. Two of the pairs of "co-habitors", Geneva Martin, Philippe Martin, Zhou



8. The Class List also contained three pairs of "co-habitors" who each share(d) a single parking space. Two of the pairs of "co-habitors", Geneva Martin, Philippe Martin, Zhou Lin, and Yang Hyang, were known to have moved out of the Towers and the third pair, Spencer Holland and Ken Ceccucci, still resides there. The two pairs of "co-habitors" who had moved out were split on the Class List to take into account the fact they would now be living at separate addresses. This brought the total Class Member count to 209 and the total number of "moved out" Class Members to 107, with each of the former "co-habitors" who had moved out eligible to receive a half share of the amount that a non-co-habitor Class Member would receive.
9. On June 30, 2014, an additional self-identifier Class Member, Celestina Egbuhuo, was added to the Class List. This brought the total class member count to 210—with four having half-shares.
10. The names and mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service ("the USPS"). The NCOA contains change of address notifications filed with the USPS. In the event that any individual had filed a USPS change of address notification, the address listed with NCOA was used in connection with the mailing of the Notices.
11. NCOA returned updated address for 41 of the "moved-out" Class Members. The remaining 66 "moved-out" Class Members were promptly sent to Lexis/Nexis to have an updated mailing address researched. Of these 66, 35 came back from Lexis/Nexis with a



new address. The remaining 31 had to be sent to a professional locator service named Donovan, Clark, & Co for further research.

12. On May 30, 2014, Notices were printed and mailed to each of 178 Class Members for whom Heffler had an address, via postage prepaid, First-Class Mail. Each Notice advised the Class Member that they could submit a written Opt-Out request (also referred to as a Request for Exclusion) or an Objection to the Settlement postmarked by July 7, 2014.
13. On June 6, 2014, Notices were printed and mailed to the remaining 31 Class Members that had to be researched by Donovan, Clark, & Co. via postage prepaid, First-Class Mail to the best address available. Each Notice advised the Class Member that they could submit a written Opt-Out request (also referred to as a Request for Exclusion) or an Objection to the Settlement postmarked by July 7, 2014.
14. On July 2, 2014, a Notice was mailed out to the additional self-identifier Class Member described above via postage prepaid, First-Class Mail. This Notice advised the Class Member that they could submit a written Opt-Out request (also referred to as a Request for Exclusion) or an Objection to the Settlement postmarked by July 7, 2014.
15. As of this date, Heffler has received a total of 15 undeliverable Notices. All 15 of these notices were returned as undeliverable without a forwarding address, and Heffler performed address traces on each. The address traces utilize the name, previous address and/or other identifying information for locating a current address. Of the address traces performed, updated addresses were obtained and appropriate Notices were promptly re-mailed to 5 new addresses via postage prepaid, First-Class Mail. No updated addresses could be obtained for 10 names and addresses, so no further

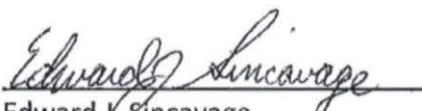
processing could be performed. Of the 5 updated addresses re-mailed as described above, none were returned as undeliverable a second time and no further processing was performed. The number of ultimately undeliverable Notices was less than 4.78% of the total number of Notices mailed.

16. As of this date, Heffler has received Four (4) Opt-Out requests. Exhibit C. Two (2) of the Opt-Out requests were received from the same individual, Johnny Barnes, who indicated that he used two parking spaces during the relevant time period.

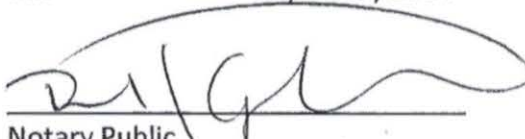
17. As of this date, Heffler has received One (1) Objection to the Settlement. Exhibit D.

18. I state under the penalty of perjury under the laws of the Commonwealth of Pennsylvania and the United States that the above is true and correct to the best of my knowledge.

**DATED: July 11, 2014**

BY:   
Edward J. Sincavage

Sworn to and subscribed before me  
this \_\_\_\_\_ day of July 2014

  
Notary Public

NOTARIAL SEAL  
David J. Guglielmo  
NOTARY PUBLIC  
Philadelphia City, Philadelphia County  
My Commission Expires 01/15/2017





## **If You Were a Tenant of the Capitol Park Towers Apartments Who Paid a Fee to Park at the Apartments**

**Please Read This Legal Notice Carefully. Your Rights Could Be Affected.**

The DC Superior Court has preliminarily approved a settlement in a class action lawsuit between tenants and former tenants of the Capitol Park Towers Apartments, 301 G St. SW, Washington, DC ("Capitol Park Towers"), who paid monthly fees to park their cars at the Capitol Park Towers, and the former owners and property managers of the Capitol Park Towers, Capitol Park Associates, an Illinois Limited Partnership; Capitol Park Land Corporation; A.I.M. Partnership No. 1, an Illinois Limited Partnership; and EJF Real Estate Services, Inc. (the "Defendants"). The case is titled *Chaney, et al. v. Capitol Park Associates, an Illinois limited partnership, et al.*, Case Number 2012 CA 005582 B. In a class action, one or more people ("Class Representatives") sue on behalf of themselves and all other people who have similar claims.

**This notice is only a summary.** For more information, visit [www.rvrlegal.com/Capitol\\_Park\\_Towers\\_Settlement](http://www.rvrlegal.com/Capitol_Park_Towers_Settlement) or call the number below.

### **What is this lawsuit about?**

This is a lawsuit under the consumer protection laws of District of Columbia. The lawsuit alleges that, between July 10, 2009 and November 15, 2013, the Defendants charged tenants of the Capitol Park Towers Apartments monthly fees to park at the Apartments without a proper business license and without proper clearance under the DC zoning regulations. The lawsuit alleges that these practices violated the DC Consumer Protection Procedures Act and unjustly enriched the Defendants. The lawsuit sought damages of \$1,500 per violation for each Class Member, and other monetary relief.

### **Are you a Class Member?**

You are a Class Member if you are a current or former tenant of the Capitol Park Towers who paid a monthly fee to park at the Apartments at any time between July 10, 2009 and November 15, 2013. However, you are not a Class Member if you are employed by any of the Defendants, or any company affiliated with the Defendants or if you have previously released your claims against any of the Defendants.

### **What are the terms of the Settlement?**

The Defendants have agreed to pay \$500,000 to settle the case. In exchange, the claims in the lawsuit will be dismissed, and no Class Member will be allowed to file new lawsuits in the future against any of the Defendants that make the same claims, or that are based on the events covered by the lawsuit. The Defendants will not be admitting that they did anything wrong, and the Class

Representatives will not be admitting that the allegations they made in the lawsuit are wrong.

### **Are you entitled to any money?**

Yes, if the Court grants final approval of the settlement. It is impossible to precisely identify the exact amount that you will receive at this time, because the settlement creates a single common fund of \$500,000. All of the costs of the litigation, including attorneys' fees and expenses, incentive awards, and the costs of administering the settlement, will be deducted from that fund prior to distribution to Class Members, and the final amount of those costs is not yet known. Based on the information available at present, it is estimated that a total of 207 Class Members will share equally in the net settlement fund.

### **Attorneys' Fees and Costs**

The attorneys for the Class Representatives ("Class Counsel") will be asking for an attorneys' fee award of up to 33% of the settlement fund, and for reimbursement of the out-of-pocket expenses they have paid while pursuing this lawsuit. Any award of attorneys' fees and expenses must be approved by the Court.

### **Incentive Awards**

Class Counsel will also be asking for incentive awards of \$2,500 for the Class Representatives, to be paid from the settlement fund. Incentive awards are intended to compensate the Class Representatives for their time and effort they spent assisting with the lawsuit. Any incentive award must be approved by the Court.

### **What are your legal rights?**

You have two options at this time:

**Remain a Class Member.** If you are a Class Member, and want to remain a Class Member, you do not have to do anything. If the settlement receives final approval, you will receive your share of the \$500,000 settlement fund. You will also give up the right to file an individual lawsuit against the Defendants that makes the same claims, or is based on the same events, as this lawsuit. If you remain a Class Member, you have the right to enter an appearance in this lawsuit through your attorney.

**Exclude Yourself.** If you do not want to be a Class Member, you must exclude yourself from the settlement. If you exclude yourself, you will lose your right to receive your share of the \$500,000 settlement fund if the settlement receives final approval. However, you will keep your right to file an individual lawsuit against the Defendants that makes the same claims, or is based on the



same events, as this lawsuit. To exclude yourself, you must send a letter stating you "request exclusion from the class in *Chaney, et al. v. Capitol Park Associates, L.P., et al.*, Case Number 2012 CA 005582 B," including your name, current address, the number of the parking space(s) which was licensed to you and the period which you used such space(s), and the apartment number or numbers where you resided in Capitol Park Towers between July 10, 2009 and November 15, 2013, to:

Capitol Park Towers Settlement  
c/o Heffler Claims Group  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102

You must mail your request for exclusion no later than July 7, 2014. Requests for exclusion mailed after July 7, 2014 will not be considered by the Court.

**Do you have a right to comment or object to the settlement?**

If you remain a Class Member, you have the right to comment on the settlement to the Court, including expressing support for the settlement. Your comments must be in writing.

You also have the right to object to the settlement if you do not think it is fair. Your objection must be in writing, and must contain the following information: (i) the name of the lawsuit; (ii) your full name, address, and telephone number (and if you no longer live at the Capitol Park Towers, your former apartment number there), (iii) the number of the parking space(s) that was licensed to you and the period during which you used such space(s), (iv) all grounds for the objection, accompanied by any legal support for the objection known to you or your counsel; (v) the identity of all counsel representing you; (vi) the identity of all counsel representing you 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 your objection; (viii) a statement confirming whether you intend to personally appear and/or testify at the Final Fairness Hearing; and (ix) your signature or the signature of your counsel. All comments and objections must be mailed to:

Capitol Park Towers Settlement  
c/o Heffler Claims Group  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102

You must also mail copies of your comments or objection to Class Counsel and Defense Counsel:

**Class Counsel:**

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

**Defense Counsel:**

William C. Casano  
*Greenstein DeLorme & Luchs, P.C.*  
1620 L Street NW, Suite 900  
Washington, DC 20036

You may only submit comments or objections if you remain a Class Member. You may not do so if you exclude yourself from the settlement. You must mail your comments or objections no later than July 7, 2014. Comments or objections mailed after July 7, 2014 will not be considered by the Court.

**The Final Fairness Hearing**

The Court will hold a Final Fairness Hearing on July 28, 2014 at 10:00 a.m. in Courtroom 219 at the Superior Court for the District of Columbia, Moultrie Courthouse, 500 Indiana Avenue NW, Washington, DC 20001 to consider whether to grant final approval of the settlement, Class Counsel's request for attorney's fees and expenses, and the Class Representatives' request for incentive awards. If you submit written comments or objections, you may appear at the hearing in person or through your counsel, and present your views about the settlement, as well as any evidence you want the Court to consider. If you do not submit written comments or objections, or if you exclude yourself from the settlement, you will not be allowed to appear at the Final Fairness Hearing.

**This notice is intended solely to provide information about the settlement. You should not interpret it as an opinion by the Court about the merits of the claims in this lawsuit.**

**For more information visit [www.rvrlegal.com/Capitol\\_Park\\_Towers\\_Settlement](http://www.rvrlegal.com/Capitol_Park_Towers_Settlement) or call (202) 350-4270 ext. 106.**



*Chaney, et al. v. Capitol Park Associates, LP, et al.*, No. 2012 CA 005582 B (D.C. Super. Ct.)  
**CLASS MEMBER LIST**

\*Where multiple names appear separated by an ampersand, this indicates that the named individuals rented a parking space jointly. We are in the process of determining how to handle these accounts, and will update you when we make a decision.

**Class Members Residing at the Capitol Park Towers Apartments, 301 G Street SW, Washington, DC 20024, as of Nov. 8, 2013, with apartment number**

	NAME	APARTMENT NUMBER
1	Acosta, Frances	627
2	Ahsan, Ghuam Muhammad	315
3	Allen, Sherla	501
4	Andrews, Sheila	433
5	Athias, Saadia	626
6	Ayele, Dejene	727
7	Bahry, Kelly Jo	711
8	Baskfield-Claiborne, Clara	824
9	Bell, Anthony	207
10	Bou-Sliman, John	613
11	Browne, Viola	229
12	Bubeck, James	231
13	Bussey, Ashley	723
14	Chaney, Arlena	426
15	Cherry, Greta	324
16	Collins, Ronald	609
17	Couture, Leo	703
18	Difebo, James	322
19	Dunford, Tristian	635
20	Duquette, Jacky	214
21	Finch, Brian	430
22	Garcia, Michael	833
23	Gilhuly, Barry	401
24	Gourneni, Rama	133
25	Gray, Teena	531
26	Hasan, Shaikh	407
27	Hill, Deidre	312
28	Hoitsma, Gary	713
29	Holland, Spencer & Ceccucci, Ken*	213
30	Horn, William	822
31	Jackman, Dexter	204
32	Jefferson, Khristian	323
33	Jones, Giovanni	726
34	Kaveh, Payman	403



35	Kesewanch, Tesfa	601
36	Kiefert, Eric	322
37	Kirby, Ayofemi	517
38	Lin, Xue	513
39	Lu, Quing	525
40	Lucas, Maurice	729
41	Mahmoud, Awad	622
42	McLean, Christina	724
43	Merritt, Flonisha	106
44	Messgina, Tadelech	619
45	Miles, Angela	814
46	Mobley, Charissa	135
47	Morgan, Carlene	318
48	Murray, James	303
49	Netha, Lisa	132
50	Nishie, Mari	503
51	Nodland, Katherine	130
52	Noiesette, Benjamin	524
53	North, Henry	111
54	Pagan, Venus	412
55	Palzom, Tsering	826
56	Perez, George	507
57	Petrov, Mihail	821
58	Pham, Danh	809
59	Phaup, Marvin	734
60	Phelps, Alicia	523
61	Piggee, Darryl	417
62	Plitsyna, Yekaterina	606
63	Posman, Harry	415
64	Quarles, Leonard	225
65	Rader, Ian	230
66	Reeves, Alfreda	828
67	Register, Robert	532
68	Reid, Shaun	808
69	Ren, Yuyang	535
70	Richmond, H. Brian	529
71	Ruppel, Scott	228
72	Saito, Chiharu	827
73	Tavakoli-Saraji, Hodjat	602
74	Seals, Timothy	420
75	Simkovic, Josef	717
76	Smith, Antoinette	811
77	Smith Isabelle	512
78	Sneed, Allysia	707
79	Spencer, Gregory	221

80	Steed, Shamequa	402
81	Steyskal, Neil	404
82	Strowbridge, Mae	227
83	Swinton-Thurman, Ingrid	611
84	Taluk, Rinchen	428
85	Tanner, Kathy	422
86	Telda, Michael	427
87	Thakor, Devang	827
88	Trapp, Michael	405
89	Tsafah, Roger	628
90	Tyler, Alwita	732
91	Ustun, Ali	519
92	Varner, Melissa	206
93	Vaughn, Jay	708
94	Ventura, Oscar	129
95	Vergara, Andres	608
96	Vieyra, Jean	731
97	Warren, Kali	623
98	Wilhjelm, Carl	522
99	Williams, Selma	603
100	Williamson, Michael	716
101	Ylli, Anita	123
102	Yohannes, Yisehac	219

**Class Members No Longer Residing at 301 G Street SW, Washington DC 20024 as of Nov. 8, 2013, with former apartment number and move-out date.**

	NAME	FORMER APARTMENT NUMBER	MOVE-OUT DATE
1	Adeboye, Samson	416	10/13/2013
2	Ashtiani, Tony	613	08/31/2011
3	Askal, Kahali	429	02/28/2010
4	Barnard, Catherine	733	08/31/2009
5	Batsaikhan, Yesunbay	532	11/30/2009
6	Brown, Alexander	118	10/31/2011
7	Bruce, Melvin	206	02/06/2010
8	Brunson, Robert	330	05/14/2012
9	Burns, Gregory	503	08/31/2009
10	Charles, Pierre I.	211	08/31/2009
11	Clark, Aaron	118	08/18/2010
12	Cohen, Matthew	435	07/23/2009
13	Cooley, Danielle	522	03/31/2013
14	Cruzado, Lissa	508	01/05/2010
15	Davis, Frank	522	09/30/2010

16	Dell'Aglio, Brandon	315	08/18/2012
17	Duruamuku, Faith	513	12/31/2010
18	Earnest, Eileen	231	08/31/2010
19	Ebuenga, Evelyn E.	830	unknown
20	Eccles, Sr., William	517	03/08/2011
21	Finwall, Vania	120	08/31/2009
22	Frazier, John	125	03/31/2009
23	Gonzales, Gemma	409	07/27/2013
24	Grant, Annie	206	02/19/2011
25	Gutierrez, Rodrigo	817	08/02/2011
26	Hailemariam, Teferi	419	unknown
27	Hall, Andrea	614	10/14/2012
28	Hamidi, Hamidulla	525	unknown
29	Hatcher, Erica	832	06/21/2012
30	Hobson, John	834	03/13/2013
31	Holloway, Ruth	303	unknown
32	Hyang, Yang & Zhou, Lin*	813	unknown
33	Jaco, Taunya	402	unknown
34	Jalil, Mohammed	305	08/31/2010
35	James, Vanessa	427	10/06/2009
36	Kahn, Shelly	328	12/10/2012
37	Kayembe, Mavuba	133	01/31/2012
38	Khan, Mohamed	414	unknown
39	Klock, Robert	332	09/30/2013
40	Lamartiniere, Jessica	629	12/18/2011
41	Lamie, Kathleen	306	07/15/2009
42	Landaverde, Amadeo A.	222	02/17/2012
43	Lewis, Neal	703	06/30/2010
44	Lewis, Ronald	530	01/31/2012
45	Liu, Lihua	129	02/27/2010
46	Lozada, Ivan	505	11/30/2010
47	Lucca, Celiandro	305	08/31/2011
48	Marklund, Chris	536	05/25/2013
49	Marshall, Evelina	614	07/03/2010
50	Martin, Geneva & Martin, Philippe*	821	unknown
51	Mathis, Meredith	429	08/31/2012
52	Mavuba-Mulanga, Nancy	125	07/13/2013
53	Mbemba, Karl	130	11/09/2009
54	McDonough, Matthew	629	12/18/2011
55	Medley, Phillip	723	02/15/2010
56	Melendez, Maria	307	12/31/2010
57	Mkoko-Lee, Hlonophile	818	unknown
58	Murphy, Raeven	635	08/31/2010
59	Muttalib, Dawud	807	07/10/2012
60	Nadeem, Yaqub	421	08/02/2010



61	Ndoye, Al Hassane	311	11/30/2009
62	Nosherwan, Nosherwan	527	06/27/2013
63	Nute, Kathryn	308	07/06/2013
64	O'Brien, Thomas	731	06/19/2010
65	Payne, Kerry	112	11/30/2012
66	Pearson, Dexter	606	12/13/2012
67	Perkins, Anthony	304	07/09/2011
68	Peters, Joshua	332	02/23/2012
69	Poole, Darryl	818	07/31/2010
70	Powaleny, Andrew	812	06/30/2011
71	Rahnavard, Omid	727	05/31/2011
72	Reeves, Attiya	402	04/30/2010
73	Resendes, Raymond	302	08/31/2012
74	Rizzo, Maria	512	09/07/2013
75	Roger, Sallee	718	06/20/2012
76	Roper, Justin	130	09/25/2010
77	Rowland, John	214	05/03/2012
78	Saadalla, Sabry	226	07/15/2011
79	Sangster, Amaris	332	06/24/2010
80	Schmitt, John	521	unknown
81	Shiferaw, Wondwosen	521	03/31/2012
82	Smith, Molly	122	07/01/2010
83	Sobocinski, Joseph	209	01/04/2012
84	Solomona, Imoasina S.T.	708	08/31/2009
85	Tarver, Meredith	807	02/25/2010
86	Taye, Kanjit	119	06/30/2013
87	Thorp, Laura	612	02/28/2013
88	Tinubu, Peter	102	07/31/2011
89	Tirado, Javier	228	10/31/2011
90	Toups, Jacob	228	07/25/2011
91	Tulloch, Andrew	120	12/04/2012
92	Turay, Mary	728	04/28/2013
93	Usova, Georgeanne	723	02/15/2010
94	Valentine, Mary	327	unknown
95	Vanja, Tomic	727	unknown
96	Wack, Louis	719	08/31/2013
97	Walker, Fiona	528	10/31/2011
98	Wall, Monique	727	02/28/2013
99	Walson, Kathryn	535	10/28/2010
100	White, Ashley	627	10/31/2012
101	Williams, Alexander	710	02/28/2011
102	Winkler, Carl	223	06/30/2010
103	Young-Tillman, Mazie	325	09/03/2011
104	Zhang, Bin	727	unknown
105	Zhang, Song L.	317	09/14/2011



1. The following information was obtained from the  
2. records of the Department of the Interior, Bureau of  
3. Land Management, regarding the land area  
4. described in the foregoing exhibit, to-wit:  
5. The land area described in the foregoing exhibit  
6. is situated in the County of [redacted] State of [redacted]  
7. and is owned by the United States of America.  
8. The land area described in the foregoing exhibit  
9. is situated in the County of [redacted] State of [redacted]  
10. and is owned by the United States of America.



Ep-1

# Johnny Barnes

301 "G" Street, S.W. - Apartment B101 - Washington, D.C. 20024  
(202) 882-2828/Telephone

(202) 841-6321/Cell

Capitol Park Towers Settlement  
c/o Heffler Claims Group  
1515 Market Street, Suite 1700  
Philadelphia, Pennsylvania 19102

Via Standard Mail and Certified Mail

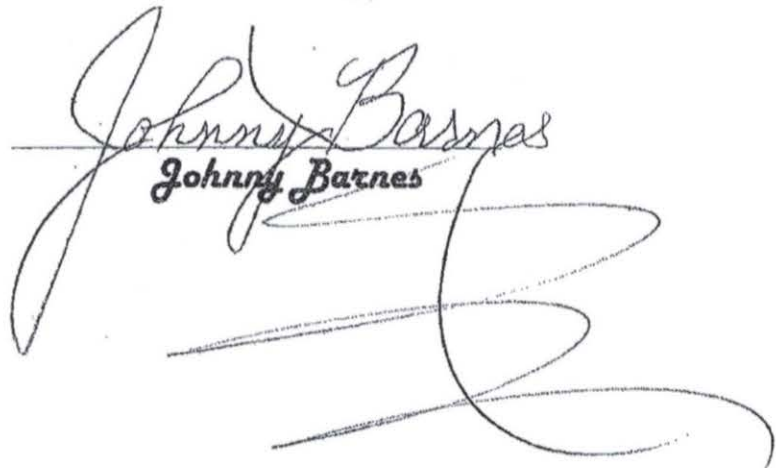
Re: *Chaney, et al. v. Capitol Park Associates, L.P., et al.*  
Case Number 2012 CA 005582 B

To Whom It May Concern:

I request exclusion from the Class in *Chaney, et al. v. Capitol Park Associates, L.P., et al.*, Case Number 2012 CA 005582 B

During the relevant time period I had and still have two parking spaces, numbered W8 and W9, I believe. My Directory Information, then and now, appears above as part of the Letterhead.

Sincerely,

  
Johnny Barnes

30 June 2014



Mr. Johnny Barnes  
301 G St SW Apt 101  
Washington, DC 20024-3108



CAPITAL DISTRICT 200/208

30 JUN 2014 PM 2.1



CAPITOL PARK TOWERS SETTLEMENT  
C/O HOFFER GROUP  
1515 MARKET STREET, SUITE 1700  
PHILADELPHIA, PENNSYLVANIA 19102  
19102195498

942

# Johnny Barnes

301 "G" Street, S.W. - Apartment B101 - Washington, D.C. 20024

(202) 882-2828/Telephone

(202) 841-6321/Cell

Capitol Park Towers Settlement  
c/o Heffler Claims Group  
1515 Market Street, Suite 1700  
Philadelphia, Pennsylvania 19102

Via Standard Mail and Certified Mail

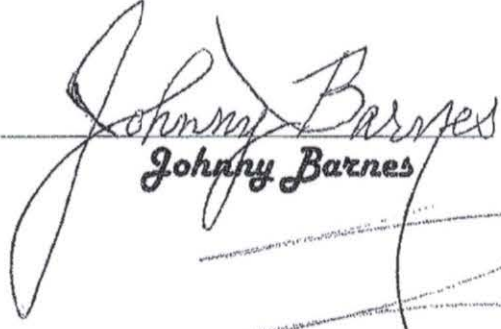
Re: *Chaney, et al. v. Capitol Park Associates, L.P., et al.*  
Case Number 2012 CA 005582 B

To Whom It May Concern:

I request exclusion from the Class in *Chaney, et al. v. Capitol Park Associates, L.P., et al.*, Case Number 2012 CA 005582 B

During the relevant time period I had and still have two parking spaces, numbered W8 and W9, I believe. My Directory Information, then and now, appears above as part of the Letterhead.

Sincerely,

  
**Johnny Barnes**

30 June 2014



JOHNNY BARNES  
301 G ST. SW, # B101  
WASHINGTON, DC 20024

CERTIFIED MAIL™



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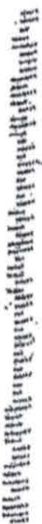


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CARROLL PARK TOWERS SETTLEMENT  
C/O HEFLER COMPANY  
1515 MARKET STREET SUITE 1700  
PHILADELPHIA PENNSYLVANIA 19102

1910231964



Ep3

Awad Mahmoud,  
301 G Street, SW  
Apartment #622  
Washington, DC 20024  
Phone: 202 251-6776  
E-mail: Awad Mahmoudqnour@hotmail.com

Parking Space : West Garage 3 and 4

June 30, 2014

Capitol Park Towers Settlement  
c/o Heffler Claims Group  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102

RE: Awad Mahmoud - Opt Out of the Capitol Park Towers Apartments Parking Lawsuit

I, Awad Mahmoud, have decided to opt out of the Capitol Park Towers Parking Class Action Lawsuit.  
Chaney, et al. v. Capitol Park Associates, L.P., et al, Case Number 2012 CA 005582B.

The attorneys involved in the lawsuit:

/s/ Tracy D. Rezvani

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

Cordially,

  
Awad Mahmoud



Amad Mahmood  
301 G Street SW Apt. 622  
Washington, DC 20024



7014 0510 0001 2795 8882

Capitol Park Towers Settlement  
c/o Hefley Claims Group  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102



1910281964



Ep4

Arlena Chaney  
The Capitol Park Towers Apartments  
301 G Street, SW, #426  
Washington, DC 20024  
E-mail: [achaneyphd@juno.com](mailto:achaneyphd@juno.com)  
202-554-0255

June 30, 2014

Capitol Park Towers Settlement  
c/o Heffler Claims Group  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102

RE: Arlena Chaney's Decision to Opt Out of the Capitol Park Towers Apartments Lawsuit

My name is Arlena Chaney. I reside at The Capitol Park Towers Apartments, 301 G Street, SW, #426, Washington, DC 20024. My parking space is WF2. I am a Lead Plaintiff in the Capitol Park Towers Parking Class Action Lawsuit: Chaney, et al. v. Capitol Park Associates, L.P., et al, Case Number 2012 CA 005582B, but I am choosing to opt out.

**I am opting out of the parking settlement because of the following reasons:**

The settlement offer is far too small for the owner's past illegal transgressions of operating a commercial parking garage on his commercial property without a license since the 1980s. The settlement offer does not center at all on the limitations of future parking costs for us tenants, who should not be charged in the first place, since, there is no DC Certificate of Occupancy offered by the DC Zoning office, which would allow the owner to charge for parking.

The attorneys who are representing the tenants are:

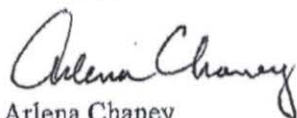
/s/ Tracy D. Rezvani  
Tracy D. Rezvani (Bar No. 464293)  
Robert O. Wilson (Bar No. 1005987)  
**REZVANI VOLIN & ROTBERT P.C**  
1050 Connecticut Avenue NW, 10th Floor  
Washington, D.C. 20036  
Phone: (202) 350-4270  
Fax: (202) 351-0544  
[rwilson@rvrlegal.com](mailto:rwilson@rvrlegal.com)  
[trezvani@rvrlegal.com](mailto:trezvani@rvrlegal.com)

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

Chaney  
OPT out  
P2

Robert O. Wilson  
**Rezvani Volin & Rotbert, P.C.**  
1050 Connecticut Avenue NW  
Tenth Floor  
Washington, D.C. 20036  
Phone: (202) 350-4270 ext. 106  
Fax: (202) 351-0544  
[www.rvrlegal.com](http://www.rvrlegal.com)

Cordially,



Arlena Chaney

NCPTTA Tenant President/Lead Plaintiff – 202-554-0255; E-mail: [achaneyphd@juno.com](mailto:achaneyphd@juno.com)

Chamney  
3016 St SW #126  
Wash DC 20024

Capital Park Towers  
c/o Heller Davis Group  
1515 Market Street, Suite 1700  
Philadelphia, Pa 19102

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Obj 1

Samson O. Adeboye  
1616 Marion Street NW, #137  
Washington, DC 20001  
Monday, June 30, 2014  
Tel: 202-484-0265

Dear Sir/Madam:

In the case of

Chaney, et al. v. Capitol Park Associates, an Illinois

limited partnership, et al., Case Number 2012 CA 005582 B.

I was a tenant at the Capitol Park Towers Apartments, 301 G Street, SW, #416 Washington, DC 20024 from November 1, 2005 to October 31, 2013. During that period, I was charged \$100.00 Per month to park at space U/L #18 (Upper Level #18) from November 1, 2005 to October 31 2013. In addition, I was also charged for second space U/L #27 (Upper Level #27) from April 2009 to April 2010, also at the rate of \$100.00 per month.

I am hereby submitting this letter to register my objection to the amount of settlement in this case. The total amount of \$500,000 is inadequate and it is not fair considering the number of members of this class action Case. In addition, the attorney will be asking for 33% of the total fund, and also, for reimbursement of out-of-pocket expenses. Incentive awards of \$2,500 for Class Counsel, and not yet specified amount of the cost of administering the settlement. With all the above-mentioned deductions, nothing much will be left for the class members.

I intend to attend the Final Fairness Hearing scheduled for July 28, 2014

at DC Superior Court. I also intend to remain a class member with objection to the total settlement fund of \$500,000.

Sincerely,

A handwritten signature in black ink, appearing to read "Samson Adeboye", is written over a horizontal line.

Samson Adeboye

202-484-0265

Samson O. Adeboye  
1616 Mason St, NW, #137  
Washington, DC 20001

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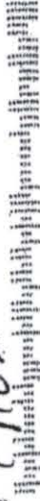
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00066721-16

1000 19102

Capital Park Towers Settlement  
c/o Hefler Claims Group  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102  
19102196499



IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

ARLENA CHANEY, <i>et al.</i> ,  Plaintiffs,  v.  CAPITOL PARK ASSOCIATES, an Illinois limited partnership, <i>et al.</i> ,  Defendants.	No. 2012 CA005582 B  Judge Neal E. Kravtiz Calendar 13  Next Event: Final Fairness Hearing July 28, 2014
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**DECLARATION OF MICHAEL G. MCLELLAN IN SUPPORT OF PLAINTIFF'S  
UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT AND AWARD  
OF ATTORNEYS' FEES, EXPENSE REIMBURSEMENTS, AND INCENTIVE  
AWARDS**

I, Michael G. McLellan, declare as follows:

1. I am a partner in the law firm Finkelstein Thompson LLP, Class Counsel in the above-captioned matter. I have personal knowledge of the following facts. I could and would competently testify to them if called as a witness.

2. I submit this Declaration in support of Plaintiff's Unopposed Motion for Final Approval of Settlement and Award of Attorneys' Fees, Expense Reimbursements, and Incentive Awards.

3. Finkelstein Thompson LLP has been involved in this litigation since its inception. My firm has prosecuted consumer fraud and other class actions nationwide for decades, and has recovered hundreds of millions of dollars for its clients. I currently lead my firm's efforts in a variety of complex class actions, including *Kamakahi v. American Society for Reproductive Medicine, et al.*, No. 11-1781 (N.D.Cal.) (co-lead counsel); *In re Domestic Drywall Antitrust*

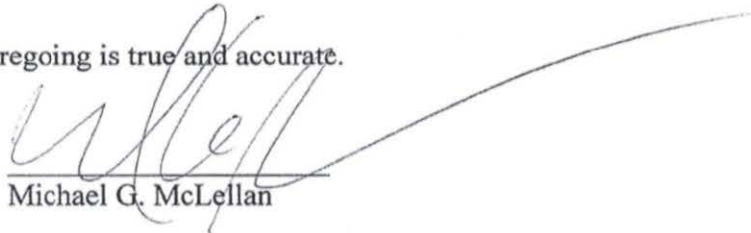
*Litigation*, MDL No. 2437 (E.D. Pa.) (co-lead counsel), and am well qualified to assess the quality of the Settlement.

4. Based on my firm's contemporaneously recorded billing records, my firm spent 1,082.7 hours on this litigation, for a total lodestar of \$382,164.50. Based on contemporaneously kept business records, my firm incurred \$8,524.13 in unreimbursed expenses prosecuting this litigation. I have reviewed Exhibit B to the Declaration of Tracy D. Rezvani, submitted hereto, and that exhibit accurately states details regarding my firm's lodestar and expenses. I expect to incur more time administering the Settlement.

5. In my experience with class action litigation, I believe that the recovery of approximately \$1400 for each Class Member in this Action reflects an excellent settlement that meets and exceeds the requirement of fair, reasonable, and adequate.

I declare under penalty of perjury that the foregoing is true and accurate.

Dated: July 14, 2014



Michael G. McLellan



**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

ARLENA CHANEY, <i>et al.</i> ,  Plaintiffs,  v.  CAPITOL PARK ASSOCIATES, an Illinois limited partnership, <i>et al.</i> ,  Defendants.	Civil Action No. 2012 CA 005582  Judge Neal E. Kravitz Calendar 13
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**[PROPOSED] ORDER AND FINAL JUDGMENT**

On the 28<sup>th</sup> day of July, 2014, a hearing having been held before this Court to determine:

(1) whether the terms and conditions of the Revised Settlement Agreement dated May 9, 2014 (the “Settlement”) are fair, reasonable and adequate for the settlement of all claims asserted by the Class against the Defendants in the Third Amended Complaint now pending in this Court under the above caption, including the release of the Defendants and the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Third Amended Complaint on the merits and with prejudice; (3) whether to approve the plan of allocation of the Settlement Fund as fair and reasonable; (4) whether and in what amount to award Class Counsel fees and reimbursement of expenses; and (5) whether and in what amount to award incentive awards to the Class Representatives. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all Class Members who could be located with reasonable effort; and the Court having considered and determined the fairness and reasonableness of the award of attorneys’ fees,

expenses, and incentive awards requested; and all capitalized terms used herein having the meanings as set forth and defined in the Settlement.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, the Class Representatives, all Class Members, and the Defendants.

2. The Court finds that the prerequisites for a class action under Superior Court Civil Rules 23 (a) and (b)(3) have been satisfied in that: (a) the Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Class Representatives are typical of the Class Members they seek to represent; (d) the Class Representatives have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the Class Members predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23(c)(1) of the Superior Court Rules this Court hereby re-certifies a modified class on behalf of all current and former residents of the Capitol Park Towers Apartments, 301 G Street SW, Washington, DC 20024 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 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 or any

person who timely submitted a request for exclusion from the Settlement, each of whom are identified in Attachment A to this Order.

4. Notice of the pendency of this case as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Superior Court Civil Rules, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. The Settlement is approved as fair, reasonable and adequate, and the Class Members and the parties are directed to consummate the Settlement in accordance with the terms and provisions of the Settlement.

6. The Third Amended Complaint is hereby dismissed with prejudice and without costs, except as provided in the Settlement.

7. The Releasing Parties, who are defined in the Settlement Agreement as Plaintiff Yohannes, the members of Settlement Class who did not opt out of the Settlement and each of their respective spouses, executors, representatives, heirs, predecessors, successors, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants by the entirety, co-borrowers, agents, attorneys, and assigns of any of them, and all those who claim through them or who assert claims on their behalf are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or

contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and unknown claims that Releasing Parties ever had, now have, or may have in the future, that result from, arise out of, are based upon, or relate in any way to the occurrences, conduct, omissions, duties, matters, or allegations in the Action or which could have been raised in the Action by any of them against any of the Released Parties who are defined in the Settlement Agreement as the Defendants, their parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and all of the directors, officers, members, partners, shareholders, employees, agents, and attorneys of those entities. The Released Claims are hereby compromised, settled, released, discharged and dismissed as against the Released Parties on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

8. The Released Parties are hereby permanently barred and enjoined from instituting, commencing or prosecuting 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 whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims, that the Released Parties ever had, now have, or may have in the future which result from, arise out of, are based upon, or related in any way to the facts, occurrences, conduct, omissions, duties, matters, or allegations in the Action, against Class Counsel and the Releasing Parties (the "Released Parties' Claims"). Such Released Parties' Claims specifically exclude any claims any of the Released Parties may have against any Class Member by virtue of any apartment lease for an apartment at Capitol Park Towers, and any claims or defenses against any person, including Class Representatives, who timely elected to be excluded from the Settlement. The

Released Parties' Claims are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

9. Neither this Order and Final Judgment, the Settlement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

a) offered or received against the Released Parties as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Released Parties with respect to the truth of any fact alleged by any of the Class Representatives or the validity of any claim that has been or could have been asserted in this or any litigation, or the deficiency of any defense that has been or could have been asserted in this or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Released Parties;

b) offered or received against the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Released Party;

c) offered or received against the Released Parties as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Released Parties, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement;

d) construed against the Released Parties as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or



e) construed as or received as evidence of an admission, concession or presumption against the Class Representatives or any of the Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable under the Third Amended Complaint would not have exceeded the Settlement Fund.

10. The plan of allocation of the Settlement Fund is approved as fair and reasonable, and Class Counsel and the Claims Administrator are directed to administer the Settlement in accordance with its terms and provisions. For purposes of allocation, co-habiting residents of the Towers paying a single monthly fee for parking during the Class Period shall be treated as a single Settlement Class Member, with their collective share of the settlement divided equally, and settlement distributions attributable to Settlement Class Members who cannot be located through reasonable efforts will remain in the Settlement Fund until the date for *cy pres* distribution pursuant to ¶¶ 25 - 27 of the Settlement.

11. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Superior Court Rules as to all proceedings herein.

12. Class Counsel are hereby awarded 33% percent of the Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and \$13,845.14 in reimbursement of expenses, which amounts shall be paid to Class Counsel from the Settlement Fund. The award of attorneys' fees shall be allocated among Class Counsel in a fashion which, in the mutual agreement of Class Counsel, fairly compensates Class Counsel for their respective contributions in the prosecution of this litigation.

13. Each Class Representative is awarded an incentive award of \$2,500.

14. In making this award of attorneys' fees and reimbursement of expenses, and the award of incentive awards to be paid from the Settlement Fund, the Court has considered and found that:

a) The Settlement has created a fund of \$500,000 in cash, \$20,000 of which is already on deposit, and the remainder of which will be deposited within 5 business days of the Effective Date as provided in the Settlement. The Class Members who have not requested exclusion from the Settlement will benefit from the Settlement created by Class Counsel;

b) Copies of the Notice were disseminated to Class Members indicating that Class Counsel were moving for attorneys' fees in the amount of up to 33% of the Settlement Fund and for reimbursement of expenses, and that the Class Representatives were moving for incentive awards, and one (1) objection was filed against the terms of the proposed Settlement, the award of attorneys' fees and expenses, or the incentive awards.

c) Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

d) The action involves complex factual and legal issues and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

e) Had Class Counsel not achieved the Settlement there would remain a significant risk that the Class might have recovered less or nothing from the Defendants;

f) Class Counsel have devoted over 1670 hours, with a lodestar value of \$683,145.51, to achieve the Settlement;

g) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with, or less than, awards in similar cases; and

h) 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.

15. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this litigation, including the administration, interpretation, effectuation or enforcement of the Settlement and this 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.

16. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement.

17. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Superior Court Civil Rules.

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Hon. Neal E. Kravitz