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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Niazi <p style="text-align: right;">Plaintiff/Petitioner(s)</p> VS. KMF Alameda, LLC <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG17879561</u> Order Motion for Preliminary Approval of Class Settlement Granted
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The Motion for Preliminary Approval of Class Settlement was set for hearing on 02/10/2021 at 03:00 PM in Department 19 before the Honorable Stephen Kaus. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: No appearances.

There being no request for oral argument, the court affirms its tentative ruling in its entirety.

Plaintiff Mohammad Niazi's ("Plaintiff") unopposed Motion for Preliminary Approval of Class Action Settlement, Approving Proposed Notice to Class, etc. (the "Motion") is GRANTED. Plaintiff has provided all additional information and made all revisions to the Settlement Agreement and Class Notice requested by the Court.

The case is a class landlord-tenant dispute whereby Plaintiff tenant alleges that rent increase notices served by defendants on certain tenants of the Ladera Woods Apartments in Fremont, California failed to include language mandated by the City of Fremont Rent Review Ordinance ("RRO"). Defendants KMF Alameda LLC and Klingbeil Capital Management, Inc. (collectively, "Defendants") are the owners and/or property managers of the Ladera Woods Apartments.

The following constitutes analysis of the Moving Papers, the Settlement Agreement and the Notice.

The case preliminarily settled for \$185,000 (See Moving Ruch Dec. Exh. A at § 1.22.) The estimated size of the class is 45 tenancies (45 "Class" shares, per Settlement Agreement at Id. Exh. A at § 1.06) consisting of approximately 61 tenants in total. (Id. at ¶ 8.) The Settlement Agreement states that attorneys' fees will be up to 33% of the settlement amount (\$61,050), plus costs of litigation in the amount of \$2,609.93 and anticipated Settlement administration costs of \$8,000. (Id. at § 2.13.) The Settlement Agreement calls for a class service award to Plaintiff of \$35,000, and proposes that Class counsel serve as administrator for the purposes of saving administration costs. (Id. at §§ 1.24, 2.14.) Thus, after expenses totaling \$106,659.93, a balance of \$78,340.07 would be available to Class Members, or an average of \$1,740.89 per Class share. The Court notes that the Proposed Class Notice states that Plaintiff's counsel estimates payments to individual class members ranges from \$465 to \$10,600. (Id. at Exh. A at p. 2.)

Settlement negotiations included one day of mediation with Gina Boer on 8/22/2019, which resulted in settlement. The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.) (See also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

The Court finds acceptable the proposed 4/26/2021 date set forth in the Proposed Class Notice at §§ VI.B and C for Class Members to object or opt out, provided that the Class Notice is served on Class Members in time to provide at least 60 days' notice. (Id. at Exh. B.)

§ VI.C of the Notice has been revised to add the language previously requested by the Court:

The Court notes and approves of the plan to distribute the settlement funds with no claims process. The release of claims by the class must be limited by the "identical factual predicate rule." (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.) (See also Hendricks v. Starkist Co (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final approval of class settlement because scope of release overbroad].) The Release contained in the Settlement Agreement has been revised as requested by the Court to limit the release to the "identical factual predicate rule."

The proposed definition of "Class" at § 1.04 of the Settlement Agreement ("All persons identified as a tenant who lived at 4401 Central Avenue, Fremont, CA and at any time from October 20, 2013 through December 31, 2018, and received at least one rent increase notice which did not contain the relevant language required by the City of Fremont Residential Rent Increase Dispute Resolution Ordinance and City of Fremont Rent Review Ordinance and paid rent to Defendants pursuant to a defect notice of rent") has been revised as requested by the Court and is acceptable for settlement purposes.

The motion now makes an adequate analysis required by Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, because it provides a reasonable estimate of the number of Class members, the total estimated possible recovery and some explanation why the settlement was reasonable in light thereof. (See Moving Ruch Dec. at ¶¶ 6; See Supp Ruch Dec. at ¶¶ 9-11.) The Supp. Ruch Dec. provides an estimate of the maximum possible recovery and an explanation why the discounted amount agreed upon in settlement is appropriate under the circumstances.

The Settlement Agreement now contains an appropriate cy pres designation, namely that 1/3 of any unclaimed funds will be distributed to each of the East Bay Community Law Center, the Eviction Defense Center and El Centro de la Raza.

The Court will not approve the amount of attorneys' fees and costs until the final approval hearing. The Court's preference, but not a requirement, is that plaintiffs file both the motion for final approval and the motions for attorneys' fees, costs and service awards as a single motion, because the Court is less likely to misfile a single set of motion papers.

The Court cannot award attorneys' fees without reviewing sufficiently detailed information about counsel's hourly rate(s) and the amount of time Plaintiffs' legal counsel spent on the case. This is the law even if the parties have agreed that Defendants will not oppose the motion for fees. (Robbins v. Alibrandi (2005) 127 Cal. App. 4th 438, 450-451.)

The court notes that counsel is authorized by the Settlement Agreement to seek 33% of the total value of the settlement. The court sets out its standard analysis below. Counsel may address that analysis in the fee application.

When using the percentage of recovery approach, the court's benchmark for fees is 30% of a total fund. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11.)

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

The Court will not decide the amount of any service awards until the final approval hearing. Plaintiff

must submit evidence regarding the nature of his participation in the action, including a description of his specific actions and the amount to time he committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.) The service award will reflect Plaintiff's actual contributions to the litigation based on the evidence submitted in support of the service award in connection with Motion for Final Approval.

The Court will order that 10% of any fee award be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

Plaintiff must reserve a hearing date for the Final Approval Motion by sending an email to Dept. 19 based on a date by which Plaintiff reasonably believes the Class Notice process to have been completed. If any Class member wishes to appear at the Final Approval hearing to orally assert an objection to the settlement, the Class Member must contact the Clerk of Dept. 19 at <dept19@alameda.courts.ca.gov> and Plaintiff's counsel at least two days before the hearing date to advise of his or her intent to appear at the hearing to object. Upon receiving notice of intent to appear at the hearing, the Court will send the Class member a Blue Jeans invitation to appear at the hearing remotely if Covid-19 restrictions remain in place at that time.

The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP § 384 and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

Dated: 02/10/2021



Facsimile

Judge Stephen Kaus

SHORT TITLE:

Niazi VS KMF Alameda,LLC

CASE NUMBER:

RG17879561

ADDITIONAL ADDRESSEES

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