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9
10 **UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

11 RYAN DALEY, and individual, and)
ISAAK CURRY, an individual, each on)
12 behalf of himself and all others)
similarly situated,)

13 Plaintiffs,)

14 vs.)

15 GREYSTAR REAL ESTATE)
PARTNERS, LLC, a Delaware limited)
16 liability company; GREYSTAR)
MANAGEMENT SERVICES, L.P., a)
17 Delaware corporation; GREYSTAR RS)
WEST, LLC, a Delaware limited)
18 liability company,)

19 Defendants.)
20

Case No.: 2:18-cv-00381-SMJ

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: August 10, 2021

Hearing Time: 1:30 p.m.

With Oral Argument

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I. NATURE OF THE CASE AND BACKGROUND

Plaintiff Representatives Ryan Daley and Isaak Curry on behalf of themselves and all others similarly situated, filed a Complaint against various Greystar entities (collectively “Greystar” or “Defendants”) alleging violations of the Washington Residential Landlord Tenant Act (RCW 59.18, *et seq.*). (ECF No. 35). The alleged violations arise from Greystar collecting information from, and charging fees to, prospective tenants without first providing certain required disclosures. On August 13, 2020, the Court certified a class consisting of:

All persons who applied to rent any property in the state of Washington where the rental property, on the date of application, was owned or managed by Defendants, who paid a tenant screening fee to Defendants or their affiliates, between June 9, 2016 and August 13, 2020. (ECF No. 96).

Class Counsel have performed a thorough study of the law and facts relating to the claims asserted in this action and have taken into account the sharply contested issues involved, the expense and time necessary to pursue certification of the action and to take the action through trial, the risks and costs of further prosecution of the action, the uncertainties of complex litigation, and the

1 substantial benefits to be received by the Plaintiffs and members of the settlement
2 class pursuant to this agreement.

3 Following mediation with Louis Peterson on November 9, 2020, and
4 extensive negotiations thereafter, the parties reached a class-wide settlement
5 agreement. (ECF No. 127, Decl. of Miller, ¶ 4). The settlement requires
6 Defendants to establish a settlement fund in the amount of \$2,500,000.00, which
7 will be used to pay the class members, class administration costs, class
8 representative incentives, and attorneys' fees and costs. (ECF No. 127, ¶ 6). If the
9 Court approves the settlement, and all class members make a valid claim,
10 \$1,770,000.00 will be divided evenly by the 80,942 class members resulting in a
11 payment of \$21.86. (ECF No. 127, ¶ 7).

12 The settlement fund will also be used to pay service awards to the Plaintiffs,
13 attorneys' fees and costs, and class administration expenses approved by the Court.
14 (ECF No. 127, ¶ 8). Both Representative Plaintiffs will request a service award of
15 \$2,500.00 each. (ECF No. 127 ¶ 9). Class Counsel will request an award of
16 attorneys' fees and costs totaling no more than \$625,000.00. (ECF No. 127, ¶ 10).
17 Class Administrator Postlethwaite & Netterville, APAC, ("P&N") have estimated
18 that it can administer the settlement for less than the \$100,000.00 allocated for
19 class administration costs in the settlement agreement. (ECF No. 127, ¶ 8).

1 **II. RELIEF REQUESTED**

2 The settlement is fair, adequate and reasonable and is an excellent result for
3 the class members. Accordingly, Plaintiffs respectfully request that the Court take
4 the following initial steps in the settlement approval process: (1) grant preliminary
5 approval of the settlement; (2) approve the proposed notice plan; (3) appoint P&N
6 to serve as the Class Administrator; and (4) schedule the final fairness hearing and
7 other related dates.

8 **III. ARGUMENT – THE SETTLEMENT IS FAIR AND REASONABLE**

9 The complete Settlement Agreement and Release of Claims, with
10 accompanying attachments is attached as **Exhibit 1** to the Declaration of Kirk D.
11 Miller filed in support of this Motion (ECF No. 127, ¶ 12).

12 A district court's approval of a class-action settlement must be accompanied
13 by a finding that the settlement is “fair, reasonable, and adequate.” *Lane v.*
14 *Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012). “[T]he district court [] must
15 evaluate the fairness of a settlement as a whole, rather than assessing its individual
16 components.” *Id.* at 818. [T]he question whether a settlement is fundamentally fair
17 within the meaning of Fed. R. Civ. P. 23(e) is different from the question whether
18 the settlement is perfect.” *Id.* at 819. Although Fed. R. Civ. P. 23 imposes strict
19 procedural requirements on the approval of a class settlement, a district court's only
20 role in reviewing the substance of that settlement is to ensure that it is “fair,

1 adequate, and free from collusion.” *Id.* A number of factors guide the district court
2 in making that determination, including: the strength of the plaintiffs’ case; the
3 risk, expense, complexity, and likely duration of further litigation; the risk of
4 maintaining class action status throughout the trial; the amount offered in
5 settlement; the extent of discovery completed and the stage of the proceedings; the
6 experience and views of counsel; the presence of a governmental participant; and
7 the reaction of the class members to the proposed settlement. *Hanlon v. Chrysler*
8 *Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998) (hereinafter the “Hanlon factors”).

9 The primary question raised by a request for preliminary approval is whether
10 the proposed settlement is “within the range of possible approval.” *See MANUAL*
11 *FOR COMPLEX LITIGATION (THIRD)* § 30.41, at 237; *accord, e.g., Alaniz v.*
12 *California Processors, Inc.*, 73 F.R.D. 269, 273 (N.D. Cal. 1976). “[T]his
13 determination is similar to a determination that there is ‘probable cause’ to think the
14 settlement is fair and reasonable.” *Alaniz*, 73 F.R.D. at 273. Once the settlement is
15 found to be “within the range of possible approval,” a court should schedule a final
16 approval hearing and provide notice to the class. *Id.* It is at that final approval
17 hearing where the court will ultimately determine, after class members have had an
18 opportunity to comment on the settlement, whether the settlement is fair,
19 reasonable, and adequate from the class members’ standpoint. *See Officers for*
20 *Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). In order to settle

1 a putative class action, the Court must first approve a settlement class that meets
2 the requirements of Fed. R. Civ. P. 23(a) and (b). *Amchem Prods., Inc. v. Windsor*,
3 521 U.S. 591, 609–12 (1997). Next, the Court must find that the settlement is fair,
4 adequate, and reasonable, and enter preliminary approval of the settlement
5 agreement pursuant to Fed. R. Civ. P. 23(e). *Staton v. Boeing Co.*, 327 F.3d 938,
6 952 (9th Cir. 2002). Next, notice and opportunity to object and opt-out must be
7 given to all class members. Finally, the Court must conduct a fairness hearing and,
8 in order to approve the final settlement, make specific findings regarding the
9 adequacy and fairness of the proposed settlement. *Id.*

10 The parties respectfully submit that the proposed settlement of this action
11 satisfies all of the relevant legal standards for preliminary approval under Fed. R.
12 Civ. P. 23. The settlement is fair considering the amount of the recovery for the
13 class and the cost and risks of further litigation in this matter. The settlement
14 resulted from intensive, extended arm’s-length negotiations over a period of
15 several months. The settlement reflects a reasonable compromise based on interests
16 of the class and the risks and expense of further litigation. All attorneys’ fees,
17 class representative fees, and class administration costs are being paid from the
18 fund established for the class’s benefit.

19 ////

20 ////

1 **A. Standard of Review for Class Settlements**

2 The court must determine the fundamental fairness, adequacy, and
3 reasonableness of the settlement, taken as a whole. *Evans v. Jeff D.*, 475 U.S. 717,
4 726–27 (1986). “The trial court should not make a proponent of a proposed
5 settlement justify each term of settlement against a hypothetical or speculative
6 measure of what concessions might [be] gained.” *Access Now, Inc. v. Claire’s*
7 *Stores, Inc.*, 2002 WL 1162422, at 4 (S.D. Fla. May 7, 2002). Significant weight
8 should be given “to the belief of experienced counsel that settlement is in the best
9 interest of the class.” *Austin v. Pennsylvania Dep’t. of Corrections*, 876 F. Supp.
10 1437, 1472 (E.D. Pa. 1995). Generally, a proposed settlement will be preliminarily
11 approved unless it is outside the range of reasonableness or appears to be the
12 product of collusion, rather than arms-length negotiation. *See Officers for Justice*,
13 688 F.2d at 625.

14 To guide courts in assessing the fairness and reasonableness of a proposed
15 settlement, the Ninth Circuit has identified several factors to employ, which may
16 include, among others, some or all of the following: the strength of plaintiffs’ case;
17 the risk, expense, complexity, and likely duration of further litigation; the risk of
18 maintaining class action status throughout the trial; the amount offered in
19 settlement; the extent of discovery completed, and the stage of the proceedings; the
20 experience and views of counsel; the presence of a governmental participant; and

1 the reaction of the Class Members to the proposed settlement. *Hanlon*, 150 F.3d at
2 1026; *Smith v. Mulvaney*, 827 F.2d 558, 562 n.3 (9th Cir. 1987); *see also* Fed R.
3 Civ. P. 23(e)(2) (listing similar factors).

4 **B. The Settlement is Presumptively Fair**

5 Preliminary approval “establishes an initial presumption of fairness when the
6 court finds that: (1) the negotiations occurred at arm’s length; (2) there was
7 sufficient discovery; and (3) the proponents of the settlement are experienced in
8 similar litigation.” *In re General Motors Corp. Pick-Up Truck Prod. Liab. Litig.*,
9 55 F.3d 768, 785 (3rd Cir. 1995). The proposed settlement was reached after
10 extensive investigation by the Plaintiffs and a number of heavily contested
11 motions, including dispositive motions and a contested motion for class
12 certification. Class Counsel have carefully explained the proposed settlement to the
13 Plaintiffs and have discussed the potential benefits and drawbacks of the
14 settlement. The Plaintiffs have considered these facts, are conscious of their duty to
15 the putative class, and have determined the settlement is in the best interest of the
16 class. In every case, there are “inherent risks of litigation.” *Torrissi v. Tucson Elec.*
17 *Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993), cert. denied, 512 U.S. 1220 (1994).

18 “[O]ne of the most important factors in assessing the fairness of a settlement
19 agreement is the strength of the plaintiffs’ case on the merits balanced against the
20 relief offered in the settlement.” *Berry v. School Dist. of Benton Harbor*, 184

1 F.R.D. 93, 98 (W.D. Mich. 1998). In considering this factor, the court need not
2 “decide the merits of the case or resolve unsettled legal questions.” *Carson v.*
3 *American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). In evaluating the
4 reasonableness of a proposed settlement, the court should consider “the present
5 value of the damages plaintiffs would likely recover if successful, appropriately
6 discounted for the risk of not prevailing, and should be compared with the amount
7 of the proposed settlement.” *In re Prudential Ins. Co. of Amer. Sales Practices*
8 *Litig.*, 148 F.3d 283, 322 (3rd Cir. 1998), cert. denied, 525 U.S. 1114 (1999)
9 (quoting *In re General Motors Corp.*, 55 F.3d at 806).

10 This case involves alleged illegal charges to prospective tenants for tenant
11 screening reports. The payments made by prospective tenants reimbursed the
12 property owners for their out-of-pocket costs for the reports. Under the terms of
13 the proposed settlement, the Defendants are required to partially reimburse the
14 tenants and prospective tenants for these charges.

15 The class members are likely unaware that their rights have been violated.
16 During the pendency of this litigation, none of the putative class members have
17 taken any action on their own behalf. The amount of damages suffered by each
18 individual class member is small.¹ Accordingly, the parties request that the Court

19 _____
20 ¹ The average charge during the class period to each prospective tenant was \$42.00.

1 enter an Order preliminarily approving the settlement, the form and manner of the
2 class notice, and schedule a hearing on fairness of the settlement pursuant to Fed.
3 R. Civ. P. 23(e).

4 The settlement is the result of arm's-length, non-collusive negotiations. The
5 parties negotiated the settlement at arm's length over the course of several months.
6 "Arm's length negotiations conducted by competent counsel constitute *prima facie*
7 evidence of fair settlements." *Ikuseghan v. Multicare Health Sys.*, No. 3:14-cv-
8 05539-BHS, 2016 WL 3976569, *3 (W.D. Wash. July 25, 2016); *see also Ortiz v.*
9 *Fiberboard Corp.*, 527 U.S. 815, 852 (1999) ("[O]ne may take a settlement amount
10 as good evidence of the maximum available if one can assume that parties of equal
11 knowledge and negotiating skill agreed upon the figure through arms-length
12 bargaining.").

13 The negotiations were conducted with the assistance of Louis Peterson, an
14 experienced mediator, and included a full-day mediation. *See Ruch v. AM Retail*
15 *Group, Inc.*, No. 14-cv-05352-MEJ, 2016 WL 1161453, at *11 (N.D. Cal. Mar. 24,
16 2016) (holding that the "process by which the parties reached their settlement,"
17 which included "formal mediation ... weigh[ed] in favor of preliminary
18 approval"); Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment
19 ("the involvement of a neutral or court-affiliated mediator or facilitator in
20

1 [settlement] negotiations may bear on whether they were conducted in a manner
2 that would protect and further the class interests”).

3 Class Counsel negotiated the settlement with the benefit of many years of
4 prior experience and a solid understanding of the facts and law of this case. (ECF
5 No. 127, ¶¶ 2,3; ECF No. 56). Class Counsel has extensive experience litigating
6 and settling class actions, and consumer class actions challenging debt collection
7 practices in particular. (ECF No. 56). The recommendation of experienced counsel
8 weighs in favor of granting approval and creates a presumption of reasonableness.
9 *See, Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 257 (N.D. Cal. 2015)
10 (“The trial court is entitled to, and should, rely upon the judgment of experienced
11 counsel for the parties.” (citation omitted)).

12 Because Class Counsel will be paid from the same settlement funds as class
13 members, they were incentivized to negotiate the largest fund possible and class
14 members are free to object to class counsel’s request. The Court has ultimate
15 discretion over the amount of the attorneys’ fee award after reviewing the Joint
16 Motion for Preliminary Approval of Class Settlement and supporting documents.

17 **C. The Relief Provided by the Settlement is Adequate Considering the**
18 **Strength of Plaintiffs’ Case, the Risk of Maintaining a Class Action**
19 **Through Trial, and the Risk, Cost and Delay of Trial and Appeal**

19 Defendants’ agreement to pay up to \$2,500,000.00 to settle this case is more
20 than adequate, given the risks and delay of continued litigation. The monetary

1 benefits of the settlement alone, which will pay class members approximately 50%
2 of the total actual damages class counsel estimated for purposes of mediation, and
3 21.67% of the maximum discretionary statutory damage the Court could award,
4 exceeds similar settlements approved by other courts. *See Knapp v. Art.com, Inc.*,
5 283 F.Supp.3d 823, 833 (N.D. Cal. 2017) (approving settlement of a consumer
6 class action that provided 42% of the average total potential recovery and
7 injunctive relief); *Cavnar v. BounceBack, Inc.*, No. 2:45-CV-235-RMP, ECF No.
8 154 (E.D. Wash. Sept. 15, 2015) (approving settlement providing 15.6% of alleged
9 unlawful collection fees paid by class members alleging FDCPA and Consumer
10 Protection Act violations); *Est. of Brown v. Consumer L. Assocs., LLC*, No. 11-
11 CV-0194-TOR, 2013 WL 2285368, at *3 (E.D. Wash. May 23, 2013) (approving
12 settlement of class claims under the Consumer Protection Act, paying class
13 members an estimated 30% of funds collected for challenged debt adjusting
14 practices); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)
15 (affirming the district court's approval of a settlement estimated to be worth
16 between 16.67% and 50% of class members' estimated loss).

17 Plaintiffs are confident in the strength of their case but also pragmatic about
18 the risks inherent in litigation and various defenses available to Defendants. In
19 Plaintiffs' view, liability is relatively clear based on a review of Greystar's
20 standard form disclosures. However, success is not guaranteed. Defendants have

1 consistently denied liability for Plaintiffs' claims and asserted ten (10) affirmative
2 defenses. (ECF Nos. 46, 47, 48). Absent this settlement, Plaintiffs would still have
3 several hurdles to clear before resolution, including additional discovery,
4 dispositive motions likely to be filed by both parties, and ultimately trial and any
5 appeal that followed. Additionally, class certification is never certain, as
6 Defendants may seek to decertify the class at any time through trial. With these
7 ongoing risks, Plaintiffs believe this settlement is appropriate.

8 Litigating this case to trial and through any appeals would be expensive and
9 time-consuming and would present risk to both parties. The settlement, by contrast,
10 provides prompt and certain relief for class members. *See, Rodriguez v. West*
11 *Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009); *Nat'l Rural Telecomms. Coop. v.*
12 *DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("The Court shall consider
13 the vagaries of litigation and compare the significance of immediate recovery by
14 way of the compromise to the mere possibility of relief in the future, after
15 protracted and expensive litigation." (citation omitted)).

16 "A key inquiry is whether the parties had enough information to make an
17 informed decision about the strength of their case and the wisdom of settlement."
18 *Rinky Dink, Inc. v. World Business Lenders*, Case No. C14-0268-JCC, 2016 WL
19 3087073, at *3 (W.D. Wash. May 31, 2016); *see also, In re Mego Fin. Corp. Sec.*
20 *Litig.*, 213 F.3d at 459. Plaintiffs and Class Counsel's decision to settle was formed

1 by extensive discovery, data analysis, and the Court's ruling on a contested motion
2 for class certification.

3 **D. Class Counsel will Request Approval of a Fair and Reasonable Fee**

4 Class Counsel intends to request an award of not more than \$625,000.00 to
5 compensate them for the work performed on behalf of the Class and to reimburse
6 them for out-of-pocket expenses they have incurred in prosecuting this action. The
7 attorneys' fees and costs class counsel seek are reasonable under the circumstances
8 of this case. *See, In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941
9 (9th Cir. 2011) (requiring that any attorneys' fee awarded be reasonable). District
10 courts have discretion to use either the percentage-of-the-fund or the lodestar
11 method to calculate a reasonable attorneys' fee from a common fund established
12 by a class action settlement. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th
13 Cir. 2002). The Ninth Circuit uses 25% as the benchmark to calculate any
14 attorneys' fee award using the percentage of the fund method. *Online DVD-Rental*,
15 779 F.3d 934, 943 (9th Cir. 2015). Here, the requested fees match the 25%
16 benchmark and are presumptively reasonable.

17 **E. Class Administration**

18 The Settlement Agreement provides that any class administration fees and
19 costs will be paid from the Settlement Fund. (ECF No. 127, ¶¶ 6, 8). After a
20 competitive bidding process, Class Counsel propose to retain P&N as Class

1 Administrator, subject to this Court's approval. P&N estimates that it can carry out
 2 the Notice Plan at or below the \$100,000.00 allocated in the Settlement
 3 Agreement. (ECF No. 127 ¶ 8). P&N will disseminate the proposed email notice;
 4 the postcard notice by mail; follow up on undelivered notices; establish and
 5 maintain a settlement website; establish a toll-free number and respond to
 6 settlement class member calls; process, log, review and report on exclusion
 7 requests; administer the settlement fund; and disburse Court-approved attorneys'
 8 fee awards, class representative service awards, and the settlement funds to
 9 settlement class members. *Id.*

10 **F. The Schedule for Final Approval**

11 The next steps in the settlement approval process are to schedule a final
 12 approval hearing, notify class members of the settlement and hearing, and provide
 13 class members with the opportunity to exclude themselves from, or object to, the
 14 settlement. The parties propose the following schedule for final approval:

Action	Date
Defendants provide class contact information to Class Counsel and Settlement Administrator	Within 21 days after entry of Preliminary Approval Order
Deadline for Delivering Class Notice	Within 15 days after receipt of class contact information
Class Counsel's Fee and Costs Notice Submitted	Within 14 days after email class notice is sent

1	Exclusion/Objection/Claims Made Deadline	Within 45 days after email class notice and/or postcard class notice, whichever is later, is sent
2		
3	Settlement Administrator's Final Determinations of Eligible/Ineligible Claims and Amounts to be Paid	Within 7 days following the expiration of the opt-out, object, and claim deadline
4	Deadline to Object to Settlement Administrator's Determinations	Within 14 days of receiving Settlement Administrator's Determinations
5	Final Approval Hearing Notice Deadline	Within 21 days of the expiration of the opt-out, object, and claim deadline if there are no timely made objections to the Settlement Administrator's determinations of eligible/ineligible claimants and amounts to be paid. If there are timely made objections to the Settlement Administrator's determinations of eligible/ineligible claimants and amounts to be paid, Representative Plaintiff's final approval motion shall be filed within 21 days after resolution of the objections.
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12	Final Settlement Hearing and Approval Order Entered	At the Court's discretion.
13		

IV. CONCLUSION

The parties respectfully request that the Court enter an order of preliminary approval of the settlement of this action as a class action and enter the administrative orders requested.

DATED this 1st day of July, 2021.

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KIRK D. MILLER, P.S.

CAMERON SUTHERLAND, PLLC

s/ Kirk D. Miller
Kirk D. Miller, WSBA #40025
Attorney for Plaintiffs

s/ Brian G. Cameron
Brian G. Cameron, WSBA #44905
Attorney for Plaintiffs

CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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