

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BRIAN PERRY, KIM PERRY, CHERYL MILLER,  
MARIANA VINCELETTE, RICHARD VINCELETTE,  
JOSEPH BARNES, COLIN APPLETON, RHETT  
KLEINSCHMIDT, and BRITTANY FRANCO, on behalf  
of themselves and others similarly situated,

Plaintiffs,

v.

EQUITY RESIDENTIAL MANAGEMENT, L.L.C.,  
GPT-RG FALL RIVER, LLC, EQR-HERITAGE RIDGE,  
L.P., CHARLES RIVER PARK "D" COMPANY, and  
ERP OPERATING LIMITED PARTNERSHIP,

Defendants.

Case No. 12-10779-RWZ

*RWZ* ~~PROPOSED~~ ORDER FOR PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT AGREEMENT, DIRECTING  
NOTICE TO THE CLASS, AND SCHEDULING FAIRNESS HEARING

WHEREAS, a proposed class action is pending before the Court entitled *Perry, et al. v. Equity Residential Management L.L.C., et al.*, No. 10779-RWZ; and

WHEREAS, the parties have entered into a Settlement Agreement dated July 10, 2015; and

WHEREAS, the parties having made application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the settlement of this Action, in accordance with the Settlement Agreement ("Agreement") which sets forth the terms and conditions of the proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein; and

WHEREAS, all defined terms contained herein shall have the same meanings as set forth in the Agreement;

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby preliminarily approves the settlement of this Action on behalf of the Class (as defined in the Agreement at ¶¶ 1.8 and 2.1) consisting of members of the three subclasses defined below. The Court further certifies the following three sub-classes (as defined in the Agreement at ¶ 2.1): (1) “Subclass 1” consisting of all current and former tenants or prospective tenants at residential apartments operated and/or managed by Equity Residential Management in the Commonwealth of Massachusetts who, at or prior to the commencement of their tenancy, paid an application fee, between February 19, 2009 and the date of entry of this Order. Tenants or prospective tenants shall be considered to have “paid” an application fee regardless of whether they paid that fee themselves or the fee was paid by a third party on their behalf; (2) “Subclass 2” consisting of all current and former tenants or prospective tenants at residential apartments operated and/or managed by Equity Residential Management in the Commonwealth of Massachusetts who, at or prior to the commencement of their tenancy, paid an amenity fee or move-in fee, between May 1, 2008 and the date of entry of this Order. Tenants or prospective tenants shall be considered to have “paid” an amenity fee or move-in fee, regardless of whether they paid that fee themselves or the fee was paid by a third party on their behalf; and (3) “Subclass 3” consisting of all current and former tenants or prospective tenants at residential apartments operated and/or managed by Equity Residential Management in the Commonwealth of Massachusetts who, at or prior to the commencement of their tenancy, paid an up-front pet fee, between February 19, 2009 and the date of entry of this Order. Tenants or prospective tenants shall be considered to have “paid” an up-front pet fee, regardless of whether they paid that fee themselves or the fee was paid by a third party on their behalf. Plaintiffs Brian Perry, Kim Perry, Cheryl Miller, Marianna

Vincelette, Richard Vincelette, Joseph Barnes, Colin Appleton, Rhett Kleinschmidt and Brittany Franco are preliminarily approved as Class Representatives, and the following attorneys and firms are approved as Class Counsel: David Pastor of Pastor Law Office LLP; Matthew J. Fogelman of Fogelman & Fogelman LLC; Preston W. Leonard of Leonard Law Office PC.; and Kevin T. Peters and Michael D. Brier of Arrowood Peters LLP.

2. The Court preliminary finds and concludes that the requirements of Rule 23 of the Federal Rules of Civil Procedure have been met:

a. The members of the Class are so numerous that separate joinder of each member is impracticable;

b. Plaintiffs' claims raise questions of law and fact common to the questions of law and fact raised by the claims of each Class Member;

c. Plaintiffs' claims are typical of the claims of the Class Members;

d. Plaintiffs can fairly and adequately protect and represent the interests of the Class;

e. Questions of law or fact common to the Class Members predominate over any questions affecting only individual Class Members; and

f. A class action is superior to other available methods for the fair and efficient adjudication of the controversy presented by the Action.

3. The Court hereby preliminarily approves the Settlement as fair, reasonable, and adequate, subject to further consideration at the Fairness Hearing described below.

4. A Fairness Hearing shall be held before this Court on January 12, 2016 at 2:00 ~~a.m.~~/p.m., in Courtroom 12 at 1 Courthouse Way, Boston, Massachusetts 02210, to consider the fairness, reasonableness and adequacy of the Settlement, the entry of a Final Order approving the Settlement, any petition for attorneys' fees, and reimbursement of

expenses made by Class Counsel, incentive Awards to the Class Representatives, and any other related matters that are brought to the attention of the Court in a timely fashion.

5. The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action Lawsuit ("Full Notice"), the Email Notice of Class Action Settlement (the "Email Notice"), the U.S. Mail Notice of Class Action Settlement (the "U.S. Mail Notice"), and the proof of claim form ("Proof of Claim"), and finds that the distribution and mailing of the Email Notice and U.S. Mail Notice (with Proofs of Claim) and posting of the Full Class Notice on a website in the manner and form set forth in ¶ 7 of this Order substantially meet the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

6. The Court appoints Dahl Administration as Claims Administrator to provide the Class Notice, and, if the Settlement is approved, to administer the Settlement and to conduct the claims process.

7. The Claims Administrator will distribute the Email Notice and U.S. Mail Notice to Class members via email or U.S. Mail (with Proofs of Claim) beginning no later than twenty-one (21) calendar days after the entry of this Order; and the Claims Administrator shall post on the Internet the Full Class Notice beginning no later than twenty-one (21) calendar days after entry of this Order for one hundred fifty (150) days after the emailing and mailing of the Class Notice.

8. No later than fifteen (15) court days before the Fairness Hearing, Defendants will file with the Court and serve upon Plaintiffs' Counsel a declaration confirming that the Class Notice has been provided in accordance with this Order.

9. 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 hereinafter provided. To be excluded from the Class, Class Members must mail a written request for exclusion from the Class to Defendant's counsel, with a copy to Class Counsel, no later than twenty-one (21) calendar days in advance of the Fairness Hearing. Class Members must include their full name, address, and date. The request for exclusion must be personally signed by the Class member requesting exclusion. To be considered valid, a request for exclusion must set forth all of this information and must be timely received. No later than ten (10) court days prior to the Fairness Hearing, Defendant's counsel shall prepare a list of the persons who, pursuant to the Class Notice, have excluded themselves from the Class in a valid and timely manner and shall deliver that list to Class Counsel.

10. No later than twenty-one (21) calendar days before the Fairness Hearing, any Class Member who wishes to object to the Settlement must file with the Court a written objection and mail a copy to Defendant's Counsel and Class Counsel. The objection shall include the name and title of the lawsuit, *Perry, et al. v. Equity Residential Management L.L.C., et al.*, No. 12-10779-RWZ, the objector's full name, address, telephone number, Equity apartment number (for both current and former tenants), lease period, and signature and must set forth in clear and concise terms, all legal and factual arguments supporting the objection. Any Class Member or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising any objection to the Settlement, and any untimely objection shall be barred.

11. Any objector who files and serves a timely, written objection in accordance with the above instructions may also appear at the Fairness Hearing either in person or through counsel retained at the objector's expense.

12. All discovery and pretrial proceedings in this Action, as well as all deadlines, are stayed and suspended until further order of this Court.

13. All papers in support of the Settlement shall be filed and served on or before fourteen (14) calendar days before the Fairness Hearing. Plaintiff's Counsel's application for attorneys' fees and reimbursement of expenses, and all supporting papers, shall be filed and served on or before twenty-eight (28) calendar days before the Fairness Hearing.

14. Any member of the Class that has not filed a Request for Exclusion may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the Settlement; provided, however, that no person shall be heard in opposition to the Settlement, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless such person complies with the deadlines set forth above.

15. The date and time of the Fairness Hearing shall be set forth in the Class Notice but shall be subject to adjournment by the Court without further notice to the members of the Class other than which may be posted on the Court's Electronic Case Filing (ECF) system or the website created pursuant to the Agreement, as set forth in the Class Notice.

16. If Final Approval of the Settlement is not granted, or if the Agreement is rescinded or the Settlement is terminated for any reason, the Settlement and all proceedings had in connection therewith shall be without prejudice to the parties' rights and the parties shall return to the *status quo ante*, and all Orders issued pursuant to the Settlement and Preliminary

and Final Approval process shall be vacated. In such event, the Agreement and all negotiations concerning it shall not be used or referred to in this action for any purpose whatsoever.

IT IS SO ORDERED.

Dated: August 11, 2015

  
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DISTRICT COURT JUDGE