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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF LOS ANGELES**

20 Marie Brown, an individual, on behalf of
21 herself and all others similarly situated

22 Plaintiff,

23 v.

24 Alliance Residential Company, LLC,
25 And DOES 1 through 500, inclusive,

26 Defendant.

Case No. 19STCV18979

CLASS ACTION

**THIRD AMENDED ~~PROPOSED~~ ORDER
GRANTING PLAINTIFF'S UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Dept. SSC 11
Assn'ed to Hon. David S. Cunningham

FILED
Superior Court of California
County of Los Angeles

06/17/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: T. Lewis Deputy

1 The Motion by Plaintiff Shelley Marie Brown (“Plaintiff”) for an Order preliminarily
2 approving a proposed Settlement and provisional class certification under California Rule of Court
3 3.769(c) and (d) came on regularly for hearing on February 7, 2022, at 11:00 a.m. in Department
4 11 of the Los Angeles Superior Court, Spring Street Courthouse, the Honorable David S.
5 Cunningham presiding. Appearing for Plaintiff and Settlement Class Representatives were Class
6 Counsel: Prescott W. Littlefield of Kearney Littlefield, LLP. Appearing for Defendant, Alliance
7 Residential Company, LLC (“Defendant”) was David M. Morrow of Wilson Elser Moskowitz
8 Edelman & Dicker LLP. Plaintiff and Defendant are referred herein together as the “Parties.”

9 Having reviewed and considered the Motion, including the First Amended Class Action
10 Settlement Agreement and Stipulation (“Settlement”), the papers filed in connection with the
11 Motion and the argument of counsel, and good cause appearing therefore, IT IS HEREBY
12 ORDERED that the Motion is granted, on the following terms and conditions:

13 1. The capitalized terms used in this Preliminary Approval and Provisional Class
14 Certification Order (“Preliminary Approval Order”) shall have the same meaning as the defined
15 terms in the Settlement Agreement, unless otherwise specified.

16 2. The Court preliminarily finds that the Settlement falls within the range of possible
17 approval as fair, reasonable and adequate, subject to further consideration by the Court at the time
18 of the Final Fairness Hearing. Specifically, the Court finds the Settlement’s gross settlement
19 amount of \$107,450, plus one-half of the Settlement Administrator’s costs in the amount of
20 \$3,500, minus (subject to later approval) anticipated attorneys’ fees of \$35,816.67, actual costs,
21 not to exceed \$12,500, service award to Plaintiff of \$5,000, and anticipated half of the
22 administration costs to be paid from the common fund of \$3,500, leaving a net settlement amount
23 of \$50,633.33 is fair, reasonable and adequate, subject to further consideration by the Court at the
24 time of the Final Fairness Hearing.

25 3. The Court also finds that the stated cause for the settlement in this matter from
26 Plaintiff’s Motion for Preliminary Approval, namely, risks of certification and trial based on a
27 novel claim predicated on Civil Code section 1950.5, the all-or-nothing nature of the claim
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1 asserted, costs avoided by settling now, and the amount of the settlement compared to the potential
2 recovery at trial all support a finding that good cause exists to find the Settlement is fair,
3 reasonable and adequate, subject to further consideration by the Court at the time of the Final
4 Fairness Hearing.

5 **4.** The Court finds that the Long-Form Notice and Summary Notice: (a) constitute the
6 best notice practicable under the circumstances, (b) constitute valid and sufficient notice to all
7 members of the Class, and (c) comply fully with the requirements of California Code of Civil
8 Procedure § 382, Rules 3.766 and 3.769 of the California Rules of Court, the California and
9 United States Constitutions, and other applicable law.

10 **5.** For purposes of this Settlement only, the Court finds that the Class is so numerous
11 that joinder of all Class Members is impracticable, Plaintiff’s claims are typical of the Class’s
12 claims, there are questions of law and fact common to the Class, which predominate over any
13 questions affecting only individual Class Members, and Class certification is superior to other
14 available methods for the fair and efficient adjudication of the controversy.

15 **6. Settlement Approval.** The Settlement Agreement, including the Long-Form
16 Notice and Summary Notice attached to the Settlement Agreement as Exhibit B and Exhibit D
17 respectively are preliminarily approved.

18 **7. Provisional Certification.** For purposes of this Settlement only, the Class is
19 provisionally certified as a class of all prospective residential tenants of Defendant in the State of
20 California who paid Defendant a “holding fee,” who did not rent an apartment from Defendant and
21 who did not receive a refund of such holding fee at any time from May 30, 2015 through May 30,
22 2021.

23 **8. Appointment of Class Representative and Class Counsel.** Plaintiff Shelley
24 Marie Brown (“Plaintiff”) is conditionally certified as the class representative to implement the
25 Settlement Agreement in accordance with its terms. Thomas A. Kearney, Andrew J. Kearney, and
26 Prescott W. Littlefield of Kearney Littlefield, LLP and Kenneth M. Lipton, The Law Offices of
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1 Kenneth M. Lipton, are conditionally appointed as Class Counsel. Plaintiff and Class Counsel
2 shall fairly and adequately protect the Class’s interests.

3 **9. Appointment of Settlement Administrator.** The Court approves Phoenix Class
4 Action Administration Solutions, LLC as the Settlement Administrator. The Settlement
5 Administrator shall comply with the terms and conditions of the Settlement Agreement in carrying
6 out its duties pursuant to the Settlement Agreement.

7 **10. Cy Pres.** Prior to the entry of judgment in this matter, Plaintiff shall submit to the
8 Court declarations sufficient for the Court to determine the total amount that would be payable to
9 all class members if all class members are paid the amount to which they are entitled pursuant to
10 the judgment. Because, pursuant to the Settlement Agreement, settlement checks issued shall
11 remain negotiable for 180 days after issuance, no later than September 14, 2023, the Settlement
12 Administrator shall file a report with the Court stating the total amount that was actually paid to
13 the settlement class members. No later than October 14, 2023, the Parties shall prepare and file a
14 stipulation and proposed order and Proposed Amended Judgment. The stipulation and proposed
15 order shall include, the amount of the distribution unpaid cash residue, and unclaimed or
16 abandoned funds to the non-party, the accrued interest on that sum and s statement identifying: (1)
17 the name of the case; (2) the cause of action resolved by the judgment, with a summary of the
18 underlying allegations or supporting factual findings; (3) the name of, and the amount distributed
19 to, each nonparty person or entity; (4) the name of the Judge ordering the distribution; and (5) the
20 purpose of the distribution to the nonparty person or entity and how the nonparty person or entity
21 plans to expend the funds or proceeds received, if known. (Cal. Gov. Code § 68520.) The
22 stipulation shall be signed by counsel for the class, defendant’s counsel and counsel for (or an
23 authorized representative of) the non-party (“cy pres”) recipient. The stipulation shall include a
24 statement to the effect that all interested persons are in accord with the amended judgment and
25 have no objections to the entry of an amended judgment. If there are objections by any party,
26 class counsel shall immediately notify the Court and the matter will be set for further hearing.
27 After the stipulation is received, the Court shall amend the judgment to direct the Settlement
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1 Administrator to pay the sum of the unpaid residue or unclaimed or abandoned class member
2 funds, plus any interest that has accrued thereon, to the Cy Pres identified by the Parties herein. A
3 conformed copy of the stipulation and order and amended Judgment (once signed by the Court)
4 shall be forwarded by class counsel to the Judicial Council.

5 **11. Provision of Class Notice.** The Settlement Administrator shall disseminate Class
6 Notice as provided in the Notice Plan in Section VII of the Settlement Agreement. The costs of
7 such notice shall be paid out of the Escrow Account funded by the Maximum Settlement Fund as
8 set forth pursuant to the terms and conditions of the Settlement Agreement. The Notice Date shall
9 be no later than thirty (30) days after the issuance of this Preliminary Approval Order.

10 **12. Requesting Exclusion.** A Class Member may elect to be excluded from the
11 Settlement Class and to not be bound by the Settlement Agreement. To make this election, a Class
12 Member must mail a written request for exclusion to the Settlement Administrator at the address
13 provided in the Long-Form Notice, postmarked by the Exclusion Deadline ordered by the Court in
14 the Preliminary Approval Order. The request must (a) state the Class Member's name, address,
15 and telephone number; (b) reference *Marie Brown v. Alliance Residential Company, LLC*, Case
16 No. 19STCV18979; and (c) clearly state that the Class Member wants to be excluded from the
17 Class, not participate in the Agreement and not receive any Agreement benefits, and otherwise
18 comply with the terms stated in the Long-Form Notice and Preliminary Approval Order. All Class
19 Members will be by bound by the Final Order and Final Judgment unless such Class Members
20 timely file valid written requests for exclusion or opt out in accordance with this Preliminary
21 Approval Order.

22 **13. Objection to Settlement.** Any Class Member who has not submitted a written
23 exclusion request pursuant to paragraph 10 above and who wishes to object to the fairness,
24 reasonableness, or adequacy of this Settlement Agreement or the proposed Settlement Agreement,
25 or to the award of Attorneys' Fees and Expenses, or to award of Service Awards to the Class
26 Representative(s), must mail a written statement, describing the Class Member's objections in the
27 specific manner set forth in this Section (below), to the Settlement Administrator at the address
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1 provided in the Long-Form Notice. The objection must be postmarked by the Objection Deadline
2 ordered by the Court in this Preliminary Approval Order. Any such objection shall include: (a) the
3 full name of the objector; (b) the full address of the objector; (c) the specific reason(s), if any, for
4 the objection, including any legal support the Class Member wishes to bring to the Court's
5 attention; (d) copies of any evidence or other information the Class Member wishes to introduce in
6 support of the objections; (e) a statement of whether the Class Member intends to appear and
7 argue at the Fairness Hearing; (f) the individual Class Member's written signature, with date; and
8 (g) reference *Marie Brown v. Alliance Residential Company, LLC*, Case No. 19STCV18979 on the
9 envelope and written objection.

10 **14. Failure to Object to Settlement.** Class Members who do not object to the
11 proposed Settlement Agreement in the manner specified in paragraph 11 above will: (a) be
12 deemed to have waived their right to object to the Settlement Agreement; and (b) be foreclosed
13 from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to
14 the Settlement Agreement.

15 **15. Final Fairness Hearing.** A Final Fairness Hearing shall be held before this Court
16 on November 17, 2022, at 9:00 a.m. [or ~~11:00 a.m.~~ 10:00 a.m. [date], at ~~11:00 a.m.~~ 10:00 a.m. [time], before
17 the Honorable David S. Cunningham in Department 11 of the Los Angeles Superior Court, Spring
18 Street Courthouse, located at located at 312 Spring Street, Los Angeles CA 90012, to determine
19 whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate.

20 **16.** Class Counsel shall file and serve papers in support of its Motion for Attorneys'
21 Fees, Costs, and Service Awards no later than sixteen (16) Court days before the Final Fairness
22 Hearing. Such a motion shall not exceed twenty-five (25) pages in length.

23 **17.** Class Counsel shall file and serve papers in support of final approval of the
24 Settlement Agreement no later than sixteen (16) Court days before the Final Fairness Hearing.
25 Such a motion shall not exceed twenty-five (25) pages in length.

26 **18.** The Settlement Administrator shall serve on Class Counsel and the Defendant's
27 Counsel a declaration: (i) attaching a list of those persons who timely opted out or excluded
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1 themselves from the Settlement Agreement; (ii) attaching a list of those persons who timely
 2 objected to the Settlement Agreement, along with a copy of their written objections; and (iii)
 3 providing an accounting reflecting the Administration Expenses incurred as of that time and the
 4 amount of additional Administration Expenses expected to be incurred for which the Settlement
 5 Administrator will seek to be reimbursed from the Maximum Settlement Fund via the Escrow
 6 Account no later than 60 days after the Notice Date.

7 **19.** The Settlement Administrator shall provide a declaration to the Parties outlining
 8 the scope, method, and results of the Notice Plan set forth in Section VII of the Settlement
 9 Agreement, and requested Administration Expenses no later than 60 days after the Notice Date.

10 **20.** The Parties may file replies/responses to objections and supplemental papers to any
 11 motion or petition no later than five (5) Court days before the Final Fairness Hearing.

12 **21.** Based on the date of this Order and the date of the Fairness Hearing, the following
 13 are the certain associated dates in this Settlement:

Event	Timing	Date
Last day for the Settlement Administrator to send Summary Notice and activate the Settlement Website	30 days after entry of this Preliminary Approval Order	July 18, 2022
Last day for Plaintiffs and Class Counsel to file and serve a Motion for Attorneys' Fees, Costs, and Service Awards	At least 16 Court days before Fairness Hearing	October 25, 2022
Last day for Class Members to request exclusion or object to the Settlement	90 days after sending of Notice	October 17, 2022
Last day to file motion for final approval of the Settlement Agreement.	16 Court days before Fairness Hearing	October 25, 2022

Event	Timing	Date
Last day to file replies or responses to objections and supplemental papers to any motion for final approval or Motion for Attorneys' Fees, Costs, and Service Awards.	At least 5 Court days before the Final Fairness Hearing	November 12, 2022
Final Approval Hearing/Attorneys' Fees Motion Hearing	[Proposed; Paragraph 15, <i>supra</i>]	November 17, 2022 at 9:00 a.m. or _____
Date for Final Report re Distribution by Settlement Administrator	[Paragraph 10, <i>supra</i>]	September 14, 2023
Date for Stipulation and order and proposed amended Judgment	[Paragraph 10, <i>supra</i>]	October 14, 2023

22. This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the updated hearing date shall be posted on the Settlement Website, but other than the website posting, the Parties will not be required to provide any additional notice to Class Members.

23. If the proposed Settlement Agreement is finally approved, the Court shall enter a separate order finally approving the Settlement Agreement and entering judgment. The form of the Final Order and Final Judgment attached to the Settlement Agreement as Exhibit A is preliminarily approved.

24. The Parties are hereby ordered, pursuant to the terms and conditions of the Settlement Agreement, to take all necessary and appropriate steps to establish the means to implement the Settlement Agreement.

25. **Stay of Dates and Deadlines.** Pending the Final Fairness Hearing, all discovery

1 and pretrial proceedings and deadlines in this Action are stayed and suspended until further notice
2 from the Court, except for such actions as are necessary to implement the Settlement Agreement
3 and this Preliminary Approval Order.

4 **26. Termination.** If the Settlement Agreement terminates for any reason, the
5 following will occur: (a) this Preliminary Approval Order and all of its provisions will be vacated
6 by its own terms, including, but not limited to, vacating conditional certification of the Class,
7 conditional appointment of Plaintiff as class representative, and conditional appointment of
8 Plaintiff's Counsel as Class Counsel; (b) the Action will revert to the status that existed before
9 Plaintiffs filed their motion for approval of the Preliminary Approval Order; and (c) no term or
10 draft of the Agreement, or any part of the Parties' settlement discussions, negotiations or
11 documentation will have any effect or be admissible into evidence for any purpose in the Action or
12 any other proceeding. This Preliminary Approval Order will not waive or otherwise impact the
13 Parties' rights, defenses, or arguments in this Action.

14 **27. No Admissions.** Nothing in this Preliminary Approval Order is, or may be
15 construed as, an admission or concession on any point of fact or law by or against any Party.

16 **IT IS SO ORDERED.**

17 Dated: 06/17/2022



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19 JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 3051 Foothill Blvd., Suite B, La Crescenta, CA 91214.

On June 14, 2022, I served the following document(s) described as

THIRD AMENDED [PROPOSED] ORDER GRANTING PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

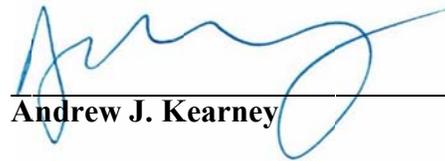
on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows: **SEE ATTACHED LIST**

BY MAIL: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, California, on that same day following ordinary business practices. (C.C.P. § 1013 (a) and 1013a(3)). *See attached Service List.*

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be served via CaseAnywhere to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. *See Attached Service List*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 14, 2022, at La Crescenta, California.



Andrew J. Kearney

SERVICE LIST

Martin Deniston David Morrow Wilson Elser Moskowitz Edelman & Dicker LLP 555 S. Flower Street - Suite 2900 Los Angeles, CA 90071-2407	<i>Attorneys for Defendant</i>
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 3051 Foothill Blvd., Suite B, La Crescenta, CA 91214.

On June 22, 2022, I served the following document(s) described as

NOTICE OF ENTRY OF ORDER

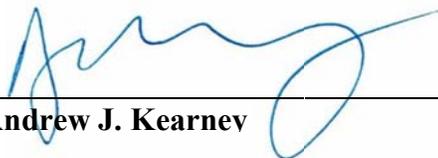
on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows: **SEE ATTACHED LIST**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 22, 2022, at La Crescenta, California.



Andrew J. Kearney

SERVICE LIST

Martin Deniston David M. Morrow Wilson Elser Moskowitz Edelman & Dicker LLP 555 S. Flower Street - Suite 2900 Los Angeles, CA 90071-2407	<i>Attorneys for Defendant</i>
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