STATE OF MINNESOTA | DISTRICT COURT

HENNEPIN COUNTY | FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

Edain Altamirano Flores; Esperanza Herrera; Lori Nicol; Olutundun Arike Ogundipe; Jason Beck; Patricia Goggin; Norma Juarez; and Bruno Gorostieta, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Spiros Zorbalas; Stephen Frenz; Equity Residential Holdings, LLC; National Housing Fund, LLC; The Apartment Shop, LLC; ERT, LLC; Quarters for Creativity, LTD.; Emerald Square Properties, Inc.; Hennepin Quarters, Inc.; Powderhorn Quarters, Inc.; Hiawatha Quarters, Inc.; 25 & 3146 Properties, Inc.; Lahaha Holdings, Inc.; Arts Avenue Properties, Inc.; SS Quarters, Inc.; Berkeley Holdings, Inc.; 1801 Properties, Inc.; SZ112, Inc.; S1322, Inc.; R110, Inc.; G121, Inc.; Alpha-Omega Companies, Inc.; JAS Apartments, Inc.; Jennifer Frenz; Mary Brandt; and 2020 Vision Investments, LLC,

Defendants.

Court File No. 27-CV-16-14225
Class Action
Judge Mary R. Vasaly

PLAINTIFFS' AND CLASS COUNSEL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ATTORNEYS' FEE AWARD, COST AWARD, AND CLASS REPRESENTATIVE SERVICE AWARD

INTRODUCTION

This historic tenant rights lawsuit has resulted in "the largest aggregate settlement in a tenant related class action case in Minnesota history"—$18.5 million. Randy Furst, *Controversial Minneapolis landlords to pay $18.5 million to settlement tenants' class-action lawsuit*, Minneapolis Star Tribune, October 13, 2018, http://www.startribune.com/biggest-tenant-class-action-suit-ever-settled-against-landlords-frenz-and-zorbalas/497307911/. This unprecedented litigation presents the

textbook case for the award of attorneys' fees under the common fund doctrine at the requested percentage of less than one-third (32%) of the settlement fund because its success is the direct product of Class Counsel's extraordinary investment of legal creativity, skill, and labor over a two-year period on a contingent basis.

Under the firmly established common fund doctrine, "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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Mills v. Elec. Auto-life Co.*, 396 U.S. 375, 392 (1970); *Gilchrist v. Perl*, 387 N.W.2d 412, 418 (Minn. 1986) ("[W]here the class representative is successful in creating a fund for the class, the representative is entitled to recover attorneys' fees."). Minnesota state and federal courts evaluate the common fund fee award requested by considering the following factors:

> (1) the benefit conferred on the class, (2) the risk to which plaintiffs' counsel was exposed, (3) the difficulty and novelty of the legal and factual issues of the case, (4) the skill of the lawyers, both plaintiffs' and defendants', (5) the time and labor involved, (6) the reaction of the class, and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases.

Yarrington v. Solvay Pharm., Inc., 697 F. Supp. 2d 1057, 1061-62 (D. Minn. 2010). Where, as here, these factors are shown by Class Counsel, Minnesota state and federal courts routinely award fees from the common fund in the range of the requested 32%, which this Court has described as "well within the typical amount of percentage fees awarded in class actions." *McClure v. Erickson Petroleum Corp.*, 27-cv-15-16515, at 7 (Vasaly, J.) (Affidavit of Isaac B. Hall, Ex. 3) (awarding attorneys' fees of 33% of common fund).

Nobody knows better than this Court the novelty, complexity, and difficulty of this case, in which the Court itself conducted 13 hearings and issued 11 substantive orders totaling almost 300 pages. (Affidavit of Michael F. Cockson, ("Cockson Aff"), Ex. A.) When this Court

granted the motion for class certification in August 2017, it concluded that "the class members are individuals with varying economic resources who may have significant difficulty funding the pursuit of these rather complex and unique claims, particularly against Defendants, who are sophisticated litigators with substantial resources." (Dkt. No. 261 at 34.) The Court also anticipated the difficulty and complexity of discovery going forward, noting that "the case requires the participation of experts and comprehensive discovery aimed at uncovering Defendants' ownership structure and system-wide maintenance procedures." (*Id*.)

These same factors unequivocally support Class Counsel's requested fees under the common fund doctrine. The settlement will provide immediate and substantial financial benefit to "individuals with varying economic resources" who otherwise lacked the financial ability to vindicate their statutory rights on their own. The settlement is the product of Class Counsel's successful litigation of "complex and unique claims" that resulted in groundbreaking rulings from this Court on issues related to landlord liability, causation and damages under Minn. Stat. § 504B.161, and Minnesota's consumer protection statutes. The settlement is the product of hotly contested and time-consuming litigation, requiring "comprehensive discovery aimed at uncovering Defendants' ownership structure and system-wide maintenance practices" in the form of literally thousands of discovery requests and hundreds of thousands of pages of documents, over 40 depositions along, with the "participation of experts" in the form of numerous expert reports and expert depositions. And defense counsel proved to be "sophisticated litigators with substantial resources," zealously defending the case by bringing or opposing numerous motions, including three rounds of contested dispositive motions; a contested class certification motion; a contested request to add punitive damages; and multiple discovery-related motions. Defendants mounted a vigorous defense.

Class Counsel's work for the benefit of the class members also included extraordinary efforts beyond the *Flores* litigation itself, including prosecuting a second, heavily litigated fraudulent transfer proposed class action (in which several dispositive motions were filed and significant discovery was taken) to protect an eventual judgment in *Flores*; filings and appearances in a third case (a foreclosure action against Defendants National Housing Fund and Stephen Frenz) affecting the class members' rights; and extensive monitoring and analysis of City license revocation actions (including attendance at several days of proceedings and review of filings and transcripts of testimony) affecting Plaintiffs' legal and factual arguments. The common fund doctrine recognizes that such directly related collateral efforts on behalf of the class further support a fee request. Indeed, Class Counsel's unusually intense and creative collateral efforts on behalf of this class here demonstrate their unyielding dedication to the class members' interests, which resulted in the creation of the $18.5 million settlement fund.

But perhaps the most important reason to award Class Counsel their requested fees and costs is the extraordinary risk they undertook in litigating cutting-edge tenant-rights claims on a contingency basis while investing millions of dollars of time and expenses to bring a factually complicated case to favorable settlement on the eve of trial. This class action turned out to be an elaborate combination of a groundbreaking tenant rights case, a complex business litigation case, and a financial fraud investigation, with each element presenting its own unique legal and evidentiary challenges and risks. Class Counsel successfully overcame each of those obstacles to deliver an unprecedented litigation result for the class. Indeed, the Minneapolis City Attorney herself praised the exceptional efforts of Class Counsel, stating that the Class Counsel team led by Michael Cockson "has been nothing short of a fierce advocate on behalf of the tenants he's representing. . . . If not for his persistence and efforts, I don't know when the city would have

become aware of the fact that Zorbalas had an ownership in any of these properties." Randy Furst, *A corporate lawyer in Minneapolis fights for low-income tenants*, Minneapolis Star Tribune, February 1, 2018, http://www.startribune.com/a-corporate-lawyer-in-minneapolis-fights-for-low-income-tenants/472262203/.

The common fund doctrine exists precisely to incentivize and reward such risk-taking and investment by counsel on behalf a large class of plaintiffs in cases of widespread public importance: "In class suits, the common fund doctrine . . . enables aggregate litigation. It is common to note that class action lawsuits overcome the collective action problem that prevails when a widely dispersed group of individuals possesses legal claims too costly to pursue individually, yet highly valuable in the aggregate. . . . However, absent a fee arrangement like the common fund doctrine, the class action mechanism would rarely be used." *Newberg on Class Actions* § 15:53 (5th ed.) (emphasis added).

For these reasons, Class Counsel request that the Court award $6 million in attorneys' fees from the $18.5 million settlement fund and $269,372.49 in costs and expenses, as well as the costs associated with administration of the settlement to the settlement administrator. Plaintiffs further request that the Class Representatives each be awarded a $10,000 service payment.

BACKGROUND

This case was commenced on September 23, 2016, and was vigorously litigated by all parties from the date of filing until the parties reached a settlement at mediation on June 8, 2018. The litigation featured a detailed, 37-page complaint (based on extensive trial and deposition testimony in another matter as well as a comprehensive pre-suit investigation) asserting cutting-edge theories of landlord liability and damages under Minn. Stat. § 504B.161, the Minnesota consumer protection statutes, and the veil-piercing doctrine; two rounds of contested dispositive

motions; a contested class certification motion; a contested request to add punitive damages; motions for injunctive relief; and multiple discovery-related motions. In addition to motion practice, Plaintiffs and Defendants conducted extensive discovery, so that by the time settlement discussions commenced shortly before trial, the parties had obtained substantially all the evidence relevant to resolution of the claims and defenses at trial. The litigation also involved extensive efforts in a collateral fraudulent transfer action (*Lori Nicol v. Equity Residential Holdings, et al.*, Court File No. 27-CV-17-13581) to secure collectability of the eventual judgment in this case—directly related litigation that was simultaneously settled with this class action and which is already the source of millions of dollars in the common settlement fund. In that case, the parties took discovery and filed several dispositive motions. Moreover, Plaintiffs negotiated and documented at least eight settlements with fraudulent-transfer defendants. These many negotiations were complex and time-consuming because the settlements involved agreements and/or discussions with numerous parties, title companies, escrow agents, and in at least one case, a potential lender. (Cockson Aff. ¶ 6.)

Set forth below is a chart that summarizes the metrics for key litigation events, which shows the complexity, difficulty, and intensity of this hotly contested complex litigation. Additional detail about these numbers is attached as Exhibit A to the Affidavit of Michael F. Cockson, filed with this motion.

Topic	**Summary**
Summary of Motions	• 44 Total Motions Filed
Court Filings	• 16 Total Key Court Orders • 275 Total Pages of Key Court Orders • 2,262 Total Number of Pages within Key Motion Papers (excluding exhibits) • 1,175 Total Number of Exhibits Filed with the Key Motions
Court Hearings/ Oral Arguments	• 18 Oral Arguments

Written Discovery	• 1,811 Total Number of Interrogatories Served • 2,565 Total Number of Requests for Production Served • 527 Total Number of Requests to Admit Served
Depositions	• 45 Depositions Taken • 354 Deposition Exhibits Marked • 161 Hours and 21 Minutes of Deposition Testimony (incl. breaks) • 5,493 Pages of Deposition Transcripts
Document Productions	• 74,838 Total Documents Produced • 211,641 Total Pages Produced

Class Counsel's monumental litigation efforts ultimately led to a historic settlement to the benefit of the tenant class on the eve of jury trial. Under the settlement agreement, Defendants are required to create a common fund of $18.5 million. A significant portion of the settlement fund has already been funded under the terms of the settlement agreement in *Nicol*. (Dkt. No. 162.) After payment of attorneys' fees and litigation costs and expenses, the money from the settlement fund will be distributed to class members according to the formula, methodology, and distribution procedures set forth in Exhibit B to the settlement agreement, and detailed in Plaintiffs' motion for preliminary approval of the settlement. (*See* Dkt. No. 589, Declaration of A. Nodler, submitted on October 12, 2018.)

On October 24, 2018, the Court issued its Order preliminarily approving the settlement and directing notice to the Class. In the notice—which was also attached to the settlement agreement—the Class was informed that Class Counsel would be seeking $6 million from the settlement fund as attorneys' fees, along with costs, and that the class representatives would each seek a service award of $10,000.

ARGUMENT

I. CLASS COUNSEL SHOULD BE AWARDED THE REQUESTED FEE.

A. Class Counsel Is Entitled to an Award of Fees from the Common Fund.

The United States Supreme Court and the Minnesota Supreme Court have both held that "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." *Boeing*, 444 U.S. at 478; *see also Mills*, 396 U.S. at 392; *Gilchrist*, 387 N.W.2d at 418 ("[W]here the class representative is successful in creating a fund for the class, the representative is entitled to recover attorneys' fees."). The purpose for awarding attorneys' fees from a common fund is to fairly and adequately compensate class counsel for services rendered to the class (in light of the significant risks undertaken by Class Counsel from a contingent fee arrangement) and to prevent unjust enrichment of persons who benefit from a lawsuit while bearing no cost. *See Boeing*, 444 U.S. at 478; *Mills*, 396 U.S. at 392; *Krueger v. Ameriprise Fin., Inc.*, No. 11-CV-02781 (SRN/JSM), 2015 WL 4246879, at *1 (D. Minn. July 13, 2015); *In re Charter Commc'ns, Inc. Sec. Litig.*, No. MDL 1506, 4:02-CV-1186 CAS, 2005 WL 4045741, at *3 (E.D. Mo. June 30, 2005).[1] Equally important, the award of attorneys' fees in successful cases incentivizes skilled counsel to represent those seeking redress for damages caused to an entire class of persons, which also serves to discourage future misconduct of similar nature. *See Charter Commc'ns*, 2005 WL 4045741, at *18-19; *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400, 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010).

[1] This Court has recognized that federal orders on attorney's fees are instructive in state cases. *McClure v. Erickson Petroleum Corp.*, 27-cv-15-16515, at 7 n.1 (Vasaly, J.) (citing *Lewy 1990 Trust ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 452 (Minn. Ct. App. 2002)).

Here, Plaintiffs and Class Counsel have created a sizable common settlement fund to redress years-long fraud and systematic maintenance violations that have damaged tenants in the Minneapolis rental market. Class Counsel are entitled to a reasonable fee from this common fund.

B. The Court Should Award Class Counsel Fees Based on a Percentage of the Common Fund.

The Court should award Class Counsel their requested attorneys' fee of 32% of the $18.5 million common fund ($6 million). The determination of the amount of a reasonable attorneys' fee awarded from a common fund is committed to the sound discretion of the Court. *See Caligiuri v. Symantec Corp.*, 855 F.3d 860, 865 (8th Cir. 2017) (citing *In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 622 (8th Cir. 2017); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1156 (8th Cir. 1999); *Yarrington*, 697 F. Supp. 2d at 1061; *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). Minnesota courts, including this Court, have repeatedly approved attorneys' fee awards from common funds based on a percentage of the fund. *See McClure v. Erickson Petroleum Corp.*, 27-cv-15-16515, at 7 (Vasaly, J.) (approving fees and cost award of 33% under common fund doctrine); *Braun v Wal-Mart, Inc.*, No. 19-CO-01-9790, 2009 WL 1592532, ¶ 15 (Minn. Dist. Ct. June 01, 2009) (awarding 38% of the settlement fund ($25 million)). In the Eighth Circuit, use of the percentage method in common fund cases is "well established." *See e.g.*, *Petrovic*, 200 F.3d at 1157 ("It is well established in this circuit that a district court may use the 'percentage of the fund' methodology to evaluate attorney fees in a common-fund settlement.").

As one Minnesota federal court has explained, "[t]here are strong policy reasons behind the judicial and legislative preference for the percentage of recovery method" over the lodestar method. *In re Xcel Energy, Inc. Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 991-92

(D. Minn. 2005). The percentage method is consistent with common arrangements in the private marketplace governing contingency cases, where the contingency fee is ordinarily measured as a percentage of the overall recovery (often set at one-third). *See Blum v. Stenson*, 465 U.S. 886, 903 (1984). The percentage method is also preferable over a lodestar approach because it aligns the interests of counsel and the class in seeking and achieving maximum recovery for the class. *See, e.g.*, *Shackleford v. Cargill Meat Solutions, Inc.*, No. 12-CV-4065-FJG, 2013 WL 937550, at *1 (W.D. Mo. Mar. 8, 2013) (noting that the Eighth Circuit "has held that in 'common fund' cases, where attorney fees and class members' benefits are distributed from one fund a percentage of the benefit method may be preferable to the lodestar method") (internal citation omitted). Thus, the Court should analyze Class Counsel's attorneys' fee request under the percentage method.

C. Class Counsel Request a Reasonable Percentage from the Common Fund.

To evaluate the reasonableness of a requested percentage of a common fund as an attorneys' fee award, Minnesota courts and the Eighth Circuit commonly apply a seven-factor test derived from factors set forth by the other circuits. *See Yarrington*, 697 F. Supp. 2d at 1061-62 (citing *Carlson v. C.H. Robinson Worldwide, Inc.*, Civ. No. 02-3780, 2006 WL 2671105, at *7 (D. Minn. Sept. 18, 2006) (which considered several factors of the Third Circuit's 10-factor test in finding that a fee award of 35.5% of a common fund was "reasonable and appropriate") and *In re Xcel*, 364 F. Supp. 2d at 993 (which considered seven factors of the Fifth Circuit's 12-factor test)). The seven factors commonly considered by Minnesota federal courts are:

> (1) the benefit conferred on the class, (2) the risk to which plaintiffs' counsel was exposed, (3) the difficulty and novelty of the legal and factual issues of the case, (4) the skill of the lawyers, both plaintiffs and defendants', (5) the time and labor involved, (6) the reaction of the class, and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases.

Yarrington, 697 F. Supp. 2d at 1061-62. (citing *In re Xcel*, 364 F. Supp. 2d at 993). These factors overwhelmingly support Class Counsel's fee request of 32% of the settlement fund.

1. The benefit conferred to the class strongly supports the requested fee.

The recovery for this class of predominantly low-income tenants is without precedent. As one commentator has observed, it is "the largest aggregate settlement in a tenant related case in Minnesota history." Randy Furst, *Controversial Minneapolis landlords to pay $18.5 million to settlement tenants' class-action lawsuit*, Minneapolis Star Tribune, October 13, 2018, http://www.startribune.com/biggest-tenant-class-action-suit-ever-settled-against-landlords-frenz-and-zorbalas/497307911/; *see also* Randy Furst, *Lawsuit against 2 Minneapolis landlords gains class-action status*, Minneapolis Star Tribune, August 15, 2017, http://www.startribune.com/lawsuit-against-2-minneapolis-landlords-gains-class-action-status/440410563/ ("McDonough, who called the case against Zorbalas and Frenz 'historic,' can recall only one other local class-action housing case. He filed that one in the late 1980s, and it resulted in a payout of a few thousand dollars."). Based on the number of class members and the total settlement fund, Class Counsel estimate that after the fees and costs requested herein, the average class member will receive an average of approximately **$2,210.75** from the settlement fund. Moreover, Class members do not need to submit any type of claim form and will see near immediate monetary pay out from the settlement fund upon final approval of the settlement. This is especially important given the lower income of most of the class members.

Continued litigation to try to obtain a damages verdict larger than $18.5 million would have exposed the class to significant risks. While the Court's summary judgment and punitive damages rulings provided the Class with significant momentum going into trial, jury trials are inherently unpredictable. Even with the real possibility of a favorable verdict on liability,

damages, and punitive damages, lengthy post-trial motions and appeals would almost certainly have followed—again injecting unpredictability into the equation. And during the post-trial period, the collectability of the judgment would become even more fraught with uncertainty given the complex web of shell corporations and sub rosa property conveyances at the heart of Defendants' business operations. Balanced against these litigation and collection risks, the $18.5 million settlement fund provides a substantial and immediate benefit to the class. *See Yarrington*, 697 F. Supp. 2d at 1062 ("By itself, the cash settlement is beneficial to the Class, but weighed against the inherent risks of trial, the Court finds that the $16,500,000 cash settlement provides a substantial and immediate benefit to the Class.").

In sum, the settlement agreement provides a substantial and immediate benefit for the class that strongly supports Class Counsel's requested fees.

2. The risk undertaken by Class Counsel strongly supports the requested fee.

In undertaking this groundbreaking litigation, Class Counsel bore all of the financial risk in the event the case was unsuccessful. Class Counsel represented Plaintiffs on a contingency-fee basis, (Cockson Aff. ¶ 7), and therefore could only recover fees if they were successful in procuring recovery for the Plaintiffs and the class. The contingent nature of the representation is a major factor supporting the reasonableness of Class Counsel's requested fee. "Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees." *In re Xcel*, 364 F. Supp. 2d at 994; *see also Yarrington*, 697 F. Supp. 2d at 1062. "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance agreed to pay for his services, regardless of success." *Pa. v. Del. Valley Citizens Counsel for Clean Air*, 483 U.S. 711, 736 (1987).

While Class Counsel strongly believed in the merit of the litigation, Class Counsel also recognized that the case presented substantial risks and uncertainties from the time it was filed. The motions filed by Defendants challenged the legal and factual sufficiency of Plaintiffs' claims at the pleading stage, at class certification, and at summary judgment.

First, Defendants filed a motion seeking to stay the proceedings, arguing that license revocations issues should first be heard and determined by the administrative process at the City of Minneapolis and that the case was not yet ripe absent adjudication of the rental license revocation through the administrative process. (*See* Dkt. No. 43.) Plaintiffs successfully opposed this motion, which allowed the litigation to continue. (*See* Dkt. No. 61.)

Defendants next filed motions to dismiss supported by three separate briefs. (*See* Dkt. Nos. 76, 81, and 86.) In those motions, Defendants argued that Plaintiffs' claims failed to state a claim, arguing, *inter alia*, (1) that tenant remedies claims must be brought in housing court subject to certain housing-court specific procedural requirements; (2) that Plaintiffs failed to allege any specific violations of Minn. Stat. § 504B.161; (3) that the Minnesota Deceptive Trade Practices Act ("DTPA") and Consumer Fraud Act ("CFA") were preempted by the tenant remedies statute; (4) that real estate is not covered by the DTPA; (5) that Defendants made no misrepresentation of fact; (6) that no misrepresentation was intentional; (7) that Plaintiffs failed to allege that Defendants caused an actual injury; (8) that no public benefit was alleged; (9) that no conspiracy was adequately alleged; (10) that the Minneapolis license ordinances were unconstitutionally vague and overbroad; (11) that various owner-Defendants were not liable; (12) that statements by Defendants were non-actionable puffery, opinion or true; (13) that Defendants' rental licenses were valid; and (14) that Plaintiffs failed to allege veil piercing. (*Id.*) Plaintiffs resisted these arguments and filed 78 pages of briefing in opposition to Defendants'

motions. (Dkt. Nos. 90-92.) The Court denied Defendants' motions in their entirety, including finding that Plaintiffs adequately pled their DTPA claims and recognizing that no Minnesota court had previously decided whether leases were covered under the DTPA. (*See* Dkt. No. 181.)

Plaintiffs next filed a motion for class certification. (*See* Dkt. No. 153.) Defendants opposed Plaintiffs' motion, arguing (1) that the class representatives lacked standing because of a lack of injury and because no misrepresentation was made to the class representatives; (2) that the requisite commonality was lacking; (3) that the class representatives' claims were not typical of the class; (4) that the class representatives could not adequately represent the class; (5) that the proposed class would not be sufficiently cohesive; and (6) that common questions did not predominate and a class action would not be the superior method for resolving the controversy. (*See* Dkt. No. 261, at 15-35 (discussing and rejecting Defendants' arguments opposing class certification).) Plaintiffs successfully opposed these arguments and the Court certified the case as a class action. (*Id.*)

Defendants petitioned for discretionary review by the Minnesota Court of Appeals of the Court's class certification order. Plaintiffs opposed Defendants' petition. The Court of Appeals denied Defendants' petition. (*See* Dkt. No. 305.)

After class certification, Plaintiffs moved to amend their complaint to add claims for punitive damages. (Dkt. No. 404.) Defendants vigorously opposed that motion, filing five different briefs. (*See* Dkt. Nos. 405-409.) Plaintiffs responded in a consolidated reply. (Dkt. No. 420.) The Court granted Plaintiffs' motion, allowing Plaintiffs to seek punitive damages. (Dkt. No. 490.)

After the close of discovery, Defendants moved for summary judgment on all of Plaintiffs' claims. Defendants' motions were supported by six briefs totaling 176 pages.[2] (Dkt. Nos. 431-435, and 447.) In these briefs, Defendants challenged the factual and legal sufficiency of all of Plaintiffs claims, including reiterating previously unsuccessful arguments from prior motions. Defendants challenged (1) whether their actions caused injury, whether there was a sufficient causal nexus to support Plaintiffs' claims, (2) whether any damage was suffered at all, (3) whether injunctive relief requests were moot, (4) whether Defendants made any actionable misrepresentations, (5) whether alleged fraud on the City of Minneapolis could render rental licenses void, and (6) whether the owner-Defendants could be liable at all. (*Id.*) Plaintiffs vigorously opposed these arguments and filed a brief exceeding 100 pages and over 150 exhibits of supporting documentation in opposition to Defendants' motions. (*See* Dkt. No. 474; Dkt. Nos. 465-478.) The vast majority of Defendants' arguments were rejected by the Court. (*See* Dkt. No. 584.)

While Class Counsel succeeded in defeating almost all of Defendants' arguments, none of these successes were guaranteed at the onset of litigation. Defendants challenged the legal and factual sufficiency of Plaintiffs' claims at every step of the litigation. Any recovery, much less significant recovery for the class, was uncertain.

Even with the successes in motion practice, victory at trial and collection of a subsequent judgment was not guaranteed. At trial, Defendants likely would have challenged whether their rental licenses were invalid, whether any fraudulent conduct took place directed at either the City of Minneapolis or at tenants, and whether tenants suffered any injury as a result of Defendants'

[2] Prior to the other Defendants, Defendant Mary Brandt moved for summary judgment. (*See* Dkt. No. 307.) Plaintiffs opposed Ms. Brandt's motion. (*See* Dkt. No. 341.) The Court granted Ms. Brandt's motion. (Dkt. No. 423.)

conduct. Even if Plaintiffs were successful, Defendants would likely have appealed the verdict, class certification, and the Court's denials of summary judgment. Defendants likely would have requested a stay of enforcement of the judgment pending appeal pursuant to Minn. R. Civ. App. P. 108.02. Assuming they were able to post a bond sufficient to "preserve the value of the judgment . . . during the pendency of appeal," Minn. R. Civ. App. P. 108.02, subd. 4(b), Defendants might have obtained a stay, thereby delaying execution on the judgment for approximately 12-18 months, depending on the Court of Appeals' appeal timeline and whether Defendants petitioned for Minnesota Supreme Court review if their appeal was unsuccessful. The risk of a successful appeal or, at a minimum, to Plaintiffs' ability to enforce the judgment and locate thousands of class members after a significant delay added to the uncertainty of securing meaningful relief to the Class.

In the face of these risks, Class Counsel litigated this case on a wholly contingent basis, knowing that the litigation would be contentious, that it would require the devotion of enormous amounts of time and expense, and that it could last for years with no guaranteed recovery upon success.

Class Counsel's complete assumption of the financial risk of the litigation strongly supports Class Counsel's requested fee.

3. The difficulty and novelty of the case strongly supports the requested fee.

To Class Counsel's knowledge, this class action has no precedent. Class Counsel are unaware of any other landlord-tenant class action in Minnesota based upon systematic breaches of the covenants of habitability under § 504B.161 or violation of Minnesota's consumer protection laws. Plaintiffs pursued novel claims, including claims that fraudulently obtained rental licenses were void *ab initio*, claims that fraud in obtaining rental licenses were actionable

under the Minnesota Consumer Fraud Act, and claims that landlord deception was actionable under the Minnesota Deceptive Trade Practices Act. Defendants challenged these claims at all stages of the litigation, arguing that all consumer protection claims were preempted by the tenant protection statutes, that Defendants' rental licenses were not fraudulently obtained and were not void, that license fraud did not support a claim by the Class, and that the DTPA did not apply to Plaintiffs' claims. This led to hundreds of pages of legal briefing and thousands of pages of factual and expert evidentiary submissions to the Court.

The novelty of the claims and Defendants' efforts to hide their misconduct led to difficult and complex factual discovery. Defendants' initial productions were severely deficient, leading to Plaintiffs filing a motion to compel production of additional documents, which was ultimately successful. This work led to Plaintiffs obtaining critical documents, which the Court cited in several orders. During discovery, Plaintiffs took depositions of the Defendants (both individuals and in corporate capacities) and Defendants' maintenance, marketing, and property management employees. This fact discovery was in turn used by expert witnesses. Plaintiffs retained three experts: one to opine on Defendants' pest control procedures; one to opine on Defendants' lead and asbestos compliance; and one to opine on damages to the class. These reports were utilized at class certification, in support of Plaintiffs' request to add punitive damages claims, and in opposition to Defendants' summary judgment motions.

Moreover, shortly after the class certification motion in this case, Defendants began taking a series of actions to transfer properties to other parties in an apparent effort to place them beyond the reach of the class in the event of a favorable judgment. Defendants transferred many of their properties to new owners under contracts for deed with close associates, leading to litigation by class representative Lori Nicol—who alleged that the transfers were fraudulent

transfers vis-à-vis the class as Defendants' creditors under the Minnesota Uniform Voidable Transactions Act ("MUVTA")—to secure those properties and the proceeds from the sale of those properties for use in satisfying an eventual judgment in the present action. Under the common fund doctrine, this directly related collateral litigation provides an additional basis for Class Counsel's requested fees because the "measuring stick of counsel's entitlement comes back to the single question of whether their efforts did in fact create, enhance, preserve, or protect the fund." *Newberg on Class Actions* § 15:59 (5th ed); *see, e.g.*, J*enkins by Agyei v. State of Mo.*, 862 F.2d 677, 678 (8th Cir. 1988) (approving the payment of fees from a desegregation litigation common fund for legal work related to tax levy election to support desegregation funding remedy). And that is exactly what the *Nicol* fraudulent conveyance action did—it enhanced, preserved, and protected the settlement fund and the class as creditors under the MUVTA against the threat that the alleged fraudulent transfers represented to the class's ability to collect an eventual judgment in *Flores*.

The novelty and complexity of this case strongly supports Class Counsel's fee request.

4. The skill of the lawyers strongly supports the requested fee.

This Court had many opportunities during motion practice to observe the lawyering skills of counsel on both sides of this case. Indeed, the Court has already stated during class certification that "it is undisputed that Plaintiffs' attorneys are highly qualified, knowledgeable and experienced attorneys who are willing to invest the resources necessary to fully prosecute the case." (Dkt. No. 261 at 29.) Likewise, the Court stated that Defendants had retained "sophisticated litigators with substantial resources." (*Id.* at 34.) Defendants' counsel vigorously defended their clients and achieved several rulings in their clients' favor during this litigation. (*See, e.g.*, Dkt. Nos. 41, 423, 584.)

The high skill level of the lawyers on both sides strongly supports Class Counsel's fee request.

5. Class Counsel's substantial investment strongly supports the requested fee.

The bottom line is that the historic class settlement in this case was possible only because of Class Counsel's substantial investment of time, labor, and dedication over the two years of this hotly contested complex litigation. The case turned out to be a unique combination of a civil rights case, a complex business litigation, and a financial fraud investigation, each aspect with its own challenges and risks. Overall, Class Counsel have invested over 13,500 hours prosecuting this action, the *Nicol* action, and other directly related collateral efforts. (*See* Cockson Aff. ¶ 12.) Class Counsel's efforts included, among other things, (1) conducting an extensive factual investigation into the alleged fraud; (2) vetting the complex and novel legal theories supporting Plaintiffs' claims; (3) drafting the Complaint; (4) responding to Defendants' motion to stay the litigation; (5) responding to Defendants' motions to dismiss; (6) reviewing over 70,000 documents and 150,000 pages produced by Defendants; (7) moving to compel additional productions and discovery from Defendants; (8) moving for a protective order to limit certain discovery inquiries by Defendants; (9) taking 23 fact depositions from Defendants and Defendants' employees; (10) taking or attending eight depositions of third party witnesses; (11) taking five depositions of Defendants' expert witnesses; (12) defending eight depositions of the Plaintiffs; (13) successfully moving for class certification; (14) successfully moving to add claims for punitive damages; (15) successfully opposing Defendants' eight motions for summary judgment; (16) litigating a fraudulent transfer action; (17) preparing for trial; and (18) attending and monitoring City license revocation proceedings; (19) filings

and appearances in a foreclosure action against several Defendants; and (20) engaging in extensive settlement negotiations over two sessions with two different mediators. The enormous amount of time and effort invested in this case by Class Counsel strongly supports Class Counsel's requested fee.

6. The reaction of the class strongly supports requested fee.

As of the filing of this motion, Class Counsel are aware of no objections that have been filed against Class Counsel's fee request or the proposed settlement. The notice provided to the class notified class members that Class Counsel would be seeking $6 million in fees from the settlement fund. The class representatives themselves entered into the settlement agreement that had as an exhibit the notice with the contemplated fee request, so the most directly involved members of the class have been aware of the fee request since the time of settlement. Moreover, courts have emphasized that even if there is a small group of objectors, that is not an impediment to awarding requested fees when the other factors are strong. *See Khoday v. Symantec Corp.*, No. 11-CV-180 (JRT/TNL), 2016 WL 1637039, at *11 (D. Minn. Apr. 5, 2016), *report and recommendation adopted*, No. 11-CV-0180 (JRT/TNL), 2016 WL 1626836 (D. Minn. Apr. 22, 2016), *aff'd sub nom. Caligiuri v. Symantec Corp.*, 855 F.3d 860 (8th Cir. 2017) (concluding that five objections did not warrant disapproval of the settlement); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 269 (D.N.H. 2007) (approving award of attorneys' fees where eleven objectors filed objections but were a small percentage of the class).

7. Comparable cases strongly support the requested fee.

The fee request here is firmly within the typical range of the percentage of fees awarded in comparable cases. Minnesota federal courts have observed that the range of percentage awards in common fund cases most typically range from 25% to 36%. *See Yarrington*, 697 F.

Supp. 2d at 1061; *In re Xcel*, 364 F. Supp. 2d at 998 (collecting cases demonstrating that the District of Minnesota routinely approved fee awards of 33%). Further, Class Counsel's requested 32% fee is fully supported by other cases decided throughout the Eighth Circuit and around the country. *See, e.g.*, *Caligiuri*, 855 F.3d at 860(affirming award of 33.33% or $20 million); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming award of 36% from common fund); *Krueger*, 2015 WL 4246879, at *3 (awarding 33.33% or $9,166,666); *Yarrington*, 697 F. Supp. 2d at 1061 (awarding 33% or $5.445 million) (Minnesota Consumer Fraud Act case); *In re Green Tree Fin. Corp. Stock Litig.*, Nos. 97-2666 (JRT/RLE), 97-2679 (JRT/RLE), 2003 WL 23335196, at *5 (D. Minn. Dec. 18, 2003) (awarding 33.33% of common fund); *Jensen v. Minn. Dep't of Human Servs.*, No. 09-1775 (DWF/FLN), 2011 WL 6178845, at *2 (D. Minn. Dec. 5, 2011) (finding a one-third contingent fee "fair and reasonable"); *Cromeans v. Morgan, Keegan, & Co., Inc.*, No. 2:12-cv-04269-NKL, 2015 WL 5785576, at *4 (W.D. Mo. Sept. 16, 2015) (awarding one-third of common fund); *In re Airline Ticket Comm'n Antitrust Litig.*, 953 F. Supp. 280, 286 (D. Minn. 1997) (awarding 33 1/3% of $86 million settlement fund); *Carlson*, 2006 WL 2671105, at *8 (awarding 35.5% of $15 million settlement); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1113, 1142 (W.D. La. 1997) (awarding fee of 36%); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291, 1292-94 (11th Cir. 1999) (awarding fee of 33%); *In re Vitamins Antitrust Litig.*, No. 00-197, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (awarding one third of $359 million antitrust recovery); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 498 (D.D.C. 1981) (awarding fee of 45%). Moreover, Minnesota courts, including this Court, have approved attorneys' fee awards from common funds in the range of one-third or more of the fund. *See, e.g.*, Final Approval Order and Judgment, *McClure v. Erickson Petroleum Corp.*, 27-cv-15-16515, at 7 (Vasaly, J.) (awarding 33% of the common

fund); *Braun v Wal-Mart, Inc.*, No. 19-CO-01-9790, 2009 WL 1592532, ¶ 15 (Minn. Dist. Ct. June 1, 2009) (awarding 38% of the settlement fund ($25 million)).

The District of Minnesota's decision in *Khoday*, affirmed by the Eighth Circuit in *Caligiuri*, is an especially instructive analog. There, plaintiffs brought a putative class action suit against defendants. *Khoday*, 2016 WL 1637039, at *1. Defendants filed motions to dismiss, which were mostly denied. *Id.* Defendants produced voluminous documents in discovery and plaintiffs conducted 13 fact depositions and four expert depositions, while Defendants took the depositions of each plaintiff and deposed plaintiffs' three experts. *Id.* at *2. After the close of discovery, plaintiffs successfully moved for certification of a class. *Id.* Defendants thereafter filed dispositive motions, which were denied. *Id.* The case was thus set for trial when a settlement was reached. *Id.* The settlement agreement provided for the creation of a $60 million settlement fund. *Id.* at *3. Plaintiffs' counsel requested one-third of the settlement fund as a fee. After careful analysis, the court awarded plaintiffs' counsel the requested fee. The Eighth Circuit affirmed the fee, finding no error in the lower court's analysis that:

> (1) "the $60 million cash settlement provides a substantial and immediate benefit to the class"; (2) "[p]laintiffs' counsel, in taking this case on a contingent fee basis, was exposed to significant risk"; (3) "there is every indication that the legal and factual issues are complex"; (4) "on both sides, each of the firms has extensive experience and expertise in complex class actions, including consumer actions"; (5) "Plaintiffs' counsel has expended nearly 20,000 hours to litigate and resolve this dispute"; (6) "[o]ut of a class of nearly fourteen million, only five objections were filed"; and (7) "courts have frequently awarded attorney fees between 25 and 36 percent of a common fund in class actions."

Caligiuri, 855 F.3d at 866. Class Counsel's fee request here is similarly appropriate.

D. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee.

Once a court has evaluated the requested percentage under the common fund doctrine, it will sometimes "verify the reasonableness of the percentage-of-the-fund award by calculating the

fee under a "lodestar" approach—totaling the hours worked, multiplying them by a typical hourly fee, and then multiplying that amount by a 'multiplier' that takes into account 'the contingent nature of success, and . . . the quality of the attorney's work.' Multipliers can range from two to five." *Khoday*, 2016 WL 1637039, at *11–12 (quoting *Petrovic*, 200 F.3d at 1157). Courts have emphasized that this "cross-check need not entail mathematical precision or bean counting, but is intended to provide an approximation of a reasonable fee in order to alert the trial judge if a percentage award is too great." *Hashw v. Dep't Stores Nat'l Bank*, 182 F. Supp. 3d 935, 950 (D. Minn. 2016) (quotations omitted). Indeed, lodestar factors are closely similar to the common fund doctrine factors: "the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client." *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 620–21 (Minn. 2008) (quotations omitted). In many cases where the percentage fee amount is higher than the lodestar amount, the court will recognize that "a multiplier is justified for a number of reasons, including the risks inherent in contingent-fee litigation[.]" *Hashw*, 182 F. Supp. 3d at 951. Minnesota federal courts often award lodestar multipliers ranging from two to five in contingency situations. *Khoday*, 2016 WL 1637039, at *11; *Hashw*, 182 F. Supp. 3d at 951 (discussing cases brought under the Telephone Consumer Protection Act where courts awarded a multiple from 1.47 to 3.81 the lodestar amount); *Jorstad v. IDS Realty Trust*, 643 F.2d 1305, 1312-14 (8th Cir. 1981); *Yarrington*, 697 F, Supp. 2d at 1076 (awarding a fee representing a 2.26 multiplier); *In re Xcel*, 364 F. Supp. 2d at 999 (awarding a fee representing a 4.7 multiplier); *In re St. Paul Travelers Sec. Litig.*, Case No. 14-cv-3801 (JRT/FLN), 2006 WL 1116118, at *1 (D. Minn. Apr. 25, 2006) (using a 3.9 multiplier); *Khoday*,

2016 WL 1637039, at *11 (awarding a fee representing a multiplier less than two but noting that the multiplier "does not factor in the caliber of Plaintiff's counsel's work in moving the case from initial complaint through settlement" and additionally noting that "Plaintiff's counsel has agreed to a total amount *less* than what might have been argued for under the lodestar method") (emphasis in original).

Here, the lodestar cross-check confirms that Class Counsel's fee request is more than reasonable. Through September 30, 2018, Class Counsel's investment of attorney time is $6,967,921. (Cockson Aff. ¶ 12.) This investment stems from 13,696.1 hours worked by attorneys and paralegals. A detailed breakdown of the time expended by each attorney and paralegal and those professionals' respective rates is contained in Exhibit B to the affidavit of Michael F. Cockson. The investment detailed herein does not include time worked by litigation support specialists, research librarians, and other paraprofessionals whose time is customarily billed to clients. (Cockson Aff. ¶ 11.) This time does not include any fees associated with the preparation of this motion. (Cockson Aff. ¶ 11.) Thus, despite the extraordinary complexity and contingency risk associated with the case, the Court does not need to apply a multiplier to the lodestar amount to match the common fund percentage amount. Indeed, the fee amount requested by Class Counsel is about 14% **less** than then overall amount Class Counsel invested in the litigation. In other words, the lodestar approach actually supports a much higher fee award than Class Counsel are requesting from the common fund.

Second, the baseline lodestar amount calculated from Class Counsel's work is reasonable and appropriate. The factors considered by Minnesota courts when evaluating a lodestar amount overlap with the elements used by the Minnesota federal courts when assessing fee requests under the percentage method. *See Milner*, 748 N.W.2d at 621; *Yarrington*, 697 F. Supp. 2d at

1061-62. Class Counsel's request is reasonable under the factors discussed at length above. *See* Section I.C. The claims in this litigation involved complex and novel allegations of fraud and systematic maintenance violations, novel legal theories, and hotly contested factual issues, as well as unusually time-consuming and intense collateral litigation and other efforts demonstrating Class Counsel's commitment to their clients' cause. The litigation tested the claims through motions to dismiss, intensive factual discovery, class certification, and motions for summary judgment. Class Counsel expended significant effort to preserve collectability of the eventual judgment through both motion practice in the present case and through the filing of the fraudulent transfer claims in the *Nicol* litigation. Given the risk and uncertainty inherent in such innovative litigation, Class Counsel would be entitled to a multiplier under lodestar precedent. However, Class Counsel here are asking for no multiplier at all—indeed, it is accepting a 11% discount on the fees invested in the case.

In short, the lodestar cross-check confirms that the requested fee under the common fund doctrine is reasonable.

II. CLASS COUNSEL SHOULD BE REIMBURSED FOR ITS COSTS AND EXPENSES

The present motion also includes a request for reimbursement of litigation expenses that were reasonably incurred and necessary for the prosecution of this case. Class Counsel have submitted an affidavit that details the costs and expenses incurred. (Cockson Aff. ¶ 17, Ex. C.) These costs and expenses total $269,372.49. Notably, this cost and expense request does not include over $75,000 in costs associated with computerized legal research incurred by Class Counsel. (Cockson Aff. ¶ 17.) All of these costs are recorded and billed separately from Class Counsel's attorney fees. Class Counsel and Plaintiffs also request that the Court award the settlement administrator its reasonable costs of providing initial class certification notice to the

class along with class settlement notice and settlement administration work, totaling an estimated $115,000. (Cockson Aff. ¶ 18.)

These litigation expenses are properly recovered by Class Counsel. *See Yarrington*, 697 F. Supp. 2d at 1067 ("Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement."); *see also In re Xcel*, 364 F. Supp. 2d at 1000 (finding that expenses of photocopying, postage, messenger services, document depository, telephone and facsimile charges, filing and witness fees, computer assisted legal research, expert fees and consultants, and meal, hotel, and transportation charges for out-of-town travel are proper in a class-action litigation); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 525 (E.D.N.Y. 2003), *aff'd sub nom. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005) (awarding class counsel costs related to "experts and consultants, litigation and trial support services, document imaging and copying, deposition costs, online legal research, and travel expenses").

III. THE CLASS REPRESENTATIVES SHOULD EACH BE AWARDED A $10,000 SERVICE AWARD.

Plaintiffs additionally move for an award giving financial recognition to the extensive services provided by the class representatives to the class.

Courts routinely grant service awards to named plaintiffs. *Khoday*, 2016 WL 1637039, at *12; *Yarrington*, 697 F. Supp. 2d at 1068 (noting that "unlike unnamed Class Members who will enjoy the benefits of the Settlement without taking on any significant role, the Named Plaintiffs [make] significant efforts on behalf of the Settlement Class and [participate] actively in the litigation"); *Zillhaver v. UnitedHealth Group, Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009). In determining whether a service award is appropriate, the Minnesota federal courts look to: (1)

the "actions the [class representatives] took to protect the class's interests"; (2) the "degree to which the class has benefitted from those actions"; and (3) the "amount of time and effort the [class representatives] expended in pursuing litigation." *Zillhaver*, 646 F. Supp. 2d at 1085 (citing *Koenig v. U.S. Bank*, 291 F.3d 1035, 1038 (8th Cir. 2001)).

A $10,000 service award for each class representative is warranted. *See Khoday*, 2016 WL 1637039, at *12 (approving service award of $10,000). The class representatives devoted a significant amount of time to this litigation. They participated in interviews and assisted Class Counsel in developing the factual record of the case, and they conferred with Class Counsel at all stages of the litigation. (Cockson Aff. ¶ 19.) Each class representative had his or her deposition taken by Defendants. (Cockson Aff. ¶ 19.) Representing the class exposed many of the Representatives to inquiry into their alienage and immigration status—an inquiry that the Court ordered Defendants to cease because it constituted an "undue burden" on such class representatives. (*See* Dkt. No. 301.) One of the class representatives led a putative class action designed to undo alleged fraudulent transfers of Defendants' assets. (Cockson Aff. ¶ 19.) The class representatives met and/or spoke by phone with Class Counsel throughout the case. Each class representative responded to several sets of written discovery requests. Finally, the class representatives took an active role in settlement negotiations, including attending mediation in person, and considered the appropriateness of a proposed mediator's settlement number both in the presence of Class Counsel and outside of Class Counsel's presence, ultimately deciding to accept the mediator's proposed settlement number. (Cockson Aff. ¶ 19.) Their significant, time-consuming, and courageous efforts provided tremendous benefit to the class and protected the class's interests because the class representatives' efforts substantially supported development of the case, class certification, and eventual settlement. *See Khoday*, 2016 WL 1637039, at *12

(approving a $10,000 service award and noting that the named plaintiffs "participated in interviews, assisted with discovery, were deposed, participated in conferences, and met with attorneys throughout the litigation process"); *Yarrington*, 697 F. Supp. 2d at 1068-69 (awarding a service awarding and noting that the named plaintiffs "participated in numerous lengthy interviews by Settlement Class Counsel; assisted in responding to multiple discovery requests; were deposed by [defendant], and answered questions regarding extremely sensitive and personal medical information" and "participating in decisions relating to the settlement of the case as part of the settlement process").

Moreover, the service award requested here is consistent with service awards in other class actions. *See Khoday*, 2016 WL 1637039, at *12 (approving service award of $10,000); *Zillhaver*, 646 F. Supp. 2d at 1085 (awarding lead plaintiffs' $15,000 each from a settlement fund of $17 million); *In re Xcel*, 364 F. Supp. 2d at 1000 (awarding $100,000 to be split between eight lead plaintiffs); *see also Yarrington*, 697 F. Supp. 2d at 1069 (awarding a $5,000 incentive award and noting that such an award was "at the modest end of the spectrum"); *In re Employee Benefit Plans Sec. Lit.*, No. 3-92-708, 1993 WL 330595, at *7 (D. Minn. June 2, 1993) (approving attorneys' fees of 33.3% and incentive awards of $5,000 to each of the three representative plaintiffs from a common fund settlement of $10.7 million).

In sum, the class representatives should be awarded a service or incentive fee of $10,000 each.

CONCLUSION

Given the extraordinary risks taken and results achieved for the class in a novel, complex, and historic tenant class action, Plaintiffs respectfully requests that the Court grant this motion in its entirety and award Class Counsel $6,000,000 from the settlement fund as an attorneys' fee.

Plaintiffs also request that the Court award Class Counsel be reimbursed $269,372.49 for their costs and expenses, award the settlement administrator its costs in providing the initial class notice and administering the settlement, estimated at $115,000, and award each class representative a $10,000 service fee.

Dated: November 21, 2018

Respectfully Submitted,

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The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, Subd. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211, Subd. 2.

s/ Michael F. Cockson
Michael F. Cockson