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Class Counsel

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JONATHAN SPIRO and SIMONE
KAPLAN, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

TRINITY MANAGEMENT SERVICES,
1188 MISSION STREET LP, 1890
CLAY STREET LP, 2240 GOLDEN
GATE AVE LLC, CRYSTAL TOWER
PARTNERS LLC, SANGIACOMO
FAMILY LP, TRINITY G2 HOLDING
LLC, JAMES SANGIACOMO, SUSAN
SANGIACOMO, and DOES 1-50,
inclusive,

Defendants.

Case No. CGC-17-562293

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Date: July 20, 2023
Time: 10:00 a.m.
Place: Department 613

The Honorable Andrew Y.S. Cheng

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I. INTRODUCTION AND FACTUAL BACKGROUND

Plaintiffs and Class Representatives Jonathan Spiro and Simone Kaplan (“Plaintiffs”) request that this Court grant final approval to the proposed settlement in this case, which will provide substantial and immediate cash benefits to Class Members. The settlement consists of a \$3.15 million common fund, which represents more than 76 percent of the total amount that Trinity charged Class Members for allegedly illegal water and trash bills. Additionally, Trinity’s change in business practices will save its tenants an estimated ***\$85,000 to \$100,000 each month*** going forward.

The proposed Settlement is fair and reasonable because it provides significant cash benefits to Class Members while eliminating the risk and delay of litigating this case further. Class Members who resided in a Trinity apartment for a year or more will receive an average of at least \$1,000 per apartment and the largest award will exceed \$3,300. Additionally, all Class Members who still reside in a Trinity apartment will never have to pay Trinity for water and trash services for the duration of their lease.

The positive response by Class Members confirms the fairness of this settlement. After being provided the Court-approved notice and after being given an opportunity to object to or opt-out of the Settlement, only one Class Member (representing less than 0.02% of the Class) chose to opt-out of the settlement and no Class Members objected to the settlement.

For these reasons, Plaintiffs request that this Court grant final approval of the settlement and approve the transfer of the Settlement Fund.

A. The Settlement Class

This Court certified this case as a class action 2020, prior to the first phase of trial. (Order Approving Plaintiff’s Unopposed Motion for Class Certification, 3/12/2020.) Following the Settlement, this Court granted preliminary approval and certified the same Class for purposes of the Settlement.

1 The Settlement Class consists of:

2
3 **All individuals who, at any time between November 3, 2014 and March 12, 2020:**

- 4 • **Rented or leased any residential property located in San Francisco that, at**
5 **any time during his or her tenancy, was: (1) owned, managed, operated, or**
6 **maintained by Defendant Trinity Management Services, and (2) subject to**
7 **the San Francisco Residential Rent Stabilization and Arbitration**
8 **Ordinance, codified at Chapter 37 of the San Francisco Administrative**
9 **Code, and**
- 10 • **Paid Defendant Trinity Management Services and/or its agents for trash,**
11 **recycling, water, or sewer services; and**
- 12 • **Where such payments were based on calculations based on the Utility**
13 **Invoicing and Allocation Addendum attached to and incorporated into the**
14 **Tenant's Lease at said property.**

15 **The Settlement Class shall expressly exclude the Judicial Officer(s) and any**
16 **immediate family member of the Judicial Officer(s).**

17 (Order Granting Preliminary Approval of Class Settlement dated 4/13/2023.)

18 **B. The Settlement**

19 The terms of the Settlement are set forth in the Amended Class Action Settlement
20 Agreement (the "Settlement Agreement") attached as Exhibit A to the Declaration of Brian J.
21 Devine, filed and served concurrently herewith ("Devine Dec.") The general terms of the
22 Settlement are described below.

23 **1. The Settlement Provides Significant Cash Benefits to Class Members**

24 The Settlement requires Trinity to pay into a Settlement Fund the total amount of
25 \$3,150,000.¹ The Settlement Fund will be used to pay: (1) benefits to Class Members, (2)
26 attorneys' fees and costs, (3) incentive awards, and (4) costs of administration. (Settlement
27 Agreement at §§ 2.2 and 2.3.) This is a non-reversionary settlement; if the Settlement is approved,
28

¹ As discussed below, Trinity has already funded the \$3,150,000 Settlement Fund into the Seeger Devine IOLTA Client Trust Account where it will be held until further order from this Court.

1 none of the Settlement Fund can ever revert to Trinity.² (*Id.* at §4.2(b).) The “Net Benefit Fund”
2 consists of the \$3,150,000 gross Settlement Fund, minus the amount this Court awards for the
3 costs of administration, attorneys’ fees, costs and incentive awards. (*Id.* at §2.4)

4 The Net Benefit Fund will be distributed on a pro-rata basis to all Class Members
5 who have not opted out of the settlement (“Settlement Class Members”). The payment that will
6 be sent to each Settlement Class Member is their pro-rata share of the Net Benefit Fund based on
7 that Class Members’ Apportioned Utility Charges relative to the total amount of Apportioned
8 Utility Charges for all Settlement Class Members. (*Id.* at §4.1.)

9 Settlement Class Members will receive substantial cash benefits. An average of
10 \$500 per apartment will be sent to Class Members, and Class Members who resided in a Trinity
11 apartment for a year or more will receive an average of at least \$1,000 per apartment. (Devine
12 Dec. at ¶3.) The largest award to a single Class Member will exceed \$3,300. (*Id.*)

13 Settlement Class Members have the option to receive their Settlement Payment
14 electronically, otherwise the Claims Administrator will mail them a check to their last known
15 address after it has been cross-checked with the National Change of Address database.
16 (Settlement Agreement at §4.2) Settlement Payment checks will remain valid for 180 days after
17 they are issued. (*Id.* at §4.3) After 180 days, the Claims Administrator will stop payment on any
18 checks that remain uncashed and any funds remaining in the Settlement Fund will be redistributed
19 to Class Members who received electronic payments or who negotiated their checks. (*Id.*) These
20 second distribution checks will remain valid for 180 days after they are issued. (*Id.*) After 180
21 days, the Claims Administrator will stop payment on any second-distribution checks that remain
22 uncashed. (*Id.*) Any funds remaining in the Settlement Fund after this time will be distributed to
23 the proposed *cy pres*, the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area.

24 The claims administration process described above ensures that all (or almost all)
25 of the Benefit Funds will be distributed to Class Members, and it does not require that a Class
26 Member do anything to have their Settlement Payment mailed to their last known address. A

27 ² Trinity would have had the right to terminate the Settlement if more Class Members had opted out, but Trinity is
28 now foreclosed from exercising that right since only one Class Member opted out. (Settlement Agreement at §7.4.)

1 second distribution is implemented to ensure that any residual funds are redistributed to Class
 2 Members who received and negotiated their Settlement Payments. Consequently, the only funds
 3 that will be distributed to the proposed *cy pres* are those (likely very few, if any) second
 4 distribution checks that remain uncashed after 180 days.

5 **2. Additional Benefits For Class Members Who Still Reside In A Trinity Apartment**

6 In addition to being entitled to the monetary benefits described above, Class
 7 Members who still reside in their Trinity apartment also are entitled to protections from ever
 8 having to pay for water and trash utilities during the entire length of their tenancy with Trinity.
 9 As part of the Settlement, Trinity agreed that as of January 25, 2023, *it will no longer charge*
 10 *Allocated Utility Charges to any Class Member who still resides in their apartment.* (Settlement
 11 Agreement at §3.3.) This provides a valuable benefit to Class Members. Additionally, following
 12 the settlement, Trinity voluntarily discontinued charging water and trash bills to its tenants, even
 13 those tenants who moved in after the Class Period and are not Class Members. (Devine Dec. at
 14 ¶4.) Class Counsel estimates Trinity’s changes in business practices that this lawsuit caused will
 15 save its tenants between **\$85,000 - \$100,000 per month** in charges for water and trash bills. (*Id.*)
 16

17 **3. Class Members Release Only Claims Related To Water and Trash Billing**

18 If the Settlement is approved, Settlement Class Members will release Trinity and
 19 its related entities for all claims arising out of any allegation that Trinity or any of the Released
 20 Parties³ “improperly or illegally charged any Allocated Utility Charges at any time through and
 21 including January 25, 2023 or failed to remit to or credit the Settlement Class with any refunds
 22 received by Trinity attributable to any of such Allocated Utility Charges, including any rent
 23 increases that allegedly were improper or illegal solely because of Trinity or any Released Party
 24 charging any Allocated Utility Charge.” (Settlement Agreement, §6.1; Definitions (s) and (t).)

25 ³ “Released Parties” includes “all owners of residential property in San Francisco that were managed, operated, or
 26 maintained by Defendant Trinity Management Services, and each of its direct or indirect parent companies,
 27 subsidiaries, affiliates, divisions, joint venturers, predecessors, successors, members, and assigns, together with each
 28 of their directors, officers, employees, agents, attorneys, shareholders, trustees, underwriters and insurers, and for
 each person identified above, all of his, her, or their respective past, present or future heirs, estates and personal
 representatives.” (Settlement Agreement, Definition (v).)

1 While this release broadly covers everything that is directly related to the allegations in this case
2 the release is narrowly-tailored and *does not include* any claims that a Class Member might have
3 against Trinity or any of its related entities that are unrelated to water and trash charges. The
4 release is a fair exchange for the benefits that Class Members receive in the settlement.

5 **C. Notice, Opt-Outs and Objections**

6 This Court approved CPT Group, Inc. to administer the Settlement. (Order
7 Granting Preliminary Approval of Class Settlement, 4/13/2023.) CPT provided Notice of this
8 Settlement to the Class as ordered by this Court. Specifically:

- 9
10 • On May 4, 2023, CPT launched and has maintained a website located at
11 www.TrinityLawsuit.com which contains, at minimum: (1) the Summary
12 Notice approved by this Court, (2) the Class Notice approved by this Court,
13 (3) the Amended Settlement Agreement, (4) the Opt-Out Request Form, (5)
14 this Court’s Preliminary Approval Order, and (6) information about the
15 date, time, and place of the Final Approval Hearing. (Declaration of Irvin
16 Garcia, filed and served concurrently herewith (“Garcia Dec.”) at ¶11.)
- 17
18 • On April 16, 2023, Class Counsel provided CPT with a spreadsheet
19 containing the data obtained in discovery, including each Class Member’s
20 name, e-mail address (if known) last known mailing address, and the
21 amounts that Trinity had charged each Class Member for water and trash
22 services (“Class Data Spreadsheet.”) (Devine Dec. at ¶5.)
- 23
24 • On May 4, 2023, CPT sent an e-mail containing the full text of the
25 Summary Notice to 3,910 Class Members for whom an e-mail address was
26 identified on the Class Data Spreadsheet. The e-mail that CPT sent to
27 Class Members included an estimate of the Class Member’s Settlement
28 Payment amount, and encouraged Class Members to visit the Settlement

1 Website or contact the Claims Administrator to elect whether they wish to
2 receive their Settlement Payment by check or electronic transfer and to
3 update their mailing address. (Garcia Dec. at ¶8.)

- 4 • On May 4, 2023, after obtaining updated addresses through the National
5 Change of Address database, CPT sent the Summary Notice to all Class
6 Members for whom there was no valid e-mail address. (Garcia Dec. at ¶¶
7 6-7.)
- 8 • 21 Summary Notices were returned to CPT, and after conducting a “skip
9 trace” on these addresses, CPT re-mailed the Summary Notices to 17 Class
10 Members for whom a newer address was found. (Garcia Dec. at ¶9.) As
11 of this date, there are 9 Summary Notices that remain undelivered. (*Id.*)

12 This Court set June 20, 2023 as the deadline for Class Members to opt-out of the
13 Settlement or to file objections to the Settlement. (Order Granting Preliminary Approval at 4:15-
14 16.) No Class Member has submitted any objection to the Settlement and only one Class
15 Member (Ashley Sue Wen Teow) has submitted an opt-out request. (Garcia Dec. at ¶¶13-14.)

16 II. LEGAL ARGUMENT

17 A class action may not be dismissed, compromised, or settled without Court
18 approval. (Cal. Civ. Code § 1781(f); Cal. Rules of Ct. Rule 3.769(a).) As is discussed below, this
19 Settlement meets the requirements for court approval.
20

21 A. The Settlement Meets the Standard for Final Approval

22 California law strongly favors settling litigation, especially class action cases. (*See*
23 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1151
24 [“[a] voluntary conciliation and settlement are the preferred means of dispute resolution ...
25 especially in complex class action litigation.”]) The Court’s role in approving a class action
26 settlement is to determine whether, under the particular circumstances of the case, the settlement
27 may be considered fair, reasonable, and adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App.
28

1 4th 1794, 1801.) Factors courts typically consider in making this determination include: (1) the
2 benefit obtained; (2) the risk, expense, and likely duration of further litigation; (3) the
3 recommendation of experienced counsel following adequate discovery; and (4) the reaction of the
4 class members to the proposed settlement. (*Id.*) A proposed settlement is presumed fair where
5 the parties reached settlement after arm's-length negotiations, the investigation and discovery into
6 the case were sufficient to allow experienced counsel and the court to act intelligently, and the
7 percentage of objectors is small. (*Id.* at 1802.) Each of the factors discussed in *Dunk* strongly
8 weigh in favor of approving the settlement.

9
10 **Benefits Obtained** – As is discussed earlier, the Settlement provides significant
11 benefits to Class Members. Trinity paid a total of \$3,150,000 into the Settlement, which
12 represents **76.4 percent** of the total amount that Trinity charged its tenants for the water and trash
13 bills that are in dispute in this litigation. Although Class Members had to compromise their claim
14 somewhat to obtain a settlement, the amount they compromised their claim is more than offset by
15 the elimination of the risk and expense of further litigation.

16 **Risk and Expense of Further Litigation** – Every litigation has risks, and this
17 case is no exception. Although Plaintiffs prevailed on the issue presented at the first phase of the
18 bifurcated trial, Trinity would have presented additional defenses at the second phase of the
19 bifurcated trial. (Devine Dec. at ¶7.) There was a significant risk that some of Trinity's
20 arguments could have significantly affected the damages that would be awarded to Class
21 Members. (*Id.*) Additionally, Trinity vowed that it would appeal this Court's finding that Trinity
22 had violated the Rent Ordinance. (*Id.*) An appeal of this decision would present a novel legal
23 question for the Court of Appeal to resolve. Although Plaintiffs believe that this Court correctly
24 decided the issue and that this Court's decision would be affirmed on appeal, it is possible that
25 Trinity could have prevailed in its appeal, and that risk must be considered in evaluating the
26 settlement in this case. Even if Plaintiffs prevailed on the appeal, the appellate process would be
27 lengthy and Class Members likely would not have received compensation for years. (*Id.*) Given
28 the current economic climate, another risk that Class Counsel considered is whether Trinity

1 would still have any assets at the end of the appellate process, or if Plaintiffs would simply be a
2 creditor in a bankruptcy proceeding.⁴ (*Id.*)

3 **Arm’s Length Negotiations** – The proposed Settlement is the result of hard-
4 fought and difficult negotiations that spanned over five years and included two in-person
5 settlement conferences and numerous virtual conferences and phone conferences, all of which
6 were presided over by Judge Mary A. Wiss. (Devine Dec. at ¶8.) The protracted and arms-length
7 negotiations that were overseen by an experience mediator provide further confirmation that the
8 resulting Settlement is fair. (*See, e.g. Sandoval v. Tharaldson Employee Management, Inc.*, 2010
9 U.S. Dist. LEXIS 69799 (C.D. Cal. 2010).)

10 **Recommendation of Counsel After Reasonable Investigation** – Class Counsel
11 recognize the expense and delay of continued litigation against Trinity through trial and a
12 possible appeal. (Devine Dec. at ¶9.) Over the last five and a half years, Class Counsel have
13 conducted an extensive investigation into this case, including first phase of a bifurcated trial and
14 preparing for the second phase of trial. In evaluating the Settlement, Class Counsel have
15 considered the uncertainty and risk of the outcome of the litigation and the difficulties and delays
16 inherent in such litigation. (*Id.*) Based upon their investigation, their understanding of the law,
17 and an analysis of the benefits which the proposed settlement affords to the Class, Class Counsel
18 have concluded that the Settlement is in the best interest of the Class. (*Id.*) Class Representatives
19 have also evaluated the Settlement and have concluded that it is fair and reasonable.
20 (Declarations of Class Representatives Jonathan Spiro and Simone Kaplan, filed on June 13, 2023
21 in support of Motion for Award of Attorneys’ Fees, Costs, and Incentive Award at ¶12.)

22 **Reaction of Class Members** – No Class Member has expressed an objection to
23 any aspect of the Settlement, and only **one** Class Member (representing about 0.02% of the Class)
24 has requested exclusion from the Settlement. (Garcia Dec. at ¶¶13-14.) The positive reaction by
25 the Class to the Settlement further supports settlement approval. (*See Hanlon v. Chrysler Corp.*,

26 ⁴ *See, e.g.*, “SF’s largest landlord Veritas defaults on loan. What does it mean for the future of city’s real estate?” San
27 Francisco Chronicle, Jan. 12, 2023 (<https://www.sfchronicle.com/sf/article/S-F-s-largest-landlord-defaults-on-massive-17714690.php>) (describing the default by another landlord, Veritas, on its loans for San Francisco apartment
28 buildings.)

1 150 F.3d 1011, 1027 (9th Cir. 1998) [“the fact that the overwhelming majority of the class
2 willingly approved the offer and stayed in the class presents at least some objective positive
3 commentary as to its fairness.”])

4 The Settlement strikes a fair compromise by providing substantial benefits to the
5 Class Members while avoiding the risks inherent in litigating this case further. Consequently,
6 Plaintiffs and Class Counsel believe that the Settlement is fair and reasonable and that this Court
7 should grant final approval of the Settlement.

8 **B. The Claims Administrators’ Fees Are Reasonable and Should Be Approved**

9 CPT Group’s fee for administering the settlement in this case is \$49,500. (Devine
10 Dec. at ¶10, Garcia Dec. at ¶16.) Class Counsel request that this Court approve payment of
11 CPT’s fees. CPT is highly experienced in administering settlements like this, and has frequently
12 been approved by this Court to administer class settlements. (*Id.*) Class Counsel obtained
13 competitive quotes from three potential administrators, and CPT Group provided the lowest quote
14 of the three companies. (*Id.*) Class counsel believes CPT’s fee is fair and reasonable and
15 requests that this Court approve payment of CPT’s bill from the Settlement Fund.

16 **C. This Court Should Approve The Transfer of The Settlement Funds**

17 On January 30, 2023, Trinity paid \$50,000 of the Settlement Fund into the Seeger
18 Devine LLP IOLTA Client Trust Account (“IOLTA Account.” (Devine Dec. at ¶11.) On March
19 21, 2023, this Court ordered that \$3,100,000 be transferred from an attached account at First
20 Republic Bank to the IOLTA Account and that transfer occurred on March 23, 2023. (Stipulation
21 and Order Dissolving Writ of Attachment dated 3/21/2023; Devine Dec. at ¶11.) Consequently,
22 Seeger Devine LLP now holds the entire \$3,150,000 Settlement Fund in its IOLTA Account.⁵
23 (Devine Dec. at ¶11.) This Court ordered that Seeger Devine is not to transfer these funds from
24 its IOLTA account except as expressly ordered by this Court. (Order Dissolving Writ at ¶4.)
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26
27 ⁵ Because these funds have been held in an IOLTA account, the minimal amount of interest that has accrued has been
28 transferred to the State Bar’s Legal Services Trust Fund Program and has not accrued in the account.

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Plaintiffs, therefore, request this Court’s approval to distribute the \$3,150,000 Settlement Fund from the Seeger Devine IOLTA Account as follows:

- \$1,260,000 in attorneys’ fees and \$11,490.48 in costs to be paid to Seeger Devine LLP (*See* Motion for Award of Attorneys’ Fees, Costs and Incentive Awards, filed and served on 6/13/2023);
- \$10,000 to be paid to each of the two Class Representatives, Jonathan Spiro and Simone Kaplan (*See Id.*);
- \$49,500 to be paid to the Claims Administrator, CPT Group, Inc. (*See* Garcia Dec. at ¶16); and
- \$1,809,009.52 (the remaining balance of the Net Settlement Fund) to be transferred to CPT Group, Inc. to disburse to Class Members the benefits that are described in the Settlement Agreement.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectively submit that the proposed Settlement is fair, reasonable, and is in the best interests of the Class. Therefore, they respectfully request that this Court grant final approval, enter judgment, and approve the transfer of the Settlement Fund.

DATED: June 27, 2023.

SEGER DEVINE LLP

By 

 Kenneth M. Seeger
 Brian J. Devine
 Class Counsel