

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

FRANCINE McCUMBER, ET AL.

Plaintiffs,

v.

INVITATION HOMES, INC., a Maryland
corporation

Defendant.

Case No. 3:21-cv-02194-B

Judge Jane J. Boyle

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND BRIEF IN SUPPORT THEREOF**

TO THE COURT, ALL PARTIES, THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs Francine McCumber, Erin Dolce (f/k/a Erin Bird and Erin Bryd), Melissa Lynch, La Shay Harvey, Maryah Marciniak, Brian Majka, Chad Whetman, Tracy White, Rachel Osborn, Teresa Kerr (f/k/a Tereasa Maria Moore), and Jose Rivera (collectively "Plaintiffs") will and hereby do move this Court for an Order preliminarily approving the settlement agreement reached with Defendant Invitation Homes, Inc.

This motion is based on the attached Memorandum of Points and Authorities, the supporting Declaration of Alex Tomasevic and its attached exhibits, and all other pleadings and papers on file in this action, and upon such other matters or arguments as may be presented to the Court at the time of the hearing.

Respectfully submitted,

Dated: May 3, 2023

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I. INTRODUCTION

This Motion seeks preliminary approval of the parties' proposed \$7,500,000 "late fees" class action settlement. This case challenges Defendant Invitation Homes, Inc., and its predecessors' (collectively "Defendant" or "INVH," unless otherwise clarified) charges to tenants in 11 states for late payment of rent. In short, Plaintiffs – who come from each of the 11 represented states, including Texas – alleged that INVH's standard late fees in its form lease agreements amount to improper penalties under the consumer protection laws and/or common law of each of their states. Defendant has vigorously opposed this matter, which was litigated heavily in three different actions in three different states for a total of about five years.

The settlement, if approved, would provide significant monetary relief for tenants, and would finally put an end to lengthy and hotly contested litigation.

The basic terms of the settlement provide for:

- A total, non-reversionary class settlement amount of \$7,500,000 to be funded by Defendant (the "Total Settlement Amount"), with up to 25% of that amount (or up to \$1,875,000) consisting of debt forgiveness to certain class members who have high active balances owing to INVH.
- The Gross Settlement Amount covers all alleged damages, attorneys' fees (up to 33.0% of the Gross Settlement Amount), litigation costs (up to \$30,000), costs of settlement administration (currently budgeted at \$175,000 or less), and typical representative enhancement awards to the named Plaintiffs for their efforts in filing the case against their landlord, sticking with the case for all this time, working closely with counsel, and helping to achieve these results (\$5,000 each, or \$55,000 total).

- An experienced and neutral Settlement Administrator, Angeion Group, will send out direct written notice to all class members via email or mail that will explain the settlement terms, will estimate what they will receive under the settlement, and give everyone the option to participate in the settlement, object to it, or opt out of it with no obligation. The Settlement Administrator will also establish a settlement website and toll-free telephone support.

An objective evaluation of the settlement confirms that the relief negotiated at arms-length is fair, reasonable, and valuable. The Parties negotiated the settlement only after one failed mediation, then another separate full day of mediation with the Honorable Jeff Kaplan (Ret.). And the settlement provides Class Members with valuable relief for their claims in terms of real money or debt relief, not coupons or illusory equitable relief. The relief also does not require the submission of a claim. Further, by settling now, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial, or of recovering a smaller amount than obtained through this settlement, possible appeals, etcetera.

Overall, the settlement is an excellent result considering all the relevant circumstances. Accordingly, Plaintiffs seek approval of the proposed settlement as preliminarily fair, reasonable, and adequate and asks the Court to conditionally certify the Class and set dates for providing notice of settlement to the Class, requests for exclusion or objection, and the final approval and fee hearings.

II. BACKGROUND¹

A. The Allegations

Defendant² operates in multiple states and rents out single-family residences. When tenants pay rent late (i.e., if not within a few days after the first of the month), Defendant assesses standard late charges under the lease – predominantly either a \$95 flat fee, or 10% of monthly rent depending on the lease version. Plaintiffs allege that these late fees are excessive and amount to illegal penalties under the statutory and/or common laws of their state.

More specifically, Plaintiffs allege that INVH’s standard fees are all illegal for the same reason. In all the relevant states, while landlords may institute appropriate “liquidated damages” provisions under certain circumstances, including to compensate the late payment of rent, they generally may only do so if: (a) it would be extremely difficult or infeasible to calculate actual damages from the late payment; *and* (b) the liquidated damages are a reasonable amount in light of the anticipated or actual harm. *See, e.g.*, Restatement (Second) of Contracts § 356(1) (Am. Law Inst. 1981) (the “Restatement”); Cal. Civ. Code § 1671(d); U.C.C. § 2-718(1). Most states, including all the states represented in this case, have adopted the Restatement into their common law or otherwise codified a statute similarly differentiating lawful liquidated damages provisions from unlawful late fee penalties.

¹ Unless otherwise indicated, the factual support for these unopposed averments can be found in the accompanying Declaration of Class Counsel Alex Tomasevic.

² INVH was once privately held by New York’s Blackstone Group. Blackstone took Invitation Homes public in February 2017. By that time, another large home rental firm—Waypoint Homes—had already merged with another—Colony Starwood—in 2016, to create “Starwood Waypoint Homes.” Invitation Homes then merged with the new Starwood Waypoint Homes entity in November 2018 to create the current defendant: Invitation Homes, Inc. (NYSE: INVH).

Plaintiffs generally alleged that INVH's fees bare no reasonable relation to the alleged "damage" suffered by INVH, if any, arising from waiting a bit of extra for the rent payment. Most of the time, Plaintiffs posited, there is little or no damage to INVH from any late payments because the amounts due are usually paid within a couple of days of the due date. Moreover, INVH has allegedly never attempted to conduct any analysis or "reasonable endeavor" to set the fee, often just picking arbitrary amounts to charge. At issue here are Defendant's late rent charges to tenants in Arizona, California, Colorado, Florida, Georgia, Illinois, Nevada, North Carolina, Tennessee, Texas, and Washington.

B. Procedural History

This case was originally filed in the Northern District of California by plaintiff Jose Rivera, only, on May 25, 2018. Mr. Rivera resided in one of INVH's California rental homes. In August of 2018, the remaining Plaintiffs joined Mr. Rivera in his California action and, in general, asserted claims under each of their respective states' laws. Eventually, however, the Northern District of California dismissed the claims of the non-resident tenants for lack of specific jurisdiction over their out of state claims. Those out-of-state plaintiffs (i.e., all of them except for Mr. Rivera) then re-filed, together, in federal district court in Maryland – Defendant's state of incorporation. That Maryland action, though, was transferred, in September of 2021, here to Dallas and this Court. Dallas is where INVH's headquarters sit. *See* Dkt. No. 31.

Mr. Rivera continued to conduct discovery and litigate his case in California, eventually filing his Motion for Class Certification. Defendant opposed and Plaintiff replied. The Northern District of California ruled on the fully briefed motion, however, by dismissing Mr. Rivera's claims on jurisdictional grounds and never ruling on the Rule 23 factors. Mr. Rivera eventually re-joined his original co-plaintiffs in this Court. *See* Dkt. No. 93 (Amended Complaint adds Mr.

Rivera). Class Counsel Nicholas & Tomasevic has represented all plaintiffs in all cases at all times.

Defendant denies all material allegations and has always vigorously defended all actions against it brought by these plaintiffs. For example, Mr. Rivera's California action included multiple motions to dismiss. Here, after Plaintiffs amended their complaint again in January of 2022, Defendant filed a Motion to Dismiss specifically targeting each claim from each state. Dkt. No. 58. The Court granted Defendant's motion in part and denied it in part. Dkt. No. 65. Plaintiff thereafter filed a Second Amended Complaint, Dkt. No. 66. Defendant then timely moved to dismiss that Amended Complaint. Dkt. No. 69. Defendant's new motion to dismiss was fully briefed when the parties went to their most recent mediation and reached a settlement.

C. Counsel's Investigation and Discovery

Prior to filing the suit, and continuing through the course of the litigation, Class Counsel conducted an extensive investigation into the factual and legal issues raised in this case. These investigative efforts included reviewing voluminous federal filings by Defendant, including SEC filings, as well as filings in states Defendant operated in or owned rental properties. Class Counsel, of course, also spent hours upon hours talking with the 11 named plaintiffs themselves and reviewing and analyzing their circumstances and documents. Counsel also searched for, identified, and interviewed numerous additional current and former tenants of Defendant, nationwide, speaking with them over the years about their experiences and compiling their supporting data and documents. As might be expected when dealing with 11 named plaintiffs to start, their referrals and contacts ballooned into contacts with many additional witnesses whose experiences were catalogued and fact-checked, and their documents gathered and analyzed.

Class Counsel also thoroughly researched and analyzed the legal issues regarding all claims which, naturally, involved the analysis of 11 states' laws, including each of their consumer protection statutes and their decisional law, and Defendant's defenses and potential defenses.

Moreover, the parties have conducted extensive discovery, making them very well-informed about the relative strengths and weaknesses of their respective positions, and providing them with information needed to negotiate the proposed Settlement. Plaintiffs served and Defendant responded to multiple sets of written discovery requests, including Interrogatories and Document Requests. Eventually each named Plaintiff served their own discovery requests and Defendant responded. Also, and after the entry of a protective order, Defendant produced and Class Counsel reviewed about 10,000 additional pages of printable documents, but more material in the form of electronic data. All told, Class Counsel received and analyzed data concerning over 133,200 tenancies and 909,000 potentially relevant charges. Plaintiffs also deposed Defendant's Portfolio Director. The parties were planning additional discovery and depositions when they decided to try to a second mediation.

D. The Lengthy and Multi-Phased Settlement Discussions

The parties attended their first mediation in January of 2020. The case did not settle that day, but the parties continued to negotiate on a class-wide basis for a while thereafter with the assistance of the mediator, including by exchanging additional post-mediation settlement briefs. While that mediation and ensuing negotiations carried the benefit of forcing the parties to prepare and have serious good-faith discussions about the strengths and weaknesses of their case, the talks eventually stalled, and the case did not settle. The parties continued to litigate.

After much additional litigation and discovery, the parties agreed to attend mediation again in August of 2022 before the Honorable Jeff Kaplan (Ret.). The parties spent a whole day

negotiating with Judge Kaplan's assistance. At the end of the day, Judge Kaplan made a Mediator's Proposal, which all parties accepted subject to some confirmatory details and data exchanges. The parties later arrived at an agreement about fees and costs. Defendant produced additional information and class data and the parties eventually finalized their written class settlement agreement which is attached to the accompanying Declaration of Alex Tomasevic as **Exhibit 1** (the "Settlement Agreement").

III. THE PROPOSED SETTLEMENT

The following is a summary of the parties' Settlement Agreement:

A. The Settlement Classes

The proposed settlement classes are as follows:

1. Arizona tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Date;
2. California tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and the Preliminary Approval Date;
3. Colorado tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and the Preliminary Approval Date;
4. Florida tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Date;

5. Georgia tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2015, and the Preliminary Approval Date;
6. Illinois tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2011, and the Preliminary Approval Date;
7. Nevada tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Date;
8. North Carolina tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Date;
9. Tennessee tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2015, and the Preliminary Approval Date;
10. Texas tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2019 and August 31, 2019;³ and

³ The reason for this Texas cutoff date is that, effective September 1, 2019, the Texas Legislature amended its late fee statute and it now states that a late fee is considered per se “reasonable” if the fee is not more than 10 percent of the amount of rent. Tex. Prop. Code § 92.019(a). All of Defendant’s fees were 10% or less. As a result, Plaintiffs’ claims were dismissed by this Court insofar as they alleged improper late fees in Texas charged after August 21, 2019.

11. Washington tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and the Preliminary Approval Date.

Excluded from the Settlement are: (a) Defendant and its officers, directors, and employees; (b) any person who files a valid and timely Request for Exclusion; and (c) judicial officers and their immediate family members and associated court staff assigned to the case.

B. \$7.5 Million Paid by Defendant on a Non-Reversionary Basis with No Claim Requirements

Per the settlement, defendant will fund a Total Settlement Amount of \$7,500,000, of which up to 25% (or up to \$1,875,000) will consist of debt relief and the rest shall be cash. Settlement Agreement at § 2.33.

The Total Settlement Amount will also be used to cover Class Counsel's Costs of up to \$30,000, Class Counsels Fees of up to 33.0% (\$2,475,000), class representative service awards of up to \$5,000 per representative (up to \$55,000 total), and Settlement Administration Costs currently estimated to be \$175,000 or less.

Regarding the individual payouts, Participating Class Members will fit into one of two buckets: a debt relief bucket or a net payout bucket. Regarding the debt relief component, many of the class members are, e.g., former tenants who vacated still owing considerable money to Defendant for things like unpaid rent or damage to their rental. The "Debt Relief" under the Settlement Agreement, in turn, applies to verifiable and active balances owed by Class Members whose outstanding balances with Defendant were more than \$1,000 as of September 30, 2022 and who do not cure their balances before Final Approval. *Id.* at §§ 2.10, 4.2.4.1. Those debtors will receive (and only receive under the Settlement) an equal credit against their debt, with the sum total of all debt relief credits not to exceed the total earmarked for debt relief of \$1,875,000.

All the other (non-debtor) class members on the other hand – those in the other bucket who do not opt out - will receive a flat and equal distribution of all remaining funds, i.e., an equal share of the Net Distribution Fund. *Id.* at § 4.2.4.1.

C. The Notice Plan

The parties proposed Settlement Notice Procedures, and procedures for opting out of or objecting to the settlement (sometimes collectively referred to as the “Notice Plan”) are set forth in Sections VII and VIII of the Settlement Agreement, and will consist of the following:

1. Direct Notice to Settlement Class Members

Written Class Notice will be sent directly to Class Members. After preliminary approval, Defendant will provide updated class member contact information to the Administrator. Settlement Agreement at § 7.1. Defendant has email addresses for most class members. As such, within 14 days of receipt of the updated class member contact information, the Administrator will email those class members with full copies of the Class Notice. *Id.* at § 7.2. For those class members where email addresses are lacking, or where emails bounce back undelivered, the Administrator will mail the notice via First Class Mail after doing a search for updated addresses through the National Change of Address Database. The Administrator will attempt to re-mail notice for any returned mailed notices. *Id.* at §§ 7.2, 7.3.

2. Settlement Website and Toll-Free Number

The Settlement Administrator will also establish a dedicated, case-specific settlement website where Settlement Class Members can obtain further information about the case and the Settlement. The settlement website will be readable on mobile devices and include copies of key case documents, including but not limited to the Settlement Agreement and the operative

Complaint. The Settlement Administrator will also establish a toll-free telephone number that Class members can call for more case information.

3. Opt-Out and Objection Procedures

Any person within the class definitions above may request to be excluded from the settlement by sending a written request stating their desire to be excluded, to the Administrator, postmarked or delivered by the deadline proscribed by the Class Notice. Settlement Agreement at § 8.1. Any Class Member who does not submit a timely and valid exclusion request may submit a written objection to the Settlement, Class Counsel’s application for attorneys’ fees and expenses, and/or the request for Class Representative service awards. To be considered, an objection must be postmarked by the deadline stated in the Class Notice and must include the information prescribed by the Class Notice. Settlement Agreement at § 8.2.

D. Release

In exchange for the consideration provided under the Settlement Agreement, Participating Class Members will release INVH and affiliated companies and agents from any claims that were brought in this matter or based on the same factual predicate as this action. Settlement Agreement at § 2.25. The named representatives, including in light of their class representative awards, will provide broader “general” releases of all claims. *Id.* at § 5.2.

IV. ARGUMENT

A. Overview of the Class Action Settlement Approval Process

Pursuant to Rule 23(e), a class action settlement must be approved by the Court before it can become effective. The process for Court approval is comprised of three principal steps:

- (1) Preliminary approval of the proposed settlement and direction to disseminate notice to the class, after submission to the Court of a written motion for preliminary approval;
- (2) Dissemination of notice to the class; and
- (3) A final approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement are presented.

By this Motion, Plaintiffs respectfully ask the Court to take the first step in the approval process and enter an order preliminarily approving the Settlement and directing class notice, pursuant to the parties' proposed Notice plan, under Rule 23(e)(1).

B. The Proposed Settlement Meets the Standards for Preliminary Settlement Approval

The decision to grant preliminary approval of a class settlement is within the District Court's sound discretion. *See Newby v. Enron Corp.*, 394 F.3d 296, 300 (5th Cir. 2004). In evaluating a motion for preliminary settlement approval, the court conducts a preliminary assessment of the factors that will be evaluated at the final settlement approval stage. *See Fed. R. Civ. P. 23(e)(1)*.

The touchstone for the class settlement approval analysis is whether the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Fifth Circuit has adopted six factors—the "*Reed* factors"—for courts to use in determining whether a settlement is fair, reasonable, and adequate: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members. *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983); *In re*

Deepwater Horizon, 739 F.3d 790, 820 (5th Cir. 2014). Additionally, Rule 23(e)(2) establishes factors for the Court’s consideration which overlap considerably with the *Reed* factors. *See* Fed. R. Civ. P. 23(e)(2) (court must consider whether: (a) the class representatives and class counsel have adequately represented the class; (b) the proposal was negotiated at arm’s length; (c) the relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and appeal, the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, the terms of any proposed award of attorney’s fees, including timing of payment, and any agreement required to be identified under Rule 23(e)(3); and (d) the proposal treats class members equitably relative to each other).

In applying and weighing these factors, the Court should consider the strong public policy in favor of settlement. *In re Deepwater Horizon*, 739 F.3d at 807 (noting an “overriding public interest in favor of settlement that we have recognized [p]articularly in class action suits”); *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *17 (N.D. Tex. Nov. 8, 2005) (recognizing the “public interest in favor of settlement of class action lawsuits”). As discussed below, the proposed Settlement here is fair, reasonable, and adequate under the circumstances of this case and readily satisfies all applicable standards for preliminary settlement approval.

1. The Settlement is the Product of Good Faith, Arms’-Length Negotiations, and Is Informed By Years of Intensive Litigation and Discovery

There is a strong presumption of fairness when a proposed class action settlement is reached through arm’s-length negotiations between experienced counsel, following “meaningful discovery.” *See In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1063 (S.D. Tex. 2012). Here, the Settlement presented for the Court’s consideration is the product of hard-fought, arms-length negotiations between the parties and their experienced and well-informed counsel. The parties participated in a long series of formal mediation sessions

including, finally, with experienced and well-respected mediator—Hon. Jeff Kaplan (Ret.), former long-time Magistrate in the Northern District and former State Appellate Court Justice. With Judge Kaplan’s assistance, the parties were ultimately able to reach an agreement by accepting Judge Kaplan’s Mediator’s Proposal at the end of a lengthy day of negotiations.

And during the past several weeks, the parties have been working diligently to finalize the settlement papers. Throughout these negotiations, the parties were represented by counsel with extensive experience in the prosecution, defense and settlement of class actions and other complex matters, including landlord-tenant class actions.

After the parties reached an agreement in principle on class relief, the parties then negotiated at arms-length regarding attorneys’ fees and expenses, subject to Court approval. Moreover, as discussed above, the Settlement here is informed by counsels’ substantial investigation and discovery regarding the legal and factual issues in the litigation. Before filing the case, Class Counsel conducted an extensive investigation into the factual underpinnings of the claim and the applicable law of all 11 states at issue. Class Counsel engaged in ongoing factual and legal investigation throughout the course of the litigation, including identifying and speaking to numerous potential fact and expert witnesses and speaking with class members across the country about their experiences. Class Counsel have also conducted extensive formal discovery in this case, including the serving of over a dozen sets of written discovery, the receipt and review of thousands of pages of printable material, and the receipt and analysis of class data. The parties sometimes fought over the proper scope of discovery. Further, there has been significant motions practice in this case, including multiple motions to dismiss and, in the California action, a fully briefed motion for class certification. In negotiating the Settlement, the parties and their counsel were significantly informed by this work and the Court’s rulings.

2. *Plaintiffs and Class Counsel Have Zealously Represented the Class*

Plaintiffs and Class Counsel have prosecuted this action on behalf of the Class with vigor and dedication for five years. As detailed above, Class Counsel have thoroughly investigated the factual and legal issues involved, conducted extensive discovery, and engaged in significant motion practice in furtherance of prosecuting the claim here. Likewise, Plaintiffs themselves were actively engaged—each provided pertinent information and documents and communicated regularly with Class Counsel up to and including evaluating and approving the proposed Settlement.

3. *The Settlement Represents a Strong Result for the Settlement Class, Particularly Given the Risks, Complexities, and Likely Duration of Ongoing Litigation*

The Settlement provides substantial monetary relief—\$7.5 million—that is well-tailored to the alleged harm. Plaintiffs in this case allege that INVH charged excessive “late” fees that were not proper liquidated damages, but rather, illegal penalties. The settlement addresses the alleged harm by paying money meant to be, in essence, a partial refund of these fees. The \$7.5 million Total Settlement Amount—which was reached pursuant to a Mediator’s Proposal presented by Judge Kaplan following extensive mediation (the parties’ second) —represents a substantial portion of what realistically could have been achieved in this case, even assuming Plaintiffs were able to overcome the various remaining hurdles to certification and other milestones, successfully try this case to judgment, and hold onto that judgment through appeals.

Of course, Defendant vehemently denied that its fees were in any way unreasonable or improper. Defendant had evidence that its fees were reasonable in relation to its actual damages and set fairly in light of the fact that actual damages are difficult to quantify precisely under the circumstances. *Cf. Clevon v. Mid-Am. Apt. Communities, Inc.*, 20 F.4th 171, 177 (5th Cir. 2021)

(a late fee need only be “a reasonable estimate of uncertain damages to the landlord that are incapable of precise calculation and result from late payment of rent.”).

Moreover, even if successful on the core question of liability, calculating the potential net class damages in this case with precision is very difficult (Defendant would argue impossible). Even if Plaintiffs succeeded in obtaining a ruling that all fees were excessive or improper, that would have been just the start of the analysis, not the end. That is because even if Defendant is not entitled to the standard late charge as a *liquidated* damage, it would nonetheless be entitled to recover its *actual* damages as a potential setoff to any class member recovery here. *See, e.g., Tex. Prop. Code § 92.019(e); Garrett v. Coast & S. Fed. Sav. & Loan Ass’n*, 511 P.2d 1197, 1203 (Cal. 1973) (Even if the charge is found to be void, the consumer does not “escape[] unscathed. He remains liable for the actual damages resulting from his default.”).

Here, Defendants collected about \$84 million in late fees in all the relevant jurisdictions over the relevant period as of mediation but had substantial evidence that they were entitled to a setoff of over \$65 million for late or unpaid rent and property damage, leaving potentially only \$19 million assuming Plaintiffs could prove that *every* late fee collected was unreasonable *every* time.

And, of course, INVH had defenses to class certification in the first instance. If Plaintiffs failed to certify a class, the practical result would not be \$19 million, but rather, quite possibly, if not likely, no relief at all for the class. Thus, a pre-certification recovery of about 39.5% of estimated net damages is a strong result for Participating Class Members, particularly in light of the significant risks and challenges, and the substantial complexity, of ongoing litigation.

While Plaintiffs absolutely believe that these obstacles are not insurmountable, they are indicative of the substantial risks that Plaintiffs and the proposed Class would face if the litigation

were to continue. The proposed Settlement provides considerable, appropriately tailored relief while allowing Class Members to avoid the risks of unfavorable, and in some cases dispositive, rulings on these and other issues.

Moreover, the method for distributing the payments—direct payments via automatic account debt credits and mailed checks, without the need for Class Members to submit claims—further supports the reasonableness of the Settlement. Payments or credits will be issued for all class members, and all the \$7.5 million will be spent in favor of the resolution without any possible reversion back to Defendant.

Finally, the settlement also provides another significant benefit that would not be available if the litigation were to continue—prompt relief. Proceeding to trial could add years to the resolution of this litigation, given the legal and factual issues raised and likelihood of appeals.

4. The Request for Fees and Costs is Reasonable at this Stage

In cases like this one where recovery is made on behalf of a class through the establishment of a common fund, “a litigant or 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). The zealous and effective efforts of Plaintiffs and Class Counsel here merit awards of attorneys’ fees, expenses, and case contribution awards.

Our Fifth Circuit has held that district courts may employ the percentage method in calculating fees in common fund cases - as the parties have done here subject to Court approval. *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012). Indeed, the “Supreme Court has also noted that in a common fund case, application of a ‘percentage fee’ approach is the proper method in awarding attorneys’ fees.” *See In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 500 (N.D. Miss. 1996) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n. 16 (1984)).

Plaintiffs request 33.0 % in attorneys' fees, which is consistent with awards made by courts in this Circuit under the percentage method. *See Welsh v. Navy Fed. Credit Union*, 2018 WL 7283639 (W.D. Tex. Aug. 20, 2018) (citing *Schwartz v. TXU Corp.*, 2005 WL 3148350 (N.D. Tex. Nov. 8, 2005)); *Jones v. JGC Dallas LLC*, No. 3:11–CV–2743–O, 2014 WL 7332551 at *6 (N.D. Tex. Nov. 12, 2014) (citing authorities and approving 30% fee award on \$2.3 million recovery); *In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 503 (N.D. Miss. 1996) (collecting cases). The Fifth Circuit has recognized that the percentage method is particularly suitable in the class action context because it allows for easy computation and aligns the interests of class counsel with those of class members. *See Union Asset Mgmt.*, 669 F.3d at 643; *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 859 (E.D. La. 2007) (“Recognizing the contingent risk of nonpayment in such cases, courts have found that class counsel ought to be compensated both for services rendered and for risk of loss or nonpayment assumed by carrying through with the case.” (quotation marks omitted)).

Here, the terms of the proposed attorneys' fee award, at 33.0%, are consistent with, if not slightly less than typical awards in similar cases. Additionally, the amount of any attorneys' fee award is intended to be considered by the Court separately from consideration of the fairness, reasonableness, and adequacy of the Settlement. Thus, Class Counsel intend to seek an attorneys' fee award of up to 33.0% of the total Settlement Amount, in addition to also seeking reasonable litigation costs and expenses, in a separate proceeding. In compliance with Rule 23(h), Plaintiffs will file a motion and supporting memorandum of law seeking this relief with the Court (and will upload to the Settlement website) well in advance of the deadline for Settlement Class Members to file objections to the Settlement.

5. *The Settlement Treats Class Members Equitably*

The proposed Settlement does not grant preferential treatment to the Plaintiffs or to any segment of the Class. The settlement benefits will be distributed equally, i.e., nobody gets more cash or credit than anyone else. This distribution model, arrived at only after pouring over the transaction data, also has the advantage of being most administratively efficient, thus keeping transaction costs reasonable. Moreover, Class Representative Service Awards, such as those that will be requested for the three Plaintiffs here, are commonly awarded in class actions, are well-justified under the circumstances, and are appropriate in amount given the Plaintiffs' commitment and effort in the litigation over its several years.

6. *The Recommendation of Experienced Counsel Also Favors Approval*

“[W]here the parties have conducted an extensive investigation, engaged in significant fact-finding and Lead Counsel is experienced in class-action litigation, courts typically defer to the judgment of experienced trial counsel who has evaluated the strength of his case.” *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *21 (N.D. Tex. Nov. 8, 2005) (citation and internal quotations omitted). Class Counsel in this case have extensive experience litigating and settling class actions and other complex matters, including landlord/tenant cases, have conducted extensive research and discovery in this case, and have conducted an extensive investigation into the factual and legal issues raised. Based on their experience and knowledge about this case, Class Counsel have weighed the benefits of the Settlement against the inherent risks, complexities, and expense of continued litigation, and they believe that the proposed Settlement is fair, reasonable, and adequate. That qualified and well-informed counsel endorse the Settlement as being fair, reasonable, and adequate further supports approving the Settlement.

C. The Court Should Provisionally Certify the Settlement Class

The Court should provisionally certify the proposed Class for settlement because the standards of Rule 23(a) and Rule 23(b)(3) are satisfied. INVH does not oppose certification of the Class for settlement purposes only.

1. The Requirements of Rule 23(a) Are Satisfied

a. Numerosity (Rule 23(a)(1))

Rule 23(a)(1) requires that “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). There is no magic number for meeting this requirement. *James v. City of Dallas*, 254 F.3d 551, 570 (5th Cir. 2001); *Serna v. Transp. Workers Union of Am.*, 2014 WL 7721824, *2 (N.D. Tex. Dec. 3, 2014). Numerosity is readily satisfied here. The Class, as defined, includes over 130,000 tenancies.

b. Commonality (Rule 23(a)(2))

Rule 23(a)(2) requires at least one common issue of fact or law “capable of class-wide resolution.” *Yates v. Collier*, 868 F.3d 354, 361 (5th Cir. 2017) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). A single common question of law or fact is sufficient. *Ibe v. Jones*, 836 F.3d 516, 528 (5th Cir. 2016) (citing *Wal-Mart*, 564 U.S. at 350). This case raises multiple common questions, including what efforts INVH took, if any, to estimate its actual damages before deploying its standard late fees, whether those efforts were reasonable, and/or whether the fees settled upon in Defendant’s form lease contracts bare any reasonable relation to INVH’s actual damages felt from the late payment of rent. Commonality is satisfied here.

c. Typicality (Rule 23(a)(3))

Typicality, under Rule 23(a)(3), is satisfied if the representative plaintiffs’ claims and those of the class arise out of the same course of conduct and share the same legal theory. *James*, 254

F.3d at 571; *Serna*, 2014 WL 7721824, at *4. Typicality does not require “complete identity of claims.” *Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir. 2002). Here, Plaintiffs, like the other Class Members, had form leases with INVH with late fee provisions, and they paid INVH pursuant to those provisions. Plaintiffs’ and other Class Members’ claims arise from the same alleged course of conduct and are based on the same legal theory—that INVH’s fee charges were not a proper or reasonable liquidated damage. *See* Restatement (Second) of Contracts § 356(1).

d. Adequacy (Rule 23(a)(4))

Rule 23(a)(4) looks at: “(1) the zeal and competence of the representatives’ counsel; (2) the willingness and ability of the representatives to take an active role in and control the litigation and to protect the interests of absentees; and (3) the risk of conflicts of interest between the named plaintiffs and the class they seek to represent.” *Slade v. Progressive Sec. Ins. Co.*, 856 F.3d 408, 412 (5th Cir. 2017); *Feder v. Elec. Data Sys. Corp.*, 429 F.3d 125, 130 (5th Cir. 2005).

Class Counsel here have extensive experience litigating and resolving class actions and other similar complex matters and are well qualified to represent the Class. Since filing this case, Class Counsel have vigorously litigated this action on behalf of the Class, conducted extensive investigation and discovery, negotiated the proposed Settlement, and have and will continue to fairly and adequately protect the interests of the Class. Likewise, the Plaintiffs have demonstrated their commitment to the Class, including by actively participating in the case for years, regularly communicating with Class Counsel about the case, and reviewing and approving the proposed Settlement. Finally, Plaintiffs’ interests are aligned with and are not antagonistic to the interests of the Class. Plaintiffs and the Settlement Class Members share an interest in obtaining relief from INVH for the alleged violations.

2. *The Requirements of Rule 23(b)(3) are Also Satisfied*

In addition to the requirements of Rule 23(a), at least one of the prongs of Rule 23(b) must be satisfied. Here, Plaintiffs seek certification, for settlement purposes, under Rule 23(b)(3), which requires that “questions of law or fact common to the class members predominate over any questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “The predominance inquiry ‘asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted). At its core, “[p]redominance is a question of efficiency.” *Butler v. Sears, Roebuck & Co.*, 702 F.3d 359, 362 (7th Cir. 2012).

Common questions predominate here. Not only do the Class Members’ claims all arise under the basic legal principles and alleged conduct (the collection of standard late fees), but under the proposed Settlement, there will not need to be a class trial, meaning there are no potential concerns about any individual issues, if any, creating trial inefficiencies. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems...for the proposal is that there will be no trial.”).

Moreover, class treatment is superior to other methods for the resolution of this case. Plaintiffs are not aware of any other actions against INVH regarding the issues raised in this case. Given the size of each Class Member’s damages—which would be dwarfed by the expense of prosecuting a separate individual case—they would be unlikely to pursue individual claims. *See Boos v. AT & T, Inc.*, 252 F.R.D. 319, 326 (W.D. Tex. 2008), *modified* (Sept. 17, 2008). In all

events, they remain free to exclude themselves from the Class if they wish to do so. Moreover, it would be far more efficient for the Court and the parties to have a single resolution (as with the proposed Settlement here), rather than multiple separate cases about the same issues.

D. The Proposed Class Notice and Notice Plan Will Provide the Best Notice Practicable and Should be Approved

Before a proposed class settlement may be approved, the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). Where certification of a Rule 23(b)(3) settlement class is sought, the notice must also comply with Rule 23(c)(2)(B), which requires:

the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974).

The proposed Notice Plan here (Settlement Agreement, §§ VII and VIII) meets all applicable standards. The Notice Plan includes direct notice to Class Members sent via email and/or first-class U.S. Mail, a dedicated settlement website where Settlement Class Members can obtain additional information about the Settlement and view key case documents, and a toll-free telephone number where Settlement Class Members can get additional information. Moreover, the proposed form of Notice (Settlement Agreement, Ex. A) informs Class Members, in clear and concise terms, about the nature of this case, the Settlement, and their rights, including all the information required by Rule 23(c)(2)(B). The Court should approve the proposed Notice Plan.

E. Finally, The Court Should Schedule a Fairness Hearing and Related Dates

The next steps in the settlement approval process are to notify Class Members of the proposed Settlement, allow Class Members an opportunity to exclude themselves or file comments or objections, and hold a Fairness Hearing.

Towards those ends, the parties propose the following schedule:

Last day for INVH to provide the final Class Information to the Settlement Administrator	[45 days after entry of Preliminary Approval Order]
Deadline to Send Notice of Settlement	[14 days after INVH provides the Class Information]
Last day for: (a) Class Plaintiffs to file motion for final approval of the Settlement; and (b) Class Counsel to file their application for attorneys' fees, expenses and service awards	[21 Days After Sending Notice of Settlement]
Opt-Out Deadline	[30 days before the Fairness Hearing]
Objection Deadline	[30 days before the Fairness Hearing]
Last day for the Parties to file any responses to objections, and any replies in support of motion for final settlement approval and/or Class Counsel's application for attorneys' fees, expenses and service awards.	[14 days before Fairness Hearing]
Fairness Hearing	[TBD]

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court do the following:

- (a) grant preliminary approval of the Settlement;
- (b) provisionally certify for settlement purposes the Class, as defined in the Settlement Agreement, pursuant to Fed. R. Civ. P. 23(b)(3);
- (c) appoint each of the Plaintiffs as class representatives;

- (d) appoint Alex Tomasevic and Craig Nicholas of Nicholas & Tomasevic, LLP as Class Counsel;
- (e) appoint Angeion Group as Settlement Administrator, and direct Angeion to carry out the duties of the Settlement Administrator specified in the Settlement;
- (f) approve the proposed Notice Plan—including the form and content of the Class Notice and the proposed method for distributing the Class Notice—and direct the Parties and Settlement Administrator to implement the Notice Plan;
- (g) continue the stay all non-Settlement related proceedings in this litigation pending final approval of the Settlement; and
- (h) set a Fairness Hearing and certain other dates, as proposed herein, in connection with the final approval of the Settlement.

Respectfully submitted,
Dated: May 3, 2023

NICHOLAS & TOMASEVIC LLP

/s/ Alex Tomasevic

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**ATTORNEYS FOR PLAINTIFFS
FRANCINE MCCUMBER, ET AL.**

CERTIFICATE OF CONFERENCE

As required by Local Rule 7.1(b), I certify that I have conferred with counsel for Defendant Invitation Homes, Inc. about the merits of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. Defendant Invitation Homes, Inc. does not oppose Plaintiffs' motion.

Respectfully submitted,
Dated: May 3, 2023

NICHOLAS & TOMASEVIC LLP

/s/ Alex Tomasevic _____
Alex Tomasevic (*pro hac vice*)
atomasevic@nicholaslaw.org

**ATTORNEYS FOR PLAINTIFFS
FRANCINE MCCUMBER, ET AL.**

CERTIFICATE OF SERVICE

On May 3, 2023, electronically submitted the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the Court's electronic filing system pursuant to Local Rule 5.1(d). I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

NICHOLAS & TOMASEVIC LLP

/s/ Alex Tomasevic

Alex Tomasevic (*pro hac vice*)

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**ATTORNEYS FOR PLAINTIFFS
FRANCINE MCCUMBER, ET AL.**

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

FRANCINE McCUMBER, ET AL.

Plaintiffs,

v.

INVITATION HOMES, INC., a Maryland
corporation

Defendant.

Case No. 3:21-cv-02194-B

Judge Jane J. Boyle

**DECLARATION OF ALEX TOMASEVIC IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

I, Alex Tomasevic, declare:

1. I am an attorney at law duly licensed to practice before all the court of the State of California, the Central, Eastern, Northern, and Southern District Courts of California, the Ninth Circuit Court of Appeals, and U.S. Supreme Court. I am a partner at the law firm of Nicholas & Tomasevic, LLP, counsel of record for Plaintiffs in this matter. I am familiar with the facts of this case and if called upon as a witness, I could testify to the following facts based on my own personal knowledge. I make this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

Background

2. The following is a brief description of my and my firm's relevant professional background. Nicholas & Tomasevic, LLP ("N&T" or "Class Counsel") has extensive experience handling class actions—consumer class actions in particular—which has been half or more of the work we perform, and the majority of the work I have performed for 16+ years.

3. N&T's experience includes, but is not limited to, state and federal court certification of class action cases for purposes of trial and for settlement in a variety of contexts, including unfair competition, false advertising, and other consumer protection cases including, specifically, litigation of class-wide claims by tenants against landlords for unfair practices and excessive fees.

4. I was admitted to the California Bar in 2006 and have been selected as a Thomson Reuters "Super Lawyer" from 2018-2023 in the field of Class Actions and Mass Torts. Previously, I was recognized as a Thomson Reuters "Rising Star" in the field as well as part of the San Diego Business Journal's "Best of the Bar."

5. I have tried certified class actions to conclusion and litigated many more, having helped recover hundreds of millions of dollars for class members over the years. I have also

defended class actions and arbitrated class, collective, and mass actions.

6. Some of my recent personal class action experience includes litigating *Moyle v. Liberty Mutual* and recovering over \$30 million in benefits against Liberty Mutual on behalf of Liberty Mutual employees in a class action settlement approved by the United States District Court, Southern District of California.

7. Also, in 2018 we helped recover over \$25 million for consumers against Procter & Gamble for unfair competition and related claims related to their marketing and sale of certain dietary supplements.

8. In 2021, we recovered over \$16 million in back wages and penalties for workers engaged by Matco Tools corporation in a misclassification action litigated and resolved in the Northern District of California.

9. We also obtained court approval of a class action settlement in *Loera v. Akal*, a California Superior Court case also involving employee rights issues. This case settled after the first phase of trial and the employees were ultimately awarded about \$10 million in damages.

10. We were also counsel of record, having briefed and appeared before the United States Supreme Court in the landmark 2011 case of *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, and have a lengthy history of fighting for consumer rights, and against forced private arbitration, in the class action context, having litigated this landmark case and related cases.

11. I currently serve as lead class counsel or co-lead class counsel in several certified class actions, including consumer cases, pending in state and federal courts. For example, after a contested but successful motion for class certification, we were appointed as class counsel for a class of over 100,000 tenants, in a very similar case for excessive late rent fees in *Munguia-Brown, et al. v. Equity Residential, et al.* (N.D. Cal Case No. 16-cv-01225), where the amount in

controversy is the better part of \$100 million. That case is set to go to trial, in the Northern District, in June.

12. Also after contested proceedings, we were appointed in the Southern District of California as sole class counsel for California franchisors suing Flowers Foods, Inc. and affiliates (the makers of Wonder Bread and Dave's Killer Bread) arising out of Flowers' alleged misclassification of those franchisors as "independent contractors." The amount in controversy in that case is in the nine figures.

13. In April, we were appointed by the Eastern District of California to serve as class counsel for a group of tens of thousands of insurance policy owners and beneficiaries, against Lincoln Benefit Life Insurance Co., for unfair business practices regarding the administration of life insurance policies. The amount in controversy in that case is also in the nine figures.

14. I, and my colleagues at N&T, have been found to be adequate class counsel in every certified case that we have ever sought to be deemed as such – in more than 40 matters, including in certified consumer class actions and, in particular, landlord/tenant cases.

15. I have written and spoken on class action litigation and developments, including on behalf of the San Diego Bar Association, and have closely followed legal developments in the area.

The Litigation

16. A true and correct copy of the Parties' Settlement Agreement is attached hereto as **Exhibit 1**.

The Allegations

17. Defendant¹ operates in multiple States and rents out single-family residences. When tenants pay rent late (i.e., if not within a few days after the first of the month), Defendant assesses standard late charges under the lease – predominantly either a \$95 flat fee, or 10% of monthly rent depending on the lease version. Plaintiffs allege that these late fees are excessive and amount to illegal penalties under the statutory and/or common laws of their state.

18. More specifically, Plaintiffs allege that INVH’s fees are all illegal for the same reason. In all the relevant states, while landlords may institute appropriate “liquidated damages” provisions under certain circumstances, including the late payment of rent, they generally may only do so if: (a) it would be extremely difficult or infeasible to calculate actual damages from the late payment; *and* (b) the liquidated damages are a reasonable amount in light of the anticipated or actual harm. *See, e.g.*, Restatement (Second) of Contracts § 356(1) (the “Restatement”); Cal. Civ. Code § 1671(d); U.C.C. § 2-718(1). Most states, including all the states represented in this case, have adopted the Restatement into their common law or otherwise codified a statute similarly differentiating lawful liquidated damages provisions from unlawful late fee penalties.

19. Plaintiffs generally alleged that INVH’s fees bare no reasonable relation to the alleged “damage” suffered by INVH, if any, arising from waiting a bit of time for the rent payment. Most of the time, Plaintiffs posited, there is *zero* damage to INVH from any late payments because the amounts due are usually paid within a couple of days of the due date. Moreover, INVH has allegedly never attempted to conduct any analysis or “reasonable endeavor” to set the fee, often just picking arbitrary amounts to charge. At issue here are Defendant’s late rent charges to tenants

¹ INVH was once privately held by New York’s Blackstone Group. Blackstone took Invitation Homes public in February 2017. By that time, another large home rental firm—Waypoint Homes—had already merged with another—Colony Starwood—in 2016, to create “Starwood Waypoint Homes.” Invitation Homes then merged with the new Starwood Waypoint Homes entity in November 2018 to create the current defendant: Invitation Homes, Inc. (NYSE: INVH).

in Arizona, California, Colorado, Florida, Georgia, Illinois, Nevada, North Carolina, Tennessee, Texas, and Washington.

Procedural History

20. This case was originally filed in the Northern District of California by plaintiff Jose Rivera, only, on May 25, 2018. Mr. Rivera resided in one of Defendant's California rental homes. In August of 2018, the remaining Plaintiffs joined Mr. Rivera in his California action and, in general, asserted claims under each of their respective states' laws. Eventually, however, the Northern District of California dismissed the claims of the non-resident tenants for lack of specific jurisdiction over their out of state claims. Those out-of-state plaintiffs (i.e., all of them except for Mr. Rivera) then re-filed, together, in federal district court in Maryland – INVH's state of incorporation. That Maryland action, though, was transferred, in September of 2021, here to Dallas and this Court. Dallas is where INVH's headquarters sit. *See* Dkt. No. 31.

21. We continued to conduct discovery and litigate the *Rivera* case in California, eventually filing his Motion for Class Certification. Defendant opposed and Plaintiff replied. The Northern District of California ruled on the fully briefed motion, however, by dismissing Mr. Rivera's claims on jurisdictional grounds and never ruling on the Rule 23 factors. Mr. Rivera eventually re-joined his original co-plaintiffs in this Court. *See* Dkt. No. 93 (Amended Complaint adds Mr. Rivera). We have represented all plaintiffs in all cases at all times.

22. Defendant denies all material allegations and has always vigorously defended all actions against it brought by these plaintiffs. For example, Mr. Rivera's California action included multiple motions to dismiss. Here, after Plaintiffs amended their complaint again in January of 2022, Defendant filed a Motion to Dismiss specifically targeting each claim from each state. Dkt. No. 58. The Court granted Defendant's motion in part and denied it in part. Dkt. No. 65. We

thereafter filed a Second Amended Complaint, Dkt. No. 66. Defendant then timely moved to dismiss that Amended Complaint. Dkt. No. 69. Defendant's new motion to dismiss was fully briefed when the parties went to their most recent mediation and reached a settlement.

Counsel's Investigation and Discovery

23. Prior to filing the suit, and continuing through the course of the litigation, we conducted an extensive investigation into the factual and legal issues raised in this case. These investigative efforts included reviewing voluminous federal filings by Defendant, including SEC filings, as well as filings in states Defendant operated in or owned rental properties. We, of course, also spent hours upon hours talking with the 11 named plaintiffs themselves and reviewing and analyzing their circumstances and documents. We also searched for, identified, and interviewed numerous additional current and former tenants of Defendant, nationwide, speaking with them about their experiences and compiling their supporting data and documents. As might be expected when dealing with 11 named plaintiffs to start, their referrals and contacts ballooned into contacts with many additional witnesses whose experiences were catalogued and fact-checked, and their documents gathered and analyzed.

24. We also thoroughly researched and analyzed the legal issues regarding all claims which, naturally, involved the analysis of 11 states' laws, including each of their consumer protection statutes and their decisional law, and Defendant's defenses and potential defenses.

25. Moreover, the parties have conducted extensive discovery, making them very well-informed about the relative strengths and weaknesses of their respective positions, and providing them with information needed to negotiate the proposed Settlement. Plaintiffs served and Defendant responded to multiple sets of written discovery requests, including Interrogatories and Document Requests. Eventually each named Plaintiff served their own discovery requests and

Defendant responded. Also, and after the entry of a protective order, Defendant produced and Class Counsel reviewed about 10,000 additional pages of printable documents, but more material in the form of electronic data. All told, we received and analyzed data concerning over 133,200 tenancies and 909,000 potentially relevant charges. We also deposed Defendant's Portfolio Director. The parties were planning additional discovery and depositions when they decided to try to a second mediation.

The Lengthy and Multi-Phased Settlement Discussions

26. The parties attended their first mediation in January of 2020. The case did not settle that day, but the parties continued to negotiate on a class-wide basis for a while thereafter with the assistance of the mediator (Martin Quinn, Esq., of JAMS), including by exchanging additional post-mediation settlement briefs. While that mediation and ensuing negotiations carried the benefit of forcing the parties to prepare and have serious good-faith discussions about the strengths and weaknesses of their case, the talks eventually stalled, and the case did not settle. The parties continued to litigate.

27. After much additional litigation and discovery, the parties agreed to attend mediation again in August of 2022 before the Honorable Jeff Kaplan (Ret.). The parties spent a whole day negotiating with Judge Kaplan's assistance. At the end of the day, Judge Kaplan made a Mediator's Proposal, which all parties accepted subject to some confirmatory details and data exchanges. Defendant produced additional information and class data and the parties eventually finalized their written class settlement agreement which is attached as **Exhibit 1** (the "Settlement Agreement").

28. While we believe in the strength of this case, we are also mindful of the significant risks in proceeding to a trial on the issues in this litigation. Defendant raised several credible

arguments that may prevent us from certifying the claims for class action treatment, certifying *all* claims, or certifying the entire class as proposed in our operative complaint. And even if successful at the class certification stage, even in part, it was not certain that we could win on the merits on a motion for summary judgment or at trial, or win *more* than we have preliminarily obtained here, and/or withstand any appeal of any successful determination on class certification or the merits. Of course, Plaintiffs had counterarguments, but it nevertheless cannot be disputed that these types of class actions, in short, are often risky and complex. Ultimately, the decision to settle was based on many significant and complicated factors and thorough research and analysis.

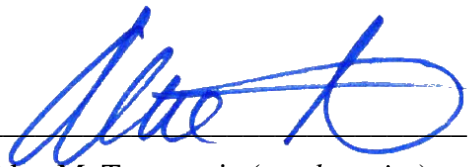
29. This motion also requests preliminary approval of a 33.0% fee request. This request is in line with awards routinely given in similar cases. Further, and as will be further explained in our forthcoming motion for attorneys' fees, should this matter proceed to the final approval stage, the amount is more than justified in that we achieved a just settlement for the class that will result in monetary payment to Class Members and that likely would not have been possible without the extensive investigation, formal and informal discovery, and negotiation conducted by counsel over the five years the case existed. Moreover, our work is not yet complete, as we will spend a significant amount of time overseeing and participating in the claims administration process and final approval proceedings.

30. Next, in my experience, Plaintiffs understood and fulfilled their duties as class representatives very well and are worthy of the proposed enhancement payment also contemplated by this settlement. It is undisputed that Plaintiffs fall within the class definitions. Plaintiffs each paid late fees and they seek the same relief for injuries resulting from Defendant's same policies and practices. In short, all Class Members are looking for the same thing (refund of late fees/charges) for the same reasons (the fees were excessive or unreasonable). Thus, Plaintiffs can

adequately and fairly represent the interests of the Class because their individual interests are consistent with those of the Class. Finally, Plaintiffs do not have any conflicts of interest with the Class and have cooperated with Plaintiffs' counsel in making themselves available to investigate the case, provide information and documents, facilitate witness interviews, and assist with significant settlement discussions. Plaintiffs remain prepared to go to trial if we need them.

31. Finally, the parties have agreed that uncashed settlement checks will be distributed to Refugee Net as *cy pres* beneficiary. My firm has no financial interest in Refugee Net and no member of my firm is serving on its board or involved with the organization in any capacity.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 3, 2023, in San Diego, California.

By: 
Alex M. Tomasevic (*pro hac vice*)

Declarant / Attorneys for Plaintiffs

EXHIBIT 1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FRANCINE MCCUMBER, individually and
on behalf of others similarly situated, et al.

Plaintiffs,

v.

INVITATION HOMES, INC.,
a Maryland corporation,

Defendant.

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Civil Case No. 3:21-CV-2194-B

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

I. RECITALS

1.1 This Joint Stipulation of Class Action Settlement and Release (the “Settlement” or “Settlement Agreement”) is made and entered into by and between the following parties: Plaintiffs Francine McCumber, Erin Dolce (f/k/a Erin Bird and Erin Byrd), Melissa Lynch, La Shay Harvey, Maryah Marciniak, Brian Majka, Chad Whetman, Tracy White, Rachel Osborn, Teresa Kerr (f/k/a Teresa Marie Moore), and Jose Rivera, on behalf of themselves and the Class Members, and Defendant Invitation Homes, Inc. (“Defendant”) (collectively, the “Parties”). Capitalized terms used herein are defined in Section II of the Settlement Agreement or indicated in parenthesis elsewhere herein. Subject to Court approval as required by the applicable Federal Rules of Civil Procedure, and as provided herein, the Parties stipulate and agree that, in consideration of the promises and covenants set forth in the Settlement Agreement and upon entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and compromised upon the terms and conditions herein.

1.2 WHEREAS, on May 25, 2018, Plaintiff Jose Rivera filed a class action complaint against Defendant in the United States District Court for the Northern District of California styled as *Jose Rivera v. Invitation Homes, Inc.*, Case No. 3:18-cv-03158-JSW, on behalf of himself and other similarly situated tenants to challenge Defendant's allegedly illegal fees and practices concerning rental homes located in California and nationwide; and

1.3 WHEREAS, on January 14, 2021, Plaintiffs (except for Plaintiff Jose Rivera) filed a class action complaint against Defendant in the United States District Court for the Northern District of Maryland styled as *Francine McCumber et al. v. Invitation Homes, Inc.*, Case No. 1:21-cv-00123-CCB, on behalf of themselves and other similarly situated tenants to challenge Defendant's allegedly excessive fees and practices concerning rental homes located in Arizona, Colorado, Florida, Georgia, Illinois, Nevada, North Carolina, Tennessee, Texas, and Washington; and

1.4 WHEREAS, on September 9, 2021, the United States District Court for the Northern District of Maryland granted Defendant's motion to transfer venue pursuant to 28 U.S.C. § 1404, and transferred the *McCumber* case to the Northern District of Texas, which was renumbered as Case No. 3:21-CV-2194-B; and

1.5 WHEREAS, on February 18, 2022, the Northern District of California dismissed Plaintiff Jose Rivera's action, Case No. 3:18-cv-03158-JSW; and

1.6 WHEREAS, Plaintiff Jose Rivera joined the *McCumber* action in the Northern District of Texas, as an additional named Plaintiff, representing a putative California class (ECF 93).

1.7 WHEREAS, the Parties have engaged in substantial litigation, discovery, and motion practice. Based on extensive and detailed negotiations and pursuant to a discovery plan and e-discovery protocol, Defendant produced thousands of pages of hard-copy and electronic documents, and data, relevant to all cases and claims; and

1.8 WHEREAS, the Parties participated in several forms of formal and informal mediation and settlement negotiation sessions, including before Martin Quinn, Esq. on August 25,

2020, and the Hon. Jeff Kaplan (Ret.) on August 4, 2022. Throughout the course of these settlement efforts, the Parties were simultaneously engaged in discovery and litigation efforts. Following a full-day mediation session before Judge Kaplan in August 2022, Judge Kaplan made a mediator's proposal for the settlement of all cases and claims, discussions continued, and the Parties ultimately entered a binding term sheet in September 2022, providing the foundation for this Settlement Agreement; and

1.9 WHEREAS, the Parties have reached the resolution set forth in this Settlement Agreement providing for, among other things, the full settlement of the Action between and among all Plaintiffs, including Mr. Rivera, and on behalf of themselves and all Class Members, and Defendant, on the terms and subject to the conditions set forth below; and

1.10 WHEREAS, the Parties agree that throughout the course of litigation, all Parties and their counsel complied with the provisions of Federal Rule of Civil Procedure 11; and

1.11 WHEREAS, Class Counsel have determined that a settlement of the Action on the terms reflected in this Settlement Agreement is fair, adequate, reasonable, and in the best interests of Plaintiffs and their fellow Class Members; and

1.12 WHEREAS, Defendant, to avoid costs, disruption and distraction or further litigation, and without admitting the truth of any allegations made in or related to the Action, or any liability with respect thereto, has concluded that it is desirable that the claims against it be settled and dismissed on the terms reflected in this Settlement Agreement; and

1.13 NOW, THEREFORE, this Settlement Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and the Parties agree that: (1) upon the Effective Date, the Action and all Released Claims shall be fully, finally, and forever settled and compromised as between Plaintiffs and Class Members on the one hand, and Defendant on the other hand; (2) upon final approval of the Settlement Agreement, the Final Judgment and Order Approving Settlement, shall be entered dismissing the Action with prejudice and releasing all Released Claims against the Released Parties, on the following terms and

conditions; and (3) all necessary steps shall be taken to secure the dismissal of the Action with prejudice.

II. DEFINITIONS

As used in this Settlement Agreement and any attached exhibits (which are an integral part of the Settlement Agreement and are incorporated in their entirety by reference), the following terms shall have the meanings set forth below, unless this Settlement Agreement specifically provides otherwise:

2.1 **“Action”** means, collectively, the lawsuit initially filed in the United States District Court for the Northern District of Maryland, styled *Francine McCumber et al. v. Invitation Homes, Inc.*, Case No. 1:21-cv-00123-CCB; and subsequently transferred to the United States District Court for the Northern District of Texas, and renumbered as Case No. 3:21-CV-2194-B, and as amended by stipulation to include claims for California properties under California law.

2.2 **“Class Counsel”** means counsel for Plaintiffs, Craig Nicholas and Alex Tomasevic of Nicholas & Tomasevic, LLP.

2.3 **“Class Counsel Costs”** means the expenses and costs incurred by Class Counsel for Plaintiffs’ litigation and resolution of the Action, as awarded by the Court, which do not exceed Thirty Thousand Dollars (\$30,000). Any litigation costs not awarded by the Court will be added to the Net Distribution Fund and distributed to Participating Class Members

2.4 **“Class Counsel Fees”** means the attorneys’ fees for Plaintiffs’ litigation and resolution of the Action, as awarded by the Court, which may not exceed 33.0% of the Total Settlement Amount, or Two Million Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$2,475,000). Any attorneys’ fees not awarded by the Court will be added to the Net Distribution Fund and distributed to Participating Class Members.

2.5 **“Class Information”** means the: (i) full name; (ii) all known email addresses; and (iii) last known physical address. Defendant will compile the Class Information in good faith from its records and provide it to the Settlement Administrator as a confidential document

pursuant to the Stipulated Protective Order in the Action through a confidential Microsoft Excel spreadsheet. Because Class Members' personal information is included in the Class Information, the Settlement Administrator shall maintain the Class Information securely and in confidence pursuant to the Stipulated Protective Order. Access to such Class Information shall be limited to employees of the Settlement Administrator with a need to use the Class Information for administration of the Settlement. The Settlement Administrator will take all necessary measures to adequately secure the Class Information.

2.6 **“Class Members”** (or sometimes, the **“Class”**) means all of Defendant's (i) Arizona tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Date; (ii) California tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and the Preliminary Approval Date; (iii) Colorado tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and the Preliminary Approval Date; (iv) Florida tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Date; (v) Georgia tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2015, and the Preliminary Approval Date; (vi) Illinois tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2011, and the Preliminary Approval Date; (vii) Nevada tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Date; (viii) North Carolina tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Date; (ix) Tennessee tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2015, and the Preliminary Approval Date; (x) Texas tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2019 and August 31, 2019;

and (xi) Washington tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and the Preliminary Approval Date. Excluded from the Settlement Class are: (a) Defendant and its officers, directors, and employees; (b) any person who files a valid and timely Request for Exclusion; and (c) judicial officers and their immediate family members and associated court staff assigned to the case.

2.7 **“Class Representatives”** means all Plaintiffs, i.e. Francine McCumber, Erin Dolce (f/k/a Erin Bird and Erin Byrd), Melissa Lynch, La Shay Harvey, Maryah Marciniak, Brian Majka, Chad Whetman, Tracy White, Rachel Osborn, Teresa Kerr (f/k/a Teresa Marie Moore), and Jose Rivera.

2.8 **“Class Representative Service Awards”** mean the amount that the Court awards to the Class Representatives, for their efforts in assisting with the prosecution of the Action and as consideration for executing this Settlement Agreement and releasing their claims against Defendants, which shall not exceed \$5,000 to each Class Representative. The Service Awards are subject to approval from the Court and will be paid from the Total Settlement Amount. Any Service Award not awarded by the Court will be added to the Net Distribution Fund and distributed to Participating Class Members.

2.9 **“Court”** means the United States District Court for the Northern District of Texas, the Honorable Jane J. Boyle presiding.

2.10 **“Debt Relief”** means the amount of debt forgiveness (up to 25% of the Total Settlement Amount, or \$1,875,000) owed by Class Members to Defendant. Debt Relief cannot be used to offset or reduce Individual Settlement Payments to Class Members. Debt Relief, for purposes of this settlement, means verifiable balances owed by Class Members to Defendant. Defendant shall cooperate with Plaintiffs’ reasonable requests to confirm the value of the Debt Relief, and the identities of those Class Members who will receive Debt Relief. Further, Defendant shall ensure the accuracy of the Debt Relief by, among other things, supplying a sufficient declaration under penalty of perjury when Plaintiffs seek approval of this Settlement Agreement. Here, the parties agree and acknowledge that the Debt Relief relates to charges,

amounts, and issues that are disputed. As such, Defendant shall not consider, characterize, or report any amount of any Debt Relief provided under this agreement as an event taxable to the Participating Class Member. The Debt Relief, for example, does not constitute a discharge of indebtedness.

2.11 **“Defendant”** means Invitation Homes Inc.

2.12 **“Defense Counsel”** means counsel for Defendant, Aaron T. Winn and Justin J. Fields of Duane Morris, LLP.

2.13 **“Effective Date”** means the later of: (a) if no objection to the motion to approve the Final Judgment and Order Approving Settlement has been filed with the Court, the date the Court finally approves the Settlement; or (b) if an objection to the motion to approve the Final Judgment and Order Approving Settlement has been filed with the Court, then the date on which the time to appeal approval of the settlement has expired; or (c) in the event that an appeal of an Order Approving Settlement has been initiated, the date after such appeal or other review has been finally concluded and is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise; or (d) if Class Counsel and Defense Counsel agree in writing, to another date that is earlier than the Effective Date as calculated according to subparagraphs (a) through (c) above.

2.14 **“Final Approval Hearing”** means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement Agreement.

2.15 **“Final Judgment and Order Approving Settlement”** means, collectively, the Final Judgment and Final Order Approving Settlement to be entered by the Court approving the settlement as fair, adequate, and reasonable, confirming the certification of the Class, and issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Settlement Agreement. The parties shall collaborate in drafting a mutually acceptable form of Final Judgment and Order Approving Settlement after any grant of Preliminary Approval..

2.16 **“Individual Settlement Payment”** means the amount payable from the Net Distribution Fund that the Settlement Administrator will distribute, on an equal pro rata basis, to each Participating Class Member as discussed in Section 4.2.4.1 below.

2.17 **“Net Distribution Fund”** means the Total Settlement Amount, less the amounts allotted to: (a) Class Counsel Costs; (b) Class Counsel Fees; (c) Class Representative Service Awards; (d) Settlement Administration Costs; and (e) Debt Relief. The Settlement Administrator will disburse the Net Distribution Fund, via Individual Settlement Payments, to Participating Class Members.

2.18 **“Notice of Settlement”** means the Notice of Class Action Settlement that the Settlement Administrator will mail to Class Members to apprise them of this Settlement (substantially in the form attached hereto as Exhibit A).

2.19 **“Objection Date”** means the date by which Class Members must file and serve objections to the Settlement Agreement and shall be no later than thirty (30) days before the date first set for the Final Approval Hearing.

2.20 **“Opt-Out Date”** means the postmark date by which a Request for Exclusion must be submitted to the Settlement Administrator for a Class Member to be excluded from the Class, and shall be no later than thirty (30) days before the date first set for the Final Approval Hearing.

2.21 **“Participating Class Members”** means Class Members who do not submit a Request for Exclusion from this Settlement.

2.22 **“Parties”** means the Plaintiffs and Defendant in this Action.

2.23 **“Preliminary Approval Date”** means the date the Court enters the Preliminary Approval Order.

2.24 **“Preliminary Approval Order”** means the order to be entered by the Court conditionally certifying the Class, preliminarily approving the Settlement Agreement, setting the date of the Final Approval Hearing, appointing Class Counsel for the Class, approving the Notice of Settlement, and setting the Opt-Out Date and Objection Date, the proposed form of

which is attached as Exhibit A.

2.25 **“Released Claims”** means all claims, demands, actions, suits, and/or causes of action brought in the Action or based on the same factual predicate of the Action, whether such claims or allegations are known or unknown, asserted or unasserted, and under or pursuant to any related statute, regulation, common law or equity principle.

2.26 **“Released Party”** or **“Released Parties”** means Defendant and any and all of its past and present parents, subsidiaries, divisions, departments, affiliates, and any and all of its past and present officers, directors, employees, stockholders, agents, predecessors, successors, attorneys, insurers, representatives, licensees, licensors, subrogees, and assigns. Released Party or Released Parties also includes any of Defendant’s alleged predecessor entities or entities with which it has allegedly merged, including those referenced in the Action, which includes Colony American Homes, Inc., Colony Starwood Homes, Waypoint Homes, Starwood Waypoint Homes, Starwood Waypoint Residential Trust, and those entities’ parents, subsidiaries, divisions, departments, affiliates, predecessors and successors.

2.27 **“Releasing Party”** means Plaintiffs and each Class Member who does not timely submit a valid Request for Exclusion – i.e., Participating Class Members.

2.28 **“Request for Exclusion”** means the written communication that must be submitted to the Settlement Administrator and postmarked on or before the Opt-Out Date by a Class Member who wishes to be excluded from the Class.

2.29 **“Settlement Administrator”** means Angeion Group, the entity retained by the Parties and approved by the Court to design, consult on, and implement the program for disseminating the Notice of Settlement to Class Members, administer and send the Individual Settlement Payments, and perform overall administrative functions.

2.30 **“Settlement Administration Costs”** means the costs incurred by the Settlement Administrator and awarded by the Court from the Total Settlement Amount.

2.31 **“Settlement Fund Account”** means the bank account established and maintained by the Settlement Administrator from which all monies payable under the terms of this

Settlement Agreement shall be paid.

2.32 **“Stipulated Protective Order”** means the Stipulated Protective Order on file in the Action, Dkt No. 62.

2.33 **“Total Settlement Amount”** means Seven Million Five Hundred Thousand Dollars and Zero Cents (\$7,500,000) – with no more than 25% of the Total Settlement Amount (\$1,875,000) apportioned to Debt Relief – which is the maximum value that Defendant is providing under this Settlement Agreement in order to settle the Action. The Total Settlement Amount will be used to pay: (a) Individual Settlement Payments; (b) Class Counsel Fees; (c) Class Counsel Costs; (d) Settlement Administration Costs; and (e) Class Representative Service Awards. Following these disbursements, the remainder of the Total Settlement Amount becomes the Net Distribution Fund for distribution of Individual Settlement Payments to Participating Class Members. Under no circumstances will Defendant be required to pay any amount in excess of the Total Settlement Amount in connection with this Settlement.

2.34 **“Void Date”** means the date by which any checks issued to Participating Class Members shall become void, *i.e.*, on the 121st day after mailing.

III. TERMS OF THE SETTLEMENT AGREEMENT

3.1 Class Certification. Solely for purposes of this Settlement, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class. Should for whatever reason the Settlement not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Action be certified in a non-settlement context. Defendant expressly reserves its right to oppose class certification in this or any other action should this Settlement not become effective.

3.2 Appointment of Class Counsel. Solely for the purposes of this Settlement, the Parties stipulate and agree the law firm of Nicholas & Tomasevic, LLP, shall be appointed as Class Counsel for the Class.

3.3 Appointment of Class Representatives. Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiffs shall be appointed as Class Representatives for the Class.

3.4 Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that Angeion Group, shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for establishing a settlement website, establishing a P.O. Box for receipt of Class Member communications; reviewing and responding to Class Member inquiries; preparing, printing and mailing the Notice of Settlement (*i.e.*, Exhibit A) to Class Members; receiving and reviewing Requests for Exclusion and Notices of Objection, if any, submitted by Class Members; calculating Individual Settlement Payments; providing status reports to Defense Counsel and Class Counsel; providing a due diligence declaration for submission to the Court prior to the Final Approval Hearing; mailing Individual Settlement Payments to Class Members; paying the Class Representative Service Awards, Class Counsel Fees, and Class Counsel Costs to, respectively, Plaintiffs and Class Counsel pursuant to the terms of this Settlement Agreement; providing a due diligence declaration for submission to the Court upon the completion of the notice process; and for such other tasks as the Parties mutually agree. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other tax documents required by administration of this Settlement Agreement shall be prepared by the Settlement Administrator. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize Settlement Administration Costs. Each of the Parties represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

IV. CONSIDERATION AND SETTLEMENT DISTRIBUTION

4.1 Settlement Value Provided by Defendant. The maximum value that Defendant is providing under this Settlement Agreement is the Total Settlement Amount of Seven Million Five Hundred Thousand Dollars and Zero Cents (\$7,500,000), with up to 25% of the Total Settlement

Amount (\$1,875,000) consisting of potential Debt Relief to Class Members who have verifiable balances owing to Defendant, which shall be paid by Defendant to fund the Settlement. Defendant shall fund the Settlement no later than thirty (30) calendar days after the Effective Date, as discussed below at Section 10.1.2. The consideration described above shall constitute the entire consideration provided by Defendant pursuant to this Settlement Agreement and Defendant shall not be required to pay any amount above the Total Settlement Amount in connection with this Settlement for any purpose.

4.2 Distribution of the Total Settlement Amount. The Total Settlement Amount shall be used to pay: (a) Class Counsel Fees; (b) Class Counsel Costs; (c) Settlement Administration Costs; (d) Class Representative Service Awards; and (e) Individual Settlement Payments.

4.2.1 Class Counsel Fees and Class Counsel Costs. The Settlement Administrator shall pay the Class Counsel Fees and Class Counsel Costs from the Total Settlement Amount. Defendant agrees not to oppose any application by Class Counsel for a Class Counsel Fees award not to exceed Two Million Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$2,475,000), which will be distributed to Nicholas & Tomasevic, LLP, or its assignee. Defendant further agrees not to oppose any application by Class Counsel for a Class Counsel Costs award not to exceed \$30,000 which will be distributed to Nicholas & Tomasevic, LLP, or its assignee. Payments to Class Counsel, Class Representatives, and Participating Class Members will occur within thirty (30) calendar days after the Settlement is funded by Defendant. Class Counsel agrees to provide the Settlement Administrator with an executed IRS Form W-9 before the Class Counsel Fees and Class Counsel Costs are issued. The Settlement Administrator shall issue the appropriate IRS Form 1099 for the payments made pursuant to this Paragraph. In the event that the Court awards less than the full amount requested for the Class Counsel Fees and/or Class Counsel Costs, the un-awarded amount will be made available for distribution as part of the Net Distribution Fund and distributed to Participating Class Members. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Class Counsel may, at Class Counsel's option,

elect to have all or part of the Court-approved Class Counsel Fees allocated to a third-party permitting payment of such fees to Class Counsel to be made in a series of periodic payments. If Class Counsel elects to have its award of all or a portion of the Court-approved Class Counsel Fees Award paid to a third-party, their interest in such funds will be assigned to the third-party to make payment of the Class Counsel Fees to Class Counsel. Such election must be made in writing within ten (10) calendar days of the Settlement Administrator's receipt of the Total Settlement Amount from Defendant. Absent such timely election, the Claims Administrator shall pay the Class Counsel Fees directly to Class Counsel in accordance with the terms set forth above. Defendant will not be responsible for payment of any amounts for attorneys' fees or costs associated with this Settlement to any law firm or party other than the Class Counsel Fees and Class Counsel Costs specified above. Furthermore, Defendant's delivery of the Total Settlement Amount to the Settlement Administrator, as specified in this Settlement Agreement, shall complete Defendant's obligation to fund the Settlement, including without limitation Defendant's obligation to pay the Court-awarded Class Counsel Fees and Class Counsel Costs. Thus, Defendant shall not be responsible for paying any further amount in attorneys' fees or costs for any reason after delivery of the Total Settlement Amount to the Settlement Administrator regardless of whether Class Counsel elects to have the Settlement Administrator pay all or part of the approved Class Counsel Fees to a third-party in order to receive periodic payments.

4.2.2 Settlement Administration Costs. The Settlement Administrator shall be paid Settlement Administration Costs from the Total Settlement Amount. The Settlement Administrator shall receive the Settlement Administration Costs within thirty (30) calendar days after the Settlement is funded by Defendant. In the event that the Court awards less than the full amount set aside for Settlement Administration Costs, the un-awarded amount will be made available for distribution as part of the Net Distribution Fund and distributed to Participating Class Members.

4.2.3 Service Awards. The Settlement Administrator shall pay Class Representative Service Awards from the Total Settlement Amount not to exceed a collective total of Fifty-Five Thousand Dollars (\$55,000), as consideration for the Class Representatives' general release and for their time and effort in prosecuting the Action. The Service Awards shall be allocated as follows: to each Class Representative in an amount not to exceed Five Thousand Dollars (\$5,000) (collectively, \$55,000). The Settlement Administrator shall pay the Service Awards to the Class Representatives within thirty (30) calendar days after the Settlement is funded by Defendant. Each Class Representative agrees to provide the Settlement Administrator with an executed IRS Form W-9 before the Service Awards are issued. The Settlement Administrator shall issue appropriate tax forms to each Class Representative for their respective payment. Each Class Representative shall be solely and legally responsible for paying any and all applicable taxes on their Service Award and shall hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award. The Service Awards shall be in addition to the Class Representatives' Individual Settlement Payments, which they shall receive as Participating Class Members. In the event that the Court awards less than the full amount requested for the Service Awards, the un-awarded amount will be added to the Net Distribution Fund and distributed to Participating Class Members. Class Representatives shall not have the right to revoke their agreements to the Settlement on the grounds the Court does not approve any or all of the requested Service Awards.

4.2.4 Individual Settlement Payments. The Settlement Administrator shall pay the Individual Settlement Payments from the Net Distribution Fund and will mail them by First Class U.S. Mail to Participating Class Members' last known mailing address within thirty (30) calendar days after the Settlement is funded as specified in Section 10.1.2 below. Any checks issued to Participating Class Members shall remain valid and negotiable for one hundred and twenty (120) calendar days from the date of their issuance and then shall become void on the 121st day after mailing, *i.e.*, the Void Date. Before mailing the Individual Settlement Payments, the Settlement Administrator will conduct a national change of address search and a skip trace as

necessary for the most current address of all Class Members eligible for payments and will use such updated addresses. The Parties agree that any unclaimed funds in the Settlement Fund Account as a result of the failure to cash Individual Settlement Payment checks by the Void Date shall be transmitted by the Settlement Administrator to Refugee Net, a 501(c)(3) organization, for its program on tenant assistant services, assisting underprivileged and minority communities.

4.2.4.1 Individual Settlement Payment Calculation for Participating Class Members. Participating Class Members who had active outstanding balances of more than \$1,000 as of September 30, 2022 and who did not cure their outstanding debt to Defendant as of the date of Final Approval, shall receive a credit against their outstanding balance. The \$1,875,000 Debt Relief Fund will be apportioned equally among the Debt Relief Class Members by dividing the Debt Relief Fund by the number of eligible Debt Relief Class Members. For example, if there are 15,000 Debt Relief class members, each Debt Relief class member would receive \$125 of debt relief. All other Participating Class Members shall receive Individual Settlement Payments from the Net Distribution Fund within thirty (30) calendar days after Defendant funds the Settlement.

The Individual Settlement Payments will be distributed equally, i.e. as a flat and equal share per Participating Class Member. More specifically, the Settlement Administrator will be supplied with and verify the grand total number of all Participating Class Members eligible to receive a net payment. The Settlement Administrator will then divide the Net Distribution Fund by that grand total number Participating Class Members.

4.2.4.2 Tax Treatment of Individual Settlement Payments. The Parties make no representations as to the tax treatment or legal effect of the payments called for in this Settlement Agreement and Participating Class Members are not relying on any statement or representation by the Parties in this regard. Participating Class Members will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein.

V. RELEASES

5.1 Participating Class Members' Release. As of the Effective Date, Participating Class Members will release the Released Parties from the Released Claims for each respective

Class Members' limitations period as defined in the Class. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties that seeks recovery for any of the Released Claims. It is the intent of the Parties that the Final Approval Order entered by the Court shall have full *res judicata* effect and be final and binding upon Participating Class Members regarding the Released Claims.

5.2 Class Representatives' General Release. In consideration for the promises and payments set forth in this Settlement Agreement, to which Class Representatives are otherwise not entitled, Class Representatives agree to provide a general release and a Cal. Civil Code § 1542 waiver to the Released Parties. Class Representatives do not release any claim that cannot be released by private contract, or for breach of the terms of the Settlement Agreement between Plaintiffs and Defendant.

5.2.1 No Pending or Future Lawsuits by Plaintiffs. Other than the Action, Plaintiffs represent that they do not have any pending lawsuits, administrative complaints or charges against Defendant or the Released Parties in any local, state, or federal court or administrative agency. Plaintiffs further acknowledge that all claims raised therein, if any, shall be fully and finally extinguished by virtue of this Settlement Agreement and the Court's Final Approval Order. Plaintiffs also represent that Plaintiffs will not bring any action in the future in which Plaintiffs seek to recover any damages from Defendant or the Released Parties relating to or arising from the Released Claims from Defendant, other than an action to enforce Plaintiffs' rights under this Settlement Agreement.

5.3 Additional Steps to Be Taken By the Released Parties Concerning Debt Relief. In consideration for the promises and consideration set forth in this Settlement Agreement, the Released Parties agree to make all reasonable adjustments to their records, ledgers, and accountings, to fully effectuate the granting of the Debt Relief to those Participating Class Members that receive it under this Agreement including by, but not limited to, revising tenant ledgers or statements, informing or updating any credit bureaus or credit reporting agencies that have been informed of the debts affected by the Debt Relief, and informing or updating any debt

collectors or collection firms, agents, agencies, employees, or vendors, who have been informed of or engaged to assist with the collection of debts affected by the Debt Relief.

VI. PROCESS FOR SEEKING PRELIMINARY APPROVAL

6.1 Motion for Preliminary Approval. As soon as practicable after execution of this Settlement Agreement, Plaintiffs will submit this Settlement Agreement to the Court for Preliminary Approval, asking the Court to issue a Preliminary Approval Order approving the Settlement. Plaintiff's submission will include this Settlement Agreement, all Exhibits thereto, and any motions, memoranda and evidence as may be necessary for the Court to determine that this Settlement Agreement is fair, adequate, and reasonable.

VII. SETTLEMENT NOTICE PROCEDURES

7.1 Class Information. No more than thirty (30) days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class Information for purposes of mailing the Notice of Settlement to Class Members.

7.2 Notice by Email Where Possible, and Where Not, First Class U.S. Mail. Defendant has email addresses for the vast majority of class members and will supply those to the Settlement Administrator along with the other Class Information. Within 14 days of receipt of the Class Information, the Settlement Administrator will email the Notice of Settlement (Exhibit A) to all Class Members. For those Class Members where email addresses are lacking, or where errors are received indicating to the administrator that emails were not delivered, the Settlement Administrator will then conduct a national change of address search and a skip trace for the most current address of those Class Members and will update such addresses as necessary, and then will mail the Notice of Settlement (Exhibit A) to all Class Members by First Class U.S. Mail. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

7.3 Undeliverable Notices. Any mailed Notice of Settlement returned to the Settlement Administrator as non-deliverable on or before a date seven (7) calendar days before the Opt-Out Date shall be re-mailed to the forwarding address affixed thereto. If no forwarding

address is provided, the Settlement Administrator shall have no further obligation to mail the Notice of Settlement to a Class Member. Class Members to whom the Notice of Settlement is resent shall have fourteen (14) calendar days thereafter or until the Opt-Out has expired, whichever is later, to mail the Request for Exclusion or Notice of Objection to the Settlement Administrator. The date of the postmark on the return envelope shall be the exclusive means used to determine whether a Class Member has timely mailed his/her Request for Exclusion or Notice of Objection on or before the relevant deadline. If a Class Member's Notice of Settlement is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice of Settlement shall not be re-mailed. If, for any reason, a Notice of Settlement is non-deliverable, the Settlement Administrator will not mail an Individual Settlement Payment to a Class Member. Rather, the Settlement Administrator will hold the Individual Settlement Payment until the Void Date, at which time the funds shall be delivered to Refugee Net, a 501(c)(3) organization, for its program on tenant assistant services.

7.4 Notice Satisfies Due Process. Compliance with the notice procedures specified in this Settlement Agreement shall constitute due and sufficient notice to Class Members and shall satisfy the requirements of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel or Defense Counsel to provide notice of the proposed Settlement. In the event the procedures in this Settlement Agreement are followed and the intended recipient of a Notice of Settlement still does not receive the notice, the intended recipient shall remain a Class Member and will be bound by all terms of the Settlement and any Final Approval Order entered by the Court if the Settlement becomes effective.

VIII. PROCEDURES FOR OPTING OUT AND OBJECTING

8.1 Requests for Exclusion (Opt-Outs). The Notice of Settlement shall state that Class Members who wish to exclude themselves from the Settlement must submit a written Request for Exclusion to the Settlement Administrator by the Opt-Out Date via mail or email. To be valid, the Request for Exclusion: (a) must contain the full name, address, and last four digits of the social security number of the person requesting exclusion; (b) must be signed by the

person requesting exclusion (if mailed); and (c) must state in substance: “I wish to exclude myself from the Settlement in the action titled *Francine McCumber et al. v. Invitation Homes, Inc.*, pending in the United States District Court for the Northern District of Texas, Case No. 3:21-CV-2194-B. I understand that by requesting to be excluded, I will receive no money from the Settlement.” If the Request for Exclusion does not contain the information listed in (a)-(c) or is not emailed or postmarked by the Opt-Out Date and returned to the Settlement Administrator at the specified address, it will not be deemed a timely and valid Request for Exclusion. The date of the postmark on the mailing envelope, or the date of the email, shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Class Member who submits a timely and valid Request for Exclusion will not be entitled to any monetary recovery under the Settlement and will not be bound by the terms of the Settlement as it relates to the Released Claims. Any Class Member who submits a timely and valid Request for Exclusion will not have any right to object, appeal, or comment on the Settlement. Class Members who fail to submit a timely and valid Request for Exclusion on or before the Opt-Out Date shall be members of the Class and will be bound by all terms of the Settlement and the Final Approval Order entered in the Action. No later than fourteen (14) calendar days after the Opt-Out Date, the Settlement Administrator shall provide Defense Counsel with a complete list of all Class Members who have submitted timely and valid Requests for Exclusion, including their name and social security number.

8.2 Notices of Objection. The Notice of Settlement shall state that Class Members who wish to object to the Settlement must submit, via mail or email, a written Notice of Objection to the Settlement Administrator by the Objection Date. To be valid, the Notice of Objection must: (a) contain the full name, address, and last four digits of the social security number of the Class Member; (b) be signed by the Class Member (if submitted by mail); and (c) include the case name, court, and number, (*Francine McCumber et al. v. Invitation Homes, Inc.*, pending in the United States District Court for the Northern District of Texas, Case No. 3:21-CV-2194-B); (d) include the basis for the objection; and (e) indicate whether the Class Member

intends to appear at the Final Approval Hearing. If the Notice of Objection does not contain the information listed in (a)-(e) or is not filed, emailed, or postmarked by the Objection Date and returned to the Court at the specified address, it will not be deemed a timely and valid Notice of Objection to this Settlement. The date of filing, email, or of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Notice of Objection has been timely submitted.

8.3 No Solicitation of Exclusions or Objections. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit a Notice of Objection to or Request for Exclusion from the Settlement or to appeal from the Court's Final Approval Order. Class Counsel shall not represent Class Members with respect to any objections or appeals to this Settlement.

IX. FINAL APPROVAL PROCEDURES

9.1 Settlement Administrator Declaration in Support of Final Approval. No fewer than thirty (30) calendar days prior to the Final Approval Hearing, the Settlement Administrator shall provide the Parties with a declaration of due diligence detailing the actions taken by the Settlement Administrator to administer the Settlement to date, proof of mailing with regard to the mailing of the Notice of Settlement, all attempts to locate Class Members, and detailing all incurred and anticipated Settlement Administration Costs. Class Counsel shall be responsible for working with the Settlement Administrator to timely submit the declaration of due diligence to the Court.

9.2 Motion for Final Approval. As soon as practicable after the Opt-Out Date, Plaintiffs will file a motion for Final Approval, asking the Court to issue a Final Approval Order. Plaintiffs' submission will include any motions, memoranda and evidence as may be necessary for the Court to determine that this Settlement Agreement is fair, adequate and reasonable.

9.3 Final Approval Hearing. The Court shall hold the Final Approval Hearing, where objections, if any, may be heard and the Court shall determine whether the Settlement should be

finally approved, and if so, the amounts payable for: (a) Class Counsel Fees; (b) the Class Counsel Costs; (c) Class Representative Service Awards; (d) Settlement Administration Costs; and (e) Individual Settlement Payments.

9.4 Entry of Final Approval Order. If the Court approves this Settlement at the Final Approval Hearing, the Parties shall request that the Court enter a Final Approval Order. After granting final approval of the Settlement and entering judgment, the Court shall retain jurisdiction over the Parties to enforce and implement the terms of the judgment.

X. ADMINISTERING THE SETTLEMENT

10.1 Funding and Allocation of Settlement.

10.1.1 Settlement Accounting. No more than ten (10) calendar days after the Final Approval Order, the Settlement Administrator will provide the Parties with an accounting of all anticipated payments from the Settlement Fund Account, including: (a) the total amount of Individual Settlement Payments; (b) Class Representatives' Service Awards; (c) Class Counsel Fees; (d) Class Counsel Costs; and (e) Settlement Administration Costs, all as specified in this Settlement Agreement and approved by the Court.

10.1.2 Funding the Settlement. Within thirty (30) calendar days following the Effective Date of the Settlement, Defendant shall fund the Settlement by providing the Total Settlement Amount, subject to any verifiable Debt Relief reduction, to the Settlement Administrator.

10.1.3 Distributing the Settlement. The Settlement Administrator shall deposit the funds in the Settlement Fund Account and will disburse the funds in the manner and at the times set forth in this Settlement Agreement, including paying the Individual Settlement Payments, Class Counsel Fees, Class Counsel Costs, Settlement Administration Costs, and Class Representative Service Awards within thirty (30) calendar days following the date on which Defendant funds the Settlement.

XI. MISCELLANEOUS PROVISIONS.

11.1 No Admission of Liability. Defendant specifically denies all of the allegations in the original, amended and/or operative complaints in the Action. Defendant further denies the allegations that the Class Members were harmed by the conduct alleged in the Action. This Settlement Agreement is a compromise of such disputed Released Claims. Nothing contained in this Settlement Agreement and no documents referred to herein and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever.

11.2 Nullification of Settlement Agreement. In the event: (a) the Court does not enter the Preliminary Approval Order as provided herein; (b) the Court does not enter a Final Approval Order as provided herein; or (c) the Settlement does not become final and binding for any other reason, this Settlement Agreement shall be null and void and any order entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such case, any funds to be awarded under this Settlement shall be returned to Defendant as of the date and time immediately prior to the execution of this Settlement Agreement and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any Settlement Administration Costs already incurred by the Settlement Administrator shall be paid by the Parties in equal shares. In the event an appeal is filed from the Court's Final Approval Order or from an order rejecting any motion to intervene, or any other appellate review is sought, Settlement administration shall be stayed pending final resolution of the appeal and Defendant will not be required to fund this Settlement until and unless the Effective Date is reached.

11.3 Exhibits and Headings. The terms of this Settlement Agreement include the terms set forth in Exhibits A attached, which are incorporated by this reference as though fully set forth herein. Exhibits to this Settlement Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for convenience only and do not constitute a part of this Settlement Agreement.

11.4 Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending

the Final Approval Hearing to be conducted by the Court.

11.5 Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument signed by Defense Counsel and Class Counsel or their successors-in-interest.

11.6 Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entire agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its Exhibits.

11.7. Authorization to Enter Into Settlement Agreement. Defense Counsel and Class Counsel warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms. The person signing this Settlement Agreement on behalf of Defendant represents and warrants that he/she is authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiffs represent and warrant that they are authorized to sign this Settlement Agreement and that they have not assigned any claim covered by this Settlement to a third-party. The Parties and their counsel agree to cooperate with each other fully and to use their best efforts to effect the implementation of the Settlement. Such cooperation includes, but is not limited to, execution of such other documents and the taking of such other actions as may be reasonably necessary to fulfill the terms of this Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

11.8 Binding On Successors and Assigns. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11.9 Participation in Drafting Settlement Agreement. The Settlement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Settlement Agreement.

11.10 Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedent so as to define all provisions of this Settlement Agreement valid and enforceable.

11.11 Notices. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement Agreement shall be: (a) in writing; (b) deemed given on the third business day after mailing; and (c) sent via United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiffs:	To Defendant:
Craig M. Nicholas Alex Tomasevic NICHOLAS & TOMASEVIC, LLP 225 Broadway, 19th Floor San Diego, California 92101	Aaron T. Winn Justin J. Fields DUANE MORRIS, LLP 750 B Street, Suite 2900 San Diego, CA 92101

11.12 Execution by Plaintiffs. Plaintiffs, by signing this Settlement Agreement, are bound by the terms herein and further agree not to submit any Request for Exclusion from or Notice of Objection to the Settlement. Any such Request for Exclusion or Notice of Objection shall therefore be void and of no force or effect.


11.13 Counterparts. This Settlement Agreement shall become effective upon its execution by all of the undersigned. Plaintiffs, Class Counsel, Defendant, and Defense Counsel may execute this Settlement Agreement in counterparts, which shall have the same force and effect as if each had signed the same instrument. Copies of the executed Settlement Agreement shall be effective for all purposes as though the signatures contained therein were original signatures.

11.14 Electronic Signatures. The Parties may execute the Settlement Agreement via

electronic signature (e.g., “DocuSign”).

IT IS SO AGREED:

Dated: 04 / 11 _____, 2023


Francine McCumber (Apr 11, 2023 20:30 EDT)

Francine McCumber
Plaintiff

Dated: _____, 2023

Erin Dolce (f/k/a Erin Bird and Erin Byrd)
Plaintiff

Dated: _____, 2023

Melissa Lynch
Plaintiff

Dated: _____, 2023

La Shay Harvey
Plaintiff

Dated: _____, 2023

Maryah Marciniak
Plaintiff

Dated: _____, 2023

Brian Majka
Plaintiff

Dated: _____, 2023

Chad Whetman
Plaintiff

Dated: _____, 2023

Tracy White
Plaintiff

electronic signature (e.g., “DocuSign”).

IT IS SO AGREED:

Dated: _____, 2023

Francine McCumber
Plaintiff

Dated: Apr 14, 2023 _____, 2023



Erin Dolce (f/k/a Erin Bird and Erin Byrd)
Plaintiff

Dated: _____, 2023

Melissa Lynch
Plaintiff

Dated: _____, 2023

La Shay Harvey
Plaintiff

Dated: _____, 2023

Maryah Marciniak
Plaintiff

Dated: _____, 2023

Brian Majka
Plaintiff

Dated: _____, 2023

Chad Whetman
Plaintiff

Dated: _____, 2023

Tracy White
Plaintiff

electronic signature (e.g., “DocuSign”).

IT IS SO AGREED:

Dated: _____, 2023

Francine McCumber
Plaintiff

Dated: _____, 2023

Erin Dolce (f/k/a Erin Bird and Erin Byrd)
Plaintiff

Dated: 04 / 11 _____, 2023

Melissa Lynch

Melissa Lynch
Plaintiff

Dated: _____, 2023

La Shay Harvey
Plaintiff

Dated: _____, 2023

Maryah Marciniak
Plaintiff

Dated: _____, 2023

Brian Majka
Plaintiff

Dated: _____, 2023

Chad Whetman
Plaintiff

Dated: _____, 2023

Tracy White
Plaintiff

electronic signature (e.g., “DocuSign”).

IT IS SO AGREED:

Dated: _____, 2023

Francine McCumber
Plaintiff


Dated: _____, 2023

Erin Dolce (f/k/a Erin Bird and Erin Byrd)
Plaintiff

Dated: _____, 2023

Melissa Lynch
Plaintiff

Dated: 04 / 11 _____, 2023



LaShay Harvey (Apr 11, 2023 18:50 EDT)

La Shay Harvey
Plaintiff

Dated: _____, 2023

Maryah Marciniak
Plaintiff

Dated: _____, 2023

Brian Majka
Plaintiff

Dated: _____, 2023

Chad Whetman
Plaintiff

Dated: _____, 2023

Tracy White
Plaintiff

electronic signature (e.g., “DocuSign”).

IT IS SO AGREED:

Dated: _____, 2023

Francine McCumber
Plaintiff

Dated: _____, 2023

Erin Dolce (f/k/a Erin Bird and Erin Byrd)
Plaintiff


Dated: _____, 2023

Melissa Lynch
Plaintiff

Dated: _____, 2023

La Shay Harvey
Plaintiff

Dated: 04 / 11 _____, 2023



Maryah Marciniak (Apr 11, 2023 17:14 CDT)

Maryah Marciniak
Plaintiff

Dated: _____, 2023

Brian Majka
Plaintiff

Dated: _____, 2023

Chad Whetman
Plaintiff

Dated: _____, 2023

Tracy White
Plaintiff

electronic signature (e.g., “DocuSign”).

IT IS SO AGREED:

Dated: _____, 2023

Francine McCumber
Plaintiff

Dated: _____, 2023

Erin Dolce (f/k/a Erin Bird and Erin Byrd)
Plaintiff

Dated: _____, 2023

Melissa Lynch
Plaintiff

Dated: _____, 2023

La Shay Harvey
Plaintiff

Dated: _____, 2023

Maryah Marciniak
Plaintiff

Dated: 04 / 11 _____, 2023



Brian Majka (Apr 11, 2023 18:37 EDT)
Brian Majka
Plaintiff

Dated: _____, 2023

Chad Whetman
Plaintiff

Dated: _____, 2023

Tracy White
Plaintiff

electronic signature (e.g., “DocuSign”).

IT IS SO AGREED:

Dated: _____, 2023

Francine McCumber
Plaintiff

Dated: _____, 2023

Erin Dolce (f/k/a Erin Bird and Erin Byrd)
Plaintiff

Dated: _____, 2023

Melissa Lynch
Plaintiff

Dated: _____, 2023

La Shay Harvey
Plaintiff


Dated: _____, 2023

Maryah Marciniak
Plaintiff

Dated: _____, 2023

Brian Majka
Plaintiff

Dated: 04 / 14 _____, 2023



Chad Whetman (Apr 14, 2023 12:41 PDT)

Chad Whetman
Plaintiff

Dated: _____, 2023

Tracy White
Plaintiff

electronic signature (e.g., “DocuSign”).

IT IS SO AGREED:

Dated: _____, 2023

Francine McCumber
Plaintiff

Dated: _____, 2023

Erin Dolce (f/k/a Erin Bird and Erin Byrd)
Plaintiff

Dated: _____, 2023

Melissa Lynch
Plaintiff

Dated: _____, 2023

La Shay Harvey
Plaintiff

Dated: _____, 2023

Maryah Marciniak
Plaintiff

Dated: _____, 2023

Brian Majka
Plaintiff

Dated: _____, 2023

Chad Whetman
Plaintiff

Dated: 04 / 13, 2023

Tracy White
Tracy White (Apr 13, 2023 18:33 EDT)

Tracy White
Plaintiff

Dated: 04 / 11, 2023

Rachel Osborn
Rachel Osborn (Apr 11, 2023 17:12 CDT)

Rachel Osborn
Plaintiff

Dated: _____, 2023

Teresa Kerr (f/k/a Teresa Marie Moore)
Plaintiff

Dated: _____, 2023

Jose Rivera
Plaintiff

Dated: May 1, 2023

DocuSigned by:
John Huh
DAE4DD2C18C6477...

Name: John Huh

Title: SVP, Litigation & Investigations
Invitation Homes, Inc.
Defendant

Approved as to form and content:

RESPECTFULLY JOINTLY SUBMITTED.

DATED:

DATED: May 1, 2023

Craig Nicholas (*pro hac vice*)
California Bar No 178444
cnicholas@nicholaslaw.org
Alex Tomasevic (*pro hac vice*)
California Bar No. 245598
atomasevic@nicholaslaw.org
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Telephone: +1 619 325 0492

DocuSigned by:
Aaron Winn
0F85371D5C104D7...


Aaron T. Winn (*pro hac vice*)
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San Diego, CA 92101-4681
Telephone: +1 619 744 2200
Fax: +1 619 744 2201

Justin J. Fields (*pro hac vice*)

Dated: _____, 2023

Rachel Osborn
Plaintiff

Dated: 04 / 11, 2023




Teresa Kerr (f/k/a Teresa Marie Moore)
Plaintiff

Dated: _____, 2023

Jose Rivera
Plaintiff

Dated: May 1, 2023

DocuSigned by:

Signature: _____
Name: John Huh
Title: SVP, Litigation & Investigations
Invitation Homes, Inc.
Defendant

Approved as to form and content:

RESPECTFULLY JOINTLY SUBMITTED.

DATED:

DATED: May 1, 2023

Craig Nicholas (*pro hac vice*)
California Bar No 178444
cnicholas@nicholaslaw.org
Alex Tomasevic (*pro hac vice*)
California Bar No. 245598
atomasevic@nicholaslaw.org
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DocuSigned by:


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Fax: +1 619 744 2201

Justin J. Fields (*pro hac vice*)


Dated: _____, 2023

Rachel Osborn
Plaintiff

Dated: _____, 2023

Teresa Kerr (f/k/a Teresa Marie Moore)
Plaintiff

Dated: 04 / 13, 2023



Jose Rivera (Apr 13, 2023 08:44 PDT)
Jose Rivera
Plaintiff

Dated: May 1, 2023


DocuSigned by:

Signature: _____
Name: John Huh
Title: SVP, Litigation & Investigations
Invitation Homes, Inc.
Defendant

Approved as to form and content:

RESPECTFULLY JOINTLY SUBMITTED.

DATED: April 18, 2023



Craig Nicholas (*pro hac vice*)
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cnicholas@nicholaslaw.org
Alex Tomasevic (*pro hac vice*)
California Bar No. 245598
atomasevic@nicholaslaw.org
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225 Broadway, 19th Floor
San Diego, CA 92101
Telephone: +1 619 325 0492

DATED: May 1, 2023

DocuSigned by:


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Telephone: + 1 214 2426484

**ATTORNEYS FOR PLAINTIFFS
FRANCINE MCCUMBER, ET AL.**

California Bar No. 259491

jfields@duanemorris.com

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Telephone: +1 415 957 3000

Fax: +1 415 957 3001

Jason Boatright

Texas Bar No. 24048138

DUANE MORRIS LLP

100 Crescent Court, Suite 1200

Dallas, TX 75201

Telephone: + 1 214 257 7217

**ATTORNEY FOR DEFENDANT
INVITATION HOMES, INC.**

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

This is a Notice of Class Action Settlement for the lawsuit titled:

FRANCINE MCCUMBER v. INVITATION HOMES, INC.
United States District Court for Northern District of Texas
Case No. 3:21-CV-2194-B

To all current and former tenants of Invitation Homes or its affiliates (“INVH”) who fit into at least one of the following categories:

1. Arizona tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2017, and [the Preliminary Approval Date];
2. California tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2018, and [the Preliminary Approval Date];
3. Colorado tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2018, and [the Preliminary Approval Date];
4. Florida tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2017, and [the Preliminary Approval Date];
5. Georgia tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2015, and [the Preliminary Approval Date];
6. Illinois tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2011, and [the Preliminary Approval Date];
7. Nevada tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2017, and [the Preliminary Approval Date];
8. North Carolina tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2017, [the Preliminary Approval Date];
9. Tennessee tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2015, and [the Preliminary Approval Date];
10. Texas tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2019 and August 31, 2019; and

11. Washington tenants who were charged penalties or fees for paying rent that INVH deemed as late or deficient between January 14, 2018, and [the Preliminary Approval Date].

Please read this Notice of Settlement carefully – it provides important information about your legal rights and obligations under an agreement to settle a class action lawsuit.

WHY IT IS IMPORTANT TO READ THIS NOTICE

Judge Jane J. Boyle, of the United States District Court for the Northern District of Texas (the “Court”) has preliminarily approved a class action settlement (the “Settlement”) of all claims that were or could have been asserted based on the facts alleged in the lawsuit titled (1) *Francine McCumber et al. v. Invitation Homes, Inc.*, Case No 3:21-CV-2194-B, initially filed, prior to being transferred to the Northern District of Texas, in the United States District Court for the Northern District of Maryland, Case No. 1:21-cv-00123-CCB (together, the “Action”).

The Settlement affects current and former tenants of Invitation Homes in the States of Arizona, California, Colorado, Florida, Georgia, Illinois, Nevada, North Carolina, Tennessee, Texas, and Washington who were charged penalties or fees for paying rent that Invitation Homes deemed late or deficient and who fit within at least one of the 11 categories listed above (i.e. “Class Members”).

You have received this Notice of Settlement because Invitation Homes’ records show that you are a Class Member.

This Notice of Settlement provides you with a description of the lawsuit, informs you of the key terms of the proposed Settlement, and discusses your rights and options under the Settlement. ***It is important that you read this Notice of Settlement carefully as your rights will be affected by the Settlement.***

WHAT THIS ACTION AND SETTLEMENT IS ABOUT

A class action is a lawsuit where one or more representative plaintiffs brings claims on behalf of many people to be decided in a single court proceeding.

Plaintiffs Francine McCumber, Erin Bird, Melissa Lynch, La Shay Harvey, Maryah Marciniak, Brian Majka, Chad Whetman, Tracy White, Rachel Osborn, and Teresa Kerr filed this Action on January 14, 2021, alleging that Invitation Homes charged excessive late rent and related fees to its tenants in the States of Arizona, Colorado, Florida, Georgia, Illinois, Nevada, North Carolina, Tennessee, Texas, and Washington. On January 25, 2023, Plaintiff Jose Rivera was added to the Action as an additional named plaintiff (collectively, the “Plaintiffs”) representing a California class of current and former tenants alleging the same illegal late fee/charge penalty violations under California law. Plaintiffs generally allege that the late rent fees and related charges have no relation to the actual damage suffered by Invitation Homes and therefore constitute illegal penalty provisions under the laws of each of the aforementioned states.

Invitation Homes believes that Plaintiffs’ claims are without merit and denies all the allegations of wrongdoing and liability. Invitation Homes contends it has, at all times, complied with all applicable laws and regulations. Invitation Homes believes, however, that further litigation would be protracted, burdensome, expensive, and contrary to the best interests of the company and its employees. In light of this, Invitation Homes believes the settlement is the best way to resolve the litigation while minimizing further burden and expenditures.

Therefore, Plaintiffs and Invitation Homes agreed to try to resolve Plaintiffs’ claims through private mediation. With the assistance of two experienced mediators over the course of two separate full-day mediation sessions, Plaintiffs and Invitation Homes were able to reach a Settlement of Plaintiffs’ claims. This Settlement is not an admission of any wrongdoing by Invitation Homes or an indication that Invitation Homes violated any law. The Court did not decide in favor of Plaintiffs or Invitation Homes. There was no trial. Instead, both sides agreed to a no-fault resolution of the Action. The Settlement is intended to allow the parties to avoid the costs of further litigation and a trial, while allowing Class Members to receive payments from the Settlement as specified below.

Plaintiffs and their attorneys, who were preliminarily appointed as representatives for the Class, believe the Settlement is in the best interests of all Class Members.

THE TERMS OF THE SETTLEMENT

I. Debt Relief Fund & Individual Settlement Payments

Participating Class Members – i.e., all Class Members who do not submit a timely Request for Exclusion as explained in the “Option 2: Request Exclusion from the Settlement” section below – will receive Debt Relief or an Individual Settlement Payment and (if applicable).

Participating Class Members will either receive debt relief or a payout from a net distribution fund depending on whether they have an outstanding balance owed to INVH of more than \$1,000. For

those who had active outstanding balances of more than \$1,000 as of September 30, 2022, and who did not cure their outstanding debt to Invitation Homes as of the date of Final Approval of the Settlement (“Debt Relief Class Members”), they shall receive a payment in the form of Debt Relief, i.e. a credit against their outstanding balance. Up to \$1,875,000 of total debt relief will be apportioned equally among the Debt Relief Class Members by dividing the Debt Relief Fund by the number of eligible Debt Relief Class Members.

All others shall receive payment from the Net Distribution Fund (as defined below) within sixty (60) calendar days after the Court issues a Final Approval Order and the Settlement becomes final and binding with no possibility of an appeal or further appeal (i.e., the “Effective Date” of the Settlement is reached). The Individual Settlement Payments will be distributed equally, i.e., as a flat and equal share of the Net Distribution Fund per Participating Class Member. More specifically, the Settlement Administrator will be supplied with and verify the total number of all Participating Class Members eligible to receive a net payment. The Settlement Administrator will then divide the Net Distribution Fund by that total number of Participating Class Members.

As of today, and according to the records of Invitation Homes, your estimated recovery from this matter would be [\$ ___ in debt relief credited against your outstanding balance with Invitation Homes [or] an Individual Settlement Payment of \$ ___.]

II. The Total Settlement Amount

The total maximum value that Invitation Homes is providing under the Settlement (i.e., the “Total Settlement Amount”) is Seven Million Five Hundred Thousand Dollars and Zero Cents (\$7,500,000), with up to 25% of the Total Settlement Amount (\$1,875,000) consisting of potential Debt Relief to Class Members who have verifiable balances owing to Invitation Homes. The Total Settlement Amount constitutes the entire consideration provided by Invitation Homes pursuant to the Settlement and Invitation Homes will not be required to pay any amount above the Total Settlement Amount in connection with this Settlement.

III. Distribution of the Total Settlement Amount

The Total Settlement Amount (\$7,500,000) will be used to pay: (1) Class Counsels Fees (explained below); (2) Class Counsels Costs (explained below); (3) Class Representative Service Awards (explained below); (4) Settlement Administration Costs (explained below); and (5) Individual Settlement Payments to Participating Class Members (as described in Section II above).

The Total Settlement Amount will be distributed as follows:

Class Counsel’s Fees and Costs: Plaintiffs’ counsel (“Class Counsel”) will request attorneys’ fees of up to 33% of the Total Settlement Amount, or \$2,475,000 (“Class Counsel Fees”), and litigation costs of up to \$30,000 (“Class Counsel Costs”). All attorneys’ fees or litigation costs will be paid from the Total Settlement Amount. The Class Counsel Fees and Class Counsel Costs are subject to approval from the Court. Any attorneys’ fees or litigation costs not awarded by the Court will be added to the Net Distribution Fund (defined below) and distributed to Class Members who do not opt out of the Settlement.

Class Representative Service Awards: Plaintiffs Francine McCumber, Erin Bird, Melissa Lynch, La Shay Harvey, Maryah Marciniak, Brian Majka, Chad Whetman, Tracy White, Rachel Osborn, Teresa Kerr, and Jose Rivera will each request a Class Representative Service Award (i.e., payment for service as a named Plaintiff / Class Representative and in consideration of agreeing to a general release of claims) in an amount not to exceed \$5,000 each (collectively, \$55,000). The requested Class Representative Service Awards are subject to approval from the Court and will be paid from the Total Settlement Amount. Any Class Representative Service Award not awarded by the Court will be added to the Net Distribution Fund (defined below) and distributed to Participating Class Members who do not opt out of the Settlement.

Settlement Administration Costs: The Court has approved Angeion Group (the “Settlement Administrator”) to administer the Settlement. The cost of administration will be paid entirely from the Total Settlement Amount. At this time, it is anticipated that administration costs will be \$175,000 or less, although that figure could change depending on certain circumstances. Any Settlement Administration Costs not incurred by the Settlement Administrator or awarded by the Court will be added to the Net Distribution Fund (defined below) and will be distributed to Participating Class Members who do not opt out of the Settlement.

Net Distribution Fund: The Net Distribution Fund is the Total Settlement Amount (\$7,500,000), less the amounts allotted to: (1) Class Counsel Fees (up to \$2,475,000), (2) Class Counsel Costs (up to \$30,000), (3) Class Representative Service Awards (up to \$55,000, collectively), (4) Settlement Administration Costs (currently estimated to be \$175,000 or less); and (5) Debt Relief (explained above). Individual Settlement Payments for Participating Class Members will be paid out of the Net Distribution Fund.

Uncashed Checks: All Participating Class Members will receive an Individual Settlement Payment without needing to make a claim. Individual Settlement Payment checks issued to Participating Class Members must be cashed within 120 calendar days from the date of issuance. On the 121st day, the checks are void and uncashed funds will be transmitted, by the Settlement Administrator, to Refugee Net, a 501(c)(3) organization, for its program on tenant assistant services, which assists underprivileged and minority communities.

IV. Release of Claims by Participating Class Members

Unless you request to be excluded from the Settlement, you will be unable to sue, continue to sue or be a part of any other lawsuit against Invitation Homes and Released Parties (defined below) regarding the Released Claims (defined below) in the Settlement.

A. Released Parties

As of the Effective Date, any Class Member (i.e., Participating Class Member) who has not excluded herself/himself from the Settlement will release Invitation Homes, and its past and present parents, subsidiaries, divisions, departments, affiliates, predecessors, successors, attorneys, insurers, representatives, licensees, licensors, subrogees, and assigns (“Released Parties”) from the Released Claims (defined below). The Released Parties also include any of Invitation Homes’ alleged predecessor entities or entities with which it has allegedly merged, including entities

referenced in the Action, which includes Colony American Homes, Inc., Colony Starwood Homes, Waypoint Homes, Starwood Waypoint Homes, Starwood Waypoint Residential Trust, and those entities' parents, subsidiaries, divisions, departments, affiliates, predecessors, and successors.

B. Released Claims

Released Claims means all claims, demands, actions, suits, and/or causes of action brought in the Action or based on the same factual predicate of the Action, whether such claims or allegations are known or unknown, asserted or unasserted, and under or pursuant to any related statute, regulation, common law or equity principle.

C. Releases

Participating Class Member Release:

As of the Effective Date, Participating Class Members will release the Released Parties from the Released Claims for each respective Class Members' limitations period as defined in the Class. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties that seek recovery for any of the Released Claims. It is the intent of the parties that the Final Approval Order entered by the Court shall have full *res judicata* effect and be final and binding upon Participating Class Members regarding the Released Claims.

Class Representatives' General Release:

In consideration for the promises and payments set forth in the Settlement Agreement, including the Class Representative Service Awards, the Class Representatives / Plaintiffs agree to provide a general release and a Cal. Civil Code § 1542 waiver to the Released Parties. The Class Representatives / Plaintiffs do not release any claim that cannot be released by private contract, or for breach of the terms of the Settlement Agreement between the Class Representatives / Plaintiffs and Invitation Homes.

YOUR OPTIONS REGARDING THIS CLASS ACTION SETTLEMENT

I. First Option: Do Nothing and Receive an Individual Recovery if the Settlement Becomes Final and Binding

You do not need to do anything to participate in this Settlement. If the Settlement becomes binding and you do nothing, you will receive either Debt Relief or an Individual Settlement Payment. The final amount of Debt Relief or Individual Settlement Payment will be calculated at the end as described above. If you do nothing, you will also be bound by the Settlement and you will be releasing all claims related to the allegations in the Action as explained in the "Participating Class Member Release" section above.

II. Second Option: Request Exclusion from the Settlement

If you do not wish to participate in the Settlement for any reason, you must submit a written Request for Exclusion, via mail or email, to the Settlement Administrator by the Opt-Out Date (i.e., **Date** – which is 30 days before the date first set for the Final Approval Hearing).

To be valid, the Request for Exclusion: (1) must contain the full name, address, and last four digits of the social security number of the person requesting exclusion; (2) must be signed by the person requesting exclusion (if mailed); and (3) must state in substance:

“I wish to exclude myself from the Settlement in the action titled *Francine McCumber et al. v. Invitation Homes, Inc.*, pending in the United States District Court for the Northern District of Texas, Case No. 3:21-CV-2194-B. I understand that by requesting to be excluded, I will receive no money from the Settlement.”

To be timely, the Request for Exclusion must be postmarked (or emailed) to the Settlement Administrator at the mailing address (or email address) below on or before [Date] (the “Opt-Out Date”). **Requests for Exclusion postmarked (or emailed) after this date may be disregarded.**

If you choose to submit a Request for Exclusion via U.S. Mail:

Francine McCumber et al. v. Invitation Homes, Inc. Class Action
c/o [INSERT SETTLEMENT ADMINISTRATOR]
[INSERT MAILING ADDRESS]

If you choose to submit a Request for Exclusion via email:

[INSERT SETTLEMENT ADMINISTRATOR’S EMAIL ADDRESS]

The subject line of the email should state: “Request for Exclusion Re: *Francine McCumber et al. v. Invitation Homes, Inc.* Class Action”

Any Class Members who submit a timely and valid Request for Exclusion will NOT receive any money from the Settlement and will not be bound by the terms of the Settlement or the Released Claims. Any Class Member who submits a timely and valid Request for Exclusion will also not have any right to object, appeal or comment on the Settlement.

Class Members who do **not** submit a timely and valid Request for Exclusion on or before the Opt-Out Date will be deemed to participate in this settlement and, as described above, will receive either a Debt Relief credit or an Individual Settlement Payment and will be bound by all terms of the Settlement and the Final Approval Order entered in this Action.

III. Third Option: Object to the Settlement

If you do not believe the Settlement is fair, you can object and ask the Court to deny approval of the Settlement. If the Court grants approval over your objection, you will remain a Class Member, will release the Released Claims, and you will still receive an Individual Settlement Payment as described above.

You can object to the Settlement by submitting a “Notice of Objection.” You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

To be valid, the Notice of Objection must: (1) contain your full name, address and last four digits of your social security number; (2) include your signature (if submitted by mail); (3) include the case name, court, and case number (i.e., *Francine McCumber et al. v. Invitation Homes, Inc.*, pending in the United States District Court for the Northern District of Texas, Case No. 3:21-CV-2194-B), (4) include the basis for the objection to the Settlement, and (5) state whether you intend to appear at the Final Approval Hearing. If the Notice of Objection does not contain the information listed in (1)-(5) above or is not sent to the Settlement Administrator, via mail or email (as described below), by the Objection Date (i.e., **Date** – which is 30 days before the date first set for the Final Approval Hearing).

To be timely, the Notice of Objection must be postmarked (or emailed) to the Settlement Administrator at the mailing address (or email address) below on or before [Date] (the “Objection Date”). Notices of Objection postmarked (or emailed) after this date may be disregarded.

If you choose to submit a Notice of Objection via U.S. Mail:

Francine McCumber et al. v. Invitation Homes, Inc. Class Action
c/o [INSERT SETTLEMENT ADMINISTRATOR]
[INSERT MAILING ADDRESS]

If you choose to submit a Notice of Objection via email:

[INSERT SETTLEMENT ADMINISTRATOR’S EMAIL ADDRESS]

The subject line of the email must state: “Notice of Objection Re: *Francine McCumber et al. v. Invitation Homes, Inc. Class Action*”

Class Members who fail to submit a timely and valid Notice of Objection shall be deemed to have waived any objections and shall be foreclosed from making any objections to the Settlement.

NEXT STEPS

I. The Court’s Final Approval Hearing

The Court will hold a Final Approval Hearing on [REDACTED] at [REDACTED] .m. in the United States District Court for the Northern District of Texas, Courtroom 1516, 1100 Commerce Street, Room 1520, Dallas, TX 75242, to consider the fairness, adequacy and reasonableness of the proposed Settlement, including without limitation: Class Counsel Fees, Class Counsel Costs, Class Representative Service Awards, Settlement Administration Costs, Debt Relief, and Individual Settlement Payments to Participating Class Members.

The Court may reschedule the Final Approval Hearing without further notice to Class Members. Class Members are advised to confirm the hearing date with Class Counsel if they intend to appear at the Final Approval Hearing.

II. How to Obtain Additional Information

This Notice summarizes the proposed Settlement. If you have questions about the Settlement, you can contact the Settlement Administrator at:

Francine McCumber et al. v. Invitation Homes, Inc. Class Action
c/o [INSERT SETTLEMENT ADMINISTRATOR]
[INSERT MAILING ADDRESS]
[INSERT PHONE NUMBER]
[INSERT EMAIL ADDRESS]

You can also find this and other useful information at the informational website created for this settlement, which is at [WWW.ADDRESS.COM].

You also can request a copy of the full Settlement Agreement from the Settlement Administrator.

You may also contact Class Counsel with any questions:

Craig Nicholas, Esq.
Alex Tomasevic, Esq.
Nicholas & Tomasevic, LLP
225 Broadway, 19th Floor
San Diego, CA 92101
Tel: 619-325-0496
cnicholas@nicholaslaw.org
atomasevic@nicholaslaw.org

PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, INVITATION HOMES, INC. OR ITS ATTORNEYS TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

FRANCINE McCUMBER, ET AL.

Plaintiffs,

v.

INVITATION HOMES, INC., a Maryland
corporation

Defendant.

Case No. 3:21-cv-02194-B

Judge Jane J. Boyle

**[PROPOSED] ORDER
GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiffs Francine McCumber, Erin Bird, Melissa Lynch, La Shay Harvey, Maryah Marciniak, Brian Majka, Chad Whetman, Tracy White, Rachel Osborn, Teresa Kerr, and Jose Rivera ("Plaintiffs") have applied to this Court for an order preliminarily approving the settlement of this action in accordance with a Joint Stipulation of Class Action Settlement and Release (the "Settlement" or "Settlement Agreement"), which, together with the exhibits thereto, sets forth the terms and conditions for a proposed settlement and dismissal of this pending action with prejudice upon the terms and conditions set forth therein; and

WHEREAS, the Court has read and considered Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, the Settlement Agreement, and the exhibits and declarations thereto;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Preliminary Approval Order incorporates by reference the definitions in the Settlement Agreement, and all terms defined therein shall have the same meaning in this Preliminary Approval Order as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the Action and all acts within the Action, and over all the Parties to the Action, including Plaintiffs, Class Members, and Defendant.

3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate, and reasonable. Indeed, the Court recognizes the significant value of the debt relief and monetary recovery provided to Class Members and finds that such recovery is fair, adequate, and reasonable when balanced against further litigation related to liability and damages issues. It appears that the Parties have conducted extensive and costly investigation, formal and informal discovery, research, and litigation such that Class Counsel and defense counsel are able to reasonably evaluate their respective positions at this time. It further appears to the Court that the proposed Settlement, at this time, will avoid substantial additional costs by all Parties, as well as avoid the risks and delay inherent to further prosecution of the Action. It also appears that the Parties reached the Settlement as the result of intensive, serious, and non-collusive, arms-length negotiations facilitated by two experienced and neutral mediators. Thus, the Court finds on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. Accordingly, Plaintiffs' Motion for Preliminary Approval of Class Action Settlement is hereby **GRANTED**.

4. For purposes of this Settlement only, the Court hereby conditionally certifies a class of Class Members, consisting of the following Class:

All of Defendant's (i) Arizona tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017,

and the Preliminary Approval Order; (ii) California tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and the Preliminary Approval Order; (iii) Colorado tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and the Preliminary Approval Order; (iv) Florida tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Order; (v) Georgia tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2015, and the Preliminary Approval Order; (vi) Illinois tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2011, and the Preliminary Approval Order; (vii) Nevada tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Order; (viii) North Carolina tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and the Preliminary Approval Order; (ix) Tennessee tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2015, and the Preliminary Approval Order; (x) Texas tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2019, and August 31, 2019; (xi) Washington tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and the Preliminary Approval Order.

The Court finds that the requirements of Rule 23(a) have been satisfied. First, the proposed Class is sufficiently numerous, consisting of tens of thousands of individuals that would be impracticable to join separately or individually. Second, Plaintiffs, as former tenants of Defendant, have claims typical of the claims of the Class. Third, Plaintiffs and Class Counsel have no apparent conflicts with the Class and have demonstrated that they will adequately represent the class members' interests.

With respect to commonality, Plaintiffs have established that this case raises at least one common question of law or fact, including how Defendant set its standardized late fees and whether Defendant's standardized late fees were reasonable.

With respect to Rule 23(b), the Court further finds that certification is appropriate under 23(b)(3). Plaintiffs' claims satisfy Rule 23 (b)(3)'s "predominance" and "superiority" prongs.

Whether Defendant's standard late fees were reasonable or the product of a reasonable endeavor to estimate damages from the late payment of rent are common questions that predominate over any individualized ones. Class treatment is superior to thousands of mini actions because some claims may be quickly surpassed by the costs and other burdens of litigation. Judicial efficiency and the possibility of inconsistent judgments further support certification.

Should for whatever reason the Settlement not become final, the fact that the Parties were willing to stipulate to certification of the Class as part of the Settlement shall have no bearing on, nor be admissible in connection with, the issue of whether a class should be certified in a non-settlement context.

5. The rights of any potential dissenters to the proposed Settlement are adequately protected in that they may exclude themselves from the Settlement of the Released Claims, or they may object to the Settlement of the Released Claims and appear before this Court. However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of Settlement.

6. The Court approves, as to form and content, the proposed Notice of Class Action Settlement to Class Members and finds that the method selected for communicating the preliminary approval of the Settlement to Class Members is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to notice, and therefore satisfies due process.

7. For Settlement purposes only, the Court hereby appoints Plaintiffs Francine McCumber, Erin Bird, Melissa Lynch, La Shay Harvey, Maryah Marciniak, Brian Majka, Chad Whetman, Tracy White, Rachel Osborn, Teresa Kerr, and Jose Rivera as Class Representatives in the Action. Further, the Court preliminarily approves Service Awards to these Class

Representatives in a collective total amount not to exceed Fifty-Five Thousand Dollars (\$55,000) – i.e., \$5,000 to each Plaintiff.

8. For Settlement purposes only, the Court hereby appoints Craig Nicholas and Alex Tomasevic of Nicholas & Tomasevic, LLP as Class Counsel for Class Members, who it finds to be adequate counsel with substantial experience litigating similar consumer class actions. Further, the Court preliminarily approves a Class Counsel Fees not to exceed Two Million Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$2,475,000). The Court also preliminarily approves a Class Counsel Costs not to exceed Thirty Thousand Dollars (\$30,000). The Class Counsel Fees and Class Counsel Costs will be subject to final approval of the Court.

9. The Court hereby appoints Angeion Group as the Settlement Administrator to administer the Notice of Settlement pursuant to the terms in the Settlement Agreement. The Settlement Administrator Costs will be subject to final approval of the Court.

10. No later than 45 calendar days after the entry of this Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class Information (as defined in the Settlement Agreement). No later than 14 calendar days after receipt of the Class Information, the Settlement Administrator shall use the Class Information to mail the Notice of Settlement to Class Members after conducting a national change of address search and a skip trace for the most current address of all Class Members and will update such addresses as necessary.

11. No later than 30 calendar days before the first date set for the Final Approval Hearing (i.e., the Opt-Out Date), any Class Member requesting exclusion from the Settlement must submit his/her Request for Exclusion by mail or email to the Settlement Administrator as instructed in the Notice of Class Action Settlement. If the Court finally approves this Settlement, Class Members who fail to submit a timely and valid Request for Exclusion on or before the Opt-Out

Date shall be Class Members bound by all terms of the Settlement and the Final Approval Order entered in the Action. To be valid, the Request for Exclusion must: (1) contain the full name, address, and last four digits of the social security number of the person requesting exclusion; (2) be signed by the person requesting exclusion (if mailed); and (3) state in substance: “I wish to exclude myself from the Settlement in the action titled *Francine McCumber et al. v. Invitation Homes, Inc.*, pending in the United States District Court for the Northern District of Texas, Case No. 3:21-CV-2194-B. I understand that by requesting to be excluded, I will receive no money from the Settlement.” Any Class Members who submit a timely and valid Request for Exclusion from the Class will not be entitled to any monetary recovery under the Settlement and will not be bound by the terms of the Settlement Agreement as it relates to the Released Claims. Any Class Members who submit a timely and valid Request for Exclusion from the Class will not have any right to object, appeal, or comment on the Settlement.

12. No later than 30 calendar days before the first date set for the Final Approval Hearing (i.e., the Objection Date), any Class Member wishing to object to the Settlement must submit his/her Notice of Objection by mail or email to the Settlement Administrator as instructed in the Notice of Class Action Settlement. Class Members who fail to submit a timely and valid Notice of Objection shall be deemed to have waived any objections and shall be foreclosed from making any objections to the Settlement.

13. The Final Approval Hearing shall be held on _____, 2023, at ____:____ a.m. / p.m., in the United States District Court for the Northern District of Texas, Courtroom 1516, 1100 Commerce Street, Room 1520, Dallas, TX 75242, to consider the fairness, adequacy and reasonableness of the proposed Settlement, including without limitation the: Class Counsel Fees,

Class Counsel Costs, Class Representative Service Awards, Settlement Administration Costs, Debt Relief, and Individual Settlement Payments to Participating Class Members.

14. This Settlement is not a concession or admission and shall not be used against Defendant or any of the Released Parties as an admission or indication with respect to any claim of any fault or omission by Defendant or any of the Released Parties. Whether the Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be: (a) construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant or any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (b) disclosed, referred to, or offered or received in evidence against any of the Released Parties in any further proceeding in the Action, or in any other civil, criminal or administrative action or proceeding, except for purposes of enforcing the Settlement. The Court's findings are for purposes of conditionally certifying the Class Members in the context of this Settlement and will not have any claim or issue or evidentiary preclusion or estoppel effect in any other action against Defendant or any of the Released Parties or in this litigation if the Settlement is not finally approved. If for any reason the Court does not execute and file a Final Approval Order, or if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason whatsoever, the Settlement Agreement and all evidence and proceedings had in connection therewith shall be without prejudice to the *status quo ante* rights of the Parties to the Action, as more specifically set forth in the Settlement Agreement, and this Preliminary Approval Order shall be rendered null and void and shall be vacated.

15. Pending further orders of this Court, all proceedings in this matter except those contemplated in this Preliminary Approval Order and in the Settlement Agreement are stayed.

16. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to Class Members.

IT IS SO ORDERED.

The Honorable Jane J. Boyle
United States District Judge