

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

MARIA CAMILA VALENCIA RIOS,  
AQUARIUS FILALI, and NADJI FILALI,  
*on behalf of themselves and all similarly situated  
individuals,*

Plaintiffs,

v.

Civil Action No. 3:25-cv-00474-REP-MRC

BELVEDERE NRDE, LLC, PEGASUS  
RESIDENTIAL, LLC, and GLENMOOR OAKS  
NRDE, LLC,

Defendant.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs, on behalf of themselves and the Settlement Class Members, by counsel, submit this Memorandum in Support of their Motion for Preliminary Approval of the Class Settlement.

**I. INTRODUCTION**

Plaintiffs filed this Class Action against Defendants Pegasus Residential, LLC (“Pegasus”), Belvedere NRDE, LLC (“Belvedere”), and Glenmoor Oaks NRDE, LLC (“Glenmoor Oaks”) (collectively, “Defendants”), challenging their use of “junk fees” to boost their profits. Junk fees are commonly defined as “add-on charges that provide little to no value in exchange” for the price. Luke Herrine, *Unfairness, Reconstructed*, 42 Yale J. on Reg. 95, 122 (2025). Businesses use these fees to slowly drive-up the cost on consumers (and the profits for themselves)—often in an unfair, illegal and deceptive manner. As the Federal Trade Commission recently explained, “[m]isleading

fees are prohibited,” and businesses “can’t lie about the fees you charge.”<sup>1</sup> Instead, businesses must “[t]ell the truth when it comes to fee-related information that matters, like what’s being charged and why.” *Id.*

Plaintiffs alleged that Defendants made several misrepresentations and conducted other deceptive acts and practices related to the assessment of three tenant fees in their form lease agreements and lease applications: a “Community Fee”; a “Pest Fee”, and a “Lease Administration Fee” (collectively, the “Disputed Fees”). Plaintiffs alleged that Defendants’ conduct violates the Virginia Consumer Protection Act (“VCPA”) and Virginia Residential Landlord Tenant Act (“VRLTA”) because they did not tell the truth about certain fees imposed on tenants at the properties throughout the Commonwealth of Virginia. Plaintiffs also alleged that these Disputed Fees are prohibited by Virginia law. Plaintiffs alleged that Defendants engaged in this scheme to increase their profits while advertising their units at a lower rental price, thereby luring unsuspecting consumers into leases packed with the Disputed Fees for services their rental payments are already supposed to guarantee. As multiple reports have now found, this practice has only compounded the rent burden on low- and middle-income Americans, depriving them of the financial mobility needed to advance up the socioeconomic ladder.<sup>2</sup> These additional fees also compound the eviction crisis.

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<sup>1</sup> Federal Trade Commission, *Getting to the bottom line: The FTC’s bipartisan Junk Fees Rule and your business*, available at: <https://www.ftc.gov/business-guidance/blog/2024/12/getting-bottom-line-ftcs-bipartisan-junk-fees-rule-your-business>.

<sup>2</sup> See *Federal Data Shows Many Virginians are ‘Rent Burdened’*, Va. Public Radio (Sept. 24, 2025), <https://www.wvtf.org/news/2025-09-24/federal-data-shows-many-virginians-are-rent-burdened> (reporting based on federal data that “four out of 10 people who are renting in Virginia cannot realistically afford their rent” and describing Virginia’s “outsized eviction rate”); see also *Nearly Half of Renter Households are Cost-Burdened, Proportions Differ by Race*, U.S. Census Bureau (Sept. 12, 2024), <https://www.census.gov/newsroom/press-releases/2024/renter-households-cost-burdened-race.html> (last visited Oct. 1, 2025).

As federal data has shown, these fees add up to create a disproportionate burden on Virginians—particularly low- and middle-income Virginians—that deprives them of funds to pay other expenses, to save for a home, and to move up the socioeconomic ladder.<sup>3</sup> This Settlement seeks to compensate the tenants at these properties for the damages they have suffered due to this conduct.

After several months of litigation and discovery, including exchanging and responding to written discovery, a contested motion for protective order, several depositions, and briefing on class certification, Plaintiffs and Defendants attended a settlement conference with United States Magistrate Judge Mark R. Colombell. With the assistance of Judge Colombell, including multiple follow-up discussions, Plaintiffs and Defendants entered into a Settlement Agreement and Release (the “Settlement Agreement” or “Agreement”), which the parties have attached to the Motion for Preliminary Approval. The proposed settlement affords significant relief to the Settlement Class Members by creating a \$3,862,000 Settlement Fund, comprising contributions from both the management company, Pegasus, and the Landlord Defendants, Belvedere and Glenmoor, as well as other affiliated landlords who will receive releases of claims against them. (Settlement Agreement §§ 1.25, 4.7.)

From this Settlement Fund, all tenants at residential properties in Virginia managed by Pegasus who paid any of the Disputed Fees between June 23, 2023, and January 29, 2026 (the “Class Period”), will receive pro rata payments from Pegasus’s contribution to the Fund. Those residents at Belvedere and Glenmoor, as well as eight other properties in Virginia, who paid any of the Disputed Fees within the relevant period will also receive an additional payment from the

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<sup>3</sup> See *Federal Data Shows Many Virginians are ‘Rent Burdened’*, Va. Public Radio (Sept. 24, 2025), <https://www.wvtf.org/news/2025-09-24/federal-data-shows-many-virginians-are-rent-burdened>; *Nearly Half of Renter Households are Cost-Burdened, Proportions Differ by Race*, U.S. Census Bureau (Sept. 12, 2024), <https://www.census.gov/newsroom/press-releases/2024/renter-households-cost-burdened-race.html> (last visited Oct. 1, 2025).

contribution by their landlords to the Fund. In addition to these amounts, Defendants have also agreed to halt collection of the Community Fee and Lease Administration Fee into the future. (Agreement § 4.2.) In return for this consideration, the Settlement Class Members will release their claims under the VCPA and VRLTA that arose during the Class Period related to the Disputed Fees or any other so-called “junk fees” that could have been asserted in this Litigation. Notably, Class Members will not release claims against the landlords who did not contribute to the Settlement Fund, and they will be advised of this fact in the Class Notice.

Under Federal Rule of Civil Procedure 23, Plaintiffs and Defendants now seek preliminary approval of the proposed class action settlement. The parties request that the Court preliminarily certify the Pegasus Settlement Class and Participating Landlords Settlement Class and the Settlement Agreement by entering the proposed Order Preliminary Approving Settlement and Directing Notice to Class. A final motion and proposed order supporting the fairness of the proposed class action settlement will be submitted (1) after the Settlement Class Members have received notice providing them with an opportunity to object or opt-out, and (2) before the Court’s Final Approval Hearing.

For the reasons explained below, the proposed class action settlement is reasonable, fair, and adequate, and the Court should preliminarily approve it.

## **II. SETTLEMENT TERMS**

### ***a. The Settlement Class***

Under the Settlement Agreement, the parties agreed to resolve the claims against Pegasus on behalf of the following class (the “Pegasus Settlement Class”):

All consumers: (1) who were or are tenants of Pegasus-Managed Properties and made a payment of any Disputed Fee from June 23, 2023 through January 29, 2026..

(Settlement Agreement § 1.28.)

The parties have further agreed to resolve the claims against Belvedere, Glenmoor Oaks, and eight other affiliated properties on behalf of the following class (the “Participating Landlords Settlement Subclass”):

All consumers: (1) who were or are tenants at Participating Landlords Properties and paid any Disputed Fee from June 23, 2023 through January 29, 2026.

(Agreement § 1.29.)

Based on a review of their records, Defendants estimate that there are approximately 10,363 leases, or 24,858 individual consumers, in the Pegasus Settlement Class and 4,649 leases, or 8,697 individual consumers, in the Participating Landlords Settlement Subclass.

***b. Consideration to the Settlement Class***

The proposed class action settlement provides direct payments to consumers affected by the very conduct at issue in this Litigation. Plaintiffs achieved the proposed settlement after the parties briefed two motions to dismiss and a motion for protective order, as well as initial briefing on class certification, and after they had engaged in extensive discovery, including multiple depositions, document productions, third party subpoenas and written discovery. The Settlement also follows a mediation and several follow-up settlement discussions before the Honorable Mark R. Colombell, United States Magistrate Judge. At each juncture, Defendants denied Plaintiffs’ allegations of wrongful conduct and damages, sought to dismiss the claims and asserted several defenses to the same, and denied that this matter satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23. Nonetheless, Plaintiffs were able to negotiate a settlement that will provide a direct financial benefit to consumers who paid the Disputed Fees during the Class Period. The Settlement has also resulted in Defendants agreeing to halt collection of two of the Disputed Fees as part of the proposed final approval order.

Specifically, Pegasus will contribute \$2,650,000 to the Settlement Fund, while the Participating Landlords Released Parties will contribute \$1,212,000. (Settlement Agreement §§ 1.16, 1.22, 4.1, 4.7.) After accounting for notice and administration costs (approximately \$20,000), attorneys' fees (up to \$1,287,333), and Plaintiffs' service awards (up to \$45,000 total),<sup>4</sup> and subject to court approval, each Pegasus Settlement Class Member will receive a payment of approximately \$79.40, while each Participating Landlords Settlement Subclass Member will receive an estimated total of \$141.00 (\$79.40 from Pegasus and \$61.60 from the Participating Landlords).<sup>5</sup> As many class members are also co-tenants in the same household, each multi-tenant household affected by the alleged misconduct in this case will receive at least \$158.80, if they are in the Pegasus Settlement Class, and \$282.00, if they are in the Participating Landlords Settlement Subclass. Below is a summary of the amounts each Class Member can expect depending on the number of tenants on their lease agreement:

<b>Settlement Class</b>	<b>Tenants in Household</b>	<b>Approximate Total Payment for Household</b>
Pegasus Settlement Class	1	\$79.40
Pegasus Settlement Class	2	\$158.80
Pegasus Settlement Class	3	\$238.20
Participating Landlords Settlement Subclass	1	\$141.00
Participating Landlords Settlement Subclass	2	\$282.00
Participating Landlords Settlement Subclass	3	\$423.00

<sup>4</sup> Under the Settlement Agreement, these costs will be divided equally among the Pegasus's and the Participating Landlords' respective contributions to the Settlement Fund (for a total deduction per contribution of up to \$676,166.50), before the remaining amounts are divided pro rata among the Settlement Class Members based on the Class or Subclass of which they are part. (Agreement § 4.7.)

<sup>5</sup> Settlement payments are paid out to each individual tenant instead of by lease because the VCPA and VRLTA both provide for claims on a per-person basis, meaning each individual class member has their own claim that entitles them to damages.

The relief provided by the proposed class action settlement is significant. The Settlement Class Members will receive a cash payment automatically. And they will all benefit from Defendants' agreement to halt collection of two of the Disputed Fees, including a Lease Administration Fee of several hundred dollars, into the future as part of their current tenancy.

***c. Class Action Fairness Notice***

Defendants will provide notice of the proposed settlement under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"). The CAFA Notice will be sent to the Attorney General of the United States and to the attorneys general of all states and the District of Columbia and all U.S. territories where Class Members reside. (Settlement Agreement § 3.2.5.)

***d. Attorneys' Fees, Costs, and Service Awards***

Class Counsel will apply for attorneys' fees in an amount approved by the Court, but not to exceed one third of the Settlement Fund. (*Id.* § 4.5.) Plaintiffs also will apply for a \$15,000 service award each (\$45,000 total) to compensate them for their efforts in prosecuting this case including, but not limited to, serving as class representatives, retaining counsel, sitting for depositions, and providing information for other discovery. (*Id.* § 4.6.)

***e. Release of Claims***

In return for this consideration, Pegasus Settlement Class Members will provide a release for Pegasus and its parents and subsidiaries that is narrowly tailored to the claims in this case, namely: "all claims, arising between June 23, 2023 and January 29, 2026, under the Virginia Consumer Protection Act and the Virginia Residential Landlord Tenant Act related to the Disputed Fees and any other fee outside of rent that could have been alleged as a 'junk fee.'" (*Id.* § 4.3.). Those tenants at properties owned Participating Landlords will also release the same claims as to those landlords. (*Id.* § 4.4.) Class Members whose landlords did not contribute to the Fund will

not release any of their claims against their landlords and will receive notices specifying that those claims are not released. (*See id.* §§ 4.3, 4.4, and ex. A.)

***f. Notice Plan and Opt-Outs***

Notice will be by both regular mail and electronic mail to the Settlement Class Members. If approved by the Court, the Settlement Administrator, American Legal Claims Services, will mail the proposed Notice attached to the Agreement as Exhibit A to the Pegasus Settlement Class Members whose landlords did not contribute to the Settlement Fund, while mailing the Notice attached to the Agreement as Exhibit B to those who are part of the Participating Landlords Settlement Subclass. (*Id.* § 3.2.2.) These Notices are identical, except that the first Notice will clarify to the recipients that they are not releasing claims against their landlords. The Administrator will also provide email Notice to those Class Members for whom it is able to obtain email addresses. (*Id.*)

If a Notice is returned as undeliverable, the Settlement Administrator will re-mail the Notice via standard U.S. Mail, postage prepaid, to those Settlement Class Members for whom an alternative mailing address can be reasonably located. (*Id.* § 3.2.2.) The Settlement Administrator will first attempt to re-mail the Notice if it received an address change notification from the U.S. Postal Service. (*Id.*) If an address change notification form is not provided, the Settlement Administrator may attempt to obtain an updated address using reasonable and appropriate methods to locate an updated address. (*Id.*)

Additionally, the Settlement Administrator will create and maintain a Settlement Class Website that will post important settlement documents, such as the Amended Complaint, the Class Notices, the Settlement Agreement, and the Preliminary Approval Order. (*Id.* § 3.2.3.) In addition, the Settlement Class Website will include procedural information regarding the status of the Court-approval process, such as an announcement when the Final Approval Hearing is scheduled, when

the Final Judgment and Order has been entered, when the Effective Date is expected or has been reached, and when payments will likely be mailed. (*Id.*)

Any Settlement Class Member who wants to be excluded from the class must advise the Settlement Administrator in writing, and his or her opt-out request must be postmarked no later than sixty days after the initial mailing of the Class Notices. (*Id.* § 3.2.6.) The Settlement Class Member's opt-out request must contain the Settlement Class Member's signature, full name, address, and telephone number. (*Id.*) Further, the Settlement Class Member must include a statement that "I do not want to be part of the Settlement Class in *Valencia v. Belvedere*," or words to that effect. (*Id.*) Requests for exclusion that do not comply with any of these requirements are invalid.

### III. ARGUMENT

#### a. Certification Standard

Courts within the Fourth Circuit favor resolution of litigation before trial. *See, e.g., S.C. Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) ("The voluntary resolution of litigation through settlement is strongly favored by the courts." (citing *Williams v. First Nat'l Bank*, 216 U.S. 582 (1910))). Settlement spares the litigants the uncertainty, delay, and expense of a trial and appeals while reducing the burden on judicial resources. As the court observed in *Stone*:

In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strains such litigation imposes upon already scarce judicial resources.

749 F. Supp. at 1423 (quoting *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir. 1980)). Rule 23 permits courts to preliminarily certify a class to carry out a settlement of the case. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 793–94 (3d Cir. 1995) (collecting cases). A court may grant preliminary approval of a class action where

the proposed class satisfies the four prerequisites of Rule 23(a) (*i.e.*, numerosity, commonality, typicality, and adequacy of representation), as well as one of the three subsections of Rule 23(b). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997). If the Court determines that a settlement class should be certified, it then should follow a three-step process before granting final approval of a proposed settlement. *Levell v. Monsanto Rsch. Corp.*, 191 F.R.D. 543 (S.D. Ohio 2000).

First, the Court should preliminarily approve the proposed settlement. *Id.* at 547. Second, class members must be given notice of the proposed settlement. *Id.* Third, a final fairness hearing must be held, after which the Court should decide whether the proposed settlement is fair, adequate, and reasonable to the class as a whole and consistent with the public interest. *Id.* This protects the class members' procedural due process rights and enables the Court to fulfill its role as the guardian for the class's interests. *Id.* Approval of a class action settlement is committed to the "sound discretion of the district courts to appraise the reasonableness of particular class-action settlements on a case-by-case basis, in light of the relevant circumstances." *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001). Additionally, "there is a strong initial presumption that the compromise is fair and reasonable." *Id.*

Rule 23 governs the certification of class actions. In considering a settlement at the preliminary approval stage, the first question for the Court is whether a settlement class satisfies Rule 23's requirements and thus may be conditionally certified for settlement purposes. Under Rule 23(a), one or more members of a class may sue as representative parties on behalf of a class if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are

typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the class's interests. Fed. R. Civ. P. 23(a).

Here, the parties have reached a proposed agreement on behalf of the Settlement Classes, which should be certified.

***b. The Settlement Class Meets the Certification Elements***

*i. The Settlement Class satisfies Rule 23(a)*

1. Numerosity

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” There is no set minimum number of potential class members that fulfills the numerosity requirement. *See Holsey v. Armour & Co.*, 743 F.2d 199, 217 (4th Cir. 1984). But where the class numbers 25 or more, joinder is usually impracticable. *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass’n*, 375 F.2d 648, 653 (4th Cir. 1967) (holding 18 class members sufficient).

The numerosity requirement is easily met here. As detailed above, there are approximately 24,858 Pegasus Settlement Class Members and 8,697 Settlement Subclass Members, including Plaintiffs. Joinder of this many individuals is neither possible nor practical, so the first prong of the certification test has been met. *See Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 425 (4th Cir. 2003).

2. Commonality

Rule 23(a)(2) requires that the court find that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “Commonality is satisfied where there is one question of law or fact common to the class, and a class action will not be defeated solely because of some factual variances in individual grievances.” *Jeffreys v. Commc’ns Workers of Am., AFL-CIO*, 212 F.R.D. 320, 322 (E.D. Va. 2003). And the common issue must be such that “determination of its

truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* The standard is a liberal one that cannot be defeated by the mere existence of some factual variances in individual grievances among class members. *Id.* at 322; *Mitchell-Tracey v. United Gen. Title Ins.*, 237 F.R.D. 551, 557 (D. Md. 2006) (finding that factual differences among class members will not necessarily preclude certification “if the class members share the same legal theory”).

Here, by definition, the Settlement Class Members share questions of law and fact. The Settlement Class Members allege that Defendants charged all of them at least one of the Disputed Fees, in connection with which they made the same misrepresentations in form lease agreements that were published to each Class Member. Thus, the practices at issue for Plaintiffs’ claims are identical across all Settlement Class Members. The theories of liability as to the Settlement Class Members therefore arise from the same practices and present basic questions of law and fact common to all members of the Settlement Classes. *See* Fed. R. Civ. P. 23(a).

### 3. Typicality

In the typicality analysis, “[a] class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001). “Nevertheless, the class representatives and the class members need not have identical factual and legal claims in all respects. The proposed class satisfies the typicality requirement if the class representatives assert claims that fairly encompass those of the entire class, even if not identical.” *Fisher v. Va. Elec. & Power Co.*, 217 F.R.D. 201, 212 (E.D. Va. 2003). “The typicality requirement mandates that Plaintiffs show (1) that their interests are squarely aligned with the interests of the class members and (2) that their claims arise from the same events and are premised on the same legal theories as the claims of the class members.” *Jeffreys*, 212 F.R.D. at 322. Commonality and typicality tend to merge because both “serve as guideposts for

determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 n.5 (2011).

Plaintiffs' class claims arise from Defendants' alleged misrepresentations and deceptive acts in connection with fees assessed in form lease agreements at all Pegasus-managed properties in Virginia. As discussed in the previous section, these are the same claims advanced on behalf of the Settlement Class Members, and Plaintiffs are members of the Pegasus Settlement Class and the Settlement Subclass. Thus, in seeking to prove their claims, Plaintiffs will advance the claims of all Settlement Class Members. This is the hallmark of typicality. *See Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2001) (citing Fed. R. Civ. P. 23(a)(3)).

#### 4. Adequacy of Representation

"Finally, under Rule 23(a)(4), the class representatives must adequately represent the interests of the class members, and legal counsel must be competent to litigate for the interests of the class." *Jeffreys*, 212 F.R.D. at 323. "Basic due process requires that the named plaintiffs possess undivided loyalties to absent class members." *Fisher*, 217 F.R.D. at 212 (citing *Broussard v. Meineke Disc. Muffler Shops*, 155 F.3d 331, 338 (4th Cir. 1998)).

The adequacy of representation requirement is met here. Plaintiffs understood and accepted the obligations of class representative, has adequately represented the interests of the putative class, and has retained experienced counsel who have handled many consumer-protection class actions. Plaintiffs' counsel has handled several consumer-protection and complex class actions, typically as lead or co-lead counsel, including in cases involving the same kind of disputed fees at issue here. *See McKay v. Columbia Debt Recovery*, No. 1:25-cv-520-WBP, ECF No. 48 (E.D. Va. Aug. 29, 2025) (Porter, M.J.) (approving Plaintiffs' counsel as class counsel in case

based on collection of interest on tenant debts that was not authorized by lease agreements or Virginia law); *Begum v. Fair Collections & Outsourcing, Inc.*, No. 1:24-cv-893-WEF, ECF No. 83 (E.D. Va. Aug. 18, 2025) (Fitzpatrick, M.J.) (approving Plaintiffs' counsel as class counsel in a case based on collection of early termination fees by tenant debt collector); *Perucci v. Hunter Warfield, Inc.*, No. 1:23-cv-872-WEF, ECF No. 45 (E.D. Va. May 20, 2024) (Fitzpatrick, M.J.) (approving Plaintiffs' counsel as class counsel in case based on collection of early termination and convenience fees by tenant debt collector); *see also Dreher v. Experian Info. Sols., Inc.*, No. 3:11-cv-00624-JAG, 2014 WL 2800766, at \*2 (E.D. Va. June 19, 2014); *Clark v. Trans Union, LLC*, No. 3:15-cv-391, 2017 WL 814252, at \*13 (E.D. Va. Mar. 1, 2017) (collecting cases and stating, "This Court has repeatedly found that [proposed Class Counsel] is qualified to conduct such litigation. . . . This Court echoes the sentiments previously stated about [proposed Class Counsel] because they pertain here with equal vigor." (citations omitted)); *Burke v. Seterus, Inc.*, No. 3:16-cv-785, ECF No. 41, Fairness Hr'g Tr. at 9:19-22 (E.D. Va. Mar. 12, 2018) ("Experience of counsel on both sides in this case is extraordinary. Ms. Kelly and Ms. Nash and their colleagues are here in this court all the time with these kinds of cases and do a good job on them."); *Heath v. Trans Union*, No. 3:18-cv-720, ECF No. 61, Prelim. Approval Hr'g Tr. at 9:8-9 (E.D. Va. Aug. 6, 2019) (Kelly Guzzo's "reputation in this district, and I am sure in others, [is] sterling"); *Turner v. Zestfinance, Inc.*, No. 3:19-cv-293, ECF No. 95, Prelim. Approval Hr'g Tr. at 13:1-4, (E.D. Va. Feb. 24, 2020), ("[W]e have Ms. Kelly . . . here, who are well known to me as being experts in this field, but it looks like the other class counsel is like the all-star team of consumer litigation."); *In re Think Finance*, No. 17-33964, ECF No. 1432, Tr. of Proceedings at 40:18-21 (Bankr. N.D. Tex.) (the court "had two or three sets of law students that sat through this, and each time I told them that when you come into this hearing you'll see some of the best lawyers in America, and I

still feel like that today”); *Galloway v. Williams*, No. 3:19-CV-470, 2020 WL 7482191, at \*8 (E.D. Va. Dec. 18, 2020) (finding that class counsel, including the lawyers at Kelly Guzzo, PLC, “have extensive backgrounds in complex and class action litigation and consumer protection litigation”); *Gibbs v. TCV V, L.P.*, 3:19-cv-789, ECF No. 97, Fairness Hr’g Tr. at 139:10-17 (E.D. Va. Mar. 25, 2021) (“The representation by class counsel is certainly adequate. I don’t want to belabor the issue at the expense of folks, one, getting tired of hearing me, but, two, also maybe feeling a little too good about themselves. But it is the case that the track record here and the success of litigating complex cases, and specifically in tribal payday lenders, is, I think, as high as it gets in this country.”); *see also* Declaration of Kristi Kelly ¶¶ 8-9 (“Kelly Decl.”) (attached as Ex. 1).

Plaintiffs also meet Rule 23’s adequacy requirement. They understand and have accepted the obligations of class representative, have adequately represented the interests of the putative class members, and have retained experienced counsel who have handled many consumer-protection class actions. (Kelly Decl. ¶¶ 8–10, 16.) Plaintiffs have no antagonistic or conflicting interests with the Settlement Class Members. Plaintiffs and the Settlement Class Members both seek monetary relief for Defendants’ allegedly unlawful actions. Plaintiffs are members of the Settlement Class and have no conflicting interest with other Settlement Class Members. Plaintiffs also have been very active, including responding to discovery requests, sitting for depositions and participating in settlement efforts. (*See id.* ¶ 16.) As a result, the Settlement Class Members are adequately represented to meet Rule 23’s requirements.

*ii. The Settlement Class satisfies Rule 23(b)(3)*

The proposed settlement contemplates permitting opt-outs under Rule 23(b)(3). An action may be maintained as a class action if the four Rule 23(a) elements described above are satisfied, and in addition, “the Court finds that the questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and that a Class action

is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). Those factors are satisfied here.

1. Predominance

If the Settlement Class is to be certified under Rule 23(b)(3), the common issues of law and fact shared by the Settlement Class Members must “predominate” over individual issues. Rule 23(b)(3)’s predominance inquiry focuses on whether the proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 362 (4th Cir. 2004); *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 142 (4th Cir. 2001). This criterion is normally satisfied when there is an essential, common factual link between all class members and the defendants for which the law provides a remedy. *Talbott*, 191 F.R.D. 99, 105 (W.D. Va. 2000) (citing *Halverson v. Convenient FoodMart, Inc.*, 69 F.R.D. 331 (N.D. Ill. 1974)). And predominance exists where the resolution of class members’ individual claims depends on examining common conduct by a defendant. *Jeffreys*, 212 F.R.D. at 323 (finding predominance because class members’ claims were based on same acts by defendant and the determinative “question in each individual controversy” was common).

The predominance requirement is satisfied here for settlement purposes because, as explained above, the essential factual and legal issues for the Settlement Class Members’ claims are common and relate to standardized practices of Defendants in form lease agreements. *Talbott*, 191 F.R.D. at 105 (“Here, common questions predominate because of the standardized nature of [defendant’s] conduct.”). Nothing more is necessary to satisfy predominance in a settlement class.

2. Superiority

Finally, the Court should determine whether a class action is superior to other methods for the fair and efficient adjudication of this controversy under Rule 23(b)(3). The factors to be considered here in determining the superiority of the class mechanism are: (1) the interest in

controlling individual prosecutions; (2) the existence of other related litigation; (3) the desirability of concentrating the litigation in one forum; and (4) manageability.<sup>6</sup> *Hewlett v. Premier Salons Int'l, Inc.*, 185 F.R.D. 211, 220 (D. Md. 1997); *accord Newsome v. Up To Date Laundry, Inc.*, 219 F.R.D. 356, 365 (D. Md. 2004).

Efficiency is the primary focus in determining whether a class action is indeed the superior method of adjudicating the controversy. *Talbott*, 191 F.R.D. at 106. In examining these factors, it is proper for a court to consider the “inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually.” *Haynes v. Logan Furniture Mart, Inc.*, 503 F.2d 1161, 1165 (7th Cir. 1974).

In *Jeffreys*, for instance, the court found that because “the facts and issues involved are identical for all class members, class members have little incentive and few resources to pursue litigation on their own, the class members are dispersed over several states, and there are few manageability concerns, the class action is the best method of resolving the matter.” 212 F.R.D. at 323. The same is true here. The Settlement Class Members’ may not be aware they have individual claims and the recovery on an individual basis may be limited, especially when compared to the relief obtained by the settlement, thus providing support for the class action mechanism over individual litigation. *See Amchem*, 521 U.S. at 617 (“The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.” (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997))).

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<sup>6</sup> A trial court may disregard management issues in certifying a settlement class, but the proposed class must still satisfy the other requirements of Rule 23. *Amchem*, 521 U.S. at 620. Thus, this criterion is not material to the Court’s analysis in this posture.

A class action is superior to other available methods for the fair and efficient adjudication of the case because a class resolution of the issues described above outweighs the difficulties in management of separate, individual claims and allows access to the courts for those who might not gain such access standing alone, particularly given the challenges of finding and paying for a lawyer when considering the likely individual recovery. Moreover, apart from the fact that the proposed settlement allows a recovery of payments by the Settlement Class Members automatically, certification permits individual claimants to opt-out and pursue their own actions separately if they believe they can recover more in an individual suit. Thus, both predominance and superiority are satisfied. For these reasons, the Court should conditionally certify the Settlement Class for settlement purposes.

***c. The Settlement Satisfies the Requirements of Rule 23(e)(2)***

“Rule 23(e) of the Federal Rules of Civil Procedure obliges parties to seek approval from the district court before settling a class-action lawsuit.” *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 483 (4th Cir. 2020) (citing Fed. R. Civ. P. 23(e)). When a court “reviews a proposed class-action settlement, it acts as a fiduciary for the class.” *1988 Tr. for Allen Child. Dated 8/8/88 v. Banner Life Ins.*, 28 F.4th 513, 525 (4th Cir. 2022). “In fulfilling this role, the district court must conclude that a proposed settlement is ‘fair, reasonable, and adequate,’” which are the three requirements established by Rule 23(e)(2) of the Federal Rules of Civil Procedure. *Id.* (citing Fed. R. Civ. P. 23(e)(2)). “In determining whether a settlement is fair, reasonable, and adequate,” Rule 23(e)(2) requires the court to consider:

- (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:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorneys' fees, including timing of payments; and
  - (iv) any agreement required to be identified under Rule 23(e)(3);
- (D) the proposal treats class members equitably relative to each other.

*Galloway v. Williams*, 2020 WL 7482191, at \*4 (E.D. Va. 2020) (quoting Fed. R. Civ. P. 23(e)(2)).

In making this assessment, district courts are provided with “considerable deference” because “the court ‘is exposed to the litigants, and their strategies, position[s], and proofs, and is on the firing line and can evaluate the action accordingly.’” *Lumber Liquidators*, 952 F.3d at 484 (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 139 (2d Cir. 2000)).

*i. Plaintiff and Class Counsel Have Adequately Represented the Class.*

Rule 23(e)(2)'s first factor examines whether “the class representatives and class counsel have adequately represented the class.” Fed. R. Civ. P. 23(e)(2)(A). This assessment is “redundant of the requirements of Rule 23(a)(4) and Rule 23(g), respectively.” *In re Flint Water Cases*, 571 F. Supp. 3d 746, 780 (E.D. Mich. 2021) (quoting Albert Conte & Herbert Newberg, *Newberg on Class Actions* § 13:48 (5th ed. June 2021 update)). Rule 23's adequacy requirements are met if: “(1) the named plaintiff has interests common with, and not antagonistic to, the Class'[s] interests; and (2) the plaintiff's attorney is qualified, experienced and generally able to conduct the litigation.” *Gibbs v. Stinson*, 2021 WL 4812451, at \*16 (E.D. Va. Oct. 14, 2021) (quoting *Milbourne v. JRK Residential Am., LLC*, 2014 WL 5529731, at \*8 (E.D. Va. Oct. 31, 2014)).

This first factor is easily satisfied. Plaintiffs' interests and those of the Settlement Class Members are fully aligned as they were all subjected to the same alleged practices. *See, e.g., Stinson*, 2021 WL 4812451, at \*16 (finding that plaintiffs were adequate in a comparable case because they had "no interests antagonistic to the class's interest" and shared "identical interest of establishing Defendants' liability based on the same questions of law and fact").

Additionally, Class Counsel has been practicing in the field of consumer protection for nearly 20 years, and they believe that this settlement is an excellent result given the largely novel theories presented the likelihood of protracted litigation. (*See Kelly Decl.* ¶¶ 3–10, 17.) Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate. *See, e.g., In re MicroStrategy*, 148 F. Supp. 2d at 665.

Given the substantial relief afforded the proposed settlement—especially when contrasted against the risks associated with litigating this matter—it is fair and appropriate for approval. *See S.C. Nat'l Bank v. Stone*, 139 F.R.D. 335, 339 (D.S.C. 1991) (concluding fairness met where "discovery was largely completed as to all issues and parties," settlement discussions "were, at times, supervised by a magistrate judge and were hard fought and always adversarial," and those negotiations "were conducted by able counsel" with substantial experience).

*ii. Negotiations Were at Arm's Length and Involved a Respected Mediator.*

The second factor examines whether the settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B); *see also Flint Water Cases*, 571 F. Supp. 3d at 780 (explaining that the second factor requires courts to "consider whether the negotiations were conducted at arm's length with no evidence of collusion or fraud"). "Courts presume the absence of fraud or collusion unless there is evidence to the contrary." *Id.* (quoting *UAW v. Gen. Motors, Corp.*, 2006 WL 891151, at

\*21 (E.D. Mich. Mar. 31, 2006)). Here, no evidence suggests the presence of collusion or fraud between the parties.

To help confirm that negotiations were at arm's length, courts look at several other factors, including the presence of a mediator. As the leading class action treatise explains: "There appears to be no better evidence of [a truly adversarial bargaining process] than the presence of a third-party mediator." Conte & Newberg, *supra*, § 13:48; *see also Flint Water Cases*, 571 F. Supp. 3d at 780 ("highly experienced mediators" provide "ample protections in their roles").

Here, Plaintiffs and Defendants participated in a mediation before Judge Colombell, followed by multiple settlement discussions over the phone and teleconference, to help reach the terms of their agreement. (*See Kelly Decl.* ¶ 15.) The active involvement of Judge Colombell confirms that there was no collusion among the parties.

*iii. The Relief Provided to the Class is Adequate.*

Rule 23(e)(2)(C) requires the Court to consider whether the relief is adequate, considering:

(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).

Fed. R. Civ. P. 23(e)(2)(C). These subfactors overlap with the factors that the Fourth Circuit has held are required to evaluate a class settlement's fairness, reasonableness, and adequacy. *Lumber Liquidators*, 952 F.3d at 484 n.8 (citing *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991)). An analysis of each factor shows that this settlement is fair, reasonable, and adequate.

The first Rule 23(e)(2)(C) sub-factor requires the Court to evaluate the settlement against the costs, risks, and delay of trial and appeal. This factor strongly supports approval of the settlement. While Class Counsel strongly believes in the strength of this case, they also acknowledge that there are substantial risks associated with continued litigation. Most notably, the

claims presented in this litigation are based on previously unasserted theories of liability and faced persistent opposition from Defendants, including in motions to dismiss that were pending at the time of the Settlement. Were Defendants to dig in on their defenses, this case would involve substantial briefing on class certification and summary judgment, as well as a trial and appeals. Even assuming Plaintiffs succeeded in obtaining a judgment, moreover, Pegasus—a management company—has a lower net worth and cash flow and fewer real estate assets than its landlord clients that would make collection of any judgment from it more difficult. The settlement avoids this significant cost, risk, and time by providing significant, guaranteed settlement benefits to the Settlement Class Members now.

Rule 23(e)(2)(C)'s second sub-factor requires the Court to evaluate the effectiveness of any proposed method of distributing relief to the class. Here, the Settlement Class Members will receive between approximately \$190.50 and \$305.75 per person in the absence of any proof of their damages. This is important because “[t]he use of objective criteria to determine settlement distribution is a hallmark of fairness.” *Flint Water Cases*, 571 F. Supp. 3d at 781. Because the cash payment is automatic, this factor supports approving the settlement.

Rule 23(e)(2)(C)'s third sub-factor requires the Court to evaluate the request for attorneys' fees, including the timing of the request. The focus of this analysis is whether there are signs that “counsel sold out the class's claims at a low value in return for [a] high fee.” *Conte & Newberg, supra*, § 13:54. There are no such indications here. As outlined above, there is no sign that Class Counsel left any money on the negotiating table. Instead, they have obtained \$3,862,000 for the Settlement Fund. Compared with the likely recovery for the Settlement Class Members' individual claims, this is significant consideration for the Settlement Class Members.

It is also important to note that the attorneys' fee component of the settlement was only discussed after all other material settlement terms had been finalized. And the attorneys' fees were also negotiated under the supervision of Judge Colombell, who is experienced enough to notice if Class Counsel were compromising the class members' claims for their own benefit. *Flint Water Cases*, 571 F. Supp. 3d at 782. As to the timing of the attorney fee award request, "courts are to consider this to prevent situations in which the request for attorney fees is unknown and could upset the compensation to claimants at the time of final approval." *Id.* There is no such concern here as the proposed Notices to the Settlement Class will identify the requested attorneys' fees.

*iv. The Settlement Treats Class Members Equitably Related to Each Other.*

The final factor under Rule 23(e)(2) requires a court to consider whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D) (emphasis added). This factor considers whether class members have been treated in a fair and impartial manner, but "[t]here is no requirement that all class members in a settlement be treated equally." *Swinton v. SquareTrade, Inc.*, 454 F. Supp. 3d 848, 876 (S.D. Iowa 2020) (emphasis in original) (citation omitted). And when considering this factor, a court "must balance the claims of those with potentially substantial damages with those with potentially minimal or insignificant damages." *Id.* (citation omitted).

The settlement here achieves this balance. Settlement Class Members will receive an equal share of the Settlement Funds—after deducting approved fees, service awards, and settlement costs—depending on which parties they are releasing their claims against, with those individuals who are releasing claims against their landlords receiving more. Considering that Settlement Class Members were all similarly affected by Defendants' conduct, and that those receiving payments from only Pegasus's contribution to the Fund are preserving their claims against their landlords,

these payments are appropriately equal. Settlement Class Members, therefore, will be treated equitably relative to each other.

***d. The Proposed Notice and Notice Plan Satisfy Rule 23***

Following preliminary approval, class members must be given notice about the nature of the settlement and of their rights. Rule 23(e)(1) requires that: “The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Rule 23(c)(2)(B) sets forth the contents of a notice to be sent to members of a Rule 23(b)(3) class:

For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through an attorney if the member so desires; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on members under Rule 23(c)(3).

The proposed Class Notices, attached as Exhibits A and B to the Settlement Agreement, satisfy these requirements. (Settlement Agreement § 3.2.) Class Counsel negotiated separate notices based on the relief afforded to each Settlement Class Member so there would be no confusion about the benefits each Settlement Class Member would receive if their landlord was providing consideration and receiving a release as part of the Settlement.

The proposed notice program will provide individual direct notice and claim forms via U.S. mail, postage prepaid and email where the Settlement Administrator is able to obtain email addresses. (*Id.* § 3.2.2.) If notices are returned as undeliverable, the Settlement Administrator will re-mail the Notice via standard U.S. Mail, postage prepaid, to those Settlement Class Members for whom an alternative mailing address can be reasonably located. (*Id.*) The Settlement Administrator will first attempt to re-mail the Notice if it received an address change notification from the U.S. Postal Service. (*Id.*) If an address change notification form is not provided by the

U.S. Postal Service, the Settlement Administrator may attempt to obtain an updated address using reasonable and appropriate methods to locate an updated address. (*Id.*)

Additionally, the Settlement Administrator will post important settlement documents to the Settlement Class Website, such as the Amended Complaint, the Class Notices, the Settlement Agreement, and the Preliminary Approval Order. (*Id.* § 3.2.3.) In addition, the Settlement Class Website will include procedural information regarding the status of the Court-approval process, such as an announcement when the Final Approval Hearing is scheduled, when the Final Judgment and Order has been entered, when the Effective Date is expected or has been reached, and when payment will likely be mailed. (*Id.*)

The settlement's robust notice and administration plan will ensure the most Settlement Class Members receive the payments to which they are entitled. As the *Manual for Complex Litigation* recognizes, mail notice is the ideal method of informing class members of a class settlement where such members can be identified, while notice through an internet website is a supplemental means of providing notice. *See* Manual for Complex Litigation § 21.311; *see also Henggeler v. Brumbaugh & Quandahl P.C.*, 2013 WL 5881422, at \*5 (D. Neb. Oct. 25, 2013) (“The court finds that the proposed notice is clearly designed to advise the class members of their rights. The Agreement provides for individual mailed notices to each of the class members. Individual notice is the best notice practicable.”).

For these reasons, the proposed Notices and Notice Plan, together, represent the “best notice that is practicable under the circumstances,” and it therefore meets the notice requirements of Rule 23. The Notices and Notice Plan should thus be approved by the Court.

#### **IV. CONCLUSION**

The proposed class action settlement is an excellent result considering the circumstances of the litigation, the extent of discovery that the parties conducted, and the highly contested and

yet-untested nature of the liability theories. The terms of the proposed class action settlement, as well as the circumstances of negotiations and its elimination of further costs caused by litigating this case through trial and appeal, satisfy the structures for preliminary approval.

For these reasons, Plaintiffs request that the Court issue an Order that: (1) grants preliminary approval to the proposed settlement; (2) approves of the proposed Notices filed concurrently with the Motion for Preliminary Approval; (3) orders that the proposed Notices be mailed and emailed to Settlement Class Members in accordance with the Notice Plan; (4) approves the appointment of American Legal Claims Services as the Settlement Administrator and Plaintiffs' counsel as Class Counsel; and (5) sets the date of the Final Approval Hearing at the Court's earliest availability, but no sooner than 120 days from the date of the granting of preliminary approval.

Respectfully submitted,

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