

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

DAVID STERN & ANN MONAHAN, ) Case No. 17 CH 17101  
Individually And As Representatives of a Class of )  
Similarly Situated Persons, )  
Plaintiffs, )  
)  
) Calendar 14  
vs. )  
)  
LEANING TREE CHUTE LLC & )  
RESIDE LIVING LLC, )  
Defendants. )

**STIPULATION AND AGREEMENT TO SETTLE CLASS ACTION**

It is stipulated and agreed by and among the undersigned Parties, subject to the Court’s approval, that the settlement of this class action shall be complete upon and subject to the following terms and conditions.

This Agreement is made by and between Defendants, Plaintiffs, and the Attorneys defined below as Class Counsel.

The Parties agree that the Litigation shall be, and hereby is, ended, settled, resolved and concluded by agreement of Defendants to make payments upon the terms and conditions of this Agreement and for the consideration set forth herein, including but not limited to a release of claims by the Class, Class Counsel, Defendants, and Plaintiffs as set forth herein.

**1. DEFINITIONS**

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below

- a. Agreement/Settlement Agreement: “Agreement”, “Settlement Agreement”, or “Stipulation and Agreement” means this Stipulation and Agreement to Settle Class Action.
- b. Authorized Claimants: Those Class Members who were initially offered a rental agreement or renewal by Defendants within the two (2) years from the date of filing of this suit, who submit a valid and timely Claim Form to register their claim for recovery pursuant to this Settlement.
- c. Class or Class Members: “Those persons who have not executed releases of claims with respect to their leases for an apartment located at any property owned and/or managed by Defendants on or after December 28, 2015, and who have claims pursuant to Section 5-12-170 of the Chicago Residential Landlord and Tenant Ordinance (“CRLTO”), because those persons did not receive an official and complete versions of either the RLTO Summary and/or RLTO Separate Summary when their rental agreements were initially offered or renewed.”

- d. Class Counsel:  
Mark Silverman Law Office, Ltd.                      Aaron Krolik Law Office, P.A.  
225 W. Washington St.                                  225 W. Washington St.  
Suite 2200    Suite 2200  
Chicago, IL 60606    Chicago, IL 60606
- e. Class Representatives: David Stern and Anne Monahan.
- f. Complaint: Filed on December 28, 2017.
- g. Court: The Circuit Court of Cook County, Illinois, County Department, Chancery Division. The Honorable Sophia Hall presiding.
- h. Defense Counsel:  
  
Ms. Margaret Fitzsimmons and Mr. Josh Kantrow  
Lewis Brisbois Bisgaard & Smith, LLP  
550 West Adams Street  
Suite 300  
Chicago, Illinois 60661
- i. Effective Date: The date thirty (30) days after entry of an order granting Final Order Prejudice of this proposed class settlement provided no appeal is timely filed. If an appeal is timely filed, the latest of the following, if applicable, becomes the Effective Date: (1) any appeal from the Final Order has been finally dismissed; (2) the Final Order has been affirmed on appeal in a form substantially identical to the form of the Final Order entered by the Court; (3) the time to petition for review with respect to any appellate decision affirming the Final has expired; and (4) if a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Order in a form substantially identical to the form of the Final Order entered by the Court.
- j. Litigation: The lawsuit filed in the Circuit Court of Cook County, Illinois, Chancery Division under Case No. 17 CH 17101.
- k. Released Parties: All named Defendants and owners of the properties managed by Defendants and their respective subsidiaries, parents, or affiliate entities, members, shareholders, officers, employees, agents, attorneys, owners of beneficial interests, and their successors in right thereto.
- l. Third Party Administrator: The Heffler Group, 1515 Market Street, Suite 1700, Philadelphia, PA 19102 is the third-party administrator (“TPA”) for the notice, claims, and payment of the settlement in this Litigation.

## 2. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

The Parties and their respective counsel shall take all the steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective reasonable efforts to obtain Court approval and implement this Agreement. The procedure for obtaining Court approval of and implementing this Agreement shall be as follows:

- a. Certification of Settlement Class and Preliminary Approval:
- i. **Certification of Settlement Class:** Class Counsel shall promptly move the Court for preliminary certification, for settlement purposes only, of the Class as defined herein, defendants will not object. Class Counsel and Defense Counsel shall jointly submit this Agreement to the Court for its preliminary approval. The Court's preliminary approval of this Agreement shall be embodied in an Order: (1) Granting Preliminary Approval of Class Action Settlement; (2) Certifying the Settlement Class; (3) Appointing Class Counsel; (4) Setting Final Fairness and Approval Hearing; and (5) Providing for Notice of Class Action, Proposed Settlement, Proposed Payment of Attorneys' Fees and Final Fairness and Approval Hearing.
- b. Class Notice Procedure: Notice shall be provided to Class Members in the following manner:
- i. **Notice to TPA:** No later than 30 business days after the Court's Order Granting Preliminary Approval of Class Settlement has been served upon it by Class Counsel, Defendants shall provide "TPA" with a list of all Class Members. This class list shall state the last known email address of each Class Member. If either the Class Member's email is not known or "bounces back" (see below), Defendants shall provide TPA the with the tenant's current and/or last known physical address in Defendants' possession.
- ii. **Costs:** All costs of the Notice of Class Settlement, whether foreseen or not, shall be paid by Defendants. TPA shall provide Defendants with evidence of all costs expended in printing, preparation of, and mailing of the Notice of Class Settlement, by way of invoices from the provider(s) of such printing, preparing, and mailing services and Defendant shall pay these invoices directly to TPA.
- c. Notice by Publication: TPA shall publish Notice of Class Settlement in the either the Chicago Tribune, or Chicago Sun Times, or other newspaper or periodical the Court approves, at Defendant's expense, no later than 30 business days after the Court's Order Granting Preliminary Approval of Class Settlement. The publication will be a standard legal notice in the classified/legal notice section of one publication. Defendants shall reimburse TPA the cost of publication within (7) business days after receipt of an invoice from the publication that published the notice.
- d. Notice by Email and/or Regular Mail: Within (14) business days of providing TPA with the class list emails, notice of proposed class settlement will be emailed to all Class Members; if an email is not available, or, if, after emailing to the last known email address, a "bounce back" message is received that the email did not go through, then notice shall be mailed to the last known address in the possession of Defendants for the tenant.
- e. Responses to Notice:
- i. **Requests for Exclusion from Class:** Any person who receives a Notice of Class Settlement may request to be excluded from the Class by submitting a request to opt-out. Any such request must be made in accordance with the terms set forth in the Notice of Class Settlement and shall be timely only if sent by mail, email, or hand-delivery, no later than (60 days after the preliminary approval date).

ii. **Objections to Settlement:** Any Class Member, who has not requested exclusion from the Class, wishing to object to the approval of this settlement shall inform the Court and the Parties in writing of his or her intent to object by following the procedure set forth in the Notice of Class Settlement no later than (60 days after the preliminary approval date).

iii. **Failure to Object:** Any Class Member who fails to file such a written statement of his or her intention to object shall be foreclosed from making any objections to this settlement, unless otherwise ordered by this Court.

iv. **Responses to Objections:** Counsel for the Parties shall file any response to the objections submitted within 14 days after they are submitted or (74 days after the preliminary approval date, whichever date is later).

v. **Failure to Submit Claim Form:** Any Class Member who fails to submit a timely Claim Form by following the procedures set forth on the Notice of Class Settlement and who also fails to file a request for exclusion from the Class shall automatically be deemed a Class Member whose rights and claims are determined by the Court's Final Order Approving Settlement of Class Action and Dismissal with Prejudice. Thus, said Class Member's rights to pursue any claims covered by the Litigation shall be waived and extinguished and said Class Member shall not be permitted to recover from the Settlement.

f. **Final Fairness and Approval Hearing:** On the date set forth in the Order Granting Preliminary Approval of Class Settlement, a Final Fairness and Approval Hearing shall be held before the Court in order to review this Agreement, along with any objections and requests for exclusion, and determine whether the Court should give final approval. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement. If the Parties' request for final approval is granted, a Final Order Approving Settlement of Class Action and Dismissal with Prejudice subject to full compliance with the Settlement Agreement shall be entered.

g. **Settlement Payment Procedures:**

i. **Settlement Payment:** Consistent with the terms of this Agreement, the Defendants shall pay the amount of Attorneys' Fees approved by the Court to Class Counsel, the incentive award to the Class Representatives, the Settlement Amounts to Class Members, and the costs of administration to the TPA.

ii. **Settlement Administration Costs:** All costs of administering the settlement shall be paid by Defendants. The costs of printing, preparing, and mailing notice shall be reimbursed to the TPA by Defendants within fourteen (14) days after presentment of an invoice showing the cost of the printing, preparing, and mailing of said notices.

iii. **Attorneys' Fees and Costs:** Subject to Court approval, Defendants shall not object to a petition for fees and costs of not more than \$66,000.00 by Class Counsel, Aaron Krolik Law Office, P.A. and Mark Silverman Law Office, Ltd., which is based on the litigation fees, advanced filing and service costs incurred, and the amount of hours worked by Class Counsel at their normal hourly rate as provided for by the Chicago Residential Landlord Tenant Ordinance. Class Counsel shall serve Defendants' Counsel and the Court with a fee petition in support of their

attorneys' fees. The Court ordered Attorneys' Fees and Litigation Costs shall be due and payable no later than (7) days after the Effective Date.

iv. **Incentive and Damages Award Payable to Class Representative:** Subject to Court approval, Plaintiffs and Class Representatives, shall enter into a mutual release of all claims with Defendants. Plaintiffs may owe Defendants months of rent. A mutual release of all claims constitutes full compensation for the Plaintiffs' and Class Representatives' claims alleged in the Complaint and for their participation as lead class representatives.

h. Payment Amounts to Class Members

- i. \$70.00 per Authorized Claimant, paid as a check mailed to the last known address of that person, as updated by that person in response to the class notice, or, as found in the records of Defendants;
- ii. Each lease or renewal shall be the source of a total recovery of \$70.00, such that multiple individuals under the same lease or renewal shall be treated as one class member, and entitled jointly to one total payment of \$70 to be divided equally between all of the claimants who submit claims and who have claims under the same lease or renewal. Further, each class member will be entitled to a total recovery of \$70 for any and all leases and renewals at any affected property;
- iii. Checks shall all indicate on their face that they shall be void after 90 days. After checks become void the funds included in any such checks shall become deemed "unclaimed" funds;
- iv. Any funds that would have been payable to any class members that submit timely exclusions shall become deemed "unclaimed" funds;

i. Claim Form Procedure:

- (1) TPA shall email and/or mail the Notice of Class Action Settlement claim form to each Class Member.
- (2) For a Class Member to receive settlement payment, he or she must return a completed claim form which (a) is signed by the Class Member or his or her authorized representative, under penalty of perjury; and (b) identifies such Class Members' name and address. Only one Claim Form needs to be submitted by Class Members who rented apartments as co-tenants. Only one payment per lease will be made regardless of the number of lessees on a single lease and/or renewal.
- (3) The Claim Form must be returned to TPA no later than (60) days after the date Notice of Settlement is given to Class Members. There are no restrictions on how claim forms may be returned in the first (60) days. Any completed claim form that is returned to TPA and is received more than (60) days after the date of mailing/emailing of Notice to Class Members shall not be accepted or processed.

(4) TPA shall timely review and process all claims forms.

i. **Resolution of Disputes:** If TPA determines that a proof of claim form is either inadequate or contradicted by Defendants' records, it shall advise Class Counsel of this determination, and the grounds for the determination, and upon request, provide relevant documentation supporting the objection.

If Class Counsel agrees with Defendants' objection to the claim, the claim shall be deemed denied, and a letter shall be sent to the claimant advising the claimant of the denial.

ii. **Payment of Settlement Amounts:** Within (5) business days after either (1) the resolution of any and all errors or disputes concerning Class Member claims, or (2) the payment of Attorneys' Fees and the Incentive Award, whichever date is later, Defendants shall prepare a Final Statement of Settlement Amount for each Class Member and send a check, via first-class United States mail, to the address identified by the Class Member on his or her claim form. Invalid claims, including claims by people who are not class members, will not be honored.

### 3. LIMITATIONS

a. **No Admission:** Neither the acceptance nor the performance by the Defendants of the terms of this Agreement nor any of the related negotiations or proceedings is or shall be claimed to be, construed as, or deemed to be an admission by Defendants or any Released Party of the truth of any of the allegations in the Complaint, the representative character of the Litigation, the validity of any of the claims that were or could have been asserted by any of the Plaintiff and/or Class Members in the Litigation, or of any liability or guilt of Defendants or any Released Party in the Litigation.

b. **Non--Evidentiary Use:** Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, Class Members or their respective counsel in the Litigation or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Agreement from being used, offered or received in evidence in any proceeding to enforce, construe or finalize this Agreement.

c. **No Collateral Attack:** This Agreement shall not be subject to collateral attack by any Class Member or any recipient of the Notice of Class Settlement after the Final Order and Dismissal is entered. Such prohibited collateral attacks shall include, but not be limited to, claims that a Class Member failed for any reason to receive timely notice of the procedure for submitting a Claim Form.

d. **No Claim Stacking:** No class member may receive more than a single payment, even if the tenant can prove multiple violations, and only one payment shall be made where Class Members were co-tenants.

### 4. RELEASES

a. **Release by Class:** It is the desire of the Parties to settle all disputes for money damages only, including attorneys' fees and costs, arising from or related to failure to make required disclosures under the Chicago RLTO. Except for Class Members who submit a timely request for exclusion from the Class, upon entry of the Final Order and Dismissal in the Litigation, Plaintiff and each and every Class Member

shall be bound by this Agreement and shall have no recourse for money damages, including attorney's fees and costs, for failure to make required disclosures under the Chicago RLTO. This release does not release Defendants and owners of the properties managed by Defendants and their respective any subsidiaries, parents, or affiliate entities, members, shareholders, officers, employees, and agents, attorneys, owners of beneficial interests, and their successors in right thereto of other future violations of Section 5-12-170 or the Chicago RLTO and is limited to money damages as provided herein.

- b. In consideration of all payments caused to be made by Defendants, Class Members' eligibility to participate in this Settlement, and any other relief described herein and upon the Final Approval Date, Plaintiffs release and forever discharge the Released Parties from any and all claims, obligations, causes of action, actions, demands, rights, and liabilities of every kind, nature and description, including penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution and equitable relief under any state statute, federal statute or common law theory, whether known or unknown, whether anticipated or unanticipated, arising prior to the Final Approval Date.
- c. In consideration of all payments caused to be made by Defendants, Class Members' eligibility to participate in this Settlement, and any other relief described herein and upon the Final Approval Date, Class Members release and forever discharge the Released Parties from any and all claims, obligations, causes of action, actions, demands, rights, and liabilities of every kind, nature and description, including penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief under any state statute, federal statute or common law theory, whether known or unknown, whether anticipated or unanticipated, arising prior to the Final Approval Date, which were pled in the Action or could have been pled in the Action regarding or related to the Disputed Fees.
- d. Mutual Release by Class Representatives: David Stern and Ann Monahan shall provide full release of all claims, known or unknown, to Released Parties, including Defendants and owners of the properties managed by Defendants and their respective any subsidiaries, parents, or affiliate entities, members, shareholders, officers, employees, and agents, attorneys, owners of beneficial interests, and their successors in right thereto.

## 5. MISCELLANEOUS

- a. Confidentiality: The Parties shall not disclose information obtained from each other in the course of the case except pursuant to a court order. If there is any subpoena for documents subject to the confidentiality agreement, Class Counsel shall timely notify defendant, to enable it to object.
- b. Representations and Warranty: Class Counsel, Plaintiff, and the Class jointly and severally represent and warrant to the Released Parties that they are not presently aware of any attorneys beyond those named as Class Counsel who have claims for fees arising out of the Litigation or the settlement contemplated hereby.
- c. Assignment: None of the rights, commitments, or obligations recognized under this Agreement may be assigned to any Party, Class Member, Class Counsel or Defense

Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

d. Governing Law: This Agreement shall be governed, construed and interpreted and the rights of the Parties shall be determined, in accordance with the laws of the State of Illinois.

e. Conditions Precedent. This Settlement is conditioned on the Court's entry of an Order granting final approval of this Settlement and passage of the Effective Date.

f. Stay of Proceeding. The Parties agree that, except as expressly provided in this Agreement, the Action and all proceedings related to this Action will be stayed pending submission of this proposed Agreement to the Court for its consideration and approval. Class Counsel and Defense Counsel agree to enter into such documentation as the Parties agree is required or advisable to effectuate the stay.

g. Dismissal with Prejudice. Upon final approval of this Agreement by the Court, the claims of the Class Members will be dismissed with prejudice, and the claims of the putative class alleged in the Complaint who have excluded themselves shall be dismissed without prejudice. The Parties will request that the Court retain jurisdiction to enforce this Agreement.

h. No Media Contact. No party will make public statements about the settlement (including specifically the amount of the settlement), except to the extent contained in materials available to the public in the Court's files. No party or their counsel, without written permission, may make public comment, social media postings, web site postings or announcements about the lawsuit or settlement.

i. Financial Reporting. Nothing in this Agreement prohibits or otherwise limits Defendants from making any and all disclosures that may be required for business reasons, including, without limitation, quarterly and annual filings, audits, tax return preparations and lender disclosures, as a result of this Settlement prior to and following the execution of this Agreement and/or final approval of this Settlement.

j. Duty to Defend and Termination of Settlement Agreement. The Parties will abide by all terms of this Agreement in good faith, will fully support the Agreement's approval and enforcement, and will defend the Agreement from any legal challenge, whether by appeal or collateral attack. If the Court disapproves the Settlement, or any agreed upon term that a Party deems material, the Parties will work in good faith to modify the settlement terms, with the exception of the payments agreed upon and to be made by Defendants as described in Section g that is not subject to modification, as reasonably necessary to obtain Court approval. If the Parties are unable to reach agreement on modified settlement terms, then either Party may terminate this Agreement..

k. Execution and Delivery. This document may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. This Settlement Agreement may be executed by one or more of the Parties, and an electronic copy, scan, or other reproduction of the executed original of this Settlement Agreement may be delivered by one or more of the Parties by electronic mail

pursuant to which the signature of or on behalf of such Party can be seen, and such execution and delivery will be considered valid, binding, and effective for all purposes.

IT IS SO STIPULATED.

\* \* \* \* **END OF AGREEMENT TERMS \* \* \***  
**SIGNATURE PAGE TO FOLLOW**



**EXHIBITS**

1. Class Notice and Class Claim Form
2. Draft Order Granting Preliminary Approval of Class Action Settlement



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