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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

UNITED STATES OF AMERICA, *ex rel.* DENIKA TERRY, ROY HUSKEY III, and TAMERA LIVINGSTON, and each of them for themselves individually, and for all other persons similarly situated and on behalf of the UNITED STATES OF AMERICA

Plaintiffs/Relators,

vs.

WASATCH ADVANTAGE GROUP, LLC, WASATCH PROPERTY MANAGEMENT, INC., WASATCH POOL HOLDINGS, LLC, CHESAPEAKE APARTMENT HOLDINGS, LLC, LOGAN PARK APARTMENTS, LLC, LOGAN PARK APARTMENTS, LP, ASPEN PARK

Case No.: 2:15-CV-00799-KJM-DB

CLASS ACTION

STIPULATION AND ORDER MODIFYING CLASS CERTIFICATION ORDER

Before: Hon. Kimberly Mueller

Trial Date: None Set

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

HOLDINGS, LLC, BELLWOOD JERRON HOLDINGS, LLC, BELLWOOD JERRON APARTMENTS, LP, BENT TREE APARTMENTS, LLC, CALIFORNIA PLACE APARTMENTS, LLC, CAMELOT LAKES HOLDINGS, LLC, CANYON CLUB HOLDINGS, LLC, COURTYARD AT CENTRAL PARK APARTMENTS, LLC, CREEKSIDE HOLDINGS, LTD, HAYWARD SENIOR APARTMENTS, LP, HERITAGE PARK APARTMENTS, LP, OAK VALLEY APARTMENTS, LLC, OAK VALLEY HOLDINGS, LP, PEPPERTREE APARTMENT HOLDINGS, LP, PIEDMONT APARTMENTS, LP, POINT NATOMAS APARTMENTS, LLC, POINT NATOMAS APARTMENTS, LP, RIVER OAKS HOLDINGS, LLC, SHADOW WAY APARTMENTS, LP, SPRING VILLA APARTMENTS, LP, SUN VALLEY HOLDINGS, LTD, VILLAGE GROVE APARTMENTS, LP, WASATCH QUAIL RUN GP, LLC, WASATCH PREMIER PROPERTIES, LLC, WASATCH POOL HOLDINGS III, LLC, and DOES 1-4,

Defendants.

Plaintiffs and Relators Denika Terry, Roy Huskey III, and Tamera Livingston, and Defendants Wasatch Advantage Group, LLC, Wasatch Property Management, Inc., Wasatch Pool Holdings, LLC, Chesapeake Apartment Holdings, LLC, Logan Park Apartments, LLC, Logan Park Apartments, LP, Aspen Park Holdings, LLC, Bellwood Jerron Holdings, LLC, Bellwood Jerron Apartments, LP, Bent Tree Apartments, LLC, California Place Apartments, LLC, Camelot Lakes Holdings, LLC, Canyon Club Holdings, LLC, Courtyard at Central Park Apartments, LLC, Creekside Holdings, LTD, Hayward Senior Apartments, LP, Heritage Park Apartments, LP, Oak Valley Apartments, LLC, Oak Valley Holdings, LP, Peppertree Apartment Holdings, LP, Piedmont Apartments, LP, Point Natomas Apartments, LLC, Point Natomas Apartments, LP, River Oaks Holdings, LLC, Shadow Way Apartments, LP, Spring Villa Apartments, LP, Sun Valley Holdings, LTD, Village Grove Apartments, LP, Wasatch Quail Run GP, LLC, Wasatch Premier Properties, LLC, Wasatch Pool Holdings III, LLC (together, "the Parties"), stipulate as follows:

WHEREAS, Federal Rules of Civil Procedure 23(c)(1)(C) provides that an "order that grants or denies class certification may be altered or amended before final judgment";

WHEREAS, on July 30, 2018, this Court granted Plaintiffs' motion for class certification as to the Rule 23(b)(3) Reimbursement Class and conditionally granted Plaintiffs' motion for class certification as to the Rule 23(b)(2) Injunctive Relief Class;

WHEREAS, this Court relied on Plaintiffs' Third Amended Complaint in its Order Granting Plaintiffs' Motion for Class Certification as to the Rule 23(b)(3) Class and Conditionally Granting Plaintiffs' Motion for Class Certification as to the Rule 23(b)(2) Class ("Class Certification Order"), ECF No. 92;

WHEREAS, pursuant to the Class Certification Order, Defendants Wasatch Advantage Group, LLC, Wasatch Property Management, Inc., Wasatch Pool Holdings, LLC, Chesapeake Commons Holdings, LLC, Logan Park Apartments, LLC, Logan Park Apartments, LP (together, the "Originally Identified Defendants") and Plaintiffs filed a Joint Stipulation to Amend Complaint, ECF No. 94, to substitute Tamera Livingston as the new class representative for the Rule 23(b)(2) class, which this Court granted on September 5, 2018, ECF. No. 95. Plaintiffs filed their Fourth Amended Complaint,

ECF No. 98, substituting Tamera Livingston as the new class representative for the Rule 23(b)(2) class on September 20, 2018.

WHEREAS, this Court certified the Rule 23(b)(3) "Reimbursement Class" as follows:

> All persons who, in the time period starting four years prior to the date of filing this Complaint through the final resolution of this matter, (1) have been tenants at any of Defendants' California properties; (2) have participated in the "Section 8" Housing Choice Voucher Program in connection with their tenancies at the California properties; and (3) have paid additional charges set forth in Additional Services Agreements in excess of their individual portions of the contract set forth in the HAP Contracts.

Class Certification Order at 13:6-10.

WHEREAS, this Court certified the Rule 23(b)(2) "Injunctive Relief Class" as follows:

> All persons who: (1) are or will become tenants at any of Defendants' California properties; (2) participate or will participate in the "Section 8" Housing Choice Voucher Program in connection with their tenancies at the California properties; and (3) pay or will pay additional charges set forth in Additional Services Agreements in excess of their individual portions of the contract rent set forth in the HAP Contracts.

Class Certification Order at 13:14-17.

WHEREAS, on May 21, 2019, this Court granted the Originally Identified Defendants' and Plaintiffs' Joint Stipulation and Order for Appointment of Class Counsel ordering that the "law firm of Goldstein, Borgen, Dardarian & Ho is adequate to serve as class counsel and are hereby appointed as Class Counsel for the Classes previously certified by this Court on July 30, 2018." ECF No. 106 at 2.

WHEREAS, on January 15, 2020, this Court granted Plaintiffs' Motion for Clarification, and ordered that the class period for the Reimbursement Class, as defined in the Class Certification Order, "begins on April 14, 2011, four years prior to the filing of the initial complaint in this action." Order Granting Motion for Clarification, ECF No. 114, at 11:12-18.

WHEREAS, in its Order Granting Motion for Clarification, this Court appointed KCC Class Action Services as the class action administrator for this case and approved Plaintiffs' proposed class notice form and procedures and ordered class notice to proceed. Class notice was mailed on March 11, 2020 and May 6, 2020, notifying Reimbursement Class Members of their right to opt out by April 15,

2020 and June 10, 2020, respectively. A single Class Member requested to be excluded from the Reimbursement Class.

WHEREAS, the Third Amended Complaint, ECF No. 71-2, and the Fourth Amended Complaint made allegations against the Originally Identified Defendants and Defendants identified as Does 1-30;

WHEREAS, based on information disclosed in discovery after the class was certified, Plaintiffs learned the following entities are or were direct or indirect owners in the relevant Wasatch properties in California and are proper Defendants to the Reimbursement and/or Injunctive Relief Class Claims: Aspen Park Holdings, LLC, Bellwood Jerron Apartments, LP, Bellwood Jerron Holdings, LLC, Bent Tree Apartments, LLC, California Place Apartments, LLC, Camelot Lakes Holdings, LLC, Canyon Club Holdings, LLC, Courtyard at Central Park Apartments, LLC, Creekside Holdings, LTD, Hayward Senior Apartments, LP, Heritage Park Apartments, LP, Oak Valley Apartments, LLC, Oak Valley Holdings, LP, Peppertree Apartment Holdings, LP, Piedmont Apartments, LP, Point Natomas Apartments, LP, Point Natomas Apartments, LLC, River Oaks Holdings, LLC, Shadow Way Apartments, LP, Spring Villa Apartments, LP, Sun Valley Holdings, LTD, Village Grove Apartments, LP, Wasatch Quail Run GP, LLC, Wasatch Premier Properties, LLC, Wasatch Pool Holdings III, LLC (together, "the Newly Identified Defendants");

WHEREAS, due to changes in property ownership, Wasatch Property Management no longer manages the properties owned, or formerly owned, by Defendants Bellwood Jerron Apartments LP, Bellwood Jerron Apartments, LLC, Camelot Lakes Holdings, LLC, Oak Valley Apartments, LLC, Oak Valley Holdings, LP, Point Natomas Apartments, LP, Point Natomas Apartments, LLC, and Wasatch Quail Run GP, LLC;

WHEREAS, Defendants clarified that the relevant legal entity that owns/manages the property Chesapeake Common Holdings LLC is correctly identified as "Chesapeake Apartment Holdings, LLC";

WHEREAS, on August 16, 2021, this Court adopted the Plaintiffs and the Originally Identified Defendants' Stipulation and Proposed Order for Leave to File Fifth Amended Complaint, Bifurcating

the Case for Discovery and Trial, and Vacating Case Deadlines. Order Adopting the Stipulation and Proposed Order, ECF No. 135;

WHEREAS, in its Order Adopting the Stipulation and Proposed Order, this Court bifurcated this case into two phases for both discovery and trial. Phase 1 of the proceedings will address: whether Wasatch Property Management is liable under the False Claims Act; whether Wasatch Property Management's practices violate Class members' rights under the Housing Assistance Payments (HAP) Contract, the Unfair Competition Law, and the Consumer Legal Remedies Act (the "Class Claims"); and if so, the amount of actual damages and restitution, if any, to remedy any and all violations under the False Claims Act and Class Claims. Phase 2 of the proceedings will address (as applicable in light of the determinations reached in Phase 1): the liability of all and various Defendant entities for the Class Claims based on alter ego liability, the single enterprise doctrine, agency principles, and Defendants' receipt of a benefit from the unlawful charges; any vicarious liability attributable to other Defendants named as to the False Claims Act claim; and penalties and treble damages under the False Claims Act.

WHEREAS, on August 17, 2021, Plaintiffs filed the operative Fifth Amended Complaint, ECF No. 136, (a) replacing Doe 5-30 Defendants with the newly discovered entities listed above for all the certified claims, and not the False Claims Act, (b) adding a new section to the Complaint entitled "Defendants' Corporate Structure: Alter Ego, Single Enterprise, and Joint Venture," (c) correcting the name of Defendant Chesapeake Common Holdings LLC to Chesapeake Apartments Holdings, LLC, and (d) making explicit the April 14, 2011 start date for the class period confirmed by the Court;

WHEREAS, the Fifth Amended Complaint provides the true name of Doe Defendants that are entities Defendants use or previously used to own the properties concerned in this litigation and that are parties to the lease documents and Housing Assistance Payment Contracts ("HAP Contracts") executed and administered on their behalf by Wasatch property management;

WHEREAS, Wasatch Property Management is the entity that signs all leases, Additional Services Agreements, and HAP Contracts, manages the properties where Defendants' Section 8 tenants live, and charges and collects the additional service charges whose legality is at issue in each of the claims. Therefore, the claims in the case turn on Wasatch Property Management's conduct. The

claims regarding all other Defendants' liability result from their contractual and corporate relationships to Wasatch Property Management;

WHEREAS, certifying the same classes and claims against the Newly Identified Defendants as those certified in the Class Certification Order does not change the number or identity of class members and, consequently, does not alter this Court's numerosity analysis under Federal Rules of Civil Procedure 23(a)(1), *see* ECF No. 92 at 15-16;

WHEREAS, adding these Defendants does not affect this Court's findings that HAP Contracts and other documents are standard forms used by Defendants at all of their California properties or that named Plaintiffs' contracts were substantially identical to all tenants, and, therefore, does not change this Court's typicality analysis under Federal Rules of Civil Procedure 23(a)(2), *see* ECF No. 92 at 16-20;

WHEREAS, the questions of law common to all class members—including whether additional charges are prohibited under the HAP Contract—remain unaltered by adding these Defendants, who were parties to the HAP Contracts and lease agreements, and, therefore, adding these Defendants does not change this Court's analysis of commonality under Federal Rules of Civil Procedure 23(a)(3), *see* ECF No. 92 at 20-26;

WHEREAS, adding the Newly Identified Defendants does not affect this Court's adequacy analysis under Federal Rules of Civil Procedure 23(a)(4) because it does not introduce any facts related to any real or potential conflicts of interest between Plaintiffs and the Class or related to Plaintiffs' and their counsel's ability to vigorously prosecute the action on behalf of the class, *see* ECF No. 92 at 20-22;

WHEREAS, because the Newly Identified Defendants are parties to the HAP Contracts and lease agreements that this Court analyzed in its Class Certification Order, adding these Defendants does not change this Court's findings relevant to the certification of the Reimbursement Class under Federal Rules of Civil Procedure 23(b)(3). Questions of law and fact common to the class—including "whether defendants' 'additional charges set forth in Additional Services Agreements' violated defendants' HAP Contract provisions with Section 8 tenants or federal law" (ECF No. 92 at 25:21-23)—still predominate over individualized issues. *See* ECF No. 92 at 24-30. Adding these Defendants

does not add individualized questions or change the factual record relevant to this Court's analysis that individual injuries are capable of proof through evidence common to the class or that damages are measurable on a class-wide basis;

WHEREAS, adding the Newly Identified Defendants does not alter this Court's finding that a class action suit is superior to other methods as required to certify the Reimbursement Class under Federal Rules of Civil Procedure 23(b)(3). The addition of these Defendants does not change the factual record relevant to the ability of individual plaintiffs to bring separate suits, the absence of related litigation, or the desirability of concentrating the litigation to promote efficiency and avoid inconsistent rulings, or the management of the class action. *See* ECF No. 92 at 30-36. The extent of each Defendant's vicarious liability for that conduct can be manageably tried in Phase 2 and will turn on evidence of corporate contracts and interrelationships rather than individual issues, making it appropriate for class treatment;

WHEREAS, Federal Rules of Civil Procedure 23(b)(2) allows a class action to be maintained if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole" and adding Defendants, who continue to be direct or indirect owners in relevant Wasatch properties in California and parties to the relevant HAP Contracts and lease agreements, does not affect this Court's findings relevant to the certification of the Injunctive Relief Class, *see* ECF No. 92 at 36-37;

WHEREAS, all Defendants agree that it would be proper to modify the Class Certification Order to add the Newly Identified Defendants.

WHEREAS, in their Joint Status Report, ECF No. 140, filed September 30, 2021, the Parties agreed to issue a supplemental class notice, if necessary, following the Court's ruling on summary judgment motions and prior to the Phase 1 of trial.

THEREFORE, THE PARTIES STIPULATE AND JOINTLY REQUEST THAT THE COURT ORDER AS FOLLOWS:

1. The Court finds that Federal Rules of Civil Procedure Rule 23(a) criteria and Rule 23(b)(3) criteria are satisfied as to the Newly Identified Defendants and that the claims of the

Reimbursement Class may properly be certified as to the Newly Identified Defendants. The Reimbursement Class shall continue to have the same definition, that is:

> All persons who, in the time period starting April 14, 2011 through the final resolution of this matter, (1) have been tenants at any of Defendants' California properties; (2) have participated in the "Section 8" Housing Choice Voucher Program in connection with their tenancies at the California properties; and (3) have paid additional charges set forth in Additional Services Agreements in excess of their individual portions of the contract set forth in the HAP Contracts.

2. The Court finds that Federal Rules of Civil Procedure Rule 23(a) criteria and Rule 23(b)(2) criteria are satisfied as to the Newly Identified Defendants who continue to be direct or indirect owners of properties managed by Wasatch Property Management in California and that the claims of the Injunctive Relief Class may properly be certified as to Aspen Park Holdings, LLC, Bent Tree Apartments, LLC, California Place Apartments, LLC, Canyon Club Holdings, LLC, Courtyard at Central Park Apartments, LLC, Creekside Holdings, LTD, Hayward Senior Apartments, LP, Heritage Park Apartments, LP, Peppertree Apartment Holdings, LP, Piedmont Apartments, LP, River Oaks Holdings, LLC, Shadow Way Apartments, LP, Spring Villa Apartments, LP, Sun Valley Holdings, LTD, Village Grove Apartments, LP, Wasatch Premier Properties, LLC, and Wasatch Pool Holdings III, LLC. The Injunctive Relief Class shall continue to have the same definition, that is:

> All persons who: (1) are or will become tenants at any of Defendants' California properties; (2) participate or will participate in the "Section 8" Housing Choice Voucher Program in connection with their tenancies at the California properties; and (3) pay or will pay additional charges set forth in Additional Services Agreements in excess of their individual portions of the contract rent set forth in the HAP Contracts.

3. Accordingly, the Court hereby modifies the Class Certification order previously entered in this case to add Aspen Park Holdings, LLC, Bellwood Jerron Holdings, LLC, Bellwood Jerron Apartments, LP, Bent Tree Apartments, LLC, California Place Apartments, LLC, Camelot Lakes Holdings, LLC, Canyon Club Holdings, LLC, Courtyard at Central Park Apartments, LLC, Creekside Holdings, LTD, Hayward Senior Apartments, LP, Heritage Park Apartments, LP, Oak Valley Apartments, LLC, Oak Valley Holdings, LP, Peppertree Apartment Holdings, LP, Piedmont Apartments, LP, Point Natomas Apartments, LLC, Point Natomas Apartments, LP, River Oaks Holdings, LLC, Shadow Way Apartments, LP, Spring Villa Apartments, LP, Sun Valley Holdings,

LTD, Village Grove Apartments, LP, Wasatch Quail Run GP, LLC, Wasatch Premier Properties, LLC, Wasatch Pool Holdings III, LLC as Defendants to the claims of the Reimbursement Class.

4. Furthermore, the Court hereby modifies the Class Certification order previously entered in this case to add Aspen Park Holdings, LLC, Bent Tree Apartments, LLC, California Place Apartments, LLC, Canyon Club Holdings, LLC, Courtyard at Central Park Apartments, LLC, Creekside Holdings, LTD, Hayward Senior Apartments, LP, Heritage Park Apartments, LP, Peppertree Apartment Holdings, LP, Piedmont Apartments, LP, River Oaks Holdings, LLC, Shadow Way Apartments, LP, Spring Villa Apartments, LP, Sun Valley Holdings, LTD, Village Grove Apartments, LP, Wasatch Premier Properties, LLC, and Wasatch Pool Holdings III, LLC as Defendants to the claims of the Injunctive Relief Class.

Dated: January 7, 2022

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ Anne P. Bellows
Anne P. Bellows

Attorneys for Plaintiffs and Relators

Dated: January 7, 2022

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Ryan Matthews (as authorized 1/6/2022)
Ryan Matthews

Attorneys for Defendants

IT IS SO ORDERED

DATED: January 25, 2022.

CHIEF UNITED STATES DISTRICT JUDGE