

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
SCOTT SMITH, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 1:21-cv-10654
)	
CHELMSFORD GROUP, LLC, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

PRELIMINARY APPROVAL ORDER

Upon consideration of the Plaintiff’s Assented-to Motion for Preliminary Approval of Class Action Settlement Agreement and Release (“Motion for Preliminary Approval”), [Doc. 96](#), along with the Class Action Settlement Agreement and Release Between Plaintiff, Scott Smith, for Himself and on Behalf of the Settlement Classes, and Defendants, Chelmsford Group, LLC, and Newbury Management Company (“Settlement Agreement”), attached as Exhibit 2 to the Motion for Preliminary Approval, [Doc. 96-2](#), and all of the additional papers filed in connection therewith, the arguments of counsel, the evidence submitted, and all other matters presented to the Court, the Court hereby grants preliminary approval of the settlement to be consummated under the Settlement Agreement (“Settlement”) upon the terms and conditions set forth in this Order. The Court makes the following findings and orders, and sets the deadlines listed at the end of this Order.

FINDINGS OF FACT

1. Chelmsford Commons is a manufactured housing community located in Chelmsford, Massachusetts, that offers affordable homeownership opportunities and wherein

tenants or residents typically own their manufactured homes but rent the land on which those homes sit, land which is also called a home site.

2. At all times relevant to this litigation, Chelmsford Commons has leased or offered for lease approximately 242 home sites.

3. Defendants began owning or managing Chelmsford Commons in 2011, when Defendant Chelmsford Group, LLC, acquired Chelmsford Commons from its former owner and contracted Defendant Newbury Management Company to manage the community.

4. At the time Defendant Chelmsford Group, LLC, acquired Chelmsford Commons, the community's rent structure was governed by a judicially-approved settlement agreement that had been in effect since 1991 and that, by its own terms, expired at the end of 2020 ("Master Lease").

5. The Master Lease permitted the community's former owner to charge higher rents to new entrants, a practice which generally resulted in new entrants paying higher rents than existing tenants or residents despite the fact that all tenants or residents leased similar home sites and received similar services in exchange for their rent.

6. Following Defendant Chelmsford Group, LLC's acquisition of Chelmsford Commons, Defendants continued this practice of maintaining a staggered rent structure.

7. Plaintiff has leased a home site at Chelmsford Commons since 1998 and has during such time resided in a manufactured home located on that site.

8. In or around November of 2020, Defendants circulated proposed home-site lease agreements (called occupancy agreements) to all tenants or residents of Chelmsford Commons that offered the same staggered base rents that Defendants had assessed prior to the expiration of the Master Lease and that would take effect following the expiration of the Master Lease.

9. The circulated occupancy agreements limited base-rent adjustments to one annual increase of either 4.5% or a percentage tied to the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) Boston, Massachusetts – ALL items (1967=100) (“CPI Percentage”), whichever is greater in any given year.

10. Numerous Chelmsford Commons tenants or residents subsequently signed the circulated occupancy agreements, which remain operative for five-year or 10-year terms.

11. On January 8, 2021, Plaintiff – through counsel and on behalf of himself as well as a putative class of Chelmsford Commons rent payers – sent a statutory demand letter to each of the Defendants, a letter which challenged the rents assessed by Defendants after expiration of the Master Lease as violating Section 32L(2) of the Massachusetts Manufactured Housing Act and which sought both equitable relief and damages.

12. In response to his demand letter, Defendants filed an action before this Court (“Related Action”) that sought relief against Plaintiff under the Declaratory Judgment Act.

13. On April 1, 2021, Plaintiff commenced the instant action in the Massachusetts Superior Court for Middlesex County.

14. On April 20, 2021, Defendants removed the instant action to this Court.

15. During the subsequent 13 months, the parties vigorously litigated both the instant action as well as the Related Action.

16. Such litigation included: Plaintiff’s Rule 12 motion to dismiss the Related Action, which was granted by the Court; Plaintiff’s motion to remand the instant action to state court, which was denied by the Court; Plaintiff’s motion for class certification, which was denied without prejudice by the Court; and Defendants’ motion for judgment on the pleadings, which the parties argued and which remains pending.

17. Shortly after oral argument on the motion for judgment on the pleadings, and at the Court's suggestion, the parties attempted to mediate a resolution of the instant action with the assistance of The Honorable Mitchel H. Kaplan (retired), a highly capable and experienced mediator.

18. After three mediation sessions before Judge Kaplan, sessions which included the confidential disclosure of informal discovery to Plaintiff by Defendants through counsel, the parties reached an agreement to resolve this action, as embodied in the terms of the Settlement Agreement.

19. The parties to the above-captioned action have freely and voluntarily entered into the Settlement Agreement, in which they have agreed to resolve this action, subject to the approval of the Court and its determination as to the fairness, reasonableness and adequacy of the Settlement.

20. If approved, the Settlement will result in the dismissal of the claims of Plaintiff and the proposed settlement class members with prejudice, except that the individualized monetary damage claims of settlement class members who file timely and valid requests for exclusion from the proposed Rule 23(b)(3) class will be dismissed without prejudice.

21. The Court has reviewed the Settlement Agreement and all materials filed related thereto, and all prior proceedings herein, and has found good cause based on the record to support the following orders.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

22. **Conditional Class Certification.**

A. Pursuant to the class action criteria of Federal Rules of Civil Procedure 23(a), 23(b)(2), 23(b)(3) and 23(e)(1)(B)(ii), the Court conditionally certifies a Rule 23(b)(2) Class for

the purpose of resolving Plaintiff's injunctive relief claim as outlined in the Settlement Agreement and a Rule 23(b)(3) Class for the purpose of resolving Plaintiff's damages claim as also outlined in the Settlement Agreement.

B. The Rule 23(b)(2) Class consists of all persons who resided at Chelmsford Commons or were obligated to pay rent to the manager of Chelmsford Commons as of September 13, 2022, and all persons who will reside at Chelmsford Commons or will be obligated to pay rent to the manager of Chelmsford Commons after September 13, 2022, and during the "Settlement Period," as defined in the Settlement Agreement.

C. The Rule 23(b)(3) Class consists of all persons who resided at Chelmsford Commons or were obligated to pay rent to the manager of Chelmsford Commons as of September 13, 2022, except those who properly exclude themselves from the Settlement pursuant to the terms of the Settlement Agreement and this Order.

D. Rule 23(b)(2) Class members will not be allowed to file a request for exclusion from the Rule 23(b)(2) Class.

E. The Court preliminarily finds, for settlement purposes only, that the prerequisites for a class action under Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure have been met, in that: (1) each of the proposed Classes is so numerous that joinder of all individual Class members in this action is impracticable; (2) there are questions of law and fact common to each of the proposed Classes and those common questions of law and fact predominate over any individual questions; (3) the claims of Plaintiff are typical of the claims of each Class; (4) Plaintiff and the proposed class counsel both have fairly and adequately represented the interests of each Class and will likely continue to do so in the future; (5) as far as the Court can discern at this time, no apparent conflict exists between Plaintiff and either of the proposed Classes he seeks to

represent; (6) the proposed Rule 23(b)(3) Class is superior to other available methods for the fair and efficient adjudication of the controversy; and (7) Defendants have acted or refused to act on grounds that apply generally to the Rule 23(b)(2) Class such that the relief proposed in the Settlement Agreement adheres to the benefit of each member of the Rule 23(b)(2) Class and to that Class as a whole.

F. If the Court does not grant final approval of the Settlement, or if the Settlement Agreement is terminated in accordance with its terms, or if the Settlement does not become effective for any reason, then: (1) this conditional certification of the Rule 23(b)(2) Class and the Rule 23(b)(3) Class set forth herein will be vacated and become null and void such that it will not be used or referred to for any purpose in this action or in any other proceeding and such that this Order may not be used against any party to this action or in any other proceeding; and (2) this action will proceed as though no class had been certified, without prejudice to any party's position on the issue of class certification or any other issue.

22. **Conditional Class Representative and Class Counsel Designation.** For settlement purposes only, and after considering the relevant factors in [Fed. R. Civ. P. 23](#) and subject to further consideration at the fairness hearing referenced below, Plaintiff is conditionally designated as representative of the Rule 23(b)(2) Class and of the Rule 23(b)(3) Class and the proposed class counsel is conditionally appointed as Class Counsel for the Rule 23(b)(2) Class and for the Rule 23(b)(3) Class. Class Counsel are:

Ethan R. Horowitz, Esq. &
Brian J. O'Donnell, Esq.
Northeast Justice Center
50 Island Street, Suite 203B
Lawrence, MA 01840
(978) 888-0624
ehorowitz@njc-ma.org

23. **Settlement Administrator Appointment.** The Court hereby: (1) appoints Atticus Administration, LLC, as Settlement Administrator to supervise and administer the notice plan as set forth in the Settlement Agreement; (2) confers upon Atticus Administration, LLC, the authority to accept and disburse funds as directed by the Settlement Agreement or by the Court; and (3) otherwise designates Atticus Administration, LLC, as the Settlement Administrator contemplated in the Settlement Agreement.

24. **Preliminary Approval of the Settlement.** The Court has conducted a preliminary assessment of the fairness, reasonableness and adequacy of the Settlement. Based on this preliminary assessment, the Court finds that: (1) the Settlement is fair, reasonable and adequate and otherwise within the range necessary for preliminary approval; and (2) the Settlement appears to have been negotiated, as far as the Court can discern at this time, in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case, subject to further review at the fairness hearing referenced below. The Court therefore preliminarily approves the proposed Settlement as set forth in the Settlement Agreement.

25. **Class Notice.**

A. The Court further finds that: (1) the form and content of the proposed class notices submitted with the Motion for Preliminary Approval provide notice of the material terms of the Settlement to the members of the Rule 23(b)(2) Class and to the members of the Rule 23(b)(3) Class (collectively, "Class Members") for their consideration; and (2) the plan for providing such notice to Class Members as set out in the Settlement Agreement is the best practicable under the circumstances.

B. The Court thus approves the notice plan set out in the Settlement Agreement and the form of the proposed class notices submitted with the Motion for Preliminary Approval

because together both: (1) satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process or any other applicable law and will constitute due, adequate and sufficient notice to all persons entitled thereto; and (2) are reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of this action, the terms of the proposed Settlement and their rights under that Settlement, including but not limited to their right to submit a request for exclusion from the Rule 23(b)(3) Class and their right to object to the proposed Settlement.

C. The Court further finds that the proposed notices submitted with the Motion for Preliminary Approval are written in simple terminology and are readily understandable by Class Members.

D. No other notice to Class Members is necessary other than that set forth in the Settlement Agreement.

E. The Settlement Administrator will execute the notice plan set forth in the Settlement Agreement and do so using the proposed notices submitted with the Motion for Preliminary Approval; however, the Settlement Administrator has discretion to format the proposed notices in a reasonable manner before mailing or publishing to minimize administration costs.

26. **Requests for Exclusion and Consequences of Exclusion.**

A. The Rule 23(b)(2) Class is mandatory, and no Rule 23(b)(2) Class member may request exclusion from the Rule 23(b)(2) Class.

B. Any Rule 23(b)(3) Class member who wishes to be excluded from the Rule 23(b)(3) Class must mail a written request for exclusion from the Rule 23(b)(3) Class to the Settlement Administrator in the manner required by the Settlement Agreement. The deadline for properly requesting exclusion is stated at the end of this Order. The Settlement Administrator's decision as

to whether any request for exclusion from the Rule 23(b)(3) Class is or is not timely or valid is final and binding.

C. Any Rule 23(b)(3) Class member who submits a timely and valid request for exclusion from the Rule 23(b)(3) Class will not have standing to object to any monetary relief in the Settlement, will be excluded from the Rule 23(b)(3) Class, and will receive no monetary relief provided in the Settlement, but will be included in the Rule 23(b)(2) Class and be bound by the Settlement as a Rule 23(b)(2) Class member.

D. A list identifying the Rule 23(b)(3) Class members requesting exclusion from the Rule 23(b)(3) Class will be assembled by the Settlement Administrator and filed with the Court no later than fifteen (15) days prior to the fairness hearing referenced below. The Settlement Administrator will provide this list to Class Counsel and counsel for Defendants as required by the Settlement Agreement.

27. **Right to Object or Appear at Fairness Hearing.**

A. Any member of the Rule 23(b)(2) Class or any member of the Rule 23(b)(3) Class (each a “Class Member” and, collectively, “Class Members”) who wishes to object to any aspect of the proposed Settlement must submit a written objection to the Settlement Administrator in the manner required by the Settlement Agreement. The deadline for properly submitting an objection is stated at the end of this Order. Objections that are untimely or otherwise not in compliance with the Settlement Agreement will not be considered by this Court.

B. Attendance by Class Members at the fairness hearing referenced below is not necessary. However, Class Members do have the right to appear and show cause, if they have any, why the terms of the Settlement should not be given final approval by the Court. Objection to the

Settlement may be made in person by Class Members on their own or through an attorney hired at their own expense.

C. Any Class Member who submits a timely objection and who also otherwise complies with the procedures for presenting objections as described above or in the Settlement Agreement may appear at the fairness hearing referenced below in support of the objection. Class Members who intend to make an appearance at the fairness hearing must file a notice of intention to appear with the Court no later than fourteen (14) days prior to the date of the fairness hearing, as set below. If a Class Member hires an attorney to represent the Class Member, the attorney must: (1) file a notice of appearance with the Clerk of the Court no later than fourteen (14) days before the date of the fairness hearing set below; and (2) send a copy of the notice of appearance to Class Counsel and counsel for Defendants by both U.S. mail and electronic mail.

D. Unless otherwise permitted by the Court, a Class Member who appears at the fairness hearing referenced below, or the Class Member's attorney, will be permitted to argue only those matters that were set forth in the timely and valid objection submitted by that Class Member. Unless otherwise permitted by the Court, no Class Member, or attorney representing that Class Member, will be permitted to raise matters at the fairness hearing that the Class Members could have raised in a written objection, but failed to do so, and all objections to the Settlement that are not set forth in a written objection will be deemed waived. Any Class Member or attorney who fails to comply with the applicable provisions of the Settlement Agreement, unless otherwise ordered by the Court, will be barred from appearing at the fairness hearing.

E. Any Class Member or attorney representing a Class Member who fails to comply with the procedures for presenting objections – either as described above or in the Settlement Agreement, unless otherwise ordered by the Court – will not be treated as having filed a valid

objection to the Settlement and will waive and forfeit any and all rights that the Class Member may have to submit a written objection, appear at the fairness hearing, seek reconsideration of the Court's final approval of the Settlement, or otherwise appeal the Court's final approval of the Settlement, and will be bound by all the terms of the Settlement upon final approval and by all proceedings, orders and judgments.

F. The parties to this action may file responses to objections with the Court within fourteen (14) days of the fairness hearing, as set below, unless otherwise directed by the Court.

28. **Fairness Hearing.** Pursuant to Federal Rule of Civil Procedure 23(e), the Court will hold a fairness hearing on _____, 202__, at _____.m., before The Honorable Denise J. Casper of the United States District Court for the District of Massachusetts in Courtroom 11 of the John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210, to consider all objections to the Settlement that are timely and that otherwise comply with the requirements of the Settlement Agreement and this Order, and to determine the following:

a. Whether the proposed Rule 23(b)(2) Class and the proposed Rule 23(b)(3) Class (collectively, the "Proposed Classes") each meets the applicable requirements of Federal Rule of Civil Procedure 23 and thus each Class should be finally certified;

b. Whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be granted final approval;

c. Whether Class Counsel's and Plaintiff's respective requests for attorney's fees and expenses and a class representative award should be allowed;

d. Whether a final order and judgment, as proposed by the parties, should be entered;

e. Whether the claims of Plaintiff and the Proposed Classes should be dismissed with prejudice, except that the individualized monetary relief claims of Rule 23(b)(3) Class members who filed a timely and valid request for exclusion would be dismissed without prejudice;

f. Whether the members of the Proposed Classes will be bound by the releases set forth in the Settlement Agreement;

g. Whether to incorporate into the Court's final order the relief provided by the Settlement Agreement to the Rule 23(b)(2) Class and whether to retain continuing jurisdiction over the same; and

h. Such other matters as the Court may deem appropriate.

The Court may adjourn or reschedule the fairness hearing, or order that the fairness hearing will be held via conference call or video conference, without further notice to the members of the Proposed Classes. Such an order by this Court will be posted by the Settlement Administrator on the settlement website.

29. **Motion for Attorney's Fees and Expenses.** All requests for approval of payment of attorney's fees and reimbursement of expenses, including Class Counsel's application for the same, will be filed no later than fourteen (14) days before the fairness hearing. Any objection to these requests will be filed with this Court no later than two (2) days before the fairness hearing. These requests will be heard by the Court at the time of the fairness hearing. The Settlement Administrator will post Class Counsel's request for attorney's fees and expenses on the settlement website contemplated by the Settlement Agreement within three (3) business days of the filing of the request with the Court.

30. **Class Representative Award.** Any request for approval of payment of a class representative award to Plaintiff will be filed no later than fourteen (14) days before the fairness hearing. Any objection to this request will be filed with this Court no later than two (2) days before the fairness hearing. The request will be heard by the Court at the time of the fairness hearing. The Settlement Administrator will post the request for a class representative award on the settlement website contemplated by the Settlement Agreement within three (3) business days of the filing of the request with the Court.

31. **Retention of Jurisdiction.** The Court will retain continuing jurisdiction to ensure the effectuation of the Settlement for the benefit of the Rule 23(b)(2) Class and the Rule 23(b)(3) Class.

32. **Miscellaneous.**

A. All other events contemplated by the Settlement Agreement to occur after this Order and before the fairness hearing, including but not limited to all aspects of settlement administration, will be governed by the Settlement Agreement.

B. The parties to this action will notify one another and work together to resolve matters involved in settlement administration that materially affect the proposed Rule 23(b)(2) Class and the proposed Rule 23(b)(3) Class.

C. This Court may order its final approval of the Settlement without further notice to the Proposed Classes. Any amendment to the Settlement hereafter made does not require further notice to the Proposed Classes if the amendment is consistent with this Order and does not limit the rights of members of the Proposed Classes.

D. This Order does not contain, constitute, reflect or imply any finding or conclusion by this Court as to any fault, omission, liability, or wrongdoing on the part of any of the

Defendants. This Order is not a finding of the validity or invalidity of any claim in this action or a determination of any wrongdoing by any of the Defendants. This Order does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims of Plaintiff and of the members of the Proposed Classes or the defenses of any of the Defendants.

E. The Settlement Administrator will place this Order on the settlement website contemplated by the Settlement Agreement within 30 days after this Order is entered. The Settlement Administrator will also place on such website the Settlement Agreement, the Motion for Preliminary Approval and its exhibits, and any other document required herein or deemed necessary to post by Class Counsel and counsel for Defendants.

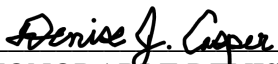
F. **Deadlines.** The deadlines outlined below govern further action:

- Deadline for Settlement Administrator to mail and e-mail notice, as provided in the Settlement Agreement: October 24, 2022 (within 30 days after issuance of this Order).
- Deadline for Settlement Administrator to publish notice, as provided in the Settlement Agreement: October 24, 2022 (within 30 days after issuance of this Order).
- Deadline for a member of the Rule 23(b)(3) Class to submit a request for exclusion from the Rule 23(b)(3) Class, as provided by and in conformance with the Settlement Agreement: December 22, 2022 (within 90 days after issuance of this Order).
- Deadline for a member to object to the Settlement, as provided by and in conformance with the Settlement Agreement December 22, 2022 (within 90 days after issuance of this Order).
- Deadline to file list of opt-outs with the Court: 15 days prior to the fairness hearing.
- Deadline to file notices of appearance at the fairness hearing: no later than 14 days prior to the fairness hearing.

- Deadline to file requests for attorney's fees and expenses and class representative award: no later than 14 days prior to the fairness hearing.
- Deadline to file the motion for final approval: 10 days prior to the fairness hearing.
- Fairness Hearing: 2:00 p.m. February 1, 2023 (no earlier than 120 days after issuance of this Order).

IT IS HEREBY ORDERED

Dated: Sept. 23, 2022



THE HONORABLE DENISE J. CASPER
UNITED STATES DISTRICT COURT JUDGE