

<p>DISTRICT COURT, ADAMS COUNTY, COLORADO</p> <p>1100 Judicial Center Drive Brighton, Colorado 80601 (303) 659-1161</p> <hr/> <p>PLAINTIFF: Alexander Koch, individually and on behalf of all others similarly situated</p> <p>v.</p> <p>DEFENDANT: Griffis Group of Companies, LLC d/b/a Griffis Residential</p> <hr/> <p>Attorneys for the Class:</p> <p>Steven L. Woodrow #43140 WOODROW & PELUSO, LLC 3900 East Mexico Ave. Suite 300 Denver, CO 80210 Telephone: (720) 213-0675 Facsimile: (303) 927-0809</p> <p>Jason Legg #42946 CADIZ LAW, LLC 501 S. Cherry St., Ste. 1100 Denver, CO 80246 720.767-2036 jason@cadizlawfirm.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 2021CV30718</p> <p>Division: C</p>
<p style="text-align: center;">MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM OF LAW IN SUPPORT</p>	

The Parties have successfully mediated this certified class action brought by residential tenants against their landlord, a property management company, challenging certain fees. As such,

Plaintiff and Class Representative Alexander Koch¹ (“Koch” or “Class Representative”), by and through undersigned counsel, moves this Court for an Order granting preliminary approval of the Class Action Settlement Agreement agreed to by the Parties (“Settlement Agreement” or “Settlement,” attached as Exhibit A). In support, Koch states as follows:

1. Class Representative brought this class action lawsuit against Defendant Griffis Group of Companies, LLC d/b/a Griffis Residential (“Griffis” or “Defendant”) challenging various fees that Griffis charges its tenants, specifically Late Fees, Notice Fees, Surcharge Fees, and Valet Trash Fees as being unlawful under Colorado law. (*See* Compl.)

2. On February 2, 2024, the Court granted Koch’s Motion for Class Certification, certifying a Class related to the charging of the Notice and Late Fees, and a Subclass relating to the Valet Trash Fee claim. The Surcharge Fee claim was dismissed.

3. The Parties thereafter agreed to mediation. Following a full-day session on June 12, 2024, overseen by Judge Edward Bronfin (ret.) of Judicial Arbiter Group, Inc. (“JAG”)—and after additional back-and-forth negotiations in the wake of the mediation—the Parties were able to reach a Class Action Settlement.

4. The Settlement provides significant and substantial benefits for the Class, including a Settlement Fund of \$599,745.00 plus strong prospective relief designed to curb the assessment of the Challenged Fees going forward.

5. There is no claims process in this settlement. Rather, all Settlement Class Members who choose to stay in the Settlement by not excluding themselves will receive benefits.

¹ Pronounced “Cook”.

6. Additionally, the Settlement features a robust notice plan that includes direct mail notice to Settlement Class Members and the establishment of a Settlement Website where Settlement Class Members can review the Agreement, access key case documents, learn about important dates and deadlines, and submit requests for exclusion.

As explained fully below, the Settlement is fair, reasonable, and adequate and worthy of preliminary approval. Koch therefore respectfully requests that the Court grant preliminary approval of this class action Settlement, order that Notice be disseminated to the proposed Settlement Class, and set deadlines for objections/opt-outs, the submission of materials in support of final approval and any other relief, and for the Final Fairness hearing.

I. Introduction

This case challenges fees that Griffis charges its tenants—specifically Late Fees, Notice Fees, and Valet Trash Fees—as being violative of Colorado law. The Parties have diligently fought this matter, including briefing and arguing a motion to dismiss and a subsequent motion to reconsider, exchanging extensive written discovery and taking depositions, litigating class certification, and participating in a formal mediation process.

The mediation was successful in bringing the Parties together to discuss their respective claims and defenses and, with the mediator’s continued help after the session had concluded, the Parties reached a settlement to resolve the claims. The result is a strong Settlement that fairly, reasonably, and adequately compensates the Class Members as certified by the Court in its Order of February 2, 2024. Indeed, the Settlement is undeniably impressive. In addition to requiring Griffis to modify certain business practices going forward, the Agreement creates a Settlement

Fund totaling \$599,745 from which all Class Members who do not opt out will receive cash compensation.

The process is straightforward: all Class Members who are on the Class List and who do not opt out will be mailed a check for their pro rata share of the Net Settlement Fund, which, if Plaintiff's Motion is granted in full, will be approximately \$144 per Class Member and \$375 per Subclass Member.² The Agreement provides for notice explaining the Settlement terms, the right of members to be excluded from or to object to the Agreement, and the procedures for doing so.

The results achieved show that preliminary approval should be granted. As such, Plaintiff respectfully moves the Court for an Order: (1) granting preliminary approval to the Settlement Agreement, and (2) ordering that Notice be disseminated to the Settlement Class in accordance with the Settlement Agreement.

II. Factual Background and Procedural History

Defendant Griffis is one of the largest residential landlords in Colorado. See Declaration of Attorney Steven L. Woodrow in Support of Motion for Preliminary Approval ("Woodrow Decl."), a true and accurate copy of which is attached as Exhibit B. As part of its operations, Griffis charges its tenants fees which Plaintiff alleged were (and are) unlawful, specifically Late Fees, Notice Posting Fees, Credit Card Surcharge Fees, and Valet Trash Fees. Woodrow Decl. ¶ 3.

² The Net Settlement Fund equals the Settlement Fund less any Court-approved notice and administrative costs, award of fees and expenses, and service award for named Plaintiff. The proposed Long Form Notice (*see* Exhibit 1 to the Settlement Agreement, attached hereto as Ex. A) will identify the approximated net recovery amounts.

This case was initially filed June 22, 2021. Woodrow Decl. ¶ 3. On February 10, 2022, the Court granted in part and denied in part Griffis's Motion to Dismiss and Strike the Class Allegations. *Id.* Therein, the Court (1) limited the class period to three (3) years preceding the filing of the Complaint, (2) denied the request to dismiss Plaintiff's claim for breach of the covenant of good faith and fair dealing and for declaratory relief, and (3) otherwise dismissed the remaining claims and allegations—including the claim that the Late Fees and Notice Fees are unlawful penalties as opposed to lawful liquidated damages. *Id.* Plaintiff moved to reconsider, and on April 14, 2022, the Court reinstated the claims challenging the Late Fees and Notice Fees as unlawful penalties. *Id.*

Thereafter, on April 27, 2022, Plaintiff filed his Amended Class Action Complaint setting forth claims for declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing. *Id.* at ¶ 4. Defendant filed its Answer on May 11, 2022, and the Parties proceeded to litigate the case through discovery. *Id.* at ¶ 4.

Following the completion of significant discovery, Plaintiff moved for class certification on June 26, 2023. *Id.* at ¶ 5. The Motion for Class Certification was fully briefed on August 18, 2023, and the Court issued an Order on February 2, 2024 certifying the following Class and Subclass:

For the Class claims of Breach of Contract and Breach of Implied Covenant of Good Faith based on Defendant Griffis' charging of the Notice Fee and Late Fee, the Class is defined as: All persons in the State of Colorado who (1) from the date three years prior to the filing of the Complaint through date notice is sent to the Class; (2) leased a residence from Defendant using Defendant's Form Lease; (3) who Griffis caused to be charged the Notice Fee or the Late Fee.

For the Class claim of Breach of Contract based on Defendant Griffis' charging of an unconscionable Valet Trash Fee, the Subclass is defined as: All persons in the State of Colorado who (1) from the date three years prior to the filing of the Complaint through date of notice is sent to the Class; (2) leased a residence from Defendant using Defendant's Form Lease; (3) who Griffis caused to be charged the Trash Valet Fee in an amount of \$42.00 from August 2018 to April 2020 and \$30.00 from May 2020 through June 2021.

The Parties subsequently agreed to mediation and participated in a full-day mediation session on June 12, 2024 overseen by Judge Edward Bronfin (ret.) at JAG. *Id.* at ¶ 7. After the mediation, and following additional back-and-forth negotiations, the Parties reached the instant Settlement. *Id.*

III. Key Terms of the Settlement

The complete terms of the Settlement are set forth in the Settlement Agreement. (Ex. A.)

A brief summary follows:

A. Class Definition

The "Settlement Class" or "Class" is defined as anyone who falls into either the Class or the Subclass (or both) certified by the Court in its Order of February 2, 2024:

For the Class claims of Breach of Contract and Breach of Implied Covenant of Good Faith based on Defendant Griffis' charging of the Notice Fee and Late Fee, the Class is defined as: "All persons in the State of Colorado who (1) from the date three years prior to the filing of the Complaint through date notice is sent to the Class; (2) leased a residence from Defendant using Defendant's Form Lease; (3) who Griffis caused to be charged the Notice Fee or the Late Fee."

For the Class claim of Breach of Contract based on Defendant Griffis' charging of an unconscionable Valet Trash Fee, the Subclass is defined as: "All persons in the State of Colorado who (1) from the date three years prior to the filing of the Complaint through date of notice is sent to the Class; (2) leased a residence from Defendant using Defendant's Form Lease; (3) who Griffis caused to be charged the Trash Valet Fee in an amount of \$42.00 from August 2018 to April 2020 and \$30.00 from May 2020 through June 2021."

(Settlement Agrmt. at § II.2.) The Parties understand the Class to consist of approximately 2,163 Members and the Subclass to include 129 individuals. *Id.*

B. Monetary Relief

The Settlement provides Class Members with substantial monetary relief. Specifically, Griffis must establish a Settlement Fund of \$599,745 (*Id.* at § II.37), that—following the payment of any award of attorneys’ fees, costs, service award for Plaintiff, and settlement administration costs—will be used to pay all class members who do not opt out. Proposed Settlement Class Counsel projects that payments will equal approximately \$144.12 per Class Member and \$374.89 per Subclass Member.³ Woodrow Decl. at ¶ 15. \$144.12 for Late Fees and Notice Fees represents a recovery of multiple months’-worth of unlawful fees. *Id.* Likewise, the per-month Valet Trash Fees equaled an average of \$36 (the Subclass was composed of tenants who were charged \$30 some months and \$42 in other months.). An approximate \$375 recovery equates to over 10 months of Valet Trash Fees. *Id.* And all of this is recovered *after* payment of legal fees, expenses, and other settlement costs. *Id.*

Further, the Settlement Fund is set up such that all class members who do not elect to opt out of the Settlement will receive direct payments in the form of checks mailed to them—no claims process is required. Any amounts remaining in the Settlement Fund after payment of all Settlement

³ This assumes \$30,000 for Notice and Administrative Fees, a \$10,000 service award, and an award of reasonable attorneys’ fees and expenses equal to one-third of the Settlement Fund, which all together would result in a Net Settlement Fund of \$359,832 to pay Settlement Class Members. It also assumes no one opts-out, though each exclusion request would add to the amount the remaining Settlement Class Members will receive. *Id.* at ¶ 15.

Class Members, and after at least one attempt at re-mailing, will be paid to a *cy pres* recipient approved by the Court.

Accordingly, the monetary relief provided to the Class is undoubtedly favorable.

C. Prospective Relief

In addition to the \$599,745 in monetary relief, the Settlement Agreement also requires that Griffis adopt certain prospective measures. Specifically, Griffis agrees that, for a period not to exceed 24 months, and subject to any changes in applicable law, that it will not: (1) charge or collect a fee for the late payment of rent unless a rent payment is late by at least seven calendar days, or charge or collect such late fees in an amount that exceeds the greater of (a) fifty dollars (\$50) or (b) five percent (5%) of the amount of the past due rent payment; (2) charge or collect a fee for posting any Demand for Rent and Possession or similar notice; or (3) with respect to any service for which Griffis is billed by a third party, charge a tenant either a markup or fee in an amount that exceeds two percent (2%) of the amount that Griffis was billed or a markup or fee in an amount that exceeds a total of ten dollars (\$10) per month, whichever is greater. (Settlement Agrmt. § III.4.)

D. Release of Liability

In exchange for the benefits to the Class, Griffis will receive a full release of any claims relating to the allegedly unlawful fees. (Settlement Agrmt. § V.) The Release includes unknown claims, which are limited to claims that could have been brought in this litigation.

E. Notice Plan

The Settlement also calls for the dissemination of Notice to Class Members. The plan features direct mail of a traditional “short form” notice summarizing the case details and the Settlement terms and inviting the recipient to visit the Settlement Website for more information. It also includes email notice (where emails are available) with the traditional “long form” notice and relevant case documents available on a settlement website for Class Members to view as needed. The Administrator will attempt to re-mail notices to any forwarding addresses received. The Notice explains the key terms of the Settlement, the rights of Settlement Class Members to request exclusion or object, instructions as to the method to submit a valid opt-out request, and the ability to download a simple opt-out request form. *See* Exhibits 1 and 2 to the Settlement Agreement, attached hereto as Ex. A,

Such terms are decidedly favorable to the Class, and the Court should grant preliminary approval to the instant Settlement.

IV. The Proposed Settlement Class Should Be Certified.

The first step for a court faced with a Motion for Preliminary Approval is to certify the proposed settlement class for settlement purposes. Manual for Complex Litigation §21.632 (4th ed. 2004); *see Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617-620, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). This is only for the purposes of settlement, and the standards are relaxed. The plaintiff must first demonstrate that the proposed class and proposed class representatives meet four requirements: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Colo. R. Civ. P. 23(a)(1)-(4). In addition, a plaintiff seeking class certification must also meet at least one of the requirements of Rule 23(b). Colo. R. Civ. P. 23(b); *see also* Wal-Mart

Stores, Inc. v. Dukes, 131 S.Ct. 2541, 2548 (2011). Rule 23(b)(2) requires that the plaintiff demonstrate that the defendant acted or refused to act on grounds that apply generally to the class. Colo. R. Civ. P. 23(b)(2). Rule 23(b)(3) requires that the plaintiff demonstrate that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Courts generally do not place much emphasis on manageability or superiority when faced with a settlement. *Amchem*, 521 U.S. at 623.

The Court already certified the Class through its Order of February 2, 2024. Because the Class is defined the same way in the settlement as in the Order, the Settlement Class meets each of the elements for certification. *See In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL 2077847, at *1 (N.D. Cal. May 10, 2019) (“The class definition has not changed and the Rule 23(a) and (b)(3) requirements remain satisfied. The Court accordingly certifies the class for purposes of the settlement.”)

V. The Proposed Settlement is Fundamentally Fair, Reasonable, and Adequate, and Thus Warrants Preliminary Approval.

The Court may approve a class settlement if it finds that it is “fair, reasonable, and adequate.” *Thomas v. Rahmani-Azar*, 217 P.3d 945, 947 (Colo. App. 2009).

While there appears to be limited Colorado case law, under federal law, which Colorado courts look to for guidance when the rules of civil procedure are substantially similar, courts use a two-step process to approve class action settlements. *See Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982) (“The procedure for review of a proposed class action settlement is a well established two-step process.”); NEWBERG ON CLASS ACTIONS § 13:12 (5th ed.) (“Courts

engage in a two-step process to ensure the fairness of any class action settlement.”); David F. Herr, *Annotated Manual for Complex Litigation*, § 21.632 (4th ed. 2004) (same).

The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is “within the range of possible approval.” Newberg, §11.25, at 38-39 (quoting *Manual for Complex Litigation*, §30.41 (3rd Ed.)); *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1110 (9th Cir. 2008). This hearing is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. Newberg, §11.25, at 38-39; *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D.Colo.2006) (“The purpose of the preliminary approval process is to determine whether there is any reason not to notify the class members of the proposed settlement and to proceed with a [final] fairness hearing”). The preliminary approval stage is an “initial evaluation” of the fairness of the proposed settlement made by the court on the basis of written submissions and informal presentation from the settling parties. *Manual for Complex Litigation*, § 21.632 (4th ed. 2004).

If the court finds a settlement proposal “within the range of possible approval,” it then proceeds to the second step in the review process—the final approval hearing. *See* Newberg, §11.25, at 38-39. At the final fairness hearing, the Court considers the reaction of the class members (through requests for exclusions and any objections) and determines whether the settlement is fundamentally fair, adequate, and reasonable based on numerous factors, including: the strength of the plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed; the experience and views of counsel; and the

reaction of the class members to the proposed settlement. *Bruce W. Higley, D.D.S., M.S., P.A. Defined Ben. Annuity Plan v. Kidder, Peabody & Co.*, 920 P.2d 884, 891 (Colo. App. 1996); *see also Helen G. Bonfils Found. v. Denver Post Emps. Stock Tr.*, 674 P.2d 997, 998 (Colo. App. 1983) (outlining factors and explaining that “[t]he ‘universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable.’”).

“The Court will ordinarily grant preliminary approval where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.” *In re Motor Fuel Temperature Sales Practices Litig.*, No. 07–MD–1840, 2011 WL 4431090, at *5 (D. Kan. Sept. 22, 2011) (internal quotation omitted); *see Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir.2002); *see also In re Motor Fuel Temperature Sales Practices Litig.*, 258 F.R.D. 671, 680 (D.Kan.2009) (“Although the Court will consider these factors in depth at the final approval hearing, they also provide a useful guide at the preliminary approval stage.”)

There can be no doubt that the Settlement was the result of serious, non-collusive negotiations. The settlement was achieved following two mediation sessions before a well-respected mediator. There are no obvious deficiencies, and no one receives preferential treatment. Additionally, and as explained below, the Settlement Agreement falls within the acceptable range of final approval with respect to each of these considerations.

A. The Strength of Plaintiff’s Case Supports Preliminary Approval

The first consideration weighs in favor of granting preliminary approval. Though Koch has a strong case, there is significant risk. Woodrow Decl. ¶ 18. Griffis’s counsel made clear that they would vigorously contest the legal theories at trial and would raise numerous defenses. *Id.* There is always risk that the Court or finder of fact would disagree that the fees challenged in the lawsuit were unlawful. *Id.* As such, notwithstanding the strength of the claims, the risk of proceeding to trial was real and counsels in support of settling—especially on the favorable terms set forth in the Settlement Agreement. *Id.*

B. The Risk, Expense, Complexity, and Duration of the Litigation Favors Settlement

This case could easily drag on. Woodrow Decl. at ¶ 19. It has been pending since 2021. Even if Koch ultimately prevailed at trial, a judgment would likely prompt Griffis to engage in post-trial motion practice and appeals. *Id.* As such, there can be little doubt that the litigation would be complex and that it would take at least another year (possibly longer) for the Settlement Class to see any real recovery. *Id.* Accordingly, there can be little question that the anticipated length of the litigation favors approving the Settlement Agreement. *Id.*

C. The Risk of Maintaining Class Status Favors Granting Preliminary Approval

While Koch takes pride in the fact he achieved class certification, there is no guarantee that this would have lasted through trials and appeals. Woodrow Decl. at ¶ 19. Griffis was certainly prepared to argue that the class should be decertified. *Id.* While Koch doesn’t agree, the risk cannot be ignored. *Id.* Additionally, facts presented at trial can be used by defense counsel to undermine class certification and call it back into question. *Id.* As such, the risk posed by this factor also

weighs in favor of granting preliminary approval so that the Settlement Class members can enjoy tangible benefits without the burden and risk of further litigation.

D. The Settlement Provides Favorable Relief

To “judge the fairness of a proposed compromise,” a court must “weigh[] the plaintiff’s likelihood of success on the merits against the amount and form of the relief offered in the settlement.” *Int’l Union*, 497 F.3d at 631 (quoting *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n. 14 (1981)). Applied here, and notwithstanding the litigation that would remain absent a settlement, the Class Representative was (and remains) confident in the strength of his claims. The question is whether the amount of the relief provides sufficient compensation to the Settlement Class, and the answer is undoubtedly “yes.” Woodrow Decl. ¶ 17. The reality is difficult to ignore: \$599,745 in monetary relief, plus prospective relief designed to help tenants is nothing to scoff at. *Id.* at ¶ 15. This is not a case where Settlement Class Members are slated to receive coupons or checks for \$5 after being made to submit onerous claim forms. *Id.* Rather, \$144 to compensate for allegedly unlawful late fees—that were imposed when the tenant admittedly failed to pay rent on time—is a fair and reasonable recovery. *Id.* Likewise, \$374 to compensate for allegedly wrongful Valet Trash services, particularly where tenants received *some* benefit from the service and Griffis incurred *some* cost to provide it, is a fair recovery as well. *Id.*

And to receive such benefits, Settlement Class Members need to do nothing at all. When coupled with the prospective relief, the strength of the Settlement supports preliminary approval.

E. The Parties Engaged in Extensive Discovery

The Court next asks whether the plaintiff has enough information to adequately assess their case and the desirability of the proposed settlement. Here, Class Counsel has conducted significant discovery into the claims and has vigorously litigated the case. Woodrow Decl. at ¶ 5. This included motion practice and substantial factfinding, including written discovery and depositions. *Id.* Class Counsel also engaged in a full-day mediation session and several follow up negotiations. *Id.* at ¶ 7. Put simply, Class Counsel has sufficient information to evaluate the claims and defenses at issue and judge the fairness of the resolution.

F. Class Counsel Supports the Settlement

The opinion of Class Counsel also supports approval. *See Marcus v. Kan. Dep't of Revenue*, 209 F.Supp.2d 1179, 1183 (D. Kan. 2002) (“Counsels’ judgment as to the fairness of the agreement is entitled to considerable weight”); *Saunders v. Berks Credit & Collections, Inc.*, No. CIV. 00–3477, 2002 WL 1497374, at *10 (E.D. Pa. July 11, 2002) (“The Court is therefore deferential to the reasoned judgment of the well-informed attorneys.”)

This is a good deal for the Settlement Class Members. Notwithstanding any individuals that may elect to opt out, all of the class members will receive compensation, and everyone benefits from Griffis’s prospective business assurances. Woodrow Decl. ¶ 17. The Settlement was achieved through mediated negotiation with the assistance of a respected third-party neutral and was hard bargained. *Id.* at ¶ 7. When viewed against the risks of continued litigation—including the possibility of no recovery at all—the Settlement presents a very favorable outcome for members of the Class. *Id.* at ¶ 19.

G. The Reaction of Absent Class Members

Class members should respond favorably. The Settlement provides significant monetary relief to people who were charged fees, many of whom are presently in collections. Woodrow Decl. at ¶ 15. Class Counsel will demonstrate this factor on Final Approval. The Settlement falls within the range of final approval under each of the factors that can be evaluated at this time. As such, the Settlement falls “within the range of possible approval” and should receive preliminarily approval from this Court.

As explained next, the proposed Notice Plan is designed to comport with due process and facilitate the submission of claims.

V. The Proposed Plan of Class Notice is the Best Practicable

As a final consideration, a court reviewing any Class Action Settlement where certification is sought in accordance with Rule 23(b)(3) (as is partly the case here) must also provide the settlement class with notice that comports with due process and the ability to opt out. Rule 23(c)(2) provides that “In any class action maintained under subsection (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” C.R.C.P. 23; *Rhodes v. Olson Assocs., P.C.*, 308 F.R.D. 664, 667–68 (D. Colo. 2015). Rule 23(e) similarly states that “A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” C.R.C.P. 23(e). Notice is “adequate if it may be understood by the average class member.” Newberg, § 11:53 at 167. The notice must describe the nature of the action, the definition of the class, the class claims and defenses at issue, as well as explain that settlement

class members may enter an appearance through counsel if so desired, request to be excluded from the settlement class, and that the effect of a class judgment shall be binding on all class members. *See Colo. R. Civ. 23(c)(2).*

The Notice plan developed by both Parties is the best possible under the circumstances. The Parties have selected RG2 Claims Administration, a nationally respected third-party settlement administrator with extensive experience administering class action settlements, to serve as Settlement Administrator. Following Preliminary Approval, the Settlement Administrator will be provided with the Class List, which contains the most recent contact information Griffis has on file for the Settlement Class Members. (Settlement Agrmt. § IV.3.b.) RG2 will then attempt to update addresses. Where available, email addresses will also be used. The Settlement administrator will then send each Class Member, via first class mail, a copy of the Short Form (postcard) Notice (attached as Group Exhibit 2 to the Settlement Agreement, attached hereto as Ex. A). Wherever an email address is located a copy of the Short Form Notice will be sent to the Settlement Class Member via email as well (the result being that many members of the Settlement Class will receive both mailed and emailed notice of the Settlement Agreement).

RG2 is also responsible for establishing and maintaining a Settlement Website (Settlement Agrmt. at § IV.3.f) that will host a traditional “Long Form” notice. Settlement Class Members can visit the website to learn information about the Settlement, be advised of key dates and deadlines, and review important settlement documents such as the Settlement Agreement, notices, motions for preliminary and final approval, and Class Counsel’s application for a Fee Award. Settlement Class Members will also be able to use the Settlement Website to download a form for opting out.

The Notice will provide information to Class Members of their inclusion in the Class because they were charged the challenged fees. Settlement Agrmt. § IV.3.f.

The Notice provides the terms and provisions of the proposed settlement, including the settlement amounts. *Id.* The Notice will advise Settlement Class Members of their rights, including the right to be excluded from, comment upon, and object to the Settlement and the procedures for taking such actions. *Id.* § IV.4, 6. The Notice will also refer Settlement Class Members to the Settlement Website and clearly state the date, time, and place of the Final Approval Hearing and advise the Class Members of their right to attend, to opt out, and to object.

VI. Conclusion

For the foregoing reasons, Plaintiff respectfully asks that the Court grant preliminary approval of the Settlement Agreement, approve the form and manner of notice described above, and schedule a Final Approval hearing.

Respectfully submitted,

ALEXANDER KOCH, individually and on behalf
of all others similarly situated,

Dated: August 26, 2024

/s/ Steven L. Woodrow

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the above titled document was served upon counsel of record by filing such papers via the Court's electronic filing system on August 26, 2024.

/s/ Steven L. Woodrow