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FILED
ALAMEDA COUNTY

JAN 10 2018

CLERK OF THE SUPERIOR COURT
By Tom Williams
Deputy

Attorneys for Mendez Class Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

LOGAN MENDEZ, KYLE NIEMIER, AND
NICOLE LENOIR, for themselves and all
those similarly-situated,

Plaintiffs,

v.

EMPYREAN TOWERS, LLC, PRIZE
GROUP, LLC, INNOVISTECH REALTY
COMPANY, ALICE TSE, and DOES 1
through 30.

Defendants.

Case No. RG15765508

[PROPOSED] ORDER
PRELIMINARILY APPROVING
SETTLEMENT, PROVISIONAL CLASS
CERTIFICATION, CLASS
REPRESENTATIVES, INCENTIVE
PAYMENT AWARDS, CLASS
COUNSEL, CLASS NOTICE AND
ADMINISTRATION

CLASS ACTION

CLASS ACTION ASSIGNED FOR ALL
PURPOSES TO: JUDGE IOANA PETROU,
DEPT. 17

Date: January 10, 2018
Time: 9:00 a.m.
Date action filed: April 8, 2015
Trial date: Not set

The motion of plaintiffs Logan Mendez, Kyle Niemier, and Nicole Lenoir ("Plaintiffs") for an Order preliminary approving the proposed settlement agreement ("Settlement Agreement"), provisional class certification, class representatives, incentive payment awards, class counsel, class notice and administration came on for hearing of this Court on January 10,

1 2018. Having read the motion, the memoranda, the declarations, and supplemental declarations
2 filed by the parties, and having heard argument of counsel, this Court finds:

3 (1) It is impracticable to bring members of the class before the Court;

4 (2) The class is ascertainable and is sufficiently numerous to warrant class treatment;

5 (3) The questions of law or fact common to that class are substantially similar and
6 predominate over the questions affecting the individual members;

7 (4) The claims or defenses of the representative Plaintiffs are typical of the claims or
8 defenses of the class;

9 (5) The representative Plaintiffs will fairly and adequately protect the interests of the
10 class; and

11 (6) A class action is the superior means for adjudicating the claims in this litigation.

12 THEREFORE IT IS ORDERED THAT:

13 1. A class action is proper as to all causes of action of the Complaint herein;

14 2. The class to be certified is defined as: All persons identified as a resident of the
15 Empyrean Towers which is located at 344 13th Street, Oakland, CA who were required to check
16 out pursuant to the relevant 21-day policy during the period April 8, 2014 through June 26, 2015.

17 3. Plaintiffs Logan Mendez, Kyle Niemier, and Nicole Lenoir are appointed as Class
18 Representatives.

19 4. The Law Offices of Andrew Wolff, P.C. is appointed Class counsel.

20 Additionally, upon consideration of the Settlement Agreement, IT IS ALSO HEREBY
21 ORDERED AS FOLLOWS:

22 1. Given the size of the Settlement Agreement and its exhibits, the Settlement
23 Agreement and its exhibits are incorporated by reference into this Order as if fully set forth in this
24 Order. Persons seeking to review the Settlement Agreement should obtain a copy on Domain Web
25 or at www.awolfflaw.com. Moreover, the Settlement Agreement can be found attached as **Exhibit**
26 **A** to the Declaration of Tony Ruch in Support of Plaintiffs' Motion for Preliminary Settlement
27

1 counsel and the Class of certifying a class, proving liability, demonstrating any substantial
2 entitlement to relief, and collecting any judgment. Subject to further consideration at the Court
3 Approval Hearing described in paragraph 12 below, this Class meets the relevant requirements of
4 California law for purposes of the Settlement Agreement.

5 3. For purposes of the Settlement Agreement, Dylan Bacovcin of KCC which is
6 located at 462 S 4th Street, Louisville, KY 40202 is approved and designated as the Settlement
7 Administrator for the Settlement Agreement. The Parties are hereby authorized to retain the
8 Settlement Administrator to assist in effectuating the terms of, and administering, the Settlement
9 Agreement.

10 4. Pursuant to California law, the Court preliminarily approves the Settlement
11 Agreement, and the Settlement provided for in the Settlement Agreement, as (a) fair, reasonable,
12 and adequate in light of the relevant factual, legal, practical and procedural considerations of the
13 Action, (b) free of collusion to the detriment of Class Members, and (c) within the range of
14 possible final judicial approval, subject to further consideration of final approval at the Court
15 Approval Hearing described at paragraph 12 of this Order.

16 5. The Court finds that the plan in the Settlement Agreement for direct mail, and/or
17 email notice to Class Members is the best notice practicable under the circumstances and satisfies
18 the requirements of due process and California law. That plan is approved and accepted. This
19 Court further finds that the Class Notice complies with California law and is appropriate as part of
20 the notice plan and the Settlement, and thus they are hereby approved, adopted and authorized for
21 dissemination. This Court further finds that no other notice to Class Members other than that
22 identified in the Settlement Agreement is reasonably necessary in the Action. The Class Notice is
23 attached herein to this Order as **Exhibit 1**.

24 6. Pursuant to the terms of the Settlement Agreement, parties are hereby directed to
25 provide the Class Member List to the Settlement Administrator. The Settlement Administrator
26 shall mail a Class Notice, substantially in the form of the document attached herein as **Exhibit 1**,
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1 to each Class Member at the addresses on the Class Member List as updated by the Settlement
2 Administrator and shall make copies of the Class Notice and the Settlement Agreement available
3 on a dedicated settlement website at www.awolfflaw.com or other website deemed appropriate by
4 the Settlement Administrator. Before mailing and publication, the Settlement Administrator shall
5 fill in all applicable dates and deadlines in the Class Notice and Publication Notice to conform to
6 the dates and deadlines specified for such events in this Order. The Settlement Administrator shall
7 also have discretion to format the Class Notice and/or Publication Notice in a reasonable manner
8 before mailing or publishing, as applicable, to minimize mailing, publication, and/or
9 administration costs while providing straightforward notice of the Settlement to Class Members.

10 7. If any Class Notice mailed pursuant to the Settlement Agreement and this Order is
11 returned as undeliverable, then the Settlement Administrator shall re-mail the Class Notice
12 immediately to the forwarding address, if any, provided on the returned mail. If the returned mail
13 does not reflect a forwarding address, then the Settlement Administrator shall attempt to obtain
14 additional contact information for such Class Members. Moreover, the Settlement Administrator
15 shall provide Class counsel with the names and addresses of the affected Class Members and Class
16 counsel shall make reasonable efforts to obtain additional address information for such Class
17 Members and provide any such information to the Settlement Administrator. The Settlement
18 Administrator shall re-send the Class Notice to Class Members at any updated address found prior
19 to the Court Approval Hearing. Other than as set forth in this Order, Representative Plaintiff,
20 Class counsel, Defendants and the Settlement Administrator shall have no other obligation to
21 deliver Class Notices.

22 8. Any Class Member who wishes to be excluded from the Settlement Class and not
23 be bound by the Settlement Agreement must complete and mail a request for exclusion ("Opt-
24 Out") to the Settlement Administrator at the address set forth in the Class Notice, postmarked no
25 later than thirty (30) days after the mailing of the Class Notice which shall be **March 5, 2018**. For
26 a Class Member's Opt-Out to be valid, it must substantially comply with the following
27

1 requirements: the Opt-Out must (a) set forth the Class Member's full name, address, email address
2 and telephone number; (b) identify the Building and Unit Number as to which the Class Member
3 seeks exclusion; (c) contain the Class Member's personal signature or the signature of a person
4 previously authorized by law, such as a trustee, guardian or person acting under a power of
5 attorney, to act on behalf of the Class Member with respect to a claim or right such as those in the
6 Action, in original or by fax or scan; and (d) clearly state the Class Member's intent to be excluded
7 from the Class, not to participate in the Settlement, and to waive all rights to the benefits of the
8 Settlement. In those instances where a Class Member includes persons who were co-tenants, the
9 Class Member shall be deemed a Successful Opt-Out as to that tenancy only if all co-tenants as to
10 that tenancy elect to opt-out in accordance with this Order and the terms of the Settlement
11 Agreement. In the event a Class Member is a Class Member as to more than one tenancy, the Opt-
12 Out may specify that the Class Member is opting out as to fewer than all tenancies by expressly
13 stating so in the Opt-Out and specifically identifying each tenancy as to which the Class Member
14 is opting out. In the absence of such specification, the Opt-Out shall be construed as a request to
15 opt-out all of the Class Member's tenancies. Any Class Member who does not submit a Successful
16 Opt-Out, or substantially comply with all requirements for opting out as are contained in this Order
17 and the Class Notice, shall be bound by the Settlement Agreement, including the Release and any
18 Final Order and Judgment entered in the Action. Any Class Member who is a Successful Opt-Out
19 will be deemed to have waived any rights or benefits under the Settlement, will not be represented
20 by Class Counsel, and will not have standing to object to the Settlement or intervene in the Action.

21 9. Any Class Member who is not a Successful Opt-Out and whom wishes to object to
22 the proposed Settlement must by **March 5, 2018** serve a written objection to the Settlement
23 ("Objection") with the Settlement Administrator. Counsel for the parties shall file any Objections
24 received but not yet filed, if any, with the Court, within seven days after the deadline set by the
25 Court for serving Objections. Each Objection must substantially comply with the following
26 requirements: (a) set forth the Class Member's full name, current address, email address, telephone
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1 number, and signature; (b) describe the Class Member's building address and Unit number and
2 dates of his or her tenancy; (c) state that the Class Member objects to the Settlement, in whole or
3 in part; (d) set forth a statement of the legal and factual basis for the Objection; and (e) provide
4 copies of any documents that the Class Member wishes to submit in support of his or her position.
5 Any Class Member who does not submit a timely Objection in accord with this Order, the Class
6 Notice, and the Settlement Agreement shall be deemed not to have filed a valid Objection to the
7 Settlement.

8 10. Any Class Member who wishes to file a motion in the Action must file the motion
9 with the Court, and contemporaneously serve it upon Class counsel and Counsel for the Defendants
10 within the time set by the Court.

11 11. Any application for an Attorney Fee/Litigation Cost Award by Class counsel and
12 any application for a Class Representative Award shall be filed with the Court no later than twenty-
13 one (21) days before the deadline for the filing of Objections to the Settlement set by the Court
14 after the mailing of the Class Notice.

15 12. A hearing (the "Court Approval Hearing") shall be held at the Alameda County
16 Superior Court which is located at 1221 Oak Street, Oakland, CA 94612, on **March 21, 2018** at
17 9:00 a.m. in Department 17 of the Court to determine, among other things, (a) whether the
18 proposed Settlement Agreement should be approved as fair, reasonable and adequate, (b) whether
19 the terms of the Settlement Agreement should be final and binding, and (c) whether all
20 requirements of any statute, rule and state and federal Constitutions necessary to effectuate the
21 Settlement Agreement have been met and satisfied.

22 13. It is not necessary for a Class Member to appear at the Court Approval Hearing.
23 However, any Class Member who wishes to appear at the Court Approval Hearing, whether pro
24 se or through counsel, must either file a Notice of Appearance in the Action, and mail and
25 postmark, or hand-deliver, the notice to Class counsel and Counsel for the Defendants no later than
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1 30 days after the mailing of the Class Notice or file a written objection which includes a Notice of
2 Appearance in this Action, pursuant to paragraph 9 of this Order.

3 14. The Court in its discretion may deny a Class Member's request to raise matters at
4 the Court Approval Hearing that the Class Member could have raised in an Objection, but failed
5 to raise.

6 15. The Court in its discretion may determine that any Class Member who fails to
7 comply with this Order, the Class Notice, or the Settlement Agreement shall not be heard at the
8 Court Approval Hearing.

9 16. All other events contemplated by the Settlement Agreement to occur after this
10 Order and before the Court Approval Hearing, shall be governed by the Settlement Agreement.

11 17. All proceedings in the Action, other than such as may be necessary to carry out the
12 terms and conditions of the Settlement Agreement or the responsibilities related or incidental
13 thereto, are stayed and suspended until further order of this Court. All deadlines in the action are
14 tolled as of January 10, 2018, absent contrary written agreement by the Parties.

15 18. If Final Approval of the Settlement Agreement is not achieved, or if the Settlement
16 Agreement is terminated for any reason, the Settlement Agreement and all proceedings had in
17 connection therewith shall be without prejudice to the rights of the Parties as of June 15, 2017
18 pursuant to paragraph 8.03 of the Settlement Agreement, and all orders issued pursuant to the
19 Settlement Agreement shall be vacated upon a motion of any Party or stipulation from the Parties.
20 In such event, the Settlement Agreement and all drafts of documents and communications
21 concerning the Settlement Agreement shall not be used or referred to in this Action for any purpose
22 whatsoever. This Order shall be of no force or effect if Final Approval does not occur, and nothing
23 in this Order, the Settlement Agreement, the Class Action Notice or any other aspect of the
24 Settlement shall be construed or used as an admission, concession, or declaration or evidence by
25 or against any Party of any claim, fault, wrongdoing, breach, or liability, or regarding certification
26 of this case as a class action.
27

1 19. The Court reserves the right to approve the Settlement Agreement with such
2 modifications, if any, as may be agreed to by Representative Plaintiffs and Defendants, or in the
3 Court's discretion, and without further notice to the Class Members.

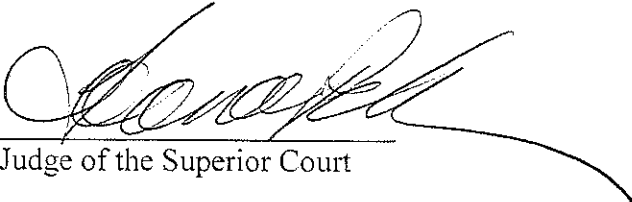
4 20. Pending this Court's decision on whether to finally approve the Settlement
5 Agreement in this Action, Representative Plaintiffs, all Class Members (excepting those who are
6 Successful Opt-Outs), and Class counsel are preliminary enjoined from commencing, prosecuting,
7 or assisting in any lawsuit, arbitration or proceeding against the Released Persons that asserts or
8 purports to assert any matter within the scope of the Release in the Settlement Agreement.

9 21. The Parties shall meet and confer in good faith to resolve any dispute concerning
10 the Settlement Agreement and/or this Order and, to the extent any such dispute cannot be resolved
11 between them, present the matter to this Court for resolution.

12 22. Plaintiffs Logan Mendez, Kyle Niemier and Nicole Lenoir are awarded Class
13 Representative incentive payment awards in the amount of \$ 7,500 each

14
15 IT IS SO ORDERED

16 Date: 1/10/18

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18 Judge of the Superior Court