

1 NEUMEYER & DILLION LLP
2 JOSEPH A. FERRENTINO, CBN 162855
3 STEPHEN M. HAUPTMAN, CBN 226123
4 JASON MOBERLY CARUSO, CBN 287809
895 Dove Street, 5th Floor
Newport Beach, California 92660
(949) 854-7000; (949) 854-7099 (Fax)

**ELECTRONICALLY
FILED**
12/21/2018 9:55 AM

SAN LUIS OBISPO SUPERIOR COURT
BY: M. Landrum
M. Landrum, Deputy Clerk

5 *Attorneys for Plaintiff and the Class*

6
7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN LUIS OBISPO
10 UNLIMITED JURISDICTION
11

12 CAMERON GEEHR, individually and on
13 behalf of all others similarly situated,

14 Plaintiffs,

15 vs.

16 HOME SWEET HOME, LLC, a California
17 limited liability company; JOHN P.
18 WALSH; ASSET CAMPUS HOUSING,
19 INC., a Texas corporation; and DOES 1-
20 10, inclusive,

21 Defendants.

CASE NO.: 17-CV-0629
DEPT.: 9
JUDGE: Honorable Tana L. Coates

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF CLASS COUNSEL'S
ATTORNEY FEES AND LITIGATION
COSTS**

*[Filed concurrently with Declaration of Stephen
M. Hauptman and [Proposed] Order]*

Date: March 6, 2019
Time: 9:00 a.m.
Dept.: 9

FILE DATE: November 27, 2017
TRIAL DATE SET: No Date Set

22 **TO THE COURT, THE MEMBERS OF THE CLASS, ALL PARTIES AND THEIR**
23 **ATTORNEYS OF RECORD:**

24 **PLEASE TAKE NOTICE** that on March 6, 2019 at 9:00 a.m., or as soon thereafter as
25 the matter may be heard, in Department 9 of the above-entitled Court, located at 1035 Palm
26 Street, San Luis Obispo, California 93408, Plaintiff Cameron Geehr ("Plaintiff") will and hereby
27 does move the Court for an order approving that attorney fees in the amount of \$142,703.87 and
28 litigation costs in the amount of \$7,296.13 be awarded to Newmeyer & Dillion, LLP ("N&D") in

3796.101 / 7842139.1

1 this matter.

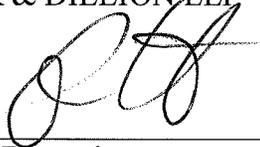
2 This Court has granted preliminary approval of the class action settlement for this lawsuit,
3 which settlement provides, among other things, the creation of a settlement fund by Defendants
4 Home Sweet Home, LLC and Asset Campus Housing, Inc. ("Defendants") in the amount of
5 \$700,000 for the partial reimbursement of rents paid by each of the members of the class. In
6 addition, the Court has approved the appointment of N&D as counsel for the class, and the
7 underlying settlement agreement provides that Defendants shall not object to an award of attorney
8 fees and litigation costs to class counsel up to \$150,000.

9 In light of the significant result achieved on behalf of the class in this matter, the award
10 for attorney fees and litigation costs requested herein is more than reasonable. The attorney fees
11 represent less than 17% of the total settlement amount of \$850,000, which is significantly less
12 than fee percentages often awarded in contingent fee class actions; and the litigation costs
13 requested are also reasonable in amount, scope and type, and were necessary to the prosecution of
14 the claims for the class.

15 This Motion will be based on this Notice, the attached Memorandum of Points and
16 Authorities, the Declaration of Stephen M. Hauptman and all exhibits thereto, the arguments of
17 counsel the Court entertains at the hearing, and all papers and records on file in this matter.

18 Dated: December 20, 2018

NEWMEYER & DILLION LLP

19
20
21 By: 

Joseph A. Ferrentino
Stephen M. Hauptman
Jason Moberly Caruso
Attorneys for Plaintiff and the Class

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION.**

3 Plaintiff Cameron Geehr (“Plaintiff”) hereby moves the Court for an order approving that
4 attorney fees and litigation costs in the total amount of \$150,000 be awarded to Newmeyer &
5 Dillion, LLP (“N&D”) for its efforts securing and finalizing the settlement on behalf of the
6 members of the class in this lawsuit.

7 This Court has granted preliminary approval of the class action settlement, which
8 provides, among other things, the creation of a settlement fund by Defendants Home Sweet
9 Home, LLC and Asset Campus Housing, Inc. (“Defendants”) in the amount of \$700,000 for
10 partial reimbursement of rents paid by each of the members of the class. Such individual
11 payments will amount to between roughly \$68 and \$1,600 going to likely in excess of 500 student
12 tenants of the apartment community located at 1050 Foothill Boulevard, San Luis Obispo,
13 California 93405 (“The SLO”). The Court has also approved the appointment of N&D as counsel
14 for the class for purposes of the settlement, and the underlying settlement agreement provides that
15 Defendants shall not object to an award of fees and costs to N&D up to \$150,000. (Declaration
16 of Stephen M. Hauptman (“Hauptman Decl.”), ¶ 3.)

17 Accordingly, it is respectfully requested that the Court enter an order awarding N&D
18 attorney fees in the amount of \$142,703.87 and litigation costs in the amount of \$7,296.13.

19 **2. SIGNIFICANT, EFFICIENT LITIGATION EFFORTS BY CLASS COUNSEL**
20 **HAVE RESULTED IN A SUBSTANTIAL RECOVERY FOR THE CLASS.**

21 N&D has devoted significant time and effort investigating the factual and legal bases for
22 the claims of the class, even well before the complaint in this case was filed. These efforts
23 continued after formal initiation of the class action, through discovery and negotiations with
24 Defendants, and culminated in the resolution of this lawsuit by way of settlement. (Hauptman
25 Decl., ¶ 4.) The following is a summary of the litigation and efforts of N&D herein:

26 N&D performed substantial preliminary investigation into the City of San Luis Obispo’s
27 issuance of “Stop Work” notices and a “Notice of Violation” to The SLO in or about September
28 2017. N&D agreed to pursue this matter on behalf of Plaintiff and the class on a contingency

1 basis, and the class action complaint detailing the allegations in this lawsuit was prepared and
2 filed in this Court in November 2017. Over the following months, N&D interviewed many
3 student tenants, as well as their parents, cataloguing the conditions and construction activities at
4 The SLO. Such efforts on the part of N&D were critical to determining the true facts in this
5 matter from the perspective of the student tenants and their families. (Hauptman Decl., ¶ 5.)

6 Although liability was (and remains) contested by Defendants, counsel for the parties
7 stipulated to stay formal discovery at the outset, electing instead to voluntarily share information
8 and conduct an early mediation. Counsel for the parties also collaborated on the preparation of a
9 survey to be distributed to The SLO's student tenants in order to determine the scope and type of
10 issues experienced by each prospective class member. N&D conferred with an experienced
11 construction expert, and arranged for a joint on-site inspection of The SLO as part of its informal
12 discovery into the claims in this action. N&D also issued a subpoena to the City's Community
13 Development Department, obtaining key information regarding The SLO and the
14 communications between Defendants and City officials. (Hauptman Decl., ¶ 6.)

15 Following the completion of the tenant survey and the on-site inspection, as well as other
16 informal investigation and analyses as referenced above, the parties participated in a day-long, in-
17 person mediation with the experienced mediator Honorable Gail Andler (Ret.) in June 2018. As a
18 result of mediation, the parties entered into a proposed settlement. The initial terms of the
19 settlement were memorialized in a term sheet signed by counsel for the parties. Thereafter, the
20 parties negotiated and executed a formal class action settlement agreement, and prepared and
21 submitted a joint motion for preliminary approval, which included the notice, claim form and
22 procedures to be utilized in providing notice to the members of the class and administering the
23 terms of the settlement. Counsel for the parties appeared at the hearing on the motion on
24 November 28, 2018, which was granted by this Court. (Hauptman Decl., ¶ 7.)

25 In addition, critical work continues and substantial work is yet to be completed in order to
26 fully and finally resolve this matter. Such additional work includes, but is not limited to,
27 preparation of the motion for final approval of the settlement and appearance and oral argument at
28 the hearing on same, and coordination and confirmation of the proper and complete

1 administration of settlement as agreed by the parties and directed by this Court. N&D therefore
 2 expects that it will devote a substantial amount of additional attorney hours to this action going
 3 forward. (Hauptman Decl., ¶ 8.)

4 **3. CLASS COUNSEL’S ATTORNEY FEES AND LITIGATION COSTS REQUEST**
 5 **SHOULD BE APPROVED.**

6 N&D seeks an award of attorney fees in the amount of \$142,703.87 and litigation costs
 7 advanced in the amount of \$7,296.13 following this Court’s preliminary approval of an \$850,000
 8 “common fund” settlement in this lawsuit. In light of the significant value of this fund created by
 9 the settlement, from which all eligible members of the class have the opportunity to participate
 10 and claim a pro rata share of partial rent reimbursement based on the length of their tenancy at
 11 The SLO, N&D’s request is reasonable and should be approved. In addition, per the terms of the
 12 settlement agreement, Defendants shall not object to this request.

13 **A. A “Common Fund” Analysis Confirms the Attorney Fee Request Is Fair and**
 14 **Reasonable.**

15 California has long recognized, as an exception to the general
 16 American rule that parties bear the costs of their own attorneys, the
 17 propriety of awarding an attorney fee to a party who has recovered
 18 or preserved a monetary fund for the benefit of himself or herself
 19 and others. In awarding a fee from the fund or from the other
 20 benefited parties, the trial court acts within its equitable power to
 21 prevent the other parties’ unjust enrichment. (*Laffitte v. Robert*
 22 *Half Internat. Inc.* (2016) 1 Cal.5th 480, 488-89 [205 Cal.Rptr.3d
 23 555].)

24 This common fund fee award, or percentage method, “distributes the cost of hiring an
 25 attorney among all the parties benefited” (in this case, in excess of 500 prospective members of
 26 the settlement class). (*Id.* at p. 489.) The method “calculates the fee as a percentage share of a
 27 recovered common fund or the monetary value of plaintiffs’ recovery.” (*Id.*) This approach is
 28 preferred in situations, such as this one, where the class recovery and counsel’s fees and costs are
 to be paid from a common fund. (See *Court Awarded Attorney Fees: Report of the Third Circuit*
Task Force (1985) 108 F.R.D. 237, 255-56.)

The California Supreme Court has recently held that “when class action litigation
 establishes a monetary fund for the benefit of the class members, and the trial court in its

1 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
2 of a reasonable fee by choosing an appropriate percentage of the fund created.” (*Lafitte, supra*, 1
3 Cal.5th at p. 503.) This approach is particularly appropriate in a contingent fee case, given its
4 “relative ease of calculation, alignment of incentives between counsel and the class, a better
5 approximation of market conditions in a contingency case, and the encouragement it provides
6 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation...” (*Id.*)

7 To promote fairness and to enable the prosecution of actions in the public interest,
8 California law provides that attorney fee awards should be equivalent to fees paid in the legal
9 marketplace generally. (See *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 47 [97
10 Cal.Rptr.2d 797]; see also *In re Continental Illinois Securities Litigation* (7th Cir. 1993) 985 F.2d
11 867, 868 (Posner, J.) (noting that a 20% fee is “at the low end of the range found in the market”).)
12 California courts encourage attorneys to undertake the enormous risks of time and money
13 necessary to vindicate the public interest, particularly the interest of those who do not have the
14 resources to seek individual redress or whose claims are too small to pursue individually.

15 In the instant case, the \$150,000 in total fees and costs requested represents less than 18%
16 of the total settlement fund of \$850,000 (and the attorney fee portion represents less than 17% of
17 the total settlement fund). This is far below the marketplace standards for percentage-based
18 contingency fees, which generally range from 33% to 50% of the client’s gross award.
19 (*Shajnfeld, A Critical Survey of the Law, Ethics, and Economics of Attorney Contingent Fee*
20 *Arrangements* (2009/2010) 54 N.Y. Law School L.Rev, p. 775.) Accordingly, the requested fees
21 and costs are fair and reasonable as a matter of law, and should be awarded to N&D.

22 **B. All Other Factors Confirm the Attorney Fees Request Is Reasonable.**

23 This Court is authorized to end its analysis of the reasonability of class counsel’s fees
24 following a determination that the request represents an uncommonly low percentage of the total
25 settlement fund. (See *Lafitte, supra*, 1 Cal.5th at p. 506.) Notwithstanding, all of the other
26 relevant factors also militate in favor of the Court approving this request. In this case, N&D
27 assumed the risk of a non-recovery; and it was agreed at the outset that payment of counsel’s fees
28 and costs would only come from a judgment or Court-approved settlement. N&D bore the

1 significant risk that its investment of time and advanced costs might never be recouped, or at a
2 minimum would be significantly delayed. There is also no reversion mechanism in the
3 settlement, meaning that the entire balance of the fund, after this Court determines the reasonable
4 attorney fees and litigation costs, will be distributed to the eligible class members. Moreover, the
5 vast majority of the gross value of the settlement, more than 80%, will be paid to directly the
6 members of the class. (Hauptman Decl., ¶ 9.)

7 The class has had the benefit of equipped and experienced counsel without having to incur
8 any upfront investment or out of pocket expenses. The attorneys at N&D responsible for
9 handling this matter have over 40 years of combined experience in real estate, construction and
10 class action litigation; and N&D was uniquely positioned to obtain a significant result on behalf
11 of the class in an efficient and cost-effective manner, preserving the maximum available
12 resources to compensate the class. (Hauptman Decl., ¶ 10.)

13 **C. Class Counsel's Costs Were Necessary and Reasonably Incurred.**

14 As set forth in the undersigned's attached declaration, N&D advanced \$7,296.13 for
15 necessary case costs on behalf of the class in the prosecution of this action. The majority of the
16 costs were incurred as Plaintiff's share of the mediation costs. Such costs were well-spent, in that
17 the assistance of Judge Andler was instrumental in achieving the settlement in this matter. The
18 balance of the "hard costs" are for attorney service and filing fees, a telephonic hearing fee, and
19 the costs of N&D's construction expert to travel to The SLO in order to perform a necessary on-
20 site inspection of the property. N&D also incurred expenses for "soft costs" for postage, printing,
21 scanning, copying, and computerized legal research. All the foregoing are usual and reasonable
22 litigation expenses incurred in a case of this nature, necessarily incurred for the successful
23 resolution. (Hauptman Decl., ¶ 11.)

24 ///

25 ///

26 ///

27 ///

28

1 **4. CONCLUSION.**

2 Based upon the foregoing, Plaintiff respectfully requests that the Court enter an order
3 approving that attorney fees in the amount of \$142,703.87 and litigation costs in the amount of
4 \$7,296.13 be awarded to N&D for its efforts securing and finalizing the settlement on behalf of
5 the members of the class in this lawsuit

6 Dated: December 20, 2018

NEWMEYER & DILLION LLP

8
9 By: _____

Joseph A. Ferrentino
Stephen M. Hauptman
Jason Moberly Caruso
Attorneys for Plaintiff and the Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

San Luis Obispo Superior Court
Geehr v. Home Sweet Home
Case Number – 17-CV-0629

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, Martha V. Ramirez, declare:

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 895 Dove Street, 5th Floor, Newport Beach, California 92660. On December 21, 2018, I served a copy of the within document(s):

1. NOTICE OF MOTION AND MOTION FOR APPROVAL OF CLASS COUNSEL’S ATTORNEY FEES AND LITIGATION COSTS

2. DECLARATION OF STEPHEN M. HAUPTMAN IN SUPPORT OF MOTION FOR APPROVAL OF CLASS COUNSEL’S ATTORNEY FEES AND LITIGATION COSTS

3. [PROPOSED] ORDER GRANTING MOTION FOR APPROVAL OF CLASS COUNSEL’S ATTORNEY FEES AND LITIGATION COSTS

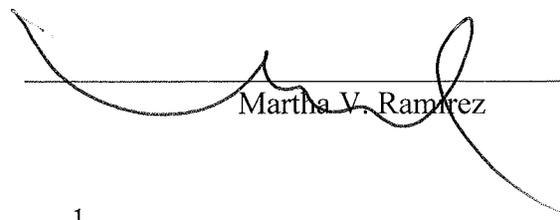
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Newport Beach, California addressed as set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

PLEASE SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 21, 2018, at Newport Beach, California.



Martha V. Ramirez

