

DEC 29 2020

CLERK OF THE COURT

BY: [Signature]  
Deputy Clerk

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*Attorneys for Plaintiffs*

**SUPERIOR COURT OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO**

STEVE SCHNEIDER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

COCOA PRC II, a Delaware limited liability  
company, COCOA DEVELOPMENTAL  
ASSOCIATES, a Delaware limited liability  
company, FAIRMONT COCOA LLP, JMA  
VENTURES, a Delaware limited liability  
company, FAIRMONT COCOA  
MANAGEMENT, COCOA RESIDENTIAL  
OWNERS ASSOCIATION

Defendants.

Case No.: CGC-18-567026

**~~PROPOSED~~ ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
UNOPPOSED PRELIMINARY  
APPROVAL**

Date: December 29, 2020  
Time: 9:30 a.m.  
Dept: 302

Complaint Filed: June 6, 2018

**~~PROPOSED~~ ORDER GRANTING PLAINTIFF'S MOTION FOR UNOPPOSED PRELIMINARY APPROVAL;  
CASE NO. CGC-18-567026**

1 **ORDER**

2 WHEREAS, a class action lawsuit is pending before this Court entitled *Steve Schneider v*  
3 *COCOA PRC II, COCOA DEVELOPMENTAL ASSOCIATES, FAIRMONT COCOA LLP., JMA*  
4 *VENTURES, FAIRMONT COCOA MANAGEMENT, COCOA RESIDENTIAL OWNERS*  
5 *ASSOCIATION.*, Case No. CGC-18-567026 (the "Lawsuit");

6 WHEREAS, on or about May 1, 2020, Plaintiff STEVE SCHNEIDER ("Schneider"),  
7 suing individually and as the representatives of a class, executed a Settlement Agreement with  
8 Defendants *COCOA PRC II, COCOA DEVELOPMENTAL ASSOCIATES, FAIRMONT COCOA*  
9 *LLP., JMA VENTURES, FAIRMONT COCOA MANAGEMENT, COCOA RESIDENTIAL*  
10 *OWNERS ASSOCIATION* ("Defendants") (collectively, the "Parties") concerning the claims  
11 asserted in the Lawsuit;

12 WHEREAS, the Court has read and considered the Settlement Agreement and its  
13 attached exhibits, and has considered the arguments of counsel for the Parties in this matter and,  
14 good cause appearing,

15 **IT IS HEREBY ORDERED** that the Motion for Preliminary Approval of Class Action  
16 Settlement is GRANTED, AND IT IS FURTHER ORDERED AS FOLLOWS:

17 **PRELIMINARY CLASS SETTLEMENT APPROVAL AND SETTLEMENT HEARING**

18 1. The Court preliminarily certifies the Settlement Class<sup>1</sup>, for settlement purposes  
19 only, consisting of:

20 (1) All purchasers of floating fractional interests or  
21 whole interests in Fairmont Heritage Place Ghirardelli Square,  
22 who were or are members of the Cocoa Residential Owners  
23 Association and who purchased their fractional or whole interest  
24 prior to May 7, 2018,

25 Excluded from the Settlement Class are: (1) Defendants and any entity or division in  
26 which Defendants have a controlling interest, its/their legal representatives, officers, directors,

27 <sup>1</sup> This Order incorporates by reference the definitions in the Settlement Agreement, and all terms herein shall have  
28 the same meaning as set forth in the Settlement Agreement.

1 assigns and successors; (2) any judge to whom this case is assigned and the judge's clerks and  
2 any member of the judge's immediate family; Class Members who are also Board of Directors  
3 members of Defendant COCOA Residential Owners Association ( the "Association")

4 2. The Court certifies that, for settlement purposes only, the requirements of  
5 California Code of Civil Procedure Section 382 and California Rules of Court, Rule 3.769 have  
6 been satisfied with regard to the Settlement Class, and finds that the class action settlement set  
7 forth in the Settlement Agreement entered into among the parties and their counsel appears to be  
8 proper; is within the range of reasonableness for a class settlement; is the product of arm's length  
9 and informed negotiations; treats all Class Members fairly, and is presumptively valid,  
10 subject only to any objections that may be raised at the Fairness Hearing. The Court  
11 further finds that the Parties conducted sufficient investigation and research, and their attorneys  
12 were able to reasonably evaluate their respective positions. The terms of the  
13 Settlement Agreement are, therefore, preliminarily approved, subject to further consideration  
14 at the Fairness Hearing.

15 3. During the Final Approval and Fairness Hearing, which shall be held before this  
16 Court at a later date in Department <sup>302</sup>502 of San Francisco Superior Court, 400 McAllister Street,  
17 San Francisco, CA, 94102, the Court will determine whether the proposed Settlement  
18 Agreement is fair and reasonable, whether final approval shall be given to it and  
19 whether Plaintiff's Counsel's application for an award of Attorneys' Fees and Expenses should be  
20 granted.

21 **NOTICE OF SETTLEMENT**

22 4. The Settlement Administrator shall prepare and provide the notices pursuant to  
23 California Rules of Court, Rule 3.766(d) after the Court approves the Notice.

24 5. The Parties shall cause Notice of the proposed Settlement and the Fairness  
25 Hearing Settlement Class Members as follows:

26 a. The Parties have agreed to designate CPT Group to serve as the  
27 independent third-party Settlement Administrator to assist in the Notice and Settlement

28 ~~PROPOSED~~ ORDER GRANTING PLAINTIFF'S MOTION FOR UNOPPOSED PRELIMINARY APPROVAL;  
CASE NO. CGC-18-567026

1 claims administration process.

2 b. The Settlement Administrator shall commence as soon as possible after entry  
3 of this order the mailing of the Notice substantially in the forms attached to the  
4 Settlement Agreement as Exhibit A, and attached as Exhibit A to the Supplemental  
5 Declaration of Jeffrey Cereghino in Support of Motion for Preliminary Approval, which  
6 shall be mailed, postage prepaid, via the United States Postal Service, to the  
7 Settlement Class for whom there is a last-known valid address and for whom  
8 addresses are obtained from the records provided by Defendant COCOA Residential  
9 Owners Association (The "Association"). Cost for mailing of the Notice shall be paid  
10 from the Settlement Fund. In addition to mailing the Notice, to the extent Settlement  
11 Class Members email addresses are available.

12 c. The Settlement Administrator will file with the Court and serve upon  
13 Plaintiff's Counsel and Defendant's Counsel no later than February 16, 2021 a  
14 declaration stating that Notice was disseminated in a manner consistent with the terms of  
15 the Settlement Agreement and this Preliminary Approval Order.

16 6. The Court finds that the procedures established for mailing and distribution of  
17 such Notice as set forth in this Order satisfy the requirements of the California Rules of Court  
18 and due process. The Court further finds that these procedures are the best notice practicable  
19 under the circumstances and shall constitute due and sufficient notice to all persons and entities  
20 entitled thereto.

21 7. The Claims Administrator shall be responsible for receipt of all written  
22 communications from the Settlement Class and shall preserve same and all other written  
23 communications from Settlement Class Members or any other person in response to the Notice.

24 **CLASS REPRESENTATIVE AND CLASS COUNSEL**

25 8. The named Plaintiff is a suitable class representative and is appointed Class  
26 Representative for the Settlement Class.

27 9. The Court appoints Jeffrey Cereghino of the Cereghino Law Group as Class

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1 Counsel. The Court finds that Class Counsel has demonstrable experience litigating, certifying,  
2 and settling class actions, and will serve as adequate counsel for the Settlement Class.

3 **REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS**

4 10. A Settlement Class Member wishing to exclude himself/herself from the  
5 Settlement must send to the Settlement Administrator a signed letter including (1) his/her name,  
6 (2) address, (3) telephone number, and (3) providing a clear statement communicating that  
7 he/she elects to be excluded from the Settlement Class, does not wish to be a Settlement  
8 Class Member and elects to be excluded from any judgment entered pursuant to this  
9 Settlement Agreement. Any request for exclusion must be postmarked on or before the  
10 exclusion deadline provided in the Notice. The date of the postmark on the return mailing  
11 envelope shall be the exclusive means used to determine whether a request for exclusion has  
12 been timely submitted. Settlement Class Members who fail to submit a valid and timely request  
13 for exclusion on or before the date specified in the Notice, shall be bound by all terms of the  
14 Settlement Agreement and the Final Order and Judgment, regardless of whether they have  
15 requested exclusion from the Settlement. The request must be personally signed by or on behalf  
16 of the Settlement Class Member requesting exclusion, and shall not be effective unless it is made  
17 in the manner and within the time set forth in this paragraph. No Settlement Class Member, or  
18 any person acting on behalf or in concert or participation with that Settlement Class Member,  
19 may request the exclusion of any other Settlement Class Member from the Settlement Class.

20 11. Copies of requests for exclusion shall be provided by the Settlement  
21 Administrator to Plaintiff's Counsel and Defense Counsel not later than three (3) business days  
22 after the deadline for submission of requests for exclusion. The original requests for exclusion  
23 will be filed with the Court by the Settlement Administrator by February 16, 2021.

24 12. All Settlement Class Members that have not submitted a timely and valid written  
25 request for exclusion from the Settlement Class will be bound by the Released Claims and  
26 other terms and conditions set forth herein and all proceedings, orders and judgments in the  
27 Lawsuit, against Defendants, their subsidiaries, parent or its parents' subsidiaries relating to

1 the claims released pursuant to 6r covered by the terms of this Settlement.

2 **OBJECTIONS BY SETTLEMENT CLASS MEMBERS**

3 13. Any Settlement Class Member that has not requested exclusion from the  
4 Settlement Class may appear at the Fairness Hearing to show cause as to why any terms of the  
5 proposed Settlement should not be approved as fair or reasonable, or why a judgment should not  
6 be entered thereon. In accordance with the Settlement Agreement, any Settlement Class Member  
7 may so object either on his or her own or through an attorney hired at his or her own expense.

8 14. In order to contest the approval of the Settlement Agreement, a Settlement Class  
9 Member must serve Plaintiffs' Counsel and Defense Counsel by mail at the addresses listed  
10 below and must file the Objection with the Court, which Objection must be filed and copies  
11 postmarked no later than February 16, 2021 . To state valid Objections to the Settlement, a  
12 Settlement Class Member making Objections must provide the following information in his  
13 or her written Objections: (i) the Settlement Class Member's full name and current address; (ii)  
14 a specific and clear statement of the Settlement Class Member's reasons for objecting to the  
15 Settlement, including the factual and legal grounds for his or her position; (iii) whether the  
16 Settlement Class Member intends to appear at the Fairness Hearing and whether the Settlement  
17 Class Member will be represented by separate counsel; and (iv) the Settlement Class  
18 Member's signature.

19 Objections must be served upon Defense Counsel at:

20 John Heller, Esq.  
21 Rogers, Joseph, O'Donnell LLP  
22 311 California Street, 10th Floor  
San Francisco, California 94104

23 Brian Maschler Esq,  
24 Gordon, Rees, Scully, Mansukhani  
25 275 Battery St. Suite 2000  
San Francisco, CA. 94111

1 Upon Class Counsel at:

2 Jeffrey Cereghino, Esq.  
3 Cereghino Law Group  
4 649 Mission St, 5th Floor  
5 San Francisco, California 94105

6 16. Any Settlement Class Member that does not make an Objection in the manner  
7 provided above shall be deemed to have waived such Objection and shall forever be foreclosed  
8 from making any Objection to the fairness or reasonableness of the proposed Settlement or the  
9 Final Order and Judgment to be entered approving the Settlement. Any Settlement Class Member  
10 who wishes to speak at the fairness hearing must follow the procedures outlined in the Notice  
11 received by the Settlement Class Member.

12 17. Papers by counsel in connection with the Settlement shall be filed as follows: By  
13 February 9, 2021 Plaintiffs' Counsel will file a motion requesting that the Court enter the Final  
14 Order and Judgment, which will, among other things, dismiss the Lawsuit, with prejudice,  
15 subject to the continuing jurisdiction of the Court, approve the Settlement Agreement, certify the  
16 Settlement Class and render an award of Attorneys' Fees and Expenses. Defendants may, at  
17 their discretion, submit such briefing as it deems necessary to support the motion for final  
18 approval, clarify its positions, and otherwise protect their interests. Such briefing by Defendants  
19 will be due on February 9, 2021. Plaintiffs' Counsel and Defendant's Counsel shall also be  
20 entitled to file responses to any Objections which may have been filed, which responses shall be  
21 filed by February 23, 2021. Class Counsel may submit reply papers to any briefs filed by  
22 Defendants by February 23, 2021. The significant events discussed herein are detailed in the  
23 Event scheduling chart.  
24  
25  
26  
27

	EVENT	DATE
1.	Individual class notice mailed and emailed (within 16 days of preliminary approval order)	By January 11, 2021
2.	Class Counsel to file petition for award of attorneys' fees and reimbursement of expenses. (21 days before final approval hearing)	By February 9, 2020
3.	Class Member Exclusion and Objections (14 days before final approval)	By February 16, 2020
4.	Class Member Notices of Intention to Appear (14 days before final approval hearing)	By February 16, 2021
5.	File declaration that approved notice plan was carried out (14 days before final approval hearing)	By February 16, 2021
6.	Plaintiff or Defendant's response to any objections filed (7 days before final approval hearing)	By February 23, 2021
7.	Final Approval Motion Filed (21 days before final approval)	By February 9, 2021
8.	Fairness Hearing	<del>By</del> March 2, 2021

### TERMINATION

18. If the Court declines to enter a Final Order and Judgment in accordance with all of the material terms of the Settlement Agreement, or the Final Order and Judgment does not for any reason become Final, the Parties to the Lawsuit will be returned to the same position as existed on February 13, 2020, and as if the Settlement Agreement had not been negotiated, made or filed with the Court. Should this occur, (a) the Parties to the Lawsuit shall move the Court to vacate any and all orders entered by the Court pursuant to the provisions of the Settlement Agreement and (b) neither the Settlement Agreement, nor any documents filed, submitted, or published pursuant to the Settlement Agreement may be used in any litigation (except to enforce the provisions of the Settlement Agreement) and nothing contained in any documents shall impact any legal proceedings.



1           19. This Order shall be of no force or effect if the Settlement does not become final,  
2 and shall not be construed or used as an admission, concession or declaration by or against  
3 the Parties or members of the Settlement Class of the validity of any claim or  
4 counterclaim or any actual or potential fault, wrongdoing or liability whatsoever, or by  
5 or against the Parties or members of the Settlement Class, that their claims or counterclaims  
6 lack merit or that the relief requested in the Complaint or any counterclaims are inappropriate,  
7 improper, or unavailable, or as a waiver by any Party of any defense or claims it or they may  
8 have.

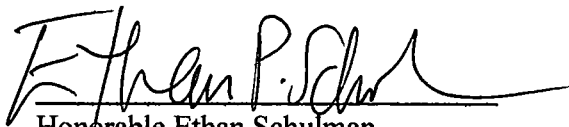
9                           **POWERS AND JURISDICTION OF THE COURT**

10           20. The Court expressly reserves its right to adjourn the Fairness Hearing or any further  
11 adjournment thereof, and to approve the Settlement Agreement, including any modifications  
12 thereto which are acceptable to the Parties, without further notice to Settlement Class Members.

13           21. Pending Final Approval of the Settlement, the Parties to the Settlement  
14 Agreement are directed to carry out their obligations under the terms thereof.

15  
16           **SO ORDERED.**

17  
18           Dated: December <sup>29</sup>27, 2020

19  
20                           

21                           Honorable Ethan Schulman  
22                           Superior Court Judge for the City and County of  
23                           San Francisco.