

# **EXHIBIT 5**

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.	)	
_____	)	

**DECLARATION OF ETHAN R. HOROWITZ**

I, Ethan R. Horowitz, state that the following facts are true and accurate, based on my personal knowledge, and that I am competent to testify to the truth and accuracy of the same:

1. I have been a member in good standing of the Bar of the Commonwealth since 2009, membership which I obtained following my studies at Harvard Law School – where I earned my *juris doctor* degree in 2008 – and following a federal judicial clerkship with the Hon. Roslyn O. Silver of the U.S. District Court for the District of Arizona.

2. At present, I am Managing Director of the Northeast Justice Center, a civil legal aid organization, and have held that position since 2015, prior to which time I worked in other public interest or private practice settings.

3. As Managing Director, I have supervised Attorney Brian J. O’Donnell in the above-referenced action, as well as the related matter docketed at 21-CV-10522-DJC, since each was initiated and have served as lead counsel in the above-referenced action on behalf of Plaintiff Scott Smith and the putative classes he has sought to represent since of March of 2022

4. Shortly after oral argument on Defendants’ Motion for Judgment on the Pleadings, the parties agreed to mediate the above-captioned litigation and ultimately decided to conduct a

mediation before the Honorable Mitchell H. Kaplan (Ret.), an experienced mediator whose publicly available *curriculum vitae* is attached hereto as **Sub-Exhibit A**.

5. The parties attended three mediation sessions before Judge Kaplan – on July 25, July 29, and August 5, 2022 – negotiations in which Defendants confidentially disclosed to Plaintiff, through counsel, informal discovery material and which ultimately resulted in the proposed resolution of the above-captioned litigation that is encompassed in the Class Action Settlement Agreement and Release submitted herewith.

6. During the mediation, I reviewed the informal discovery disclosed by Defendants, which was a then-current rent roll for the Chelmsford Commons Manufactured Housing Community (“Rent Roll”).

7. Based on my examination of the Rent Roll, I determined that approximately 30 Chelmsford Commons households have been paying the lowest monthly base rent – rounded down to the nearest dollar – in the community (“Lowest Rent Households”).

8. Assuming annual base rent increases of 4.5% which commence in April of 2023, I determined that the base rent of the Lowest Rent Households – if they were to remain in Chelmsford Commons – would not exceed \$964.37 until April of 2033.

9. Assuming annual base rent increases of 5% which commence in April of 2023, I determined that the base rent of the Lowest Rent Households – if they were to remain in Chelmsford Commons – would not exceed \$964.37 until April of 2032.

10. Assuming annual base rent increases of 6% which commence in April of 2023, I determined that the base rent of the Lowest Rent Households – if they were to remain in Chelmsford Commons – would not exceed \$964.37 until April of 2030.

11. Based on my examination of the Rent Roll, I also determined that the highest monthly base rent assessed to a Chelmsford Commons household has been \$964.37.

12. Assuming that such a household were to avoid annual base rent increases of 4.5% between April of 2023 and April of 2033, I calculated that each such household would save approximately \$33,000 in rent payments.

13. Assuming that such a household were to avoid annual base rent increases of 4.5% for seven years during the Settlement Period, as defined by the Settlement, I calculated that each such household would save approximately \$16,000 in rent payments.

14. Assuming that such a household were to avoid annual base rent increases of 4.5% for five years during the Settlement Period, as defined by the Settlement, I calculated that each such household would save approximately \$8,000 in rent payments.

15. Assuming that such a household were to avoid annual base rent increases of 6% for the period between April of 2023 and April of 2030, I calculated that each such household would save approximately \$22,000 in rent payments.

16. Assuming that such a household were to receive reimbursement for the amount of base rent paid in excess of the base rent one of the Lowest Rent Households was paying for the period between April of 2021 and April of 2023, I calculated that each such household would be reimbursed approximately \$8,500.

17. During both my time in private practice and my tenure as the Justice Center's Managing Director, I have represented clients in class-action litigation, including four other manufactured housing class actions which I successfully prosecuted or am prosecuting on behalf of the plaintiff class:

- a. *Reid, et al. v. Neighborhood Assistance Corp. of Am.*, as defense counsel, 2011-CH-37979 (Circuit Court of Cook County)

16-0296 (App. Ct. of Ill. 1st Dist.)

- b. *Lannan, et al. v. Levy & White, et al.*, as class counsel,  
14-CV-13866-IT (D. Mass.)
- c. *Layes, et al. v. RHP Properties, Inc., et al.*, as class counsel,  
15-CV-2722 (Middlesex Super. Ct.)  
18-P-218 (Mass. App. Ct.)  
20-CV-10721-RWZ (D. Mass.)
- d. *Currie, et al. v. RHP Properties, Inc., et al.*, as class counsel,  
17-CV-1055 (Middlesex Super. Ct.)
- e. *Baldwin, et al. v. RHP Properties, Inc., et al.*, as class counsel,  
18-CV-849 (Middlesex Super. Ct.)
- f. *Craw, et al. v. Hometown America, LLC, et al.*, as class counsel,  
18-CV-12149-LTS (D. Mass.)

18. Based on my experience and judgment, I can discern no conflict between Plaintiff Scott Smith and the members of the proposed classes that he seeks to represent.

19. Based on my experience and judgment, I believe that the Class Action Settlement Agreement and Release is a resolution that is fair, reasonable and adequate to the proposed class members who would be bound by the Settlement.

20. During the course of this litigation, I maintained time records in the normal course of my duties as the Managing Director of the Justice Center, records which I kept in good faith and which I created both routinely as well as contemporaneously with the conduct described in each record – or within a reasonable time thereafter (“Time Records”).

21. Upon review of the Time Records corresponding to the above-captioned matter and the related matter, I have determined that I spent more than 150 hours on tasks which benefitted Mr. Smith and the classes he seeks to represent, a number which I expect to increase substantially by the conclusion of this litigation.

I affirm that the foregoing is true and accurate, to the best of my personal knowledge, and do so under the pains and penalties of perjury. Executed this 19th day of September, 2022, by:

/s/ Ethan R. Horowitz

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Ethan R. Horowitz



## Hon. Mitchell H. Kaplan (Ret.)

JAMS Mediator, Arbitrator and Referee/Special Master

### Case Manager

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## Biography

The **Hon. Mitchell H. Kaplan (Ret.)** was appointed to the Massachusetts Superior Court in 2009 and presided in the Business Litigation Section for eight years. Judge Kaplan is known for being intelligent, hardworking, thoughtful and fair, as well as for having the tenacity and skill to parse complex factual records and effectively manage multi-party matters.

### Testimonials from counsel:

- “[Judge Kaplan] maintained insight into practical litigation risks and never forgot what it was like for a company whose business objectives drove litigation strategy.”
- “Judge Kaplan has been telling parties—and their counsel—what they need to hear, not what they want to hear, for many years at the BLS.”

During his time on the bench, Judge Kaplan presided over a diverse range of business disputes; consumer, securities and wage act class actions; insurance coverage matters; trade secret litigation; and construction cases.

Prior to his appointment, Judge Kaplan practiced at the firm of Choate, Hall & Stewart for 31 years, where he chaired the securities litigation group and handled business, commercial and insurance matters.

## **ADR Experience and Qualifications**

- While in private practice, served as an arbitrator on a three-person panel addressing ownership of intellectual property
- Represented parties in a numerous mediations before neutrals, including those involving securities litigation, leveraged buyouts, real estate development and contract disputes
- While a judge, mediated several commercial matters at the parties' request, with the understanding that if the mediation failed, he would no longer preside over the matter

## **Representative Matters**

### **Business Commercial**

- Presided over cases involving the following:
  - Complex business commercial contract disputes
  - Fraud and False Claims Act claims
  - Whistleblower claims
  - Breach of fiduciary duty
  - Disclosure obligations
  - Trade secret litigation
  - Taxation and internet sales
  - Corporate mergers
  - Statutes of limitations
- Served as a special assistant attorney general representing the Massachusetts state treasurer in claims against an investment banking firm
- Represented accounting firms and technology companies in securities class actions cases in courts and in SEC investigations



- Represented accounting firms in malpractice litigation
- Tried cases in state and federal courts and before administrative agencies, the Commodities Futures Trading Commission and the U.S. Tax Court

## **Class Actions**

- Represented accounting firms and technology companies in securities class actions
- Presided over cases involving the following:
  - Wage act class actions
  - Consumer protection and other Chapter 93A claims
  - Internet providers
  - A variety of matters involving novel issues concerning the criteria for class certification

## **Construction**

- Presided over cases involving the following:
  - Large public construction projects
  - Condominium developments
  - Damages for delay
  - Disputes regarding design and engineering firms
  - Bridge Design

## **Employment**

- Presided over cases involving the following:
  - Wage disputes, including overtime, weekend pay and other statutory obligations
  - Discrimination
  - Noncompete agreements

## **Insurance**

- Represented firms and individuals in disputes involving directors and officers' insurance coverage
- Served as general counsel to newly organized workers' compensation carrier
- Presided over cases involving the following:
  - Insurance coverage, between carriers and between insureds and their carrier

- Commercial property insurance
- Insurers' claims to recoupment and offset
- The duty to defend

## **Real Property**

- Tried cases involving disputes between the owners of the largest office tower in Boston and a municipality and contractor involving a public construction project
- Presided over cases involving the following:
  - Option to purchase restaurant
  - Landlord-tenant disputes
  - Commercial and condominium development projects
  - Retroactive assessment of condominium fees
  - Zoning disputes
  - Deed reformation requests
  - Municipal leases

## **Securities**

- Represented companies, individuals and accounting firms in a variety of securities-related matters, including class litigation, derivative claims, insurance coverage disputes and internal and government investigations
- Presided over cases involving the following:
  - Residential mortgage-backed securities (RMBS) and the collapse of the RMBS market
  - Securities registration and warrant agreements
  - Derivative claims
  - Audits and professional malpractice
  - FINRA

## **Honors, Memberships, and Professional Activities**

*Completed Virtual ADR training conducted by the JAMS Institute, the training arm of JAMS.*

## **Memberships and Affiliations**

- Council Member, Boston Bar Association
  - Chair, Section of Delivery of Legal Service
  - Chair, Section on Administration of Justice
  - Chair, Amicus Committee

- Member, Massachusetts Board of Bar Overseers
  - Vice Chair, 2001–2002
- Member, Standing Committee, Supreme Judicial Court on the Rules of Professional Conduct
- Member, Joint Bar Committee on Judicial Appointments
  - Chair, 1996–1997
- Board Member, Greater Boston Legal Services
  - Treasurer, 2006–2009
  - Dow-Gardiner-Landrum Award (for legal service to the poor), 2009
- Board Member, Lawyers Committee for Civil Rights
- Board Member, American Civil Liberties Union of Massachusetts
- Board Member and Executive Committee Member, Associated Industries of Massachusetts
- Member, Board of Editors, *Boston Bar Journal*

## Selected Awards and Honors

- Listed in Best Lawyers in America and Massachusetts Super Lawyers for multiple years

## Background and Education

- Judge, Massachusetts Superior Court, 2009–2020
  - Business Litigation Session, 2012–2019
- Attorney; Choate, Hall & Stewart; 1979–2009
  - Partner, 1984–1989
- Associate, Hutchins & Wheeler, 1976–1977
- Law Clerk to Hon. Joseph L. Tauro, U.S. District Court for the District of Massachusetts, 1978–1979
- J.D., *cum laude*, Cornell University, 1976
- B.A., *cum laude*, Mathematics and Philosophy, Colby College, 1972
  - Phi Beta Kappa

## Counsel Comments

- **"On the bench, Judge Kaplan never forgot what it was like to represent a company whose business objectives drove litigation strategy.** That understanding, and his insights into the practical litigation risks, make him an outstanding addition to the JAMs team."

– IP Litigation Partner

- "Mitch was an outstanding lawyer and a terrific judge. We will place his name at the top of our mediation- arbitration list. Congrats on a great signing."

– National Trial Attorney

- "I have been before Judge Kaplan many times, including an extended bench trial which presented novel legal issues and complex engineering testimony. **Judge Kaplan was one of the most intelligent, dedicated, hardworking, and effective Superior Court Judges I encountered in my 35+ years of practice.** He is thoughtful, fair, and understands the critical issues necessary to resolve cases, both on and off the bench."

– Construction Practice Partner

- "The Bench's loss is a huge gain for sophisticated litigants truly interested in mature, thoughtful and creative analysis of their cases. **Judge Kaplan has been telling parties (and their counsel) what they need to hear, not what they want to hear, for many years at the BLS.** It will be a great resource to the legal community that he will continue to do so at JAMS."

– Professional Liability Litigator

- "Judge Kaplan is an exciting addition to the panel of neutrals serving with JAMS' Boston office. Judge Kaplan's experience in private practice and long-time assignment to the Business Litigation Session in Suffolk Superior Court make him particularly qualified to assist parties in assessing and resolving complex business disputes and civil litigation. Judge Kaplan is well-versed in the law governing contract, fraud, and breach of fiduciary duty claims and **is especially well-known for having the tenacity and skill to parse through complex factual records and effectively manage multi-party matters.**"

– Litigation Department Chair

- "**Judge Kaplan has the perfect blend of experience, intellect, demeanor, and determination to effectively facilitate the resolution of complex civil matters.** On many occasions over the years, I have witnessed first-hand Judge Kaplan's mastery of the subject matter on a wide range of complex business, employment, and restrictive covenant disputes. **Judge Kaplan has a well-deserved reputation as a quick study, which is one the first things I look for in an arbitrator or mediator.** For these reasons and others, I am looking forward to working with Judge Kaplan as a JAMS neutral."

– Employment Partner

- "Judge Kaplan is an outstanding and thoughtful jurist, who, while on the bench, always took an interest in the cases and lawyers before him, and employed a practical, friendly, and helpful approach to managing cases. **He was always courteously transparent about his assessment of cases, which served to help us, as the lawyers, evaluate the**

**strength, weaknesses, and direction of our cases.** He also routinely gave of his time to help educate the bar. **His rare combination of knowledge, acumen, demeanor, and dedication set him apart as a judge and will make him an outstanding neutral.** I am looking forward to working with him."

– Nationally Recognized Litigator

## News

- September 23, 2020  
**Hon. Mitchell H. Kaplan (Ret.) Joins JAMS in Boston**  
<https://www.jamsadr.com/news/2020/hon-mitchell-h-kaplan-ret-joins-jams-in-boston>

## Publications

- March 2021  
**Q&A with Hon. Mitchell H. Kaplan (Ret.)**  
JAMS Spotlight  
<https://www.jamsadr.com/files/uploads/documents/articles/kaplan-jamsspotlight-2021-03.pdf>

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