

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STEVE VERGARA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

APPLE REIT NINE, INC. now known as
APPLE HOSPITALITY REIT, INC.,

Defendant.

Civil Action No.: 1:19-cv-02027-DLI-RML

Honorable Dora L. Irizzary

Honorable Robert M. Levy

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

To: All persons and entities who, from April 8, 2013 through June 27, 2013, inclusive (the “Class Period”), purchased or otherwise acquired units of Apple REIT Nine, Inc. in the Dividend Reinvestment Plan (“DRIP”).

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.

**YOUR RIGHTS WILL BE AFFECTED BY A CLASS
ACTION LAWSUIT PENDING IN THIS COURT.**

I. THE PURPOSE OF THIS NOTICE

This Notice is being sent pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Eastern District of New York (the “Court”) to inform you (a) of a proposed settlement of this certified class action lawsuit pending in the Court under the above caption (the “Action”) against Apple REIT, Nine, Inc. n/k/a Apple Hospitality REIT, Inc. (the “Defendant”), and (b) procedures for Class Members to exercise their rights to opt-out, object or remain a part of the Class, and deadlines to exercise rights and for a final approval hearing.

YOUR RIGHTS MAY BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS ACTION.

IF YOU WISH TO COMMENT IN FAVOR OF THE SETTLEMENT OR OBJECT TO THE SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS IN THIS NOTICE.

YOU MAY BE ELIGIBLE TO RECEIVE MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.

TO DETERMINE YOUR ELIGIBILITY TO RECEIVE MONEY FROM THIS LAWSUIT, YOU SHOULD REVIEW THE ENCLOSED VERIFICATION FORM.

IF YOU DO NOT WISH TO PARTICIPATE IN THE SETTLEMENT, YOU MAY REQUEST TO BE EXCLUDED FROM THE SETTLEMENT BY SUBMITTING A VALID REQUEST FOR EXCLUSION THAT MUST BE POSTMARKED ON OR BEFORE FEBRUARY 7, 2022. IF YOU RECEIVED THIS NOTICE ON BEHALF OF A SETTLEMENT CLASS MEMBER WHO IS DECEASED, YOU SHOULD PROVIDE THE NOTICE TO THE AUTHORIZED LEGAL REPRESENTATIVE OF THAT SETTLEMENT CLASS MEMBER.

The District Court has preliminarily approved the Settlement, whose terms are set forth in the Settlement Agreement, which is available at www.AppleReitNineSettlement.com. You have received this Notice because records indicate that you may be a member of the Class (“Class Member”). This Notice is designed to inform you of your rights, and how you can comment in favor of the Settlement, or object to the Settlement.

If the Settlement is finally approved by the District Court, the Settlement will be binding upon all Class Members, unless you exclude yourself, and even if you object to the Settlement. If finally approved, the Settlement resolves the Class’s claims asserted against the Defendant.

There will be a hearing to consider Final Approval of the Settlement (the “Final Approval Hearing”) before the Honorable Robert M. Levy, United States Judge, at 10:00 AM on March 17, 2022 in Courtroom 11BS of the United States Courthouse, 225 Cadman Plaza East, Brooklyn, NY 11201.

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES ASSERTED BY ANY OF THE PARTIES. IT IS BASED ON STATEMENTS OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THE LAWSUIT AND OF THE UPCOMING FINAL APPROVAL HEARING CONCERNING THE SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY, OR MAY NOT, WISH TO TAKE IN RELATION TO THE CLASS ACTION.

1. The “Class,” as previously certified by the Court, consists of:

All persons and entities who, from April 8, 2013 through June 27, 2013, inclusive (the “Class Period”), purchased units of Apple REIT Nine Inc. in the DRIP (the “Class”) in lieu of the declared cash dividend at a value of \$10.25 per unit.

Excluded from the Class by definition are:

- (a) Defendant; (b) Apple REIT Nine, Inc.’s affiliates and subsidiaries; (c) the officers and directors of Apple REIT Nine, Inc. and its subsidiaries and affiliates at all relevant times; (d) members of the immediate family of any excluded person; (e) the legal representatives, heirs, successors, and assigns of any excluded person or entity; and (f) any entity in which any excluded person or entity has or had a controlling interest.
2. Defendant denies any wrongdoing in this Action and maintains that it is not liable for the harm alleged by Plaintiff. This Notice is not an expression of any opinion of the Court concerning the merits of the Action, or a finding by the Court that the claims asserted by Plaintiff in this case are valid. This Notice is intended solely to advise you of your rights in connection with the Proposed Settlement.

II. OVERVIEW AND STATUS OF THIS ACTION

3. Plaintiff Steve Vergara filed this case on April 8, 2019 asserting claims against Defendant Apple REIT Nine, Inc., now known as Apple Hospitality REIT, Inc., a real estate investment trust or REIT. Plaintiff originally asserted claims for breach of contract and for breach of the implied duty of good faith and fair dealing under Virginia law. By Memorandum and Order dated March 31, 2020 the Court dismissed Plaintiff’s breach of contract claim.
4. During the Class Period, Apple REIT Nine, Inc. contracted with its unitholders to provide consenting DRIP participants with units in lieu of cash dividends. The DRIP units were typically priced at \$10.25 per unit throughout the Class Period. Plaintiff alleges that Apple REIT Nine, Inc. breached the implied covenant of good faith and fair dealing by exercising its discretion unfairly, arbitrarily and in bad faith in maintaining the \$10.25 price when the actual fair market value of the DRIP was considerably less, and thereby dismissed. Plaintiff alleges that as a result of Defendant’s continued overvaluation of the unit prices of Apple REIT Nine, Inc., participants in the DRIP were shortchanged each time they received A-9 units in lieu of the cash dividends declared and paid by A-9.
5. On May 15, 2020, Plaintiff filed his motion to certify the Action as a class action. On February 5, 2021, and following discovery into class certification-related issues, the Court by Magistrate Judge Robert M. Levy issued a Report and Recommendation recommending to the District Court the Plaintiff’s motion for class certification be granted in its entirety. On February 19, 2021, the Court by Honorable Judge Irizarry adopted the Report and Recommendation in total granting Plaintiff’s motion for class certification, certifying the Class as set forth above, and appointing Plaintiff as Class Representative and Lead Counsel as Class Counsel.

III. SUMMARY OF SETTLEMENT TERMS AND FREQUENTLY ASKED QUESTIONS (FAQS)

Defendant will pay \$1.2 million in cash to resolve the claims of Plaintiff and the Class and for attorneys’ fees and other costs (“Settlement Fund Deduction”). After deduction of the Settlement Fund Deductions, the balance (“Net Settlement Fund”) will be available for distribution to Eligible Class Members pursuant to the Plan of Allocation annexed hereto. The Class (and each member of the Class) is limited solely to the Settlement Fund for the satisfaction of all Released Claims against all Released Parties (which include, *inter alia*, Defendant and its predecessor Apple REIT Nine, Inc., funds and partnerships and for each of the foregoing entities, their present and former partners, employees, general partners, limited partners, directors, officers, attorneys, parents, subsidiaries, and members, shareholders, agents, insurers and/or representatives assigns and A-9’s former directors, officers, attorneys, parents, subsidiaries, and assigns).

Under the proposed Plan of Allocation, the Settlement Administrator will calculate each Eligible Class Member's "Allowed Payment Amount" (share of the Net Settlement Fund) in the following manner:

100% of the Net Settlement Fund will be allocated among the Eligible Class Members according to the Plan of Allocation. Class Members who made purchases during the Class Period shall receive a *pro rata* share of this sum based on the Plan of Allocation.

The Plan of Allocation is not a part of or a condition of approval of the Settlement. Under the Agreement, the Net Settlement Fund may be distributed in accordance with the proposed Plan of Allocation or such other plan as the Court may approve.

WHY DID I GET THIS NOTICE?

This Notice is being sent to you pursuant to the Preliminary Approval Order of the District Court because you, someone in your family, or an investment account for which you serve as a custodian may have acquired shares of Apple REIT Nine, Inc. pursuant to Apple REIT Nine, Inc.'s DRIP between April 8, 2013 and June 27, 2013. The District Court has directed us to send you this Notice because, as a potential Class Member, you have a right to know about your options before the District Court rules on the proposed Settlement. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the District Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Settlement Administrator selected by the Plaintiff and approved by the Court, will make payments pursuant to the Settlement Agreement and the court-approved Plan of Allocation after any objections and appeals are resolved. This Notice is also being sent to inform you of a hearing to be held by the District Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the Fee and Expense Application.

In a class action lawsuit, the court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. A class action lawsuit is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Once the class is certified, the court must resolve all issues on behalf of the class members, except for any Persons who choose to exclude themselves from the class. In this case, the District Court has certified the Class, appointed Steve Vergara to serve as Class Representative, and has appointed the law firm of Squitieri & Fearon, LLP to serve as Class Counsel.

This Notice does not express any opinion by the District Court concerning the merits of any claim in the Class Action. The District Court must decide whether to approve the Settlement. If the Court approves the Settlement and the Plan of Allocation, payments to Eligible Class Members will be made after appeals if any are resolved.

WHAT DOES THE SETTLEMENT PROVIDE?

In advance of the Final Approval Hearing Defendant shall cause to be delivered to Class Counsel, a check or wire transfer in the amount of \$1.2 million, which will earn interest to add to the Settlement Fund. If the settlement amount is approved, the claims of all Class Members who do not timely exclude themselves will be released. Certain expenses and fees will be deducted from the Settlement Fund and the balance, the Net Settlement Fund, will be distributed among Eligible Class Members according to the Plan of Allocation.

AM I INCLUDED IN THE SETTLEMENT?

You are included in the Class if you, or an investment account for which you serve as a custodian, acquired shares of Apple REIT Nine, Inc. pursuant to the Apple REIT Nine, Inc.'s DRIP between April 8, 2013 and June 27, 2013, inclusive.

All Class Members are included in the Settlement unless he/she/it exercise his/her/their right to opt-out (*see* page 5 herein). However, only Eligible Class Members will receive a share of the Net Settlement Fund. As explained in the Settlement Agreement, an Eligible Class Member is a Class Member whose number of DRIP Shares purchased by such Class Member was greater than the number of shares redeemed by A-9 from such Class Member during the Class Period, if any.

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR ELIGIBLE CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT FUND. IF YOU ARE A CLASS MEMBER, YOU DO NOT NEED TO TAKE ANY FURTHER ACTION TO RECEIVE PAYMENT.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

If there were no Settlement, the litigation may proceed to judgment or some other disposition. If Plaintiff failed to establish any essential legal or factual element of his claim against the Defendant, neither he nor the Class would recover anything from the Defendant. Also, if the Defendant were successful in proving any of its defenses, the Class could recover substantially less than the amounts provided in the Settlement, or nothing at all.

WHAT IS THE LEGAL EFFECT OF THE SETTLEMENT ON MY RIGHTS?

If you are a member of the Class, the Settlement will affect you. If the District Court grants final approval of the Settlement, the Class Action will be dismissed with prejudice and all Class Members will fully release and discharge the Defendant (and the other Released Parties) from all claims for relief arising out of or based on Plaintiff's allegations. When a Party to the litigation "releases" claims that means that Party cannot sue the Defendant or the other Released Parties for any of the claims covered by the release. If you are an Eligible Class Member, you will receive a payment based upon the distribution formula described in the Plan of Allocation or as otherwise approved by the Court.

WHAT IF I PURCHASED SHARES UNDER THE DRIP BEFORE OR AFTER THE CLASS PERIOD OR PURCHASED SHARES OUTSIDE OF THE DRIP?

The Class Period covered by the Settlement covers only DRIP purchasers from April 8, 2013 until June 27, 2013, inclusive, and the claims of all Settlement Class Members concerning DRIP purchases of Apple REIT Nine, Inc. during that period will be released under the terms of the Settlement unless Settlement Class Members affirmatively exclude themselves from the Settlement Class.

WHAT WILL I RECEIVE FROM THE SETTLEMENT?

Pursuant to the Settlement, Defendant shall cause to be delivered to Class Counsel a check or wire transfer in the amount of \$1.2 million, which will be deposited into an interest-bearing escrow account.

At this time, it is not possible to determine precisely how much each Eligible Class Member may receive from the Settlement. However, using a conservative estimate assuming that every Eligible Class Member participates, and assuming that a request for attorneys' fees not to exceed the maximum potential sum permitted under the Settlement Agreement (\$400,000.00) is granted, and that an application for reimbursement of expenses in the amount not to exceed \$155,000.00 is granted, and assuming the Eligible Class Member did not have any shares redeemed by A-9 during the Class Period, then the Eligible Class Member could receive at least \$.50 per share for the Net DRIP shares purchased during the Class Period.

If the Settlement is approved by the District Court, the Net Settlement Fund (*i.e.*, the Settlement Fund less: (a) all federal, state, and local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing Notice to Class Members and administering the Settlement on behalf of Class Members; and (c) any attorneys' fees and expenses awarded by the District Court) ("Settlement Fund Deduction") will be distributed to Eligible Class Members as set forth in the proposed Plan of Allocation, or such other plan as the District Court may approve.

The Net Settlement Fund will not be distributed until the District Court has approved a plan of allocation, and the time for any petition for rehearing, appeal, or review, whether by *certiorari* or otherwise, concerning the terms of the Settlement and the District Court's approval thereof, has expired and the distribution calculations concluded by the Settlement Administrator.

Approval of the Settlement is independent from approval of the Plan of Allocation. Any determination with respect to the Plan of Allocation will not affect the Settlement, if approved.

The District Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

Each Class Member shall be deemed to have submitted to the jurisdiction of the District Court with respect to his, her, or its Verification Form. Upon request of the Settlement Administrator, each Person that submits a Verification Form shall subject his, her, or its Claim to investigation as to his, her, or its status as a Claimant and the allowable amount of his, her, or its Claim. Disputes will be handled by the Settlement Administrator upon proof submitted supporting that dispute.

Persons that are excluded from the Class by definition or that exclude themselves from the Class or who have zero (or fewer) Net DRIP shares will not be eligible to receive a distribution from the Net Settlement Fund.

PROPOSED PLAN OF ALLOCATION

100% of the Net Settlement Fund will be allocated to net DRIP shares purchased between April 8, 2013 and June 27, 2013 inclusive for Apple REIT Nine, Inc. according to the Plan of Allocation. Class Members who made net purchases (*i.e.*, net of redemptions during the Class Period) during the Plan of Allocation Class Period shall receive a *pro rata* share of this sum based on the Plan of Allocation.

Payment pursuant to the Plan of Allocation, or such other plan as may be approved by the District Court, shall be deemed conclusive against all Eligible Class Members. No Person shall have any claim against Plaintiff, Class Counsel, Defendant, or any of the other Released Parties, or the Settlement Administrator arising from distributions made substantially in accordance with the Settlement Agreement, the Plan of Allocation approved by the District Court, or further orders of the District Court. Except as otherwise provided in the Settlement Agreement, Plaintiff, Defendant, and their respective counsel, and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Funds, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any Verification Form or nonperformance of the Settlement Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

The Plan of Allocation set forth herein is the plan that is being proposed by Plaintiff to the District Court for approval. The District Court may approve this Plan of Allocation as proposed or it may modify the Plan of Allocation without further notice to the Class. Any orders regarding a modification of the Plan of Allocation will be posted on the Settlement website, www.AppleReitNineSettlement.com.

WHAT IF I DO NOT WISH TO BE INCLUDED IN THIS SETTLEMENT?

If you do not wish to participate in the Settlement, you may request to be excluded. To do so, you must timely submit a valid Request for Exclusion that must (a) be properly completed and postmarked on or before February 7, 2022, and (b) be signed by you. The Court may request further documentation evidencing your holdings of and transactions in, Apple REITs Nine DRIP shares if deemed necessary. The Request for Exclusion should be mailed to the address set forth in this Notice.

If you timely and validly request exclusion from the Settlement, (a) you will be excluded from the Settlement, (b) you will not share in the proceeds of the Settlement described herein, (c) you will not be bound by any judgment entered in the Action, and (d) you will not be precluded, by reason of your decision to request exclusion from the Settlement, from otherwise prosecuting an individual claim, if timely, against the Defendants (or the Released Parties) based on the matters complained of in the Action.

WHAT IF A SETTLEMENT CLASS MEMBER IS DECEASED?

The authorized legal representative(s) of a Class Member may receive a recovery on behalf of the Class Member, if otherwise eligible.

WHAT IF I HELD APPLE REIT NINE, INC. DRIP SHARES ON SOMEONE ELSE'S BEHALF?

If you held Apple REIT Nine DRIP shares for the beneficial interest of a Class Member, you are requested to provide the names and addresses of such persons or entities to the Settlement Administrator. If you notify the Settlement Administrator of this information, the Settlement Administrator will send a copy of the Notice to the beneficial owners. Upon full compliance with this request, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Settlement Administrator with proper documentation supporting the out-of-pocket expenses for which reimbursement is sought.

HOW AND WHAT DO I DO TO MAKE SURE THE SETTLEMENT ADMINISTRATOR HAS MY CORRECT ADDRESS?

If your address changes from the address to which this Notice was directed, you must notify the Settlement Administrator of your new address as soon as possible. Failure to keep the Settlement Administrator informed of your address may result in the loss of any monetary award you might be eligible to receive. Please send your new contact information to the Settlement Administrator at the address listed below and include your old address, new address, new telephone number, date of birth (for natural persons), and appropriate tax identification number. These last two items are required so that the Settlement Administrator can verify that the address change is from an actual Class Member.

Apple REIT Nine Settlement
c/o KCC Class Action Services
P.O. Box 43265
Providence, RI 02940-3265
info@AppleREITNineSettlement.com

WHAT ARE THE PLAINTIFF'S AND COUNSELS' FEES AND COSTS?

At the Final Approval Hearing, Class Counsel will request that the District Court award attorneys' fees to Plaintiff's counsel, plus expenses in an amount not to exceed approximately \$555,000 (inclusive of notice and administration costs) (collectively "Settlement Fund Deductions") which were incurred in connection with the litigation of the Class Action. Whatever amount is approved by the Court as legal fees and expenses will be paid from the Settlement Fund. To date, Class Counsel has not received any payment for their services in conducting the Class Action, nor have Class Counsel been reimbursed for their expenses. Class Counsel will request case contribution award to the class representative in recognition of his time, effort, and expense on behalf of the Class, in a sum not to exceed a total of \$10,000.00 which amount has been included in the Settlement Fund Deductions described above.

HOW WILL THE NOTICE COSTS AND EXPENSES BE PAID?

Class Counsel are authorized by the Settlement Agreement, as approved by the District Court, to use the Settlement Fund to pay the Settlement Administrator's fees and expenses incurred in connection with giving notice, administering the Settlement, and distributing the Net Settlement Fund to Class Members.

IV. REASONS FOR THE SETTLEMENT

Class Counsel have conducted a thorough investigation of the claims and allegations asserted in the Class Action, as well as the underlying events relevant to the Class Action.

In evaluating the Settlement, Plaintiff and his counsel have considered: (a) the substantial benefits to the members of the Class from the Settlement; (b) the facts developed during Plaintiff's investigation and discovery including depositions of Defendant's current and former officers and directors; (c) the attendant risks of continued litigation and the uncertainty of the outcome of the Class Action; (d) the probability of success on the merits; and (e) the conclusion of Plaintiff's counsel that the terms and conditions of the Settlement are fair, reasonable, adequate and in the best interests of Plaintiff and the Class.

Defendant has denied, and continues to deny, that it or Apple REIT Nine, Inc. committed any breach of any contract duty, or any other law, or engaged in any of the wrongful acts alleged in the Class Action, and expressly maintains that the Class Action is without merit and that Defendant is entering into the Settlement solely to eliminate the burden, expense, distraction and uncertainties inherent in further litigation.

Plaintiff has stated, and continues to state, that he brought these claims in good faith, that he believes that the claims had substantial merit at all relevant times, and that he is agreeing to the terms of the Settlement only because he believes that the Settlement provides a substantial benefit to the Class and has concluded that the terms of the Settlement are fair, reasonable and adequate and in the best interests of the Class.

The \$1.2 million in consideration payable by Defendant under the Settlement provides a substantial and immediate benefit to the Class. Although Interim Class Counsel believes that Plaintiff would be able to prove merit to the claims asserted in the case, there is a substantial risk that Class Members would not recover anything at all if the case were not settled. If the case were to continue to be litigated, the Class would still need to establish the merits of the claims and the amount of damages, if any, by a preponderance of the evidence, and would also need to overcome various legal defenses in order to survive any dispositive summary judgment motions or recover at trial.

V. SUMMARY OF CLASS MEMBERS' LEGAL RIGHTS AND OPTIONS

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
EXCLUDE YOURSELF FROM THE CLASS BY SUBMITTING A REQUEST FOR EXCLUSION FORM POSTMARKED NO LATER THAN FEBRUARY 7, 2022	If you are an Eligible Class Member and exclude yourself from the Class, you will not be eligible to get any payment from the Net Settlement Fund. This is the only option that allows you to be part of any other lawsuit against the Defendant or the other Released Parties concerning the Released Claims.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION NO LATER THAN FEBRUARY 26, 2022	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the Fee and Expense Application, you may write to the District Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the Fee and Expense Application unless you are a Class Member and do not exclude yourself.
ATTEND THE FINAL APPROVAL HEARING ON MARCH 17, 2022 AT 10:00 AM AND FILE A NOTICE OF INTENTION TO APPEAR NO LATER THAN FEBRUARY 26, 2022	Filing a written objection and notice of intention to appear allows you to speak in the District Court about the fairness of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application. If you submit a written objection, you may (but do not have to) attend the hearing and speak to the District Court about your objection.
DO NOTHING	The Verification Form enclosed with this Notice provides instructions for how you can review the information that will be used as a basis for your Allowed Payment. If you do not dispute the payment information prior to the date noted in the Verification Form, you will receive payment based on the information provided by David Lerner Associates.
DISPUTE THE INFORMATION PROVIDED BY DAVID LERNER ASSOCIATES	You may dispute the DRIP information provided by David Lerner Associates according to the instructions provided on the enclosed Verification Form. The Settlement Administrator will determine the validity of that dispute and adjust payment if the dispute is valid.

VI. YOUR RIGHT TO OPT OUT OF THE CLASS ACTION AND FILE YOUR OWN LAWSUIT

HOW CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?

If you do not want to be legally bound by the Settlement, you must exclude yourself by February 7, 2022. To do so, you must mail your written request for exclusion to the Settlement Administrator at the address below. Your written request for exclusion must include your full name, address, telephone number, the last four digits of your Social Security Number, a statement that you wish to be excluded from the Settlement, and it must be personally signed by you. If you exclude yourself, you will not receive money from this Settlement, but you will retain your legal rights regarding any claims that you may have against the Released Parties regarding the claims asserted in this case.

Apple REIT Nine, Inc. Settlement
EXCLUSIONS
c/o KCC Class Action Services
P.O. Box 43265
Providence, RI 02940-3265

**HOW CAN I OBJECT TO THE SETTLEMENT,
PLAN OF ALLOCATION, AND FEE AND EXPENSE APPLICATION?**

Any Class Member who does not request exclusion may object to the Settlement, the proposed Plan of Allocation, and/or the Fee and Expense Application. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Eastern District of New York at the address set forth below on or before February 26, 2022. Your written objection should include all reasons for the objection, including any legal and evidentiary support you wish to bring to the Court's attention. The objection must also include your name, address, telephone number, the number of Apple REIT Nine, Inc. shares you held, and the number of Apple REIT Nine, Inc. shares that you purchased in the DRIP. You must also serve the papers on designated representative Lead Counsel and Defendant's counsel at the addresses set forth below.

To be considered, your objection must be filed with the Clerk's Office no later than February 26, 2022, and sent to:

<p><u>Clerk's Office</u> United States District Court Eastern District of New York Clerk of the Court 225 Cadman Plaza East Brooklyn, NY 11201</p>	<p><u>Defendant's Counsel</u> MCGUIREWOODS LLP Stanley Roberts, Esq. 800 East Canal Street Richmond, VA 23219</p>	<p><u>Lead Counsel</u> SQUITIERI & FEARON, LLP Lee Squitieri 424 Madison Avenue 3rd Floor New York, NY 10017</p>
<p>Re: <i>Vergara v. Apple REIT Nine, Inc.</i> 1:19-cv-0207-DLI-RML</p>		

You may file a written objection without having to appear at the Final Approval Hearing. You may not, however, appear at the Final Approval Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the District Court orders otherwise.

If you file an objection to the Settlement, Plan of Allocation, and/or the Fee and Expense Application you also have a right to appear at the Final Approval Hearing either in person or through counsel hired by you at your own expense. You are not required, however, to hire an attorney to represent you in making written objections or in appearing at the Final Approval Hearing. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or the Fee and Expense Application, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on the Settlement Administrator at the address set forth above. Persons who intend to object and desire to present evidence at the Final Approval Hearing must include in their written objection or notice of appearance, the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

Unless the District Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation and the Fee and Expense Application. Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

WHAT RIGHTS AM I GIVING UP BY REMAINING IN THE CLASS?

If you remain in the Class, you will be bound by any orders issued by the District Court. For example, if the District Court approves the Settlement, the District Court will enter the Final Order and Judgment. The Final Order and Judgment will dismiss with prejudice the claim against the Defendant, and will provide that, upon the Effective Date of the Settlement, Plaintiff and each of the other members of the Class on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors, and assigns, among others, shall be deemed by operation of law to have fully granted and completely discharged, dismissed with prejudice, settled and released, and agreed to be barred by a permanent injunction from the assertion of, Released Claims against any of the Released Parties and their attorneys.

"Released Claims" shall mean any and all claims, rights, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, or suspected or unsuspected, whether asserted directly, indirectly, derivatively, representatively, or in any other capacity, including, without limitation, any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, and any claims for gross negligence, fraud or negligent misrepresentation that a Class Member has or may have against the Released Parties that arise from, are based on, or are related in any way to the allegations, transactions, facts, events, matters, occurrences, acts, representations, statements or

omissions that were or could have been alleged, set forth or referred to in the Action during the Class Period, except for claims related to the enforcement of the Settlement.

“Released Parties” shall mean Defendant and its predecessor, A-9, Defendant’s present and former directors, officers, attorneys, parents, subsidiaries, and assigns and A-9’s former directors, officers, attorneys, parents, subsidiaries, and assigns.

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

VII. THE FINAL APPROVAL HEARING

The Court has scheduled the Final Approval Hearing to be held March 17, 2022 at the time identified in Section I above to determine: (a) whether the Court should finally approve the Settlement as fair, reasonable and adequate to the Class; (b) whether to enter judgment dismissing the Class Action with prejudice and extinguishing and releasing the Released Claims; (c) if the Court approves the Settlement, whether the Court should grant Plaintiff’s application for payment of attorneys’ fees and reimbursement of expenses; and (d) to consider such other matters as may properly come before the Court.

The Court may postpone, reschedule or adjourn the Final Approval Hearing without further notice to the Class other than by filing a notice on the docket in the Class Action in advance of the Final Approval Hearing, or by making an announcement at the Final Approval Hearing or any adjournment thereof. The Court also has reserved the right to approve the Settlement at or after the Final Approval Hearing with such modification(s) as may be consented to by the Parties and without further notice to the Class.

VIII. YOUR RIGHT TO APPEAR AND OBJECT

Any member of the Class who objects to any aspect of the Settlement, entry of the Final Order and Judgment, and/or Plaintiff’s counsel’s application for payment of attorneys’ fees and expenses, or who otherwise wishes to be heard, may appear in person by his, her or its attorney at the Final Approval Hearing and present evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no person shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the judgment to be entered thereon, and no papers or briefs submitted by any member of the Class or any other person shall be received and considered by the Court, unless, not later than February 26, 2022, such person files with the Court and serves upon all of the counsel listed below, at the addresses listed below, a written objection. The objection shall be served upon:

Lee Squitieri Squitieri & Fearon, LLP 424 Madison Avenue 3rd Floor New York, NY 10017 lee@sfclasslaw.com	Stanley Roberts McGuireWoods LLP 800 East Canal Street Richmond, VA 23219 sroberts@mcquirewoods.com
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IX. FINAL ORDER AND JUDGMENT OF THE COURT

If following the Final Approval Hearing the Settlement is approved by the Court as fair, reasonable and adequate, the Parties will jointly request that the Court enter a Final Order and Judgment which will, among other things: (a) determine that the requirements of the Federal Rules of Civil Procedure and due process have been satisfied in connection with the Notice provided to the Class; (b) approve the Settlement as fair, reasonable and adequate to the Class; (c) dismiss the Class Action with prejudice on the merits, as against Defendant, without costs except as herein provided, and release Defendant and any other of the Released Parties from the Released Claims; and (d) determine any payment of attorneys’ fees and expenses incurred by Plaintiff.

X. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

At the Final Approval Hearing, Lead Counsel will request that the District Court award attorneys' fees not to exceed one-third of the Settlement Fund (or \$400,000.00) plus expenses—in an amount not to exceed approximately \$155,000 (inclusive of administration costs) which were incurred in connection with the litigation of the Class Action. Whatever amount is approved by the Court as legal fees and expenses will be paid from the Settlement Fund. To date, Class Counsel has not received any payment for their services in conducting the Class Action, nor have they been reimbursed for their expenses. Plaintiff will also request an incentive award to the class representative in recognition of his time, effort, and expense on behalf of the Class not to exceed \$10,000.00.

XI. SCOPE OF THIS NOTICE

This Notice is not all-inclusive. The references in this Notice to the pleadings in the Class Action, the Settlement Agreement and all other papers or proceedings herein are only summaries and do not purport to be comprehensive. For the full details of the Class Action, the claims that have been asserted in the Class Action and the terms and conditions of the Settlement, including a complete copy of the Settlement Agreement and related Orders and proposed forms of Orders, you are referred to the Court file for the Class Action (accessible at www.AppleReitNineSettlement.com).

You may also review the Settlement Agreement filed with the District Court, as well as the other pleadings and records of this litigation, which may be inspected during business hours, at the office of the Clerk of the Court, Eastern District of NY, 225 Cadman Plaza East, Room 130, Brooklyn, New York 11201.

If you have any questions about the Settlement of the Class Action, you may contact Class Counsel at the addresses and telephone numbers below.

**DO NOT TELEPHONE OR WRITE THE DISTRICT COURT OR THE
OFFICE OF THE CLERK OF THE COURT REGARDING THIS NOTICE.**

BY ORDER OF THE U.S. DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

SQUITIERI & FEARON, LLP

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3rd Floor

New York, NY 10017

lee@sfclasslaw.com

(212) 421-6492

(212) 421-6553 (fax)

PLEASE DO NOT CALL OR WRITE THE COURT WITH GENERAL INQUIRIES.