Settlements of Adhesion

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Eviction cases make up over a quarter of all cases filed in the federal and state civil courts and have enormous consequences for tenants, who are nearly always unrepresented by counsel. These cases overwhelmingly settle, yet settlement scholars have entirely overlooked eviction both empirically and theoretically. One of the core questions animating settlement scholarship—how do the parties negotiate settlement?—has never been asked or answered in the eviction context. This Article does so.

The Article presents results from the first empirical study of eviction settlement negotiations. The study involved rigorous analysis of an original dataset of over one thousand hand-coded settlements, observations of settlement negotiations in the hallways of housing court, and dozens of interviews. The findings demonstrate that unrepresented tenants—who make up the vast majority of tenants in the eviction system—have no meaningful influence over settlement terms. Rather, the terms are set by landlords and their attorneys. The quantitative analysis shows that, despite variation in the merits of cases, settlement agreements involving the same landlord law firms nearly always reach the same settlement. Substantive terms vary across cases handled by different landlord law firms, however. The determining factor of a settlement's terms is the law firm that represents the landlord. Through detailed data analysis, the Article demonstrates that each landlord law firm drafts and deploys a standardized settlement agreement, and that agreement is virtually always what unrepresented tenants sign.

Drawing on the empirical findings and scholarship about contracts of adhesion, the Article develops the theoretical concept of "settlements of adhesion." The process by which eviction settlements are reached parallels that of a standard contract of adhesion. The settlements are drafted by a repeat player, written on preprinted forms, presented to the tenant with the implicit representation that there will be no deviation from the core terms contained, and signed by the tenant after discussion of the one term left open to negotiation (the payment schedule). The concept of settlements of adhesion reshapes long-standing debates about settlement. It shows that—at least in one civil context—not only do the merits not matter, but settlements

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bear little relationship to the substantive law because one side alone sets the terms. And while scholars have argued extensively about whether settlements are beneficial because they advance private interests or, alternatively, undesirable because they erode the public realm, settlements of adhesion show that there are contexts in which neither occurs. Settlements of adhesion pervert the public realm—they allow landlords to usurp public resources and the authority of the court entirely to their own advantage.

This Article makes four core contributions. First, it provides rigorous empirical data that reveals the process by which eviction settlements—one of the most common types of civil settlement—are reached in one jurisdiction. Second, the Article is the first to surface the phenomenon and develop the theoretical concept of settlements of adhesion. Third, by providing fresh empirical data about settlement negotiations in a previously unexplored context, the Article reshapes existing theoretical debates about settlement. Fourth, the Article proposes reforms for eviction courts grounded in the finding that settlement agreements are not negotiated.

INTRODUCTION

In the past fifty years, the field of civil procedure has witnessed an explosion of scholarship on settlement.[1] Nearly all scholars seem to agree that trials have "vanished,"[2] causing many to turn their attention to the rules, practices, and outcomes related to settlement.[3] Yet, despite constituting approximately 27%

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[1] *See infra* Part I.

[2] *See, e.g.*, Marc Galanter & Mia Cahill, *"Most Cases Settle": Judicial Promotion and Regulation of Settlements*, 46 STAN. L. REV. 1339, 1344 (1994); Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 460–64 (2004); Judith Resnik, *Migrating, Morphing,* and *Vanishing: The Empirical and Normative Puzzles of Declining Trial Rates in Courts*, 1 J. EMPIRICAL LEGAL STUD. 783, 790 (2004) [hereinafter Resnik, *Migrating, Morphing,* and *Vanishing*] (citing Patrick Higginbotham, *Judge Robert A. Ainsworth, Jr. Memorial Lecture, Loyola University School of Law: So Why Do We Still Call Them Trial Courts?*, 55 SMU L. REV. 1405 (2002)); Stephen C. Yeazell, *The Misunderstood Consequences of Modern Civil Process*, 1994 WIS. L. REV. 631, 638 (noting a doubling in the number of cases reported settled from 1938 to 1990). There is strong contemporary empirical support for this claim. *See* Theodore Eisenberg & Charlotte Lanvers, *What Is the Settlement Rate and Why Should We Care?*, 6 J. EMPIRICAL LEGAL STUD. 111, 143 (2009).

[3] *See generally, e.g.*, J. Maria Glover, *The Federal Rules of Civil Settlement*, 87 N.Y.U. L. REV. 1713 (2012); J.J. Prescott & Kathryn E. Spier, *A Comprehensive Theory of Civil Settlement*, 91 N.Y.U. L. REV. 59 (2016); Ellen E. Deason, *Beyond Managerial Judges: Appropriate Roles in Settlement*, 78 OHIO ST. L.J. 73 (2017); Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374 (1982) [hereinafter Resnik, *Managerial Judges*].

of all civil filings in state and federal courts combined,[4] eviction is largely absent from the mainstream settlement literature. This absence is all the more striking given the well-documented consequences of eviction on low-income people and people of color.[5] Settlement scholarship, and particularly empirical scholarship, tends to focus on cases filed in federal court, tort claims, and complex multidistrict litigation.[6] The result is that the vibrant,

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[4] *See Eviction Lab*, PRINCETON UNIV. (last updated Sept. 9, 2023), https://perma.cc/V4XK-GQSN (noting approximately 3.6 million eviction cases filed per year); *U.S. District Courts—Judicial Business 2022*, U.S. CTS., https://perma.cc/M429-WU4D (noting 274,771 civil cases filed in U.S. district courts in 2022); *Court Statistics Project*, NAT'L CTR. STATE CTS. (last updated Oct. 2024), https://perma.cc/8BK9-PZBR (noting approximately 13.31 million civil cases filed in state courts in 2021).

[5] *See, e.g.*, Robert Collinson, John Eric Humphries, Nicholas Mader, Davin Reed, Daniel Tannenbaum & Winnie van Dijk, *Eviction and Poverty in American Cities*, 139 Q.J. ECON. 57, 66, 77–81 (2024); Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOCIO. 88, 120–21 (2012); Maureen Crane & Anthony M. Warnes, *Evictions and Prolonged Homelessness*, 15 HOUS. STUD. 757, 767 (2000); Patrick D. Smith, Danya E. Keene, Sarah Dilday, Kim M. Blankenship & Allison K. Groves, *Eviction from Rental Housing and Its Links to Health: A Scoping Review*, 86 HEALTH & PLACE 1, 34 (2024); Jack Tsai, Natalie Jones, Dorota Szymkowiak & Robert A. Rosenheck, *Longitudinal Study of the Housing and Mental Health Outcomes of Tenants Appearing in Eviction Court*, 56 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 1679, 1683–85 (2021); Hugo Vásquez-Vera, Laia Palència, Ingrid Magna, Carlos Mena, Jaime Neira & Carme Borrell, *The Threat of Home Eviction and Its Effects on Health Through the Equity Lens: A Systematic Review*, 175 SOC. SCI. & MED. 199, 206 (2017); Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 297–301 (2015).

[6] *See generally, e.g.*, Glover, *supra* note 3 (federal courts); Verity Winship & Jennifer K. Robbennolt, *An Empirical Study of Admissions in SEC Settlements*, 60 ARIZ. L. REV. 1 (2018) (federal courts); Christina L. Boyd & David A. Hoffman, *Litigating Toward Settlement*, 29 J.L. ECON. & ORG. 898 (2012) (federal courts); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811 (2010) (federal courts); Minna J. Kotkin, *Outing Outcomes: An Empirical Study of Confidential Employment Discrimination Settlements*, 64 WASH. & LEE L. REV. 111 (2007) (federal courts); Janet Cooper Alexander, *Do the Merits Matter? A Study of Settlements in Securities Class Actions*, 43 STAN. L. REV. 497 (1991) (federal courts); Judith Resnik, *Failing Faith: Adjudicatory Procedure in Decline*, 53 U. CHI. L. REV. 494 (1986) [hereinafter Resnik, *Failing Faith*] (federal courts); Yeazell, *supra* note 2 (federal courts); Nora Freeman Engstrom, *Sunlight and Settlement Mills*, 86 N.Y.U. L. REV. 805 (2011) [hereinafter Engstrom, *Sunlight and Settlement Mills*] (tort claims); Ronen Avraham, *An Empirical Study of the Impact of Tort Reforms on Medical Malpractice Settlement Payments*, 36 J. LEGAL STUD. S183 (2007) (tort claims); Samuel Issacharoff & John Fabian Witt, *The Inevitability of Aggregate Settlement: An Institutional Account of American Tort Law*, 57 VAND. L. REV. 1571 (2004) (tort claims); Jonathan T. Molot, *How U.S. Procedure Skews Tort Law Incentives*, 73 IND. L.J. 59 (1997) (tort claims); Tom R. Tyler, *A Psychological Perspective on the Settlement of Mass Tort Claims*, 53 LAW & CONTEMP. PROBS. 199 (1990) (tort claims); H. LAURENCE ROSS, SETTLED OUT OF COURT: THE SOCIAL PROCESS OF INSURANCE CLAIMS ADJUSTMENT (2d ed. 1980) (tort claims); Margaret S. Thomas, *Morphing Case Boundaries in Multidistrict Litigation Settlements*, 63 EMORY L.J. 1339 (2014) (multidistrict litigation); Elizabeth Chamblee Burch & Margaret S. Williams, *Perceptions of Justice in Multidistrict Litigation: Voices from the Crowd*, 107 CORNELL L. REV. 1835 (2022) (multidistrict

decades-long normative debate about settlement—whether its pervasiveness is cause to celebrate or lament, and whether and how the rules should adjust—has failed to take into account one of the primary and most significant legal contexts in which it occurs: in eviction cases filed in state courts.[7] Theoretical models of settlement processes are similarly devoid of this contextual underpinning.[8]

I aim to take an initial step toward filling those gaps here. I do so based on a multipart empirical study I conducted on one of the foundational dynamics that animates existing settlement theory in the context of eviction: the process by which settlement agreements are reached.[9] Specifically, I examined the extent to which settlement agreements are reached through a process of negotiation in nonpayment of rent eviction cases in Boston, Massachusetts.[10] By "negotiation," I mean a process in which each side has a meaningful opportunity to influence a settlement's terms.[11] My focus in the study was on cases in which the landlord was represented by counsel but the tenant was unrepresented because this is by far the most common representation structure in eviction cases,

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litigation). *But see generally* Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979) (discussing settlement in the context of divorce); Megan M. La Belle, *Against Settlement of (Some) Patent Cases*, 67 VAND. L. REV. 375 (2014) (discussing settlement in the context of patent cases). An exception of an empirical study of eviction settlements is Nicole Summers, *Civil Probation*, 75 STAN. L. REV. 847 (2023) [hereinafter Summers, *Civil Probation*].

7 *See generally, e.g.*, Owen M. Fiss, *Against Settlement*, 93 YALE L.J. 1073 (1984) [hereinafter Fiss, *Against Settlement*]; David Luban, *Settlements and the Erosion of the Public Realm*, 83 GEO. L.J. 2619 (1995) [hereinafter Luban, *Settlements and the Public Realm*]; Carrie Menkel-Meadow, *Whose Dispute Is It Anyway?: A Philosophical and Democratic Defense of Settlement (In Some Cases)*, 83 GEO. L.J. 2663 (1995) [hereinafter Menkel-Meadow, *Whose Dispute Is It Anyway?*]; Yeazell, *supra* note 2.

8 *See generally, e.g.*, Robert Cooter, Stephen Marks & Robert Mnookin, *Bargaining in the Shadow of the Law: A Testable Model of Strategic Behavior*, 11 J. LEGAL STUD. 225 (1982); Lucian Ayre Bebchuk, *Litigation and Settlement Under Imperfect Information*, 15 RAND J. ECON. 404 (1984); George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984).

9 *See* Engstrom, *Sunlight and Settlement Mills*, *supra* note 6, at 814–23; Nora Freeman Engstrom, *Run-of-the-Mill Justice*, 22 GEO. J. LEGAL ETHICS 1485, 1491–1514 (2009) [hereinafter Engstrom, *Run-of-the-Mill Justice*]; Issacharoff & Witt, *supra* note 6, at 1618–34; Mnookin & Kornhauser, *supra* note 6, at 966–77, 985–96; Fiss, *Against Settlement*, *supra* note 7, at 1076–82. *See generally* Cooter et al., *supra* note 8; Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974) [hereinafter Galanter, *Why the "Haves" Come Out Ahead*].

10 Specifically, my focus was on cases in which the landlord was represented by counsel and the tenant was unrepresented. These are the most typical eviction cases—preexisting data show that most eviction cases are filed for nonpayment of rent, and most eviction cases involve a represented landlord and an unrepresented tenant. *See infra* Part II.

11 *See infra* Parts I, II.

particularly in large, urban housing courts.[12] This is the first rigorous study of eviction settlement negotiations.[13]

My methodology was threefold. First, I constructed a dataset of case-level eviction settlement data. To build this dataset, I hand coded every nonpayment of rent eviction case filed in the Boston Housing Court[14] in 2019 in which the landlord was represented by counsel and a settlement was reached. This dataset included 1,577 cases and accompanying settlements. Of these 1,577 cases, tenants were represented by counsel in less than 5%. Second, I observed settlement negotiations occurring live in the hallways of the Boston Housing Court.[15] I conducted twenty-three hours of observation over the course of seven separate days. Third, I conducted semi-structured interviews of tenants and landlord attorneys.[16] I interviewed two dozen unrepresented tenants with eviction cases in the Boston Housing Court and five landlord attorneys across different law firms with high-volume eviction practices.

Both the quantitative and qualitative data revealed the virtual absence of negotiation in eviction settlements. The quantitative data show that settlements are nearly identical among cases brought by the same landlord law firm. They are not, however, identical across law firms. Each landlord law firm has its own standard-form settlement, and that standard form is nearly always what unrepresented tenants sign. The data show that during the study year, twelve major law firms provided counsel to

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12 *See* Kathryn A. Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359, 382 (2022) [hereinafter Sabbeth, *Eviction Courts*]; *Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS. (last updated Aug. 2025), https://perma.cc/7W9H-B4SN (noting that, on average, 83% of landlords and 4% of tenants have counsel in eviction cases). An exception is when the jurisdiction has enacted right to counsel legislation. Nineteen cities, two counties, and five states have passed right to counsel legislation. *See The Right to Counsel for Tenants Facing Eviction: Enacted Legislation*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS. (last updated Aug. 2025), https://perma.cc/G3ZC-VXRZ.

13 A few scholarly works have been written on eviction settlement negotiations, but all have relied on anecdotal evidence. *See, e.g.*, Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons*, 85 CALIF. L. REV. 79, 108–15 (1997) [hereinafter Engler, *Out of Sight and Out of Line*]; Erica L. Fox, *Alone in the Hallway: Challenges to Effective Self-Representation in Negotiation*, 1 HARV. NEGOT. L. REV. 85, 97–109 (1996).

14 This court is officially known as the Eastern Housing Court of Massachusetts. Because it is located in Boston and primarily serves residents of Boston, I refer to it as the "Boston Housing Court" throughout.

15 I received Institutional Review Board (IRB) approval to conduct this portion of the study.

16 I also received IRB approval to conduct the interviews.

three-quarters of all represented landlords in the Boston Housing Court. Every law firm used its own distinct settlement form. In over 96% of settlements involving these twelve law firms, there was no deviation from the form's standard terms whatsoever, aside from the inputting of case-specific dollar arrears amounts and payment timetables.[17] Across the five substantive terms I analyzed, settlements handled by the same landlord law firm were identical 99.9% of the time. And although Massachusetts law recognizes numerous defenses and counterclaims that entitle tenants to a rent abatement—a reduction in the amount of rent they owe in their eviction case—the data show that only 0.1% of unrepresented tenants received any abatement.[18] In other words, the settlements virtually always forced tenants to repay the entirety of their rental arrears, even though the law dictates that many tenants are likely entitled to a much better deal.[19]

Interviews and observations then confirmed what is suggested by the case-level data: Landlord law firms draft and deploy standard-form settlement agreements, and unrepresented tenants sign them without modifying the terms. When negotiation occurs, it is nearly exclusively over the schedule on which payments to the landlord will be made. The structural and monetary terms of the settlements go undiscussed; they are preset by landlord law firms and signed onto by tenants. Virtually all tenants whose eviction cases are handled by the same landlord law firm obtain the same settlement terms, regardless of the merits of their case or its procedural posture at the time of settlement.[20]

Based on the findings, I theorize that these are settlements of adhesion. The process by which eviction settlements are drafted and signed contains the elements associated with a standard contract of adhesion: They are written on preprinted contractual forms; they are drafted on behalf of one party (the landlord); the drafting party is a repeat player; they are presented to the adhering party (the tenant) with the explicit or implicit representation that there will be no deviation from the core terms contained; they are signed by the tenant after minimal dickering over the few terms open to negotiation (generally the payment schedule); the

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17 *See infra* Part III.B.2–3; *see also infra* Table 5.

18 For a complete discussion of these defenses and counterclaims, see *infra* Part II.A.2.

19 Available evidence indicates that it is very likely that far greater than 0.1% of tenants in eviction proceedings have meritorious counterclaims entitling them to a rent abatement. *See infra* Part III.A; *infra* note 171 and accompanying text.

20 *See infra* Part III.C.

adhering party (the tenant) enters into few transactions of this type in comparison with the drafting party (the landlord); and the principal obligation imposed on the adhering party (the tenant) is the payment of money.[21] Fundamentally, the settlements are standard forms that are framed and experienced as nonnegotiable, and they are presented to the tenant on a take-it-or-leave-it basis.[22] For these reasons, I term them settlements of adhesion.

The analogy is not meant to imply perfect parallelism; as I describe, settlements of adhesion depart from contracts of adhesion along certain dimensions.[23] Instead, the conceptual framing is intended to offer a springboard for descriptively understanding the findings and considering them normatively. It reshapes longstanding settlement debates in two key ways.

First, settlements of adhesion complicate existing scholarly understandings of the impact of the law on settlement outcomes. Foundational settlement theory proposed that parties bargain for settlement "in the shadow of the law" such that a case's merits generate legal entitlements that the parties use to negotiate preferred outcomes, subject to informational asymmetries, transaction costs, and agency costs.[24] Prior empirical studies on settlement,

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[21] *See* Todd D. Rakoff, *Contracts of Adhesion: An Essay in Reconstruction*, 96 HARV. L. REV. 1173, 1177 (1983) [hereinafter Rakoff, *Contracts of Adhesion*] (defining contracts of adhesion based on the presence of these seven characteristics); *see also Contract*, BLACK'S LAW DICTIONARY (9th ed. 2009) (defining an "adhesion contract" as "[a] standard-form contract prepared by one party, to be signed by another party in a weaker position . . . who adheres to the contract with little choice about the terms"); Andrew Tutt, Note, *On the Invalidation of Terms in Contracts of Adhesion*, 30 YALE J. ON REG. 439, 441–42 (2013) (defining contracts of adhesion as "form contracts, offered on a take-it-or-leave-it basis, usually by a seller of a good or service"); Andrew A. Schwartz, *Consumer Contract Exchanges and the Problem of Adhesion*, 28 YALE J. ON REG. 313, 346 (2011) (defining a contract of adhesion as a "take-it-or-leave-it standard form agreement, usually presented to a consumer by a business entity" and for which "[n]egotiation over any of the terms contained in the form—except, often, the price—is neither contemplated nor permitted"); Michael C. Duffy, Comment, *Making Waives: Reining In Class Action Waivers in Consumer Contracts of Adhesion*, 80 TEMP. L. REV. 847, 847 n.2 (2007) (citing Rakoff, *Contracts of Adhesion*, *supra*, at 1177) (defining contracts of adhesion based on the presence of the seven characteristics).

[22] Professor Todd Rakoff's seven definitional characteristics are often boiled down to these features in scholarship and case law. *See* Schwartz, *supra* note 21, at 346 (referring to a contract of adhesion as a "take-it-or-leave-it standard form agreement"); Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 600 (1991) (Stevens, J., dissenting) (referring to such contracts as "form contracts offered on a take-or-leave basis"); *see also* Rakoff, *Contracts of Adhesion*, *supra* note 21, at 1177 ("Another of the central factors is the presentation of demands on a take-it-or-leave-it basis.").

[23] *See infra* Part IV.B.

[24] *See* Mnookin & Kornhauser, *supra* note 6, at 966–73; Alexander, *supra* note 6, at 501–05.

though, contradicted this conclusion by showing that a case's merits "do not matter" for settlement outcomes.[25] The studies found that cases instead settled for "going rates" based on claimed damages amounts (in SEC class actions) or suffered injuries (in automobile accident personal injury claims).[26] These going rates were reached through repeated negotiations that were grounded in the dictates of the substantive law but, as applied to individual cases, were unaffected by whether the plaintiff's claims were weak or strong.[27] By contrast, this is the first study to reveal a context in which neither the individual case merits nor the substantive law shape settlement outcomes.

Second, settlements of adhesion reshape decades-long debates about whether settlements are advantageous because they advance private interests or disadvantageous because they erode the public realm and public values.[28] Prior scholarship has largely embraced this dichotomy. On one side, scholars such as Professor Carrie Menkel-Meadow have argued that settlements better promote the satisfaction of private interests as compared with adjudication because parties can craft outcomes that align with their values and preferences.[29] On the other side, scholars such as Professor David Luban have contended that settlement sacrifices the opportunity for the public realm (i.e., courts) to elaborate public values and therefore "erodes" the public realm.[30] Settlements of adhesion demonstrate an alternative empirical reality contemplated by neither side of this ongoing debate. The settlement terms advance a single party's interests, and the settlements are reached and gain legal force through active participation by the courts. Specifically, court personnel facilitate the signing of these one-sided settlements in the hallways of the courthouse, and

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[25] Alexander, *supra* note 6, at 501; *see also* Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1530–32.

[26] Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1532–35; Alexander, *supra* note 6, at 514–19.

[27] Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1532–35. *But see* Alexander, *supra* note 6, at 547 n.194 ("There may be no particular reason why the 'going rate' is set at a particular level.").

[28] *See infra* Part I.

[29] Carrie Menkel-Meadow, *For and Against Settlement: Uses and Abuses of the Mandatory Settlement Conference*, 33 UCLA L. REV. 485, 487 (1985) [hereinafter Menkel-Meadow, *For and Against Settlement*] (arguing that, among other things, settlement "can be particularized to the needs of the parties, it can avoid win/lose, binary results, provide richer remedies than the commodification or monetarization of all claims, and achieve legitimacy through consent").

[30] Luban, *Settlements and the Public Realm*, *supra* note 7, at 2641.

judges enter and enforce the settlements as court orders. Far from eroding the public realm, settlements of adhesion pervert it.

The Article proceeds as follows. Part I provides an overview of the theoretical and empirical literature on negotiation in civil settlement. Part II describes the research site and methodology for my empirical study. Part III presents both the quantitative and qualitative findings. Part IV elaborates the theoretical concept of settlements of adhesion and argues its normative implications. Part V proposes reforms.

I. NEGOTIATION IN CIVIL SETTLEMENT

Negotiation is a cornerstone of civil settlement theory.[31] Perhaps the central, overarching question animating the theoretical literature on civil settlement is whether the fact that most cases settle is a legitimate and desirable outcome of the civil justice system. Scholars' answers to this question depend largely on their views of how settlement negotiation occurs in practice.[32] Two core debates run throughout the literature.

The first debate concerns the role of the substantive law in guiding settlement negotiations. The traditional view of civil settlement is that parties negotiate "in the shadow of the law."[33] Professors Robert Mnookin and Louis Kornhauser's foundational model of settlement proposed that legal rules form parties' bargaining endowments by determining the outcome they would receive if they took the case to trial.[34] According to their theory, parties reference these expected trial outcomes as leverage to achieve settlement terms that align with their preferences.[35] They suggested that negotiation allows parties to achieve a settlement that reflects the case's merits while avoiding the risk, transactional costs, and information costs associated with going to

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[31] *See, e.g.*, Mnookin & Kornhauser, *supra* note 6, at 972; Alan E. Friedman, Note, *An Analysis of Settlement*, 22 STAN. L. REV. 67, 70–71, 80 (1969); David Luban, *Bargaining and Compromise: Recent Work on Negotiation and Informal Justice*, 14 PHIL. & PUB. AFFS. 397, 404 (1985); Menkel-Meadow, *Whose Dispute Is It Anyway?*, *supra* note 7, at 2673.

[32] *See* Fiss, *Against Settlement*, *supra* note 7, at 1076–85; Menkel-Meadow, *Whose Dispute Is It Anyway?*, *supra* note 7, at 2672–74; Luban, *Settlements and the Public Realm*, *supra* note 7, at 2629–32; Galanter & Cahill, *supra* note 2, at 1348–49; Samuel Issacharoff & Robert H. Klonoff, *The Public Value of Settlement*, 78 FORDHAM L. REV. 1177, 1179–90 (2009).

[33] *See* Mnookin & Kornhauser, *supra* note 6, at 968; Cooter et al., *supra* note 8, at 228; *see also* Priest & Klein, *supra* note 8, at 6–17.

[34] Mnookin & Kornhauser, *supra* note 6, at 968–69.

[35] *Id.* at 968–69, 972–73.

trial.[36] Related law and economics models of civil settlement propose that litigants set bargaining limits based on their expected outcomes at trial adjusted for the probable costs of litigation and settlement, and then they reach settlement when the limits overlap.[37]

The traditional view of negotiation in the shadow of the law has been heavily criticized from a variety of angles. Scholars, including those writing from a law and economics perspective, have argued that litigation costs, bargaining costs, and informational asymmetries can heavily distort—even overwhelm—the merits of the suit in negotiation.[38] A related body of literature has argued that because trials are so few in number, parties bargain in the "shadow of settlement."[39] This literature is grounded in empirical studies showing that cases settle at formulaic "going rates" agreed upon by repeat players over time.[40] Professor Janet Cooper Alexander conducted a landmark study in which she examined the settlements of SEC class actions brought against computer-related companies

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[36] *Id.* at 974. Mnookin and Kornhauser also acknowledged that negotiations are affected by parties' unequal abilities to bear litigation costs, differential attitudes toward risk, asymmetric information, and emotions. *Id.* at 971–73.

[37] *See* Priest & Klein, *supra* note 8, at 6–17; Steven Shavell, *Suit, Settlement, and Trial: A Theoretical Analysis Under Alternative Methods for the Allocation of Legal Costs*, 11 J. LEGAL STUD. 55, 63–64 (1982); William M. Landes, *An Economic Analysis of the Courts*, 14 J.L. & ECON. 61, 101–02 (1971); John P. Gould, *The Economics of Legal Conflicts*, 2 J. LEGAL STUD. 279, 284–88 (1973); Richard A. Posner, *An Economic Approach to Legal Procedure and Judicial Administration*, 2 J. LEGAL STUD. 399, 417–20 (1973).

[38] *See* Friedman, *supra* note 31, at 70–71 (arguing that "[w]hether the eventual settlement figure within the bargaining range is more favorable to the plaintiff or defendant depends primarily upon which party is the better bargainer"); Lucian Arye Bebchuk, *Suing Solely to Extract a Settlement Offer*, 17 J. LEGAL STUD. 437, 445–47 (1988) (describing how asymmetric information and litigation costs may permit a plaintiff with a negative expected value of going to trial to nevertheless extract a positive settlement from a defendant); Glover, *supra* note 3, at 1727–37 (describing the ways in which litigation costs, informational asymmetries, and unpredictability in litigation outcomes contribute to the distortion of settlement values); Shavell, *supra* note 37, at 65–69 (describing how the rules governing allocation of legal costs and the parties' relative levels of risk aversion affect settlement outcomes); Ben Depoorter, *Law in the Shadow of Bargaining: The Feedback Effect of Civil Settlements*, 95 CORNELL L. REV. 957, 962–65, 974–79 (2010) (explaining how various nonlegal factors—like asymmetric information, strategic behavior, litigants' concerns about the optics of trial, principal-agent problems, and even information about past settlements—can affect settlement outcomes).

[39] *See* Glover, *supra* note 3, at 1725–44; *see also* Depoorter, *supra* note 38, at 974–79 (describing the mechanisms by which past settlements influence the processes through which future ones are reached); Galanter & Cahill, *supra* note 2, at 1341–42 (suggesting that the settlement component of the legal system has grown while the proportion of cases that go to trial has decreased).

[40] Alexander, *supra* note 6, at 547; Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1529–35; *see also* ROSS, *supra* note 6, at 18 (discussing going rates in the insurance claims context).

that had gone public in the early 1980s.[41] Despite the merits of the cases varying, she found that they almost uniformly settled at an apparent going rate equal to approximately one-quarter of the damages amount sought in the complaint.[42] She concluded that the parties do not bargain based on their expected outcomes at trial but instead negotiate based on settlements in cases with comparable alleged damages amounts.[43] The merits of the case "do not matter" to these negotiations.[44]

In an equally groundbreaking study, Professor Nora Freeman Engstrom similarly found that personal injury claims are negotiated based on well-established going rates that are unrelated to the legal merits of the case but instead are proportionally related to the injuries suffered.[45] These rates are negotiated over time between "settlement mills"—law firms with high-volume personal injury practices—and insurers, both of whom are repeat players.[46] These going rates "reflect well-established legal rules and entitlements and bear *some* relation to past trial verdicts," but they are unaffected by the merits of the claimant's individual case.[47] Engstrom concluded that the shadow of the law is "dim" in settlement negotiations.[48]

The second core debate in the settlement literature concerns whether settlement or adjudication is the more appropriate vehicle for legal dispute resolution. One large body of civil settlement theory argues that settlement is superior to adjudication because it better satisfies the parties' interests.[49] This theory is associated

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41 Alexander, *supra* note 6, at 506.

42 *Id.* at 514–19.

43 *See id.* at 547; *see also* Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1532–35 (describing how insurance adjusters and negotiators at personal injury law firms "come to a common understanding of certain injuries' proper value" for settlement purposes); Depoorter, *supra* note 38, at 974–79 (describing the mechanisms by which past settlements create a feedback effect on future settlements).

44 Alexander, *supra* note 6, at 501. Alexander lamented that this result undermines the rule of law and the public interest more broadly. *Id.* at 568–70.

45 Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1532–35; Engstrom, *Sunlight and Settlement Mills*, *supra* note 6, at 828.

46 Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1532–35; Engstrom, *Sunlight and Settlement Mills*, *supra* note 6, at 828. This finding is consistent with Professors Samuel Issacharoff and John Fabian Witt's theory of "aggregate settlement," which posits that systems for tort settlements are likely to emerge in which claims are settled at the "wholesale level" rather than resolved at the "retail level" of individualized litigation. *See generally* Issacharoff & Witt, *supra* note 6.

47 Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1532–33 (emphasis in original).

48 *Id.* at 1529–30.

49 *See, e.g.*, Menkel-Meadow, *Whose Dispute Is It Anyway?*, *supra* note 7, at 2672–73. This view of negotiation is advanced in the bestselling book *Getting to Yes* and is associated

with the alternative dispute resolution (ADR) school of thought led by Professor Roger Fisher, negotiator William Ury, Professor Carrie Menkel-Meadow, and others. According to the ADR view, negotiation can function as a nonadversarial, problem-solving process whereby parties identify their needs and preferences and work together to reach a mutually agreeable solution.[50] Proponents argue that this process opens the door to a wider range of case outcomes than adjudication allows, and these outcomes are more likely to align with party objectives than those ordered by a court following adjudication.[51] The ADR view has been highly influential, engendering a remake of Rule 16 of the Federal Rules of Civil Procedure and a dramatic expansion of the judicial role in facilitating settlement.[52]

Critics attack the ADR view from two related angles. The first line of critique challenges ADR's claim that settlement maximizes party welfare. Professors Marc Galanter and Owen Fiss have argued that settlements are negotiated based on parties' bargaining power, not preferences.[53] And they contended that because bargaining power is shaped by parties' economic resources and repeat player status, settlement simply reproduces distributional inequality.[54] They argued that judges, through adjudication, play a crucial role in lessening the impact of material inequalities, and that this role is lost when the parties settle.[55]

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with the Harvard Negotiation Project. *See generally* ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (1981). It is also facilitated by Rule 16 of the Federal Rules of Civil Procedure and is widely embraced by many in the judiciary. *See* Deason, *supra* note 3, at 86–87, 95–97; Luban, *Settlements and the Public Realm*, *supra* note 7, at 2621.

50 *See* Menkel-Meadow, *Whose Dispute Is It Anyway?*, *supra* note 7, at 2691. *See generally* FISHER & URY, *supra* note 49.

51 *See* Menkel-Meadow, *Whose Dispute Is It Anyway?*, *supra* note 7, at 2672–73.

52 *See* Deason, *supra* note 3, at 93–99; Glover, *supra* note 3, at 1723–24; James J. Alfini, *Risk of Coercion Too Great: Judges Should Not Mediate Cases Assigned to Them for Trial*, DISP. RESOL. MAG., 1999, at 11, 11.

53 *See* Fiss, *Against Settlement*, *supra* note 7, at 1076 (arguing that disparities in resources between parties create power imbalances that affect settlement outcomes); Galanter, *Why the "Haves" Come Out Ahead*, *supra* note 9, at 98–104 (describing the various advantages that "RPs" (repeat players) possess over "OSs" (one-shotters) during the litigation process).

54 *See* Fiss, *Against Settlement*, *supra* note 7, at 1076–78 (describing the various ways in which disparities in the parties' resources can influence settlement outcomes); Galanter, *Why the "Haves" Come Out Ahead*, *supra* note 9, at 98–104, 114–15.

55 *See* Fiss, *Against Settlement*, *supra* note 7, at 1077–78; *see also* Galanter, *Why the "Haves" Come Out Ahead*, *supra* note 9, at 135 (noting that parties in litigation are "equal before the law" because the amount of resources they may deploy is limited through formal rules).

Galanter and Fiss's power-based critiques informed a robust body of settlement theory that attacks the ADR view on the grounds that it undermines the role of courts to elaborate public norms and uphold public values.[56] Led by Professors Judith Resnik, Fiss, Luban, and others, these critics contend that courts fulfill public functions. In their view, the job of judges "is not to maximize the ends of private parties, nor simply to secure the peace, but to explicate and give force to the values embodied in authoritative texts such as the Constitution and statutes,"[57] and this function is lost when cases settle.[58] The ADR view, Fiss argued, improperly conceptualizes the role of courts as to resolve disputes rather than to "give meaning to public values."[59] Resnik famously questioned the appropriateness of the new judicial role brought about by the ADR shift in the courts.[60] She declared that this new role gave rise to "managerial judges" whose primary function becomes facilitating and encouraging settlement rather than adjudicating cases.[61] Luban concluded that settlements—especially when they are opaque to the public—erode the public realm.[62]

These theoretical debates rarely make reference to eviction cases or to cases involving unrepresented parties of any type.[63] The prototypical cases that underpin the theoretical literature on settlement are federal court cases, tort cases in which both sides are represented, and cases involving multidistrict litigation, class action claims, or both.[64] Empirical studies of settlement likewise

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56 *See, e.g.*, Owen M. Fiss, *The Supreme Court 1978 Term—Foreword: The Forms of Justice*, 93 HARV. L. REV. 1, 29 (1979) [hereinafter Fiss, *The Forms of Justice*].

57 Fiss, *Against Settlement*, *supra* note 7, at 1085; *see also* Luban, *Settlements and the Public Realm*, *supra* note 7, at 2622–26; Resnik, *Failing Faith*, *supra* note 6, at 545–46.

58 *See* Jules Coleman & Charles Silver, *Justice in Settlements*, 4 SOC. PHIL. & POL'Y 102, 114–19 (1986); Resnik, *Failing Faith*, *supra* note 6, at 545–46; Yeazell, *supra* note 2, at 656–60 (describing how changes to the Federal Rules of Civil Procedure and judicial encouragement of settlement have reduced the number of trials, and arguing that this trend matters because settlements "permanently insulate any prior decision from appellate review" because they lead to "no final judgment and therefore no decision from which an appeal will lie").

59 Fiss, *The Forms of Justice*, *supra* note 56, at 44. This shift toward the ADR view ultimately led to amendments to Rule 16 of the Federal Rules, which formally authorized this judicial behavior. *See* FED. R. CIV. P. 16; Deason, *supra* note 3, at 77–78.

60 *See* Resnik, *Managerial Judges*, *supra* note 3, at 414–31.

61 *Id.* at 378–79.

62 Luban, *Settlements and the Public Realm*, *supra* note 7, at 2647–48.

63 *See generally, e.g.*, Alexander, *supra* note 6 (discussing a study that involved class actions against corporations, which were represented by counsel); Engstrom, *Run-of-the-Mill Justice*, *supra* note 9 (discussing a study that involved negotiations between insurance companies and plaintiffs' lawyers).

64 *See supra* note 6 and accompanying text.

tend to be grounded in these types of cases.[65] Yet it is now well-known that most civil cases do not involve represented parties on both sides but instead are "lawyerless"—involving at least one party who is not represented by counsel.[66] And among these lawyerless cases, an overwhelming number are eviction cases. Nearly 3.6 million eviction cases are filed annually, amounting to 27% of all civil filings in federal and state courts combined.[67] In nearly all these cases, the tenant lacks counsel.[68]

To date, there has been no rigorous empirical study of eviction settlement negotiations. Most of our scholarly understanding of the process by which eviction settlements are reached stems from Professor Russell Engler's scholarship on "poor people's courts" in the 1990s.[69] Engler observed that eviction settlements are often reached between parties of highly unequal bargaining power in the hallways of the courthouse.[70] "Powerless" tenants, who frequently hold marginalized identities, are on one side of the bargaining table, and experienced landlord attorneys, who are frequently repeat players in housing court, are on the other.[71] Engler described landlord attorneys engaging in bullish and aggressive behavior toward unrepresented tenants in an unmonitored, informal setting.[72]

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65 *See supra* note 6 and accompanying text; *see also* HERBERT M. KRITZER, LET'S MAKE A DEAL: UNDERSTANDING THE NEGOTIATING PROCESS IN ORDINARY LITIGATION 24 (1991) (noting that the focus of the book is on negotiations conducted by lawyers).

66 *See* Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 751 (2015) (suggesting that "it is not improbable to estimate that two-thirds of all cases in American civil trial courts involve at least one unrepresented individual"); *see also* Anna E. Carpenter, Colleen F. Shanahan, Jessica K. Steinberg & Alyx Mark, *Judges in Lawyerless Courts*, 110 GEO. L.J. 509, 518 (2022) (describing the rise in the rate of pro se litigants and suggesting that "civil trial courts have become lawyerless"); Anna E. Carpenter, Alyx Mark, Colleen F. Shanahan & Jessica K. Steinberg, *The Field of State Civil Courts*, 122 COLUM. L. REV. 1165, 1181 (2022) (suggesting that "most" who "experience civil law and courts" are "lawyerless").

67 *See supra* note 4.

68 *See Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention*, *supra* note 12. While right to counsel legislation, which would establish universal access to legal representation for indigent tenants, is gaining traction, it has been enacted in only a small minority of jurisdictions. *See The Right to Counsel for Tenants Facing Eviction: Enacted Legislation*, *supra* note 12 (showing that nineteen cities, five states, and two counties have enacted right to counsel legislation).

69 *See generally* Engler, *Out of Sight and Out of Line*, *supra* note 13.

70 *Id.* at 104–15. Engler was specifically interested in whether landlord attorneys engage in impermissible advice giving. *Id.* at 108–18.

71 *Id.* at 107–08.

72 *Id.* at 111–12, 111 n.143.

While Engler raised numerous alarm bells, his factual claims were based on anecdotal evidence rather than a systematic empirical study.[73] Many questions thus remain unanswered. At a systemic level, we do not know how eviction settlements are drafted and agreed upon. To what extent do tenants have influence over the terms? And do the merits of the case affect settlement outcomes? To date, no academic research has rigorously investigated the factors and processes that shape eviction settlement negotiations.

II. STUDY CONTEXT, DESIGN, AND METHODOLOGY

I designed and implemented a three-part empirical study of settlement negotiation in the Boston Housing Court. The study was designed to answer a straightforward question: To what extent are eviction settlements negotiated between the parties? I use "negotiated" to refer to a process wherein each side has some meaningful influence over the terms.[74] The specific focus of the study was on nonpayment of rent eviction cases in which the landlord was represented by counsel and the tenant was unrepresented (pro se). This case type (nonpayment of rent) and representation structure (represented landlord versus pro se tenant) is prototypical in most jurisdictions.[75] The primary methodological

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[73] *See* Engler, *Out of Sight and Out of Line*, *supra* note 13, at 104 n.104, 109 n.133, 135 (citing *New York Times* articles); *id.* at 105 n.105, 106 n.115–16, 118 (citing advocacy reports); *id.* at 105 n.106 (citing a *Daily News* article); *id.* at 105 n.107 (citing a *Newsday* article).

[74] Scholars traditionally conceptualized settlement negotiation as an adversarial process in which one party's gain is the other's loss. *See, e.g.*, GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: NEGOTIATION 21 (1981) (proposing that all negotiations have a theoretical point at which the gains of one party become the loss of the other); Gary T. Lowenthal, *A General Theory of Negotiation Process, Strategy, & Behavior*, 31 U. KAN. L. REV. 69, 95 (1982) (finding that one party's gain is another's loss when the subject of the negotiation is "an item or sum that must be rationed"); Friedman, *supra* note 31, at 70–71 (explaining that parties will only settle for an amount within the bargaining range that is fixed by their opposing bargaining limits, implying that movements along the range of possible settlements constitute a gain for one party and a simultaneous loss for the other). As described previously, another group of scholars has conceptualized negotiation as a problem-solving process that is not necessarily zero-sum nor requiring of compromise. *See, e.g.*, Galanter & Cahill, *supra* note 2, at 1375–76 (discussing "problem-solving bargaining styles"); Lowenthal, *supra* note 74, at 95–98 (discussing nonzero sum negotiations). *See generally* FISHER & URY, *supra* note 49. Both views conceptualize negotiation as a process wherein each side has meaningful influence over the terms of the settlement.

[75] *See* Clark Merrefield, *Eviction: The Physical, Financial and Mental Health Consequences of Losing Your Home*, THE JOURNALIST'S RES. (Oct. 15, 2021), https://perma.cc/JD9E-RL3A (stating that "[n]onpayment of rent is by far the most common reason landlords file eviction notices"); Russell Engler, *And Justice for All—Including the Unrepresented Poor:*

component of the study was the creation and analysis of a unique dataset of eviction settlement data. This dataset included data from every settlement in a nonpayment of rent eviction case filed in the Boston Housing Court in 2019 that met the study inclusion criteria, amounting to nearly 1,600 settlements. To supplement this data analysis, I conducted observations of settlement negotiations in the hallways of the Boston Housing Court and interviewed tenants and landlord attorneys.

A. Study Context

I selected Boston as the site for the study for several reasons. First, this study is intended as a complement to my prior empirical study on the substance of eviction settlements, which was based on Boston data. In that study I asked the question: "What are the terms of eviction settlements?"[76] In this study I ask, "How are eviction settlements reached?" It makes sense to investigate the process by which eviction settlements are reached in a context in which we can build upon and deploy our knowledge of their substance. No other prior study except mine has examined the terms of eviction settlements.

Second, Boston is an ideal site for this study because it is a jurisdiction in which tenants have legal leverage to negotiate. Landlord-tenant laws vary widely across jurisdictions, and in many jurisdictions the laws so heavily favor landlords that tenants have few, if any, legal entitlements to use as bargaining chips in settlement negotiations. Not so in Boston. Under Massachusetts law, tenants in eviction proceedings enjoy strong substantive and procedural protections that can entitle them to significant rent abatements and damages, along with entitlement to possession. I describe these laws in greater detail in Part II.A.2 below. As I have argued previously, studying the operationalization of the law—sometimes referred to as "the law in action"—in jurisdictions where the law is "good"[77] allows us to disentangle possible

Revisiting the Roles of the Judges, Mediators, and Clerks, 67 FORDHAM L. REV. 1987, 2059 (1999) (suggesting that "most" Boston Housing Court cases "pit a represented landlord against an unrepresented tenant") [hereinafter Engler, *And Justice for All*]; *Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention*, *supra* note 12 (showing that representation rates for landlords are far higher than for tenants in every recorded jurisdiction).

[76] Summers, *Civil Probation*, *supra* note 6, at 861.

[77] Of course, "good" law is normatively subjective. Here and elsewhere, I refer to good law as law that most strongly advances tenant interests.

explanations for negative findings.[78] Here, studying tenant settlement negotiation in a jurisdiction with pro-tenant laws allows us to understand whether tenants can effectively deploy legal leverage in settlement *when they have it*. A negative answer here suggests that tenants' inability to effectively negotiate is due to factors other than the absence of legal leverage.[79] Otherwise, a negative finding leaves us wondering whether the problem is simply that the law provides no grounds for tenants to negotiate. Importantly, I do not, and cannot, claim generalizability of the conclusions of this study across jurisdictions.

1. Settlement in the Boston Housing Court.

The Boston Housing Court serves Boston as well as four small surrounding municipalities.[80] More than five thousand eviction cases are filed annually in the Boston Housing Court.[81] As is typical in housing courts across the country, most cases filed allege nonpayment of rent as the basis for eviction.[82] Across all cases filed, approximately 80% of landlords are represented by counsel compared to only 5% of tenants.[83]

Settlement is the prototypical means by which eviction cases are resolved in the Boston Housing Court when both parties appear.[84] Eviction settlements occur in a uniquely public fashion in Boston and elsewhere. Whereas most civil settlements occur out of court, do not form part of the public case record, and are the product of private negotiations inaccessible to researchers,[85] eviction settlements are typically recorded in the case file and are discussed and agreed upon in the public spaces of the

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78 Nicole Summers & Justin Steil, *Pathways to Eviction*, 50 LAW & SOC. INQUIRY 129, 159 (2025).

79 An affirmative answer suggests that making laws more favorable to tenants will translate into more negotiating power for tenants.

80 MASS. GEN. LAWS ch. 185C, § 1 (2025).

81 *See* Summers & Steil, *supra* note 78, at 12 n.6.

82 *See id.* at 15.

83 *See id.*

84 Overall, 56% of eviction cases filed in the Boston Housing Court are resolved through settlement. *See* Summers, *Civil Probation*, *supra* note 6, at 872. However, nearly all the remaining cases are disposed of with default judgments or voluntary dismissals; only 4% of cases go to trial. *See id.*

85 *See* Resnik, *Migrating, Morphing,* and *Vanishing*, *supra* note 2, at 830 (discussing increasing efforts to provide public access to settlements); Luban, *Settlements and the Public Realm*, *supra* note 7, at 2648–49 (discussing concerns about secret settlements); Resnik, *Managerial Judges*, *supra* note 3, at 425–26 (describing how when judges use their pretrial managerial powers to usher parties toward settlement, their decisions are "made privately, informally, off the record, and beyond the reach of appellate review").

courthouse.[86] On the first court date, the Boston Housing Court strongly urges the parties to attempt to reach settlement. The Court has a "Housing Specialist Department" with staff available to help mediate cases. Despite the existence of this Department, however, many cases settle through direct negotiation in the hallways of the courthouse, without the involvement of a mediator.[87] When no mediator is involved in the process of reaching settlement, a clerk or mediator will review the finalized agreement with any unrepresented parties.

The court has its own settlement form that is available, but not required, for parties to use. It is standard practice in the Boston Housing Court for the court to formally enter agreed-upon settlements as court orders.[88] Settlements are signed by the judge "SO ORDERED,"[89] and the court retains jurisdiction over enforcement of many settlements until the parties have satisfied the terms.[90] Judges do not typically interact individually with the parties before signing the settlement.[91]

My prior empirical study of the substantive terms of eviction settlements in the Boston Housing Court found that two-thirds of settlements take the form of what I termed a "civil probation agreement."[92] Civil probation agreements (CPAs) award judgment to the landlord but stay execution (i.e., the physical eviction) pending the tenant's compliance with certain specified conditions for a certain period of time (typically around one year).[93] The conditions may include repayment of rental arrears, payment of ongoing rent on time, behavioral terms, or a combination of multiple conditions.[94] If the tenant complies with the conditions, the tenancy is reinstated after the probationary period.[95] If the landlord alleges that the tenant violated any of the conditions, the tenant

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86 *See* Summers, *Civil Probation*, *supra* note 6, at 859; Summers & Steil, *supra* note 78, at 9.

87 *See* Summers & Steil, *supra* note 78, at 9; Engler, *And Justice for All*, *supra* note 75, at 2060; Fox, *supra* note 13, at 91–92.

88 *See* Adjartey v. Cent. Div. of the Hous. Ct. Dep't, 120 N.E.3d 297, 305 (Mass. 2019); *see also* Summers & Steil, *supra* note 78, at 10.

89 Summers & Steil, *supra* note 78, at 10.

90 *See* Summers, *Civil Probation*, *supra* note 6, at 873–75. Because of this structure, eviction settlements are akin to what would be considered a consent decree in other civil litigation contexts. *See* Larry Kramer, *Consent Decrees and the Rights of Third Parties*, 87 MICH. L. REV. 321, 325–26 (1988).

91 *See* Summers & Steil, *supra* note 78, at 10.

92 Summers, *Civil Probation*, *supra* note 6, at 870.

93 *Id.* at 869–70, 885–86.

94 *Id.* at 884.

95 *Id.* at 870.

can be evicted through an expedited, alternative legal process in which they enjoy few of the substantive or procedural protections formally afforded under Massachusetts statutory law.[96] As I argued previously, the structure of civil probation has a host of negative consequences for tenants and the judicial system writ large: It creates a shadow legal system for eviction, expands landlords' control over tenants, and raises the possibility of "net-widening," potentially increasing the number of tenants brought into the eviction legal system and regulated by it.[97] My prior research found that the remaining one-third of settlements that are not CPAs nearly all take the form of move-out agreements, which place the tenant under a legal obligation to vacate the unit by a specified date.[98]

2. Tenant leverage in settlement negotiations.

As described previously, in most eviction cases in the Boston Housing Court the tenant is unrepresented by counsel and the landlord is represented.[99] In addition to the disparity in legal representation, eviction settlement negotiations are plagued by other imbalances of power. Tenants facing eviction overwhelmingly hold marginalized identities—they are disproportionately Black women with children who are low income, and they often face language, educational, and cultural barriers to effective self-representation.[100] Landlords, and represented landlords in particular, tend to be wealthier individuals or institutions (such as corporations or the public housing authority), and they and their attorneys are often repeat players in housing court.[101]

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96 *Id.* at 874–75.

97 Summers, *Civil Probation*, *supra* note 6, at 906.

98 *Id.* at 869; *see also* Summers & Steil, *supra* note 78, at 16.

99 Summers & Steil, *supra* note 78, at 15.

100 *See Desmond*, *supra* note 5, at 120–21 (suggesting that Black women are overrepresented in eviction records and explaining that they bear the brunt of the material hardship caused by eviction); Sabbeth, *Eviction Courts*, *supra* note 12, at 398–99 (noting that tenants in eviction courts "are disproportionately poor women of color" and describing how the fact that judges and lawyers are more likely to be "middle or upper-middle class white men" "creat[es] powerful dynamics of race, gender, and class" that are augmented when tenants are unrepresented); Daniel W. Bernal, *Pleadings in a Pandemic: The Role, Regulation, and Redesign of Eviction Court Documents*, 73 OKLA. L. REV. 573, 600–20 (2021) (finding that lease, notice, and pleading documents failed to meet plain language standards, and that some landlords are not required to translate material for non-English-speaking litigants).

101 *See* Engler, *Out of Sight and Out of Line*, *supra* note 13, at 107, 116–18 (describing representation statistics for landlords and tenants in housing courts in New York, Massachusetts, and New Haven); Elora Raymond, Richard Duckworth, Ben Miller,

At the same time, Massachusetts law extends robust protections to tenants that theoretically should endow them with leverage in settlement negotiations.[102] Massachusetts law recognizes numerous substantive defenses and counterclaims for tenants facing nonpayment of rent eviction.[103] These include the warranty of habitability,[104] interference with quiet enjoyment,[105] violation of the security deposit law,[106] violation of the unfair and deceptive practices statute,[107] retaliation,[108] and discrimination.[109] Each of these claims, if established, entitles the tenant to monetary damages from their landlord.[110] Additionally, many of the statutes mandate statutory damages or treble damages for certain violations and contain fee shifting provisions. For example, the interference with quiet enjoyment statute entitles tenants to damages equal to three times the monthly rent or actual damages, whichever is higher, for any violation.[111] The security deposit statute sets damages at three times the amount of the security deposit for certain violations, including failure to hold the deposit in an interest-bearing account.[112] And under the unfair and deceptive practices statute, damages may be trebled for tenants living in properties owned by commercial landlords.[113]

Michael Lucas & Shiraj Pokharel, *Corporate Landlords, Institutional Investors, and Displacement: Eviction Rates in Single-Family Rentals* 3–6 (Fed. Rsrv. Bank of Atl., Cmty. & Econ. Dev. Discussion Paper No. 4, 2016) (describing the rise of corporate landlords).

[102] *See* Mnookin & Kornhauser, *supra* note 6, at 968 (describing how legal rules generate endowments that can serve as bargaining leverage).

[103] *See* MASS. GEN. LAWS ch. 239, § 8A (2025) (allowing any claims related to the tenancy to be asserted as a counterclaim and defense in an eviction action).

[104] *See id.*; *see also* Bos. Hous. Auth. v. Hemingway, 293 N.E.2d 831, 838–43 (Mass. 1973) (holding that residential leases imply a warranty of habitability and tracing the justifications for that holding).

[105] MASS. GEN. LAWS ch. 186, § 14 (2025); *id.* ch. 239, § 8A.

[106] *Id.* ch. 186, § 15B; *id.* ch. 239, § 8A; *see also* Meikle v. Nurse, 49 N.E.3d 210, 213–16 (Mass. 2016).

[107] MASS. GEN. LAWS ch. 93A, §§ 2, 9 (2025).

[108] *Id.* ch. 239, § 2A; *id.* ch. 186, § 18.

[109] *Id.* ch. 151B, § 4. *See generally* Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. §§ 3601–3619).

[110] MASS. GEN. LAWS ch. 239, § 8A (2025). Monetary damages are based on—but not limited to—the reduction of the fair market value of the premises caused by the defective conditions. *Id.*

[111] *Id.* ch. 186, § 14. The interference with quiet enjoyment statute covers interference with utilities, illegal lockouts, and serious conditions of disrepair, among other unlawful landlord conduct. *Id.*

[112] *Id.* ch. 186, § 15B.

[113] MASS. GEN. LAWS ch. 93A, §§ 2, 9 (2025); *see also* Billings v. Wilson, 493 N.E.2d 187, 187–88 (Mass. 1986). Actual damages for breach of the warranty of habitability are

A Massachusetts statute commonly known as 8A enables tenants to use these claims both to offset the amount of rent owed in the form of a rent abatement, and as a defense to the landlord's claim for possession.[114] Specifically, 8A provides that if the tenant establishes that the landlord is liable for damages greater than the amount the tenant owes in unpaid rent, the tenant is entitled to possession.[115] Thus for example, if the tenant owes $1,000 in rental arrears, she wins possession if she establishes damages in the amount of $1,001 or higher. In this scenario, if the monthly rent amount is greater than $334, a single claim for interference with quiet enjoyment would be sufficient for the tenant to prevail (and win a damages award).

Additionally, Massachusetts law affords tenants strong procedural protections in eviction proceedings. Some protections come in the form of strict procedural requirements to which the landlord must adhere to establish a prima facie claim for possession. For example, in a nonpayment of rent case the landlord must serve the tenant with a predicate notice to quit that contains specific information.[116] The landlord's failure to serve the notice or comply with the informational requirements is a fatal defect entitling the tenant to dismissal.[117] Defects in the service or content of the summons and complaint operate similarly.[118] Massachusetts law also affords tenants relatively robust procedural rights, including to conduct written discovery and to demand a jury trial.[119] Jury trials are notoriously costly and, in the housing court, extraordinarily slow to schedule. A tenant's ability to forgo requested discovery or waive their right to a demanded jury trial in settlement should, theoretically, function as leverage in negotiations.

B. Study Design and Methodology

The study contained three distinct methodological components: (1) analysis of case settlements; (2) observations of settlement negotiations; and (3) interviews.

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measured by the reduction in value of the premises caused by the conditions defect. *See Hemingway*, 293 N.E.2d at 845.

114 MASS. GEN. LAWS ch. 239, § 8A (2025).

115 *Id.*

116 *Id.* ch. 186, §§ 11, 31.

117 *Id.* ch. 186, § 31.

118 *Id.* ch. 239, § 1A.

119 MASS. UNIF. SUMMARY PROCESS R. 7, 8.

1. Settlement analysis.

The first study component was quantitative analysis of settlement documents. The objective in analyzing settlement documents was to gain insight into the extent of negotiation based on the degree and types of variation across settlement terms. The analysis is grounded in the core assumption that negotiation is reflected in settlement variation.[120] If parties are negotiating eviction cases—i.e., if both parties have some influence over the terms—settlement outcomes should vary due to differences in party preferences, case merits, and procedural postures.[121] Classical negotiation theory, as elaborated by Mnookin, Kornhauser, and others, predicts that cases in which the tenant has more meritorious claims or stronger procedural footing should settle on terms more favorable to the tenant.[122] And even if parties are not negotiating based on their legal entitlements, ADR theory would predict that negotiation based on other factors, such as party preferences, should result in some variation in settlement terms across cases.[123] The specific hypothesis tested is whether settlements of nonpayment of rent eviction cases involving unrepresented tenants vary across cases in which the landlord is represented by the same landlord law firm.

To conduct this analysis, I built a unique dataset of eviction settlement data. The dataset included information from every eviction settlement in a nonpayment of rent eviction case filed in the Boston Housing Court in 2019 in which the landlord was represented by counsel. To retrieve the settlements and relevant court documents, I manually identified each case that met the study inclusion criteria from the Massachusetts online court database. The database showed that 5,368 eviction cases were filed in the Boston Housing Court in 2019. There were three criteria for inclusion in the study: (1) the case was filed for nonpayment of rent; (2) the landlord was represented by counsel; and (3) the

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[120] I am not making a general claim that the absence of variation in settlements within a particular legal industry indicates nonnegotiation.

[121] Foundational studies of civil settlement have likewise been grounded in this core assumption. *See* Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1532–33 (finding a lack of variation in personal injury settlement amounts among cases involving the same type of injury, and concluding that such settlements therefore did not reflect the merits); Alexander, *supra* note 6, at 514–19 (finding a lack of variation in securities class action settlement amounts, and concluding that such settlements were neither voluntary nor negotiated based on the merits).

[122] *See supra* Part I.

[123] *See supra* Part I.

case settled. Of those, 1,577 cases met the study criteria and were included in the dataset.[124] While the focus of the study is on cases with represented landlords and unrepresented tenants, I included cases regardless of the representation status of the tenant in order to offer a descriptive (noncausal) comparison of settlements with represented and unrepresented tenants. Tenants were represented by counsel in 4.7% of the 1,577 cases.

For each case that met the inclusion criteria, I downloaded the case settlement from the online database. A sample settlement is included as Appendix A. I then created a unique dataset by manually coding each case settlement and other relevant case information across over thirty variables. I coded the specific terms of the settlement, variables such as whether the settlement was typewritten or handwritten, and the number of days between the date of the settlement and the first court date. I also coded available background information about the case from the docket and other case materials, such as the representation status of the parties, the type of landlord (corporate, individual owner, or housing authority), the amount of arrears allegedly owed, and the law firm representing the landlord. This coding generally required little judgment because it primarily involved the direct transfer of information expressly stated on case documents into a coding spreadsheet. When the coding required judgment, I provide details of how I made these judgments in the codebook and in footnotes to the text where results are described. A detailed codebook is included as Appendix B.

2. Observations.

To supplement the quantitative data analysis, I conducted observations of settlement negotiations occurring live in the hallways

[124] I identified these cases manually on masscourts.org, the public database of Massachusetts state court case files. I chronologically went through each summary process eviction case filed in the Boston Housing Court in 2019. For each case identified as a nonpayment case on the database, I opened the case docket to determine if the landlord was represented by counsel. When the landlord was represented, I then examined the docket further to determine whether the case disposed with a settlement. Because I completed this process manually and I did not have access to a scraped database containing this information, I do not have data on the drop-off rates for each selection criteria (i.e., the number of cases dropped from the total population because of another case type, lack of landlord representation, or for a nonsettlement outcome). My prior research on the Boston Housing Court, based on a sample of cases filed in 2013–2017, suggests that approximately 77% of cases are filed for nonpayment of rent, landlords have representation in 83% of cases, and 56% of cases settle. *See* Summers & Steil, *supra* note 78, at 15; Summers, *Civil Probation*, *supra* note 6, at 872.

of the Boston Housing Court.[125] As described previously, the courthouse hallways are the primary site where settlements are reached.[126] These hallways are public spaces, and the conversations are easily audible and visible to others present. I observed settlement conversations by sitting on benches in the courthouse hallways and listening to the conversations as they occurred live. I took notes on the conversations and attempted to transcribe them as closely to verbatim as possible. To avoid being noticed by the parties, I used the "Notes" application on an iPhone to do so. I also took notes on the parties' appearances, their body language and tone, and the manner in which settlement agreements were physically drafted, presented, and executed. I also observed mediators and other courthouse officials' participation in the settlement process to the extent it took place in the hallways and similarly recorded my observations. I conducted twenty-three hours of observation over the course of seven separate days. The conclusions drawn from my observations are limited by the fact that some settlements are reached in closed-door mediation sessions led by the Housing Specialist Department, and I was unable to observe these sessions. However, all settlements that met the study inclusion criteria, including those reached in the mediation sessions, are included in the dataset.

3. Interviews.

Finally, I conducted semi structured interviews of tenants and landlord attorneys about their settlement experiences.[127] I recruited tenants for the study by approaching them in the courthouse hallways, identifying myself as a researcher, and offering them the opportunity to participate in the study. Interviews were conducted at the courthouse in a specific location of the participant's choosing. I asked tenants open-ended questions about the process by which they reached settlement in their case, any attempts at negotiation, and how the terms of the settlement were decided. I also asked background questions about their reasons for facing eviction and the outcome they hoped to achieve in their case. Interviews lasted anywhere from ten minutes to one hour. All interviews were audio recorded. Participants were given $20

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[125] I received IRB approval for this component of the project.

[126] *See supra* Part II.A.1.

[127] I received IRB approval for this component of the project. All participants signed an IRB-approved consent form.

cash gifts for participation in the study. I interviewed sixteen tenants over the course of six separate days.

I recruited landlord attorneys for interviews through email requests and by approaching them directly in the courthouse hallways. I conducted these interviews over the phone (where the interview was arranged by email) and in the courthouse. I asked attorneys open-ended questions about their overall experiences reaching settlement with unrepresented tenants, the extent to which tenants influence settlement terms, and the process by which they draft settlements. I also asked background questions about their law firm, their length of experience in housing court, and their firm's billing structure for eviction cases. I took detailed notes during the interviews, but I did not audio record them. I conducted five interviews with landlord attorneys from five different law firms.

III. EMPIRICAL FINDINGS

The core empirical finding is that landlord law firms deploy standardized settlement forms and unrepresented tenants sign these forms without modifying the terms. The data show that the specific terms of settlements are nearly uniform among cases handled by the same landlord law firm, but they differ across firms. Each landlord law firm sets its own preferred terms, and those are the terms used in virtually all its settlements regardless of case merit or procedural posture. The only settlement term that is negotiated—over which unrepresented tenants appear to have any influence at all—is the schedule for rental arrears repayment.

This Part first presents descriptive statistics on the repeat player landlord law firms in the Boston Housing Court, the landlords they represent, and the types of cases they handle. It then presents preliminary findings that suggest nonnegotiation of settlement terms. The subsequent sections present detailed findings that strongly suggest a lack of negotiation over terms related to the scope and conditions of civil probation and the monetary judgment amount but indicate negotiation over the repayment schedule. The Part concludes by presenting findings that also suggest a lack of negotiation over the type of settlement (i.e., civil probation or move-out agreement).

While the focus of the analysis is on cases involving unrepresented tenants, Appendix C includes the findings for cases involving represented tenants.[128] Throughout, findings from the case data analysis are presented first, followed by findings from observations and interviews that explain and supplement the quantitative results.[129]

A. Descriptive Statistics of the Top Twelve (T-12) Firms

The case data show that a dozen landlord law firms dominate the legal market for evictions in Boston. I refer to this group of law firms as the "T-12," and to cases in which the landlord is represented by one of these law firms as "T-12 cases." Specifically, the data show that in 75% of nonpayment eviction cases in which the landlord is represented by counsel and the case ended in settlement, the landlord is represented by a T-12 firm.[130] These T-12 firms include the legal department of the Boston Housing Authority, which is identified as Firm *D*, and the in-house counsel of a large corporate landlord. The other ten firms are relatively small private law firms (ten or fewer attorneys) that specialize in landlord-tenant law and operate primarily in the greater Boston area. Table 1 below shows the share of nonpayment eviction cases handled by each T-12 law firm (identified anonymously).

The data show that institutional landlords retain the T-12 firms at much higher rates than individual landlords. Among represented landlords, 80% of corporate landlords were represented by a T-12 firm, compared with only 23% of individual landlords. The Boston Housing Authority was always represented by one of the T-12 (usually its own legal department, but occasionally one of the other T-12). This data is shown in Table 2 below.

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[128] I strongly emphasize that the comparison of cases involving represented and unrepresented tenants is not causal and is descriptive only.

[129] As previously described, many of the claims I make in this Part that serve as context for my empirical findings are drawn from my personal experiences and observations. *See supra* Part II.B.3.

[130] Other data show that approximately 80% of landlords are represented in eviction cases in the Boston Housing Court. *See* Summers, *Civil Probation*, *supra* note 6, at 881.

TABLE 1: T-12 LAW FIRM REPRESENTATION OF LANDLORDS IN NONPAYMENT EVICTION CASES*

Law Firm	Number (Percentage) of Cases in Which Represented Landlord
A	280 (17.7%)
B	156 (9.9%)
C	134 (8.4%)
D	96 (6.0%)
E	92 (5.8%)
F	88 (5.5%)
G	84 (5.3%)
H	71 (4.5%)
I	65 (4.1%)
J	44 (2.7%)
K	39 (2.5%)
L	38 (2.4%)
Sum *A*–*L*	1,187 (75.1%)

*Includes cases that resulted in settlement only. Percentages based on nonpayment eviction cases in which landlord is represented by counsel. Total nonpayment eviction cases in which landlord is represented by counsel = 1,579.

TABLE 2: T-12 LAW FIRM REPRESENTATION BY LANDLORD TYPE IN NONPAYMENT EVICTION CASES*

Landlord Type	Percentage of Cases With Representation by T-12 Firm
Housing Authority	100%
Corporation**	80%
Individual Owner	23%

*Percentages based on nonpayment eviction cases in which landlord is represented by counsel only.

**Includes all corporate forms, including nonprofit corporations. Massachusetts law requires all corporations to be represented by counsel in eviction cases.

The data indicate that T-12 firms overwhelmingly reach settlements that take the form of CPAs. As described previously, there are essentially two structural types of settlements in the Boston Housing Court: CPAs and move-out agreements.[131] While specific terms vary (as described further below), to be classified as a CPA, a settlement must: (1) award a possessory judgment to

[131] *See supra* Part II.A.1; Summers, *Civil Probation*, *supra* note 6, at 869–70; Summers & Steil, *supra* note 78, at 11.

the landlord, (2) stay execution of the eviction pending the tenant's compliance with specified conditions, and (3) provide that if the landlord alleges violation of the conditions, the tenant may be evicted by motion.[132] In cases handled by T-12 firms, 90% of settlements met the definition of a CPA. The other 10% were move-out agreements.

The data show that T-12 firms appear to handle cases with a variety of merits and procedural postures. Case merits are difficult to discern based on information in the case file alone because many underlying facts about the tenancy and landlord-tenant relationship are not observable. The presence of defective conditions in the unit, for example, which would give rise to several meritorious defenses and counterclaims, is not observable from the case documents. However, the number of months' rent allegedly owed at the time of filing is one indicator of case merit that is observable from the case file. The number of months' rent owed is an indicator of case merit because Massachusetts law entitles tenants to possession where the value of their counterclaims exceeds the amount of rent owed.[133] This legal structure means that tenants who owe fewer months' rent have a more easily winnable case than tenants who owe more months' rent, all else being equal, because the amount of damages they must establish is lower.[134]

The data indicate that each T-12 firm handles cases with a range of months' rent owed. For most firms, approximately one-quarter to one-third of cases allege less than two months' rent owed, approximately one-quarter to one-half of cases allege two to four months' rent owed, and approximately one-third of cases allege greater than four months' rent owed. The Boston Housing Authority, Firm *D*, tends to handle cases with greater numbers of months' rent owed and another firm, Firm *K*, tends to handle cases with fewer months' rent owed. The complete data is presented in Table 3 below.[135]

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[132] *See* Summers, *Civil Probation*, *supra* note 6, at 869–70.

[133] MASS. GEN. LAWS ch. 239, § 8A (2025). This rule is subject to certain requirements. *See id.*; *supra* Part II.A.2.

[134] *See supra* Part II.A.2. Meritorious counterclaims can fairly easily exceed a low amount of rent owed because multiple claims carry treble and statutory damages. Statutory damages are set at a minimum of three months' rent for interference with quiet enjoyment and three times the amount of the security deposit (which is usually in the amount of one month's rent) for certain violations of the security deposit law. MASS. GEN. LAWS ch. 186, §§ 14, 15B (2025). The unfair and deceptive practices act allows for the doubling or trebling of all damages in certain instances. *Id.* ch. 93A, § 9.

[135] Note that data is unavailable for Firm *B* because its settlements do not state the tenant's monthly rent.

TABLE 3: NUMBER OF MONTHS' RENT ALLEGEDLY OWED IN T-12 CASES ENDING IN SETTLEMENT*

Law Firm	Less than 2 Months' Rent Owed	2–4 Months' Rent Owed	Greater Than 4 Months' Rent Owed
A	27.8%	41.6%	30.6%
B	~	~	~
C	14.9%	62.8%	22.3%
D	5.6%	20.5%	73.9%
E	24.7%	46.9%	28.4%
F	24%	37.3%	38.7%
G	33.9%	26.7%	39.4%
H	27.3%	36.3%	36.4%
I	40.6%	42.2%	17.2%
J	23.3%	36.7%	40.0%
K	86.2%	13.8%	0%
L	60.7%	32.2%	7.1%
All *A*–*L*	24.0%	47.2%	28.8%

*This data is based on nonpayment eviction cases with unrepresented tenants that result in a CPA settlement. Firm *B*'s settlements do not state the monthly rent amount, and this data is thus unavailable from the case file.

Of course, it is still possible that tenants do not have meritorious counterclaims and defenses across the board, and therefore there is no variation in case merits. For several reasons, my assumption is that this is not the case. First, as described previously, Massachusetts law recognizes many different categories of defenses and counterclaims, including warranty of habitability, interference with quiet enjoyment, security deposit violations, and retaliation, among others.[136] The plethora of defenses and counterclaims available allows for a range of facts to give rise to rent abatements (or outright defenses to possession). Many—but not all—of these counterclaims are grounded in the existence of substandard conditions. The case data do not indicate which cases are in properties with substandard conditions. However, much data exists indicating that substandard conditions are widespread among low-income renters.[137] This data makes highly implausible the possibility that no counterclaims exist across the

[136] *See supra* notes 103–10 and accompanying text.

[137] *See, e.g.*, Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145, 185–86 (2020) [hereinafter Summers, *The Limits of Good Law*]

population studied such that the cases are uniformly unmeritorious (from the tenant's perspective).

My assumption that counterclaims exist at some level across the cases studied is also informed by my decade of experience as a practicing eviction defense attorney in Massachusetts. During this time, I met hundreds, if not thousands, of tenants facing eviction. I met many of these tenants randomly, often in the hallways of housing courts, and I performed client interviews to identify facts that would give rise to meritorious counterclaims and defenses. It was extremely rare to meet a tenant who did not have a single defense or counterclaim. Nevertheless, the validity of the assumption that defenses and counterclaims exist at some level across the cases studied is unknowable from the available data.

The data also show that cases handled by the same T-12 firm vary in their procedural postures at the time of settlement. Cases differ in terms of whether the landlord had obtained a default judgment (which would weaken the tenant's negotiating position) and whether the tenant had filed an answer or demanded a jury trial (which would strengthen the tenant's negotiating position).[138] The data show that each T-12 firm settles cases with a range of these procedural postures at the time of settlement. Within most T-12 firms, in approximately 10–20% of cases, the landlord had already obtained a default judgment at the time of

(finding that in over half of nonpayment of rent cases in New York City tenants had meritorious warranty of habitability claims); Danny McDonald, *Federal Audit Raps Boston Housing Authority for Failing to Maintain Public Housing in Safe, Sanitary Conditions*, BOS. GLOBE (Mar. 2, 2025), https://www.bostonglobe.com/2025/03/02/metro/federal-audit-raps-boston-housing-authority-failing-maintain-public-housing-safe-sanitary-conditions/ (describing the results of a government audit that found that Boston's public housing was riddled habitability problems); Sophia Wedeen, *Greater Assistance Needed to Combat the Persistence of Substandard Housing*, JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV. (Aug. 1, 2023), https://www.jchs.harvard.edu/blog/greater-assistance-needed-combat-persistence-substandard-housing (describing data from the American Housing Survey showing that 10.6% of renters in the lowest income quintile live in inadequate housing); James Krieger & Donna Higgins, *Housing and Health: Time Again for Public Action*, 92 AM. J. PUB. HEALTH 758, 760 (2002) (stating that "low-income people are . . . 2.2 times more likely[ ] to occupy homes with severe physical problems compared with the general population"); Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 27 GEO. J. ON POVERTY L. & POL'Y 97, 104, 119, 135 (2019) (suggesting that substandard housing is experienced primarily by the poor).

138 Although Massachusetts law does not require the tenant to submit a written answer to avoid default, an answer strengthens the tenant's bargaining leverage by signaling the existence of their claims to the landlord. *See* MASS. UNIF. SUMMARY PROCESS R. 10 ("If a defendant fails to answer and also fails to appear for trial, said defendant shall be defaulted . . . ."). A jury trial demand significantly increases the tenant's leverage in negotiations because jury trials are costly and typically cause substantial delay in the case resolution.

settlement. In another approximately 5–10% of the cases, the tenant had either filed an answer or had asserted a jury demand. Thus, while in the bulk of cases the procedural posture was relatively neutral—neither party had leveraged a procedure that significantly strengthened or weakened their hand in negotiations—about a fifth of cases had postures that advantaged one party. Under classical negotiation theory, this variation should lead to differences in settlement outcomes.[139] The complete data are presented in Table 4 below.

TABLE 4: PROCEDURAL POSTURES IN T-12 CASES RESULTING IN SETTLEMENT*

Law Firm	**Cases with Default Judgment (*Pro-Landlord Posture*)**	**Cases with Neutral Posture**	**Cases with Answer or Jury Demand (*Pro-Tenant Posture*)**
A	9.4%	82.4%	8.2%
B	8.7%	85.5%	5.8%
C	10.6%	83.4%	6.0%
D	20.5%	67.0%	12.5%
E	9.9%	86.8%	3.3%
F	8.0%	85.2%	6.8%
G	11.2%	85.2%	3.6%
H	24.2%	63.1%	12.7%
I	7.8%	87.6%	4.6%
J	13.3%	82.2%	4.5%
K	6.9%	88.0%	5.1%
L	7%	87.8%	5.2%
All *A*–*L*	11.3%	80.6%	8.1%

*This data is based on nonpayment eviction cases with unrepresented tenants that result in a CPA settlement.

In sum, the data show that the T-12 law firms provide representation to landlords in three-quarters of all nonpayment of rent eviction cases that settle. Of T-12 settlements, 90% are civil probation agreements. Each T-12 firm handles cases with a range of merits and procedural postures.

[139] *See supra* Part II.B.1.

B. Preliminary Evidence of (Non)Negotiation

Given that each T-12 firm handles cases with different merits and procedural postures, classical negotiation theory would predict variation in settlements reached by the same T-12 firm if the settlements are negotiated.[140] To preliminarily test this hypothesis, I examined three sets of questions: (1) To what extent are settlements typewritten, with printed terms, rather than handwritten? When T-12 firms use typewritten settlements, does the number of terms vary within settlements reached by the same T-12 firm? (2) When settlements are typewritten, to what extent are the typewritten terms altered with handwritten insertions, deletions, or modifications of language? When handwritten alterations are made, how often do they favor the tenant? and (3) When settlements are typewritten, how often are additional terms handwritten into the agreement? When such additions are made, how often do they favor the tenant?

The analyses revealed that T-12 settlements almost always exclusively include typewritten terms; that the number of terms is virtually always the same in all settlements handled by the same T-12 firm; and that the typewritten terms are rarely altered or added to by tenants.

1. Typewritten settlements.

The data revealed that nearly all T-12 settlements were typewritten. Specifically, 99.8% of settlements entered into by T-12 firms and unrepresented tenants were typed.[141] There is no publicly accessible printer at the Boston Housing Court, and thus there is no possibility that the parties decided on the terms of the settlement together in court, typed it on a computer in the courthouse hallways, and then printed it.[142] If an agreement is typewritten, it must have been drafted and printed prior to the court date. There are three possible drafting scenarios for these typewritten settlements: (1) The parties negotiated the terms over the duration of multiple court dates and then memorialized them in writing ahead of the court date on which the settlement was

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[140] For more discussion of why such variation should be expected with negotiation, see *supra* Part II.B.1.

[141] Of T-12 settlements with represented tenants, 100% were typewritten.

[142] There is one printer at the courthouse that is maintained by legal services and pro bono attorneys who operate the "Attorney for the Day" program for unrepresented litigants. This printer is not available for attorneys or litigants unaffiliated with the program.

signed; (2) the parties negotiated the terms prior to the first court date (i.e., outside of court) and then memorialized them in writing ahead of the first court date; and (3) one party drafted the typewritten settlement and brought it to the court date. The case data, observations, and interviews all support the third hypothesis.

First, the data show that most settlements are signed on the first court date. The median and mode number of days between the first court date and the date of the settlement is zero. Thus, in most cases, the T-12 attorney and the tenant did not discuss the settlement terms over the duration of multiple court dates and then eventually memorialize their agreement in a typewritten document (presented as the first hypothesis above). Most commonly, they achieved settlement during their first in-court interaction.

The question thus becomes whether the parties negotiated the settlement terms prior to the first court date (the second hypothesis). The interviews and observations did not support this hypothesis. T-12 attorneys reported in interviews that it was extremely rare that they spoke with tenants before their first court date. T-12 firms' business model, as reported in interviews, is to handle a large volume of cases during a single in-court session. Speaking with tenants outside of court would undermine the efficiency of that model. Moreover, no tenant I interviewed had spoken with the landlord's lawyer prior to court. And across the dozens of hours of settlement discussions I observed, no tenant or landlord attorney ever referenced an out-of-court conversation between them.

The observations, interviews, and data instead support the third hypothesis: that one side (the landlord) drafted the settlement and brought it to court. I consistently observed landlord attorneys present typed settlements to tenants and make a statement such as, "I brought an agreement, and I'll go over it with you and see if you agree." The attorney would then proceed to describe the terms of the settlement without reference to earlier conversations or agreements. In interviews, T-12 attorneys readily acknowledged that they bring predrafted typewritten settlements to court. They also reported that they prepare these settlements without participation from the tenant. Across all the settlement negotiations I observed, I never once saw a tenant present a typewritten settlement to a landlord's attorney. In every instance, the landlord's attorney presented the typed settlement to the tenant.

The data also show that, within each T-12 firm, all CPA settlements include the exact same number of typewritten terms. The number of terms ranges from ten to sixteen terms across T-12 firms, but the number of typed settlement terms is virtually uniform within cases handled by the same firm. Overall, 99.6% of T-12 settlements contain the same number of typed terms as other settlements handled by the same firm. These findings are presented in Table 5 below.

TABLE 5: TYPEWRITTEN TERMS IN T-12 SETTLEMENTS*

Law Firm	**Number of Settlements**	**Number of Typewritten Terms**	**Percentage of Settlements in Conformity**
A	245	11	99.6%
B	137	12	100%
C	94	11	100%
D	88	12	97.8%
E	81	13	98.8%
F	75	10	100%
G	71	11	100%
H	66	16	100%
I	64	15	100%
J	30	12	100%
K	29	14	100%
L	28	12	100%
All *A*–*L*	1008		99.6%**

*This data is based on CPA settlements in nonpayment evictions with unrepresented tenants only.

**Represents the overall percentage of T-12 settlements that contain the same number of typewritten terms as other settlements handled by the same T-12 firm.

2. Alteration of typewritten terms.

Next, I analyzed the frequency with which the typewritten terms in T-12 settlements were altered with handwritten deletions, edits, or insertions. The presence of alterations that substantively benefit tenants would suggest that tenants successfully negotiate changes to T-12 firms' predrafted terms. To capture the frequency of alterations to typewritten settlements, I coded whether the settlement contained any handwritten alteration to a typewritten term, including a deletion of language, an edit to language, or an insertion of additional language. For each alteration, I then coded

whether the alteration substantively favored the tenant,[143] favored the landlord,[144] or was neutral.[145]

Overall, 4.2% of T-12 settlements with unrepresented tenants contained handwritten alterations to typewritten terms. Of these alterations, 60% favored the tenant, 26% favored the landlord, and 14% were neutral. Thus, only 2.5% of all T-12 settlements with unrepresented tenants contained pro-tenant alterations. Put differently, 97.5% of T-12 settlements with unrepresented tenants contained no pro-tenant alterations to prewritten terms. This finding suggests that in all but the most exceptional cases, tenants do not negotiate changes to predrafted settlement terms. These findings are presented in Table 6 below.

TABLE 6: PREVALENCE OF HANDWRITTEN ALTERATIONS IN T-12 SETTLEMENTS*

	Number of Settlements	**Any Alteration**	**Pro-Tenant Alteration**
T-12 Settlements	1008	4.2%	2.5%

*This data is based on CPA settlements in nonpayment evictions with unrepresented tenants only.

3. Additional terms.

I then examined the extent to which additional terms were handwritten into otherwise typewritten settlements and the extent to which these terms substantively favored tenants. The presence of such pro-tenant additions would suggest that tenants successfully negotiate changes to T-12 firms' predrafted settlements. To capture the frequency of additions to typewritten settlements, I coded whether the settlement contained any additional

143 *See infra* Appendix B. Pro-tenant alterations were most commonly the elimination of obligations to pay court costs, the creation of carve-outs in waiver terms (typically for personal injury claims), and the deletion of a term requiring the tenant to participate in financial counseling.

144 *See infra* Appendix B. Pro-landlord alterations included requirements that ongoing rent be paid weekly rather than monthly, the erasure of hearing rights in the event of an alleged breach of terms by the tenant, and the addition of language to assure the dismissal of the tenant's counterclaims, among others.

145 *See infra* Appendix B. Neutral alterations were those that did not make any meaningful change in the parties' respective rights or obligations. These alterations tended to simply clarify existing settlement terms.

handwritten terms.[146] For each handwritten term, I coded whether the term substantively favored the tenant, favored the landlord, or was neutral.[147]

Overall, 14.8% of T-12 settlements with unrepresented tenants contained handwritten terms in addition to the typewritten terms. However, only 6% of these additions were favorable to tenants.[148] The overwhelming majority of additional terms (85%) favored landlords,[149] and the remaining 9% were neutral.[150] Thus, only 0.9% of all T-12 settlements with unrepresented tenants contained pro-tenant additional handwritten terms. This finding indicates that in 99.1% of T-12 settlements, the tenant did not negotiate to add terms beyond what was already written into the agreement. These findings are presented in Table 7 below.

TABLE 7: PREVALENCE OF HANDWRITTEN ADDITIONS IN T-12 SETTLEMENTS*

	Number of Settlements	**Any Addition**	**Pro-Tenant Addition**
T-12 Settlements	1008	14.8%	0.9%

*This data is based on CPA settlements in nonpayment evictions with unrepresented tenants only.

In sum, the data show that 99.8% of T-12 settlements involving unrepresented tenants had typewritten terms. Of these settlements, 99.6% had the same number of typewritten terms as other settlements handled by the same T-12 law firm; across T-12 law firms, the number of terms varied. Interviews and observations strongly suggest that these settlements are prewritten by T-12 law firms without participation by the tenant. The data further show that these prewritten settlements are virtually never modified in ways that benefit tenants. Only 2.5% of T-12 settlements

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146 I coded handwritten language as an additional term rather than an alteration when it was written separately (and usually numbered separately) from any typewritten term.

147 *See infra* Appendix B. Like neutral alterations, neutral additions were those that did not make any meaningful change in the parties' respective rights or obligations.

148 Almost all these additional terms required the landlord to inspect the conditions of the premises or conduct repairs.

149 Additional terms that favored landlords included obligations on the tenant to pay legal fees, participate in financial counseling, secure a representative payee, and work with social service agencies, among others.

150 These additions often clarified existing settlement terms or recited case facts or information in a manner that did not favor either party.

contain pro-tenant handwritten alterations to the typewritten terms, and less than 1% contain additional handwritten terms that favor the tenant. With very few exceptions, unrepresented tenants appear unable to modify the T-12 firm's predrafted settlement agreement.

C. Terms Related to the Scope and Conditions of Civil Probation

The analysis presented above shows that T-12 settlements nearly always contain the same number of typewritten terms as other settlements handled by the same firm. Yet this finding leaves unanswered whether the terms are substantively the same as one another. I next took up that question. Specifically, I examined the extent of variation in terms among CPA settlements handled by the same T-12 firm and across T-12 firms.

As described previously, the structure of a CPA awards a possessory judgment to the landlord, stays execution of the eviction pending the tenant's compliance with specified conditions, and provides that if the landlord alleges violation of the term, the tenant may be evicted upon motion.[151] Definitionally, all CPAs contain these structural terms. In addition to the structural terms, CPAs contain three categories of substantive terms: terms related to the scope and conditions of civil probation, monetary terms, and terms related to the schedule for arrears repayment.[152] This Section describes the findings for the extent of variation in five distinct settlement terms related to the scope and conditions of civil probation; Part III.D and Part III.E describe the findings for the monetary and repayment terms.

I analyzed five substantive terms related to the scope and conditions of civil probation. For each substantive term, I determined the extent of variation in the presence or absence of the term in settlements handled by the same law firm. I also determined the extent of variation across firms. The upshot of the findings is that settlements handled by the same T-12 firm nearly always contain identical substantive terms related to the scope and conditions of civil probation, but that variation in these terms exists across T-12 firms.

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[151] Summers, *Civil Probation*, *supra* note 6, at 869–70.

[152] *See supra* Part II.A.1.

1. Probationary condition requiring compliance with all lease terms.

First, I analyzed the settlements for the presence or absence of a term requiring the tenant to comply with their lease as a condition of civil probation. When a settlement contains such a term, any lease violation—however unrelated to the initial grounds for eviction—can be the basis of a motion seeking the tenant's eviction.[153] The presence of the term dramatically widens the substantive scope of a civil probation agreement.[154] As shown in Table 8 below, only one T-12 firm had internal variation in the presence or absence of this term. This variation amounted to only one settlement that did not contain the term while all others did.

TABLE 8: SETTLEMENTS WITH TERM THAT REQUIRES COMPLIANCE WITH ALL LEASE TERMS*

Law Firm	Number of Settlements	Percentage of Settlements with Term
A	245	0%
B	137	100%
C	94	100%
D	88	98.9%
E	81	100%
F	75	100%
G	71	100%
H	66	0%
I	64	100%
J	30	100%
K	29	100%
L	28	100%
All *A*–*L*	1008	69.0%

*This data is based on CPA settlements in nonpayment evictions with unrepresented tenants only.

2. Probationary condition requiring the tenant to timely recertify their income.

I next analyzed the presence or absence of a term requiring the tenant to timely recertify their income as a condition of civil

153 *See* Summers, *Civil Probation*, *supra* note 6, at 883.

154 For a complete explanation of the significance of such a term, see *id.* at 883–85.

probation.[155] The presence of this term similarly expands the scope of a tenant's probation.[156] As shown in Table 9 below, the presence or absence of the term aligned perfectly with the identity of the landlord law firm: Either all settlements contained the term, or none did.

TABLE 9: SETTLEMENTS WITH TERM THAT REQUIRES TENANT TO TIMELY RECERTIFY THEIR INCOME*

Law Firm	Number of Settlements	Percentage of Settlements with Term
A	245	0%
B	137	0%
C	94	0%
D	88	0%
E	81	0%
F	75	0%
G	71	0%
H	66	100%
I	64	0%
J	30	100%
K	29	0%
L	28	0%
All *A*–*L*	1008	9.5%

*This data is based on CPA settlements in nonpayment evictions with unrepresented tenants only.

3. Probationary condition requiring a specific form of payment.

Third, I analyzed the presence or absence of a term requiring tenants to make monetary payments through a specific form of payment.[157] This requirement is burdensome and costly for tenants, forcing them to make a trip to the post office, bank, or other

[155] Timely recertification of income is a standard requirement of public and subsidized housing programs. *See* 24 C.F.R. § 982.516 (2024); *id.* § 960.257. Although tenants in these programs are already required to comply with this requirement, incorporation of the obligation as a condition of civil probation dramatically strengthens the landlord's enforcement mechanism for noncompliance. *See* Summers, *Civil Probation*, *supra* note 6, at 892–93 (explaining that the reimplementation of existing tenancy terms into a CPA, even though the tenant is already obligated to comply with them, significantly augments the landlord's enforcement mechanisms for noncompliance and more readily results in eviction).

[156] *See* Summers, *Civil Probation*, *supra* note 6, at 883.

[157] Typically, such a term requires the payment to be made in certified funds via either a money order or cashier's check.

financial institution to obtain payment and costing anywhere from $2 to $20 per payment. As shown in Table 10 below, only one T-12 firm had internal variation in the presence or absence of this term, which amounted to all settlements except one that contained the term.

TABLE 10: SETTLEMENTS WITH TERM THAT REQUIRES SPECIFIC FORM OF PAYMENT BY TENANT*

Law Firm	Number of Settlements	Percentage of Settlements with Term
A	245	100%
B	137	0%
C	94	0%
D	88	0%
E	81	98.8%
F	75	100%
G	71	100%
H	66	100%
I	64	100%
J	30	100%
K	29	0%
L	28	0%
All *A*–*L*	1008	62.6%

*This data is based on CPA settlements in nonpayment evictions with unrepresented tenants only.

4. Waiver of the tenant's right to request a stay of execution.

Next, I analyzed the presence or absence of a settlement term that waives the tenant's right to request a stay of execution (the physical eviction). Under Massachusetts law, a tenant may request a stay of execution for any cause that the court finds "just and reasonable."[158] When the tenant waives this right in settlement, they forgo the opportunity to invoke this statutory right. As shown in Table 11 below, only two firms had internal variation in the presence or absence of the term. This variation amounted to a total of three settlements that deviated from the law firm's standard inclusion or exclusion of the term.

158 *See* MASS. GEN. LAWS ch. 239, § 9 (2025). The stay may be structured either as a postponement of the eviction until a later date or as an extension of time for the tenant to establish compliance with the probationary conditions.

TABLE 11: SETTLEMENTS WITH TERM THAT WAIVES TENANT'S RIGHT TO REQUEST A STAY OF EXECUTION*

Law Firm	Number of Settlements	Percentage of Settlements with Term
A	245	0.4%
B	137	0%
C	94	100%
D	88	0%
E	81	0%
F	75	0%
G	71	0%
H	66	100%
I	64	100%
J	30	0%
K	29	0%
L	28	92.9%
All *A*–*L*	1008	24.9%

*This data is based on CPA settlements in nonpayment evictions with unrepresented tenants only.

5. Waiver of all tenant claims.

Finally, I analyzed the presence or absence of a settlement term that waives all tenant claims against the landlord.[159] As described previously, Massachusetts statutes recognize tenant claims for a range of landlord conduct, including breach of the warranty of habitability, interference with quiet enjoyment, violation of the security deposit law, and retaliation, among others.[160] Under Massachusetts law, counterclaims are noncompulsory in summary process actions and thus are not waived in future actions due to a failure to plead.[161] Therefore, a settlement term that waives all tenant claims may amount to a significant waiver of legal liability where the tenant has claims for which they have not received relief.

Once again, the data show that the presence or absence of this settlement term is almost perfectly uniform among cases

[159] An example of such a term is: "In consideration of Plaintiff's agreement herein, Defendant(s) hereby waives, remises and releases plaintiff of all and any other claims, debts, demands, counterclaims, defenses in every name and nature from the inception of the tenancy to the date of this Agreement regarding the Defendant(s) occupying of the premises." *E.g.*, *infra* Appendix A.

[160] *See supra* Part II.A.2.

[161] MASS. UNIF. SUMMARY PROCESS R. 5.

handled by the same T-12 firm. While overall approximately 80% of settlements contain this waiver term, only one firm has internal variation among its settlements. The results are presented in Table 12 below.

TABLE 12: SETTLEMENTS WITH TERM THAT WAIVES ALL TENANT CLAIMS AGAINST LANDLORD*

Law Firm	Number of Settlements	Percentage of Settlements with Term
A	245	0%
B	137	100%
C	94	100%
D	88	100%
E	81	98.8%
F	75	100%
G	71	100%
H	66	100%
I	64	100%
J	30	100%
K	29	100%
L	28	100%
All *A*–*L*	1008	75.6%

*This data is based on CPA settlements in nonpayment evictions with unrepresented tenants only.

6. Summary of findings.

Table 13 below summarizes the findings by showing the overall extent of firm-level variation in the presence or absence of each of the terms related to the structure, scope, and conditions of civil probation. For each term analyzed, over 99% of settlements were substantively the same as others handled by the same law firm. Across all five substantive terms, settlements matched others handled by the same T-12 firm (i.e., conformed) 99.9% of the time. Put differently, the CPA settlement terms deviated from other CPA settlements handled by the same T-12 firm at a rate of 0.1%. This finding rules out the possibility that although all settlements handled by the same T-12 firm contained the same number of terms, those terms might be substantively different from one another. Instead, it confirms that each T-12 firm's settlement terms related to the structure, scope, and conditions of civil probation are internally uniform, despite variation in merits and procedural postures.

TABLE 13: SUMMARY OF VARIATION IN T-12 SETTLEMENTS

Term	Conformity with Other Settlements Handled by Same T-12 Firm
Requirement to comply with lease	99.9%
Requirement to timely recertify income	100%
Requirement for specific form of payment	99.9%
Waiver of right to request stay of execution	99.7%
Tenant waiver of all claims	99.9%
All terms	99.9%

The data further show, however, that settlements do not contain identical substantive terms across T-12 firms. Each of the five terms analyzed varied across T-12 settlements overall. Thus, there is not simply an industry-wide standard or going rate for these terms. For each term, at the population level, some settlements contain the term, and some do not. These findings strongly suggest that, in cases handled by T-12 firms, settlement terms related to the scope and conditions of civil probation are not negotiated but rather are determined unilaterally by the T-12 firm representing the landlord.

D. Monetary Terms

Aside from terms that establish the structure, scope, and conditions of civil probation, the remaining settlement terms in CPAs relate to the amount and scheduling of monetary payments. This Section discusses the findings related to the extent of negotiation over the monetary judgment amount. Part III.E discusses the findings related to negotiation over the repayment schedule.

The monetary judgment amount in a civil probation agreement is a product of three inputs: the amount of the tenant's rental arrears, the value of the tenant's damages claims against the landlord (if any),[162] and court costs. The rental arrears amount is legally straightforward: It is equivalent to the total unpaid rent.[163]

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[162] These claims offset the amount of rental arrears owed. *See supra* Part II.A.2.

[163] There are some instances where this amount may be less straightforward, such as if the tenant's rent is subsidized and a third party is responsible for some portion of the

The latter two inputs, however, are less so. As described previously, Massachusetts statutory law recognizes five separate legal causes of action that entitle tenants to damages against their landlord in nonpayment of rent eviction cases.[164] These damage awards typically take the form of a rent abatement—a reduction in the judgment amount based on the value of the tenants' claims. While not every tenant facing eviction for nonpayment of rent has meritorious counterclaims, negotiation should occur over the merit and value of the claims where applicable. Similarly, court costs are negotiable. Under Massachusetts law, landlords may obtain court costs in eviction cases (usually totaling around $200) upon receiving a judgment for possession.[165] At the same time, tenants' counterclaims entitle them to payment of costs (and attorney's fees) by the landlord upon a ruling in their favor.[166] Generally, at the time of settlement, there have been no rulings on the merits, and thus the allocation of costs is undetermined.[167]

To glean insight into the extent of negotiation over the monetary judgment amount in settlements, I examined two settlement terms: the presence or absence of an award of a rent abatement to the tenant, and the assignment of court costs. The presence of rent abatements in settlements would suggest that tenants successfully negotiate the monetary judgment amount. Similarly, a balanced distribution of assignment of court costs, with a solid percentage of cases requiring the landlord to bear costs, would suggest that tenants successfully negotiate the monetary term. To supplement this data analysis, I observed settlement discussions and interviewed landlord attorneys and tenants about the monetary judgment amount. Overall, the findings strongly suggest that monetary judgments are not negotiated. They indicate that the monetary judgment is almost always set at the amount sought by landlords and their attorneys: the full amount of rent owed, without any rent abatement for tenant claims, plus court costs. I present the data findings below, followed by the findings from hallways observations and interviews.

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rental payments. Nevertheless, disputes over the amount of unpaid rent should be primarily factual, rather than legal, in nature.

164 *See supra* Part II.A.2.

165 MASS. GEN. LAWS ch. 239, § 3 (2025).

166 *See id.* ch. 186, §§ 14, 15B; *id.* ch. 93A, § 11.

167 The exception is when a default judgment has issued.

1. Data findings.

The overall monetary judgment amounts varied significantly both within and across T-12 settlements because of variation in the underlying arrears amounts owed.[168] To assess the prevalence of negotiation over monetary terms, I first analyzed the prevalence of a settlement term that awards the tenant a rent abatement. The term is typically written in clear, plain language such as, "The rent owed is reduced by $____ on account of the tenant's claims, leaving the amount owed of $____." While the precise number or percentage of cases in which tenants have meritorious claims in this dataset is unknown, lawsuits, advocacy reports, journalistic accounts, and scholarship suggest that landlords' violations of these laws are widespread and that many tenants have meritorious claims.[169] A finding that a sizable percentage of settlements reduce the monetary judgment on account of the tenant's claims is likely reflective of negotiation because landlord attorneys are unlikely to give away these abatements without any push from the tenant. Conversely, a finding that a very low percentage of settlements award the tenant a rent abatement suggests that tenants are unable to leverage claims to their advantage.

The data show that among all T-12 settlements involving pro se tenants, only one settlement awarded the tenant a rent abatement, amounting to less than 0.1% of T-12 settlements.[170] In other words, in 99.9% of T-12 settlements, the tenant received no rent abatement. Again, while the precise number of cases in which tenants have meritorious counterclaims is unknown, available evidence indicates that claims occur in significantly greater than 0.1% of cases.[171] The complete data showing the prevalence of rent abatement by T-12 firm is presented in Table 14 below.

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[168] For detailed findings and analysis regarding monetary judgment amounts, see *infra* Appendix C.

[169] *See supra* note 137 and accompanying text.

[170] This is based on CPA settlements in actions for nonpayment of rent only.

[171] *See supra* note 137 and accompanying text; *see also Housing Court Summary Process: Fee-Shifting, Dispositions, and Other Practices*, MASS.GOV 2 (May 2021), https://perma.cc/ZA5L-5HU5 (finding that in 6.2% of all eviction cases in Massachusetts housing courts, both an answer and a counterclaim were filed). Research in other jurisdictions has also shown that an extremely small percentage of unrepresented tenants with meritorious warranty of habitability claims obtain rent abatements or otherwise benefit from their claims. *See* Summers, *The Limits of Good Law*, *supra* note 137, at 190 (finding that, in New York, between 36% and 51% of tenants had meritorious warranty of habitability claims despite rent abatements being granted in only 1.75% of nonpayment of rent eviction cases).

TABLE 14: SETTLEMENTS WITH RENT ABATEMENT*

Law Firm	Number of Settlements	Settlements with Rent Abatements
A	245	0%
B	137	0.7%
C	94	0%
D	88	0%
E	81	0%
F	75	0%
G	71	0%
H	66	0%
I	64	0%
J	30	0%
K	29	0%
L	28	0%
All *A*–*L*	1008	0.1%

*The data presented is for nonpayment evictions with unrepresented tenants that resulted in CPA settlements.

The data also show that 93% of T-12 settlements with unrepresented tenants required the tenant to pay court costs. Thus, while tenants occasionally avoided these costs, T-12 attorneys successfully shifted them onto tenants in the overwhelming majority of settlements, even though in most cases there had been no court order entitling the landlord to recoupment of costs.[172] The complete data for the assignment of court costs is presented in Table 15 below.

[172] A landlord has established entitlement to costs in cases with a default judgment prior to settlement. In 11.3% of cases, there was a default judgment prior to settlement. *See supra* Table 4.

TABLE 15: SETTLEMENTS WITH MONETARY JUDGMENTS THAT INCLUDED COURT COSTS*

Law Firm	Number of Settlements	Settlements that Required Tenant to Pay Court Costs
A	245	99.2%
B	137	92.0%
C	94	79.8%
D	88	96.7%
E	81	97.5%
F	75	96.0%
G	71	100%
H	66	100%
I	64	98.4%
J	30	100%
K	29	0%
L	28	100%
All *A*–*L*	1008	93.1%

*The data presented is for nonpayment evictions with unrepresented tenants that resulted in CPA settlements.

2. Observations and interviews.

Hallway observations and interviews consistently provided evidence that T-12 attorneys unilaterally set the monetary judgment amount, without negotiation by the tenant. In interviews, T-12 attorneys reported that they nearly always recovered the full amount of rental arrears in CPA settlements. In response to the question, "How do you decide the amount to be repaid in settlements?," one attorney stated bluntly, "It's the balance; they have to pay it off." Attorneys said that they very rarely reduced the judgment amounts based on the tenant's counterclaims. One attorney artfully explained that they "don't typically abate rent in the normal course."

Attorneys' statements in interviews were consistent with my observations in the courthouse hallways. The following exchange between a T-12 attorney and an unrepresented tenant was typical:

> T-12 attorney: "Okay, so this is the agreement. This [pointing at settlement document] is the amount you owe."
>
> Tenant: "Okay."

In another interaction, a T-12 attorney stated, "So there are court fees involved in this case; they are $275." The tenant responded only with a nod of her head, and the attorney proceeded to review the rest of the prepared settlement. In another conversation, a different T-12 attorney presented a typewritten settlement to a tenant and stated, "So I brought an agreement, and I'll go over it with you and see if you agree. . . . I'll go over what we have. There's a balance of $2,000 plus some court costs that get added." The attorney then proceeded to describe the other settlement terms, and the tenant signed the settlement without ever discussing the judgment amount.

Across all the settlement conversations I observed, the only discussions I witnessed about the monetary judgment amount concerned the specific calculations of rental arrears. Tenants would occasionally dispute whether the landlord's ledger properly reflected all payments that had been made and the correct amount of rent due each month. These disputes appeared to be most common in cases involving subsidized tenancies, in which the tenant's share of the rent adjusts based on their income. To resolve the disputes, tenants and landlord attorneys would present receipts and rent ledgers, and they would sometimes call the property manager for additional information. However, in my observations, these conversations were always factual in nature, concerning the rental amounts owed and the sums paid. Conversations never involved discussion of legal liability based on the merits of the case or the parties' likelihood of success at trial. Despite the letter of the law saying otherwise, the clear norm in the hallway was that if the tenant had not paid their rent, they were responsible for paying it back in full, plus costs. The case data, observations, and interviews all strongly suggest that the monetary judgment amount is not negotiated.

E. Repayment Term

Finally, the case data, observations, and interviews suggest that T-12 attorneys and tenants *do* negotiate the settlement term that establishes the schedule for the tenant's payment of the monetary judgment. This term typically sets forth an installment plan with a dollar amount that the tenant must pay monthly for a certain number of months in order to satisfy the full judgment.

As an initial matter, the case data show that the length of time for repayment varies significantly across cases within T-12 firms. Within cases handled by each T-12 firm, settlements have a

range of repayment schedule lengths, from shorter than six months to longer than twelve months. There is no consistency within T-12 firm cases. The data also show that the dollar amount of required monthly payments varies significantly. Within and across T-12 firms, the monthly payment amount in settlements ranges from less than $100 to greater than $500. The complete data showing the length of repayment schedules and monthly payment amounts are presented in Tables 8A and 9A of Appendix C. There is no indication from the case data that T-12 firms deploy uniform repayment plans across their settlements.

Observations and interviews provide the strongest evidence of negotiation over the repayment schedule. During courthouse observations, I witnessed frequent negotiations over the repayment schedule. Attorneys would often propose monthly amounts, and tenants would respond with what they could afford. The attorney and tenant would exchange proposals, and once reaching an amount agreeable to both sides, the attorney would do the math to determine the number of months' payments that would be required. In contrast to the process for setting all other settlement terms, I observed several T-12 attorneys inquire about the tenant's preferences. One T-12 attorney informed the tenant, with reference to the payment schedule, "You can do the terms you want." Another attorney asked a tenant directly, "How much is an amount you can pay?" and then used the tenant's response to craft a repayment schedule. Although conversations about the repayment schedule were not always amicable, they consistently involved back-and-forth statements of preferences that influenced the term ultimately written into the settlement.

In interviews, T-12 attorneys described a process consistent with what I observed in the hallways: They engage in a conversation with the tenant about what they can afford and then draft a repayment schedule based on that conversation. One attorney reported, for example, that they decide the repayment schedule by looking at the tenant's monthly rent amount and asking the tenant what they can pay extra each month. All attorneys interviewed stated that the schedule is set jointly with the tenant, in contrast to the other terms.

In sum, the case data, observations, and interviews all suggest that both parties negotiate the settlement term that establishes the schedule for payment of the judgment amount. Among the nine to sixteen terms included in each T-12 firm's settlement, the repayment schedule appears to be the only one negotiated.

F. Alternative Explanations

Thus far I have interpreted my findings to strongly suggest that the settlements are not negotiated, except for the repayment term. In this Section, I address two other possible interpretations of the findings: (1) that negotiation occurs over settlement type, rather than settlement terms, and (2) that uniformity in settlement terms reflects an equilibrium reached over time.

1. Negotiation over settlement type? Civil probation agreements versus move-outs.

While the data appear to suggest that the specific terms of civil probation agreements are not negotiated, the possibility remains that tenants negotiate the overall type of settlement. As described previously, 90% of T-12 settlements are CPAs, which give the tenant an opportunity to reinstate their tenancy, and 10% are move-out agreements, which obligate the tenant to vacate the unit.[173] It is possible that even if tenants are unable to negotiate changes to the terms of CPAs, they negotiate to reach CPAs rather than move-out agreements in the first place. While I cannot rule out this possibility, the available case data, observations, and interviews do not support this conclusion.

My study design does not permit a causal analysis of the factors that impact the type of settlement reached. However, the data show that move-out agreements and CPAs are reached in cases with different underlying characteristics. First, settlement type varies significantly with landlord type. Cases with landlords who are individual property owners are significantly more likely to settle with move-out agreements: Among T-12 cases brought by individual landlords, nearly half of settlements (48.4%) were move-out agreements. By contrast, only 9.2% of settlements in T-12 cases filed by corporate landlords resulted in move-out agreements, and among cases brought by the public housing authority, less than 2% of settlements were move-out agreements.[174] Regression analysis confirms that cases with individual landlords are

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[173] *See supra* Part III.A.

[174] These findings are consistent with prior research, which found through logistic regression analysis on a multiyear dataset that individual landlords are more likely to evict through move-out agreements as compared with corporate landlords and the public housing authority. Summers & Steil, *supra* note 78, at 20–21.

significantly more likely to result in move-out agreements at a level of statistical significance.[175]

Second, the data show that move-out agreements are reached in cases that involve much larger alleged arrears amounts as compared with cases that result in CPAs. Among T-12 cases that result in move-out agreements, the average arrears alleged in the summons and complaint is $5,905. Among T-12 cases that result in CPAs, the average is less than half that amount: $2,766.[176] Regression analysis shows that cases that settle with a move-out agreement have on average $3,128.19 more in alleged arrears than cases that reach a CPA, holding other factors constant.[177] These findings make logical sense. When the tenant owes more money, the landlord is more likely to want to sever the relationship, and when the tenant owes less, the landlord is more likely to be willing to offer them a second chance to retain their tenancy.

Observations and interviews provided further insight into the prevalence of negotiation around settlement structure. Overall, no observation or interview gave any indication that T-12 attorneys initially offer move-out agreements and tenants successfully negotiate to convert the settlement into a CPA (or vice versa). In every settlement conversation I observed, the T-12 attorney presented a preprinted settlement form to the tenant, and that form served as the basis for the ensuing discussion. I did not once witness the tenant and landlord attorney discuss alternative settlement structures. Specifically, in all my observations, the T-12 attorney presented a CPA to the tenant, and a CPA was ultimately signed. Tenants described the same process in interviews. Always, they reported that the T-12 attorney offered them a CPA at the outset of the interaction, and their case settled with a CPA. And in interviews with T-12 attorneys, the attorneys reported that they reserve move-out agreements for a very small subset of cases, usually those with higher arrears amounts (which aligns with the data analysis). Otherwise, T-12 attorneys stated, it is their practice to offer CPAs.

While these findings do not preclude the possibility that in some cases tenants may negotiate between the two types of settlements, they suggest that landlords and their attorneys likely predetermine the settlement type.

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175 For regression specifications and results, see *infra* Appendix C.

176 For additional data showing median and percentile values, see *infra* Appendix C.

177 For regression specifications and results, see *infra* Appendix C.

2. Settlement equilibrium.

Another potential explanation for the uniformity in settlement terms at the law firm level is that the landlord and tenant have reached equilibrium. It is possible that negotiation has occurred repeatedly over time to reach a going rate for settlement that both sides accept through the rental price. In this scenario, lower rental prices reflect an agreement for worse settlement terms, and higher rental prices reflect an agreement for better ones. Were this to occur, tenants and landlords would be implicitly agreeing on the settlement terms at the outset of the rental agreement.

Analysis of data to test for the possibility of equilibrium is precluded here by the unavailability of full rental price data.[178] But there are several reasons why the equilibrium explanation is likely implausible, even if the data cannot rule it out altogether. As an initial matter, as many scholars have noted, huge inequalities in bargaining power exist between represented landlords and unrepresented tenants. Tenants are disproportionately low-income, Black, and women with children, whereas represented landlords tend to be institutional actors or white individuals.[179] Unrepresented tenants are generally unaware of their legal rights and how to effectively leverage them, whereas landlord attorneys have professional expertise and training. It strains credulity to believe that genuine, effective negotiation between the two sides occurred at a systemic level at any point such that equilibrium would be reached over time.

It is also highly implausible that tenants are knowingly agreeing to eviction settlement terms at the time they enter into a rental agreement. As a general matter, low-income tenants have little awareness of the operation of the eviction legal system and the typical outcomes of an eviction filing.[180] And even if they

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[178] For public and subsidized units, the settlements only state the tenant's share of the rent, not the full contract rent. *See Negotiating a Settlement of Your Case—Representing Yourself in an Eviction Case*, MASS LEGAL HELP 763, 767, 769, 773 (Jan. 2025), https://perma.cc/8YPZ-CF55.

[179] *See supra* notes 99–101 and accompanying text.

[180] *See* Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 588–90 (1992) (describing the ways in which marginalized, unrepresented tenants' unfamiliarity with the rules of eviction proceedings prevents them from effectively participating in the process); Engler, *Out of Sight and Out of Line*, *supra* note 13, at 109–10 (describing how many low-income tenants in New York's housing courts "often do not grasp the complexities of the law" and find

were aware of the substance of eviction settlements at a general level, it would be almost impossible for them to know the substance of their landlord's standardized eviction settlement agreement at the time of lease signing. For one, until recently, these agreements were not publicly accessible in any realistic sense. Until changes were made to the online database of Massachusetts state court case files (masscourts.org) in 2025, a nonattorney member of the public was required to travel to the courthouse and request the physical case file in order to view a case's settlement. Second, there is no certainty about which law firm would represent the landlord at the time of a (hypothetical, prospective) eviction. Landlords change counsel, and tenancies—particularly subsidized tenancies—can last years if not decades.[181] Thus, even if a tenant somehow knew the substance of their landlord's law firm's standardized settlement and the settlement terms were incorporated into the rental price at the time of leasing, it is entirely plausible that the landlord will have changed counsel by the time the tenant faces eviction (and thus that the terms will have changed). A landlord's standardized settlement terms at the time of lease-up are not guaranteed at the time of the tenant's eviction, even if the tenant were to somehow (implausibly) be made aware of them.

Additionally, equilibrium is unlikely because about half of all eviction cases are in units not subject to the private market. Specifically, my prior research has indicated that more than half (57%) of eviction cases filed in the Boston Housing Court are in public and subsidized housing.[182] The full rental amount is not incorporated into the rental agreement for public housing and many subsidized units. Public housing authority tenants' rental obligations are determined solely based on their income, and the remainder of the unit cost is paid by the government.[183] The tenant's share of the rent adjusts as their income changes. The lease states only the amount of tenant's rent share based on their present income;

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themselves pressured in hallways by aggressive lawyers to "agree to settlements without knowing their rights or understanding their cases").

181 *See* OFF. OF POL'Y DEV. & RSCH., LENGTH OF STAY IN ASSISTED HOUSING 14 (2017) (finding that in 2015, "the typical household that ended participation [in assisted housing programs] had lived in assisted housing for 6.0 years"); Dana Anderson & Sheharyar Bokhari, *Renters Are Staying Put Longer, with 1 in 6 Now Living in the Same Home for 10 Years or More*, REDFIN NEWS (May 31, 2024), https://perma.cc/9C72-5UCU (reporting that, as of 2022, about two-thirds of renters move within four years).

182 Summers, *Civil Probation*, *supra* note 6, at 876.

183 *See How Rent Is Set*, BOS. HOUS. AUTH., https://perma.cc/PJC4-UXH2.

it nowhere states the amount of the full contract rent. Similarly, tenants in project-based Section 8 housing pay a "Family Rent Portion" of the rent that is based on their income, and the remainder is paid through the subsidy.[184] The contract rent is not listed on the rental agreement because the tenant is not responsible for it. In both types of housing the full rental amount is not disclosed to the tenant, and thus the tenant would have no way of knowing what settlement terms they should expect.

Finally, if a landlord's standardized settlement terms are indeed incorporated into the rental price, that result would directly violate statutory law and public policy. An agreement to exchange a rental price for settlement terms would mean that tenants are paying less in exchange for worse settlement terms and more in exchange for better terms, regardless of the merits of their (eventual) eviction cases. Case merits are determined in part by the merits of tenants' defenses, and some of those defenses are grounded in claims that are nonwaivable. Massachusetts law is clear, for example, that the warranty of habitability and the covenant of quiet enjoyment—which serve as both counterclaims entitling tenants to rent abatements and defenses to eviction—cannot be waived. Massachusetts case law states that the warranty of habitability "cannot be waived by any provision in the lease or rental agreement,"[185] and any lease or agreement that purports to waive the covenant of quiet enjoyment "shall be void and unenforceable."[186] An agreement for a lower rental price in exchange for specific settlement terms amounts to a waiver of these laws, which is prohibited.

In sum, while the data cannot rule out the possibility that the uniformity in terms reflects equilibrium, the totality of the circumstances suggests that this explanation is unlikely.

IV. SETTLEMENTS OF ADHESION

The empirical findings strongly suggest that when unrepresented tenants and T-12 firms reach settlements in eviction cases

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[184] *See HCV Applicant and Tenant Resources*, U.S. DEP'T OF HOUS. & URB. DEV., https://perma.cc/4MG7-F54M.

[185] Bos. Hous. Auth. V. Hemingway, 293 N.E.2d 831, 843 (Mass. 1973). Warranty of habitability damages are measured based on the difference between the value of the premises in their defective condition and the fair market rental value of the premises in habitable condition (not the agreed upon rent). *See* MASS. GEN. LAWS ch. 239, § 8A (2025); Cruz Mgmt. Co. v. Thomas, 633 N.E.2d 390, 394 (Mass. 1994).

[186] MASS. GEN. LAWS ch. 186, § 14 (2025).

in the study jurisdiction, the settlements are not negotiated in any meaningful sense. The T-12 firm determines the core content of the settlement, including the overall settlement structure, the assignment of rights and liabilities, and the financial obligations of the parties, while leaving open only one term for negotiation: the length of the repayment period. As landlords' attorneys readily admit, each T-12 firm uses its own standardized settlement form. The data show that the settlements reached virtually never deviate from that form regardless of the case's merits or procedural posture. Importantly, while settlements reached by the same T-12 firm are nearly uniformly identical internally, settlements across cases handled by different T-12 firms are not. Thus, unlike the contexts of personal injury or SEC class action settlements, there is no industry-wide going rate for eviction settlements. The law firm representing the landlord decides its preferred settlement terms, and those preferences are written into its standardized form that becomes the settlement in all but the most exceptional cases. For any given pro se tenant facing eviction, the data suggest that what determines the terms of their settlement is the identity of the law firm that represents their landlord.

Based on these findings, I argue that these settlements are best conceptualized as *settlements of adhesion*. They are settlements reached through a process and within an institutional context that parallel those of contracts of adhesion. In this Part, I first define and elaborate the theoretical concept of settlements of adhesion. I make the case for why this concept best captures the dynamics within which eviction settlements are reached, despite certain divergences from contracts of adhesion. I then articulate the normative and theoretical implications of adhesive settlements.

A. Theoretical Framework

Eviction settlements reached between landlords represented by T-12 firms and unrepresented tenants should be understood as settlements of adhesion. They are standardized form settlements drafted by landlord law firms that tenants sign without achieving any meaningful input over the terms. While the concept of adhesion has received enormous attention in contracts scholarship, this is the first extension of it to the settlement context.

While there is no uniform definition of contracts of adhesion, the characteristics identified by Professor Todd Rakoff are frequently cited:

> (1) The document whose legal validity is at issue is a printed form that contains many terms and clearly purports to be a contract.
>
> (2) The form has been drafted by, or on behalf of, one party to the transaction.
>
> (3) The drafting party participates in numerous transactions of the type represented by the form and enters into these transactions as a matter of routine.
>
> (4) The form is presented to the adhering party with the representation that, except perhaps for a few identified items (such as the price term), the drafting party will enter into the transaction only on the terms contained in the document. This representation may be explicit or may be implicit in the situation, but it is understood by the adherent.
>
> (5) After the parties have dickered over whatever terms are open to bargaining, the document is signed by the adherent.
>
> (6) The adhering party enters into few transactions of the type represented by the form—few, at least, in comparison with the drafting party.
>
> (7) The principal obligation of the adhering party in the transaction considered as a whole is the payment of money.[187]

Settlements reached between T-12 firms and unrepresented tenants meet these criteria, adapted to the settlement context.

First, the settlement is on a printed form that contains many terms and clearly purports to be a settlement.[188] The data show that 99.8% of T-12 settlements are on printed forms.[189] Virtually all settlements contain between ten and sixteen printed terms.[190] The settlements purport to be (and are) legally binding documents.[191]

Second, all the evidence indicates that the settlement forms are drafted on behalf of the landlord only. As an initial matter, T-12 firm attorneys readily admit that they draft and deploy standardized settlement forms. Observations and interviews consistently revealed that tenants do not have input into these forms prior to coming to court. The case data further show that each T-12 firm's

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[187] Rakoff, *Contracts of Adhesion*, *supra* note 21, at 1177.

[188] Out-of-court settlements are typically enforced and treated as contracts. *See* 1 TIMOTHY MURRAY, CORBIN ON CONTRACTS § 2.9 (rev. ed. 2018).

[189] *See supra* Part III.B.1.

[190] *See supra* Table 5.

[191] *See supra* note 188.

settlements are identical to one another but that settlements differ across T-12 firms. This finding provides further evidence that the T-12 firm drafts the substantive terms of the settlements. The only alternative explanation—that T-12 firms perfectly select for cases based on merits, procedural posture, and party preferences, leading to uniform negotiated outcomes at the firm level but variation across firms—is both implausible and contradicted by the available data. The several forms of evidence all support the conclusion that the settlements are drafted by the T-12 firms on behalf of the landlords they represent.

Third, T-12 firms participate in numerous transactions of this type. The case data show that each T-12 firm handled dozens of nonpayment eviction settlements in the study year in this specific court alone, with several firms handling over a hundred cases each.[192] These law firms plainly "enter[ ] into these transactions as a matter of routine."[193]

Fourth, the settlements are presented to tenants with the explicit and implicit representation that the only term open for negotiation is the repayment schedule. Observations repeatedly revealed that T-12 firm attorneys present the settlement as a take-it-or-leave-it agreement with fixed terms that cannot be modified. They use language such as, "I have an agreement here that I'll go through with you. There are lots of terms . . ." and, "Okay, so this is the agreement, this is the amount you owe . . . ." The clear takeaway for the tenant is that the terms of the settlement are fixed. And regardless of the tenant's subjective impressions, the case data show that tenants experience the terms as nonnegotiable. Across the five substantive terms analyzed, settlements were identical to others handled by the same T-12 firm 99.9% of the time.[194] If tenants could negotiate the terms, the data would not show this firm-level uniformity—negotiation would result in variation, with some tenants preferring and achieving (based on merit or other factors) different terms. The data also indicate that T-12 firms recovered the full damages they sought 99.9% of the time and recovered court costs 93% of the time.[195] Thus, the monetary terms of settlements are likewise experienced as nonnegotiable, except for court costs on occasion.

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[192] Many of these law firms handle eviction cases in other divisions of the Massachusetts housing courts as well.

[193] Rakoff, *Contracts of Adhesion*, *supra* note 21, at 1177.

[194] *See supra* Table 13.

[195] *See supra* Part III.D.1.

Fifth, unrepresented tenants and T-12 firm attorneys sign the settlement after "dicker[ing]" over the only term open for negotiation: the repayment schedule.[196] In the typical settlement process, the T-12 attorney presents the preprinted settlement to the unrepresented tenant, reviews the terms with them, and asks the tenant what monthly payment they can afford. The parties then engage in back-and-forth discussion to decide on a specific payment plan, and upon agreeing to a plan, they sign the predrafted form agreement in the presence of a clerk or Housing Specialist Department staff member. The data show that in most eviction cases, this process occurs during a single in-court interaction.

Sixth, the adhering parties to the settlements (tenants) enter into few transactions of this type relative to landlord's attorneys. The tenants signing onto these agreements, who are individual people facing eviction, are far less frequent players as compared with T-12 attorneys, who specialize in landlord-tenant law and enter into these settlements as a matter of routine practice. The data show that no two settlements in the study year involved the same tenant. While it is probable that some tenants have faced eviction multiple times and have signed multiple eviction settlements over a longer period,[197] this frequency would pale in comparison to the number of settlements signed by any given T-12 firm during an equivalent period, based on the available data.[198] From any conceivable perspective measuring the relative frequency with which tenants and T-12 firms sign onto these settlements, T-12 firms are classic repeat players and unrepresented tenants are not.[199]

Seventh and finally, the principal obligation of the tenant in the transaction is the payment of rental arrears and ongoing rent,

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196 Rakoff, *Contracts of Adhesion*, *supra* note 21, at 1177.

197 Some recent work has drawn attention to the phenomenon of "serial eviction filing[ ]," whereby landlords file evictions repeatedly against the same household as a mechanism for rent collection. Philip ME Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 CITY & CMTY. 638, 650 (2019). The data here do not show repeated filings against the same household, possibly because data were collected for one year of filings only and many settlements last a year or longer. *See supra* Part III.A.

198 Most T-12 firms reach dozens of nonpayment eviction settlements each year. *See supra* Part III.A.

199 *See* Summers, *Civil Probation*, *supra* note 6, at 859 (explaining that landlords and their attorneys "tend to be repeat players"); Galanter, *Why the "Haves" Come Out Ahead*, *supra* note 9, at 98–104 (describing the various characteristics and advantages of repeat players); Galanter & Cahill, *supra* note 2, at 1385–86 (describing the advantages that repeat players have over "one shot" participants due to their superior knowledge of the law and settlement practices).

i.e., money. To be sure, civil probation agreements include a host of other obligations for tenants, including compliance with the lease and sometimes separate behavioral terms.[200] Yet the primary affirmative action required of tenants entering the settlements is to pay money. And whether monetary payment is *the* principal or *a* principal obligation of tenants signing onto these settlements is immaterial. Under modern-day contract theory, contracts of adhesion are generally understood to involve multiple obligations of the adhering party.[201] Similarly, contracts involving no monetary transaction, such as terms of service for free websites and internet services, are commonly described as adhesive.[202]

The essence of a contract of adhesion is that it is a standardized form contract that is drafted by one party, who is a repeat player, and is signed onto by the other party, who is not a repeat player, without negotiation.[203] The terms are fixed by the drafting party; they are "boilerplate."[204] Eviction settlements reached between T-12 firms and unrepresented tenants display these same characteristics. They are standardized forms drafted by landlord

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[200] *See* Summers, *Civil Probation*, *supra* note 6, at 869–71.

[201] *See, e.g.*, David A. Hoffman, *Relational Contracts of Adhesion*, 85 U. CHI. L. REV. 1395, 1405 (2018) (describing the terms of service on a free news media site as a contract of adhesion); Margaret Jane Radin, *Reconsidering Boilerplate: Confronting Normative and Democratic Degradation*, 40 CAP. U. L. REV. 617, 619–20 (2012) [hereinafter Radin, *Reconsidering Boilerplate*] (describing internet terms of service contracts as "boilerplate" adhesion contracts).

[202] *See* Hoffman, *supra* note 201, at 1405; Radin, *Reconsidering Boilerplate*, *supra* note 201, at 619–20.

[203] *See, e.g.*, *Contract*, BLACK'S LAW DICTIONARY (9th ed. 2009) (defining an adhesion contract as "[a] standard-form contract prepared by one party, to be signed by another party in a weaker position . . . who adheres to the contract with little choice about the terms"); Friedrich Kessler, *Contracts of Adhesion—Some Thoughts About Freedom of Contract*, 43 COLUM. L. REV. 629, 632–33 (1943) (describing contracts of adhesion as "standardized contracts" that are "*à prendre ou à laisser*" [take it or leave it] and offered by a stronger party to a party with weaker bargaining power); W. David Slawson, *Standard Form Contracts and Democratic Control of Lawmaking Power*, 84 HARV. L. REV. 529, 549–50 (1971) (describing contracts of adhesion as standard-form contracts to which opposing parties have no meaningful choice but to agree).

[204] *See* MARGARET JANE RADIN, BOILERPLATE: THE FINE PRINT, VANISHING RIGHTS, AND THE RULE OF LAW 8–9 (2013) [hereinafter RADIN, BOILERPLATE] (defining "boilerplate" contracts as "standardized form contracts" that "like the rigid metal used to construct steam boilers in the past, [ ] cannot be altered," and explaining that "[s]tandardized form contracts, when they are imposed upon consumers, have long been called 'contracts of adhesion,' or 'take-it-or-leave-it contracts,' because the recipient has no choice with regard to the terms"). "Boilerplate" here is used to mean "hard boilerplate." *See* Gregory Klass, *Boilerplate and Party Intent*, 82 LAW & CONTEMP. PROBS. 105, 106 (2019) (defining "hard boilerplate" as "language that is not open to negotiation or alteration," in other words, boilerplate in the "original sense of the term: . . . as fixed and unchanging as the thick steel plating on steam boilers").

law firms, who are repeat players, and they are signed onto by unrepresented tenants, who are not repeat players. For all but the exceptional tenant who successfully alters or adds a term in their own favor,[205] the settlement terms are those drafted by the T-12 firm and standardized for all its cases. The data show that in at least 96.6% of T-12 settlements, the tenant did not alter or add any terms to the T-12 firm's standardized form.[206] Across the five substantive terms analyzed, settlements were identical to others handled by the same T-12 firm 99.9% of the time.[207] And in 99.9% of T-12 settlements, the landlord was awarded the full dollar amount of damages sought.[208] The observations, interviews, and case data consistently and overwhelmingly show that the settlements are not negotiated. All available evidence suggests that tenants have no influence or input into the settlement they sign, aside from the repayment schedule.

Thus, the findings show that the typical tenant facing eviction for nonpayment of rent settles their case with a settlement drafted entirely by the landlord's attorney, with a monetary judgment in the exact amount sought by the landlord, and without making any modifications to the preprinted settlement terms. The process of settling their case is adhesive. The data indicate that settlements of adhesion constitute nearly three-quarters of all settlements in nonpayment of rent eviction cases with represented landlords and unrepresented tenants in the study jurisdiction. They are the modal settlement in the modal eviction case.

B. Differences Between Settlements and Contracts of Adhesion

Importantly, T-12 settlements differ from contracts of adhesion in certain ways. The processes by which these settlements are reached mimic those of contracts of adhesion, but they are not identical. The analogy is not intended to imply perfect parallelism. Instead, its purpose is to offer a conceptual framing that both orients our descriptive thinking about what these settlements are in practice and provides an intellectual springboard for thinking about them normatively. While the distinctions between contracts and settlements of adhesion described below are meaningful, they do not nullify the core similarities that fuel the analogy

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[205] *See supra* Part III.B. The data show that less than 3.4% of T-12 settlements include a pro-tenant alteration or addition to the standardized terms. *See supra* Tables 6, 7.

[206] *See supra* Tables 6, 7.

[207] *See supra* Table 13.

[208] *See supra* Table 14.

and enable this purpose. They do, however, caution against the blind importation of normative conclusions and recommendations for reform.

First, settlements of adhesion differ from contracts of adhesion in that a consistent term of the settlements is subject to negotiation: the repayment schedule. Although classical definitions of contracts of adhesion contemplate that a specific term may be left open for bargaining, contracts of adhesion are often understood as contracts that are entirely standardized.[209] And indeed, a typical contract of adhesion today allows for no back-and-forth bargaining related to any of the terms; the formation process is a simple click-and-sign only. A Microsoft, Google, or Netflix terms of service contract, for example, is comprised entirely of fixed terms.[210] When scholars refer to contracts of adhesion as "take-it-or-leave-it" contracts, they often mean that the only option presented to the prospective adherent is to take or leave the contract in its entirety.[211]

The flexibility of the repayment term distinguishes these settlements from many contracts of adhesion, but it does not negate their otherwise adhesive qualities. The landlord law firm sets the overall structure of the settlement, assigns rights and liabilities through specific terms, and determines the size of the monetary judgment. The negotiation relates only to the amount of time over which the judgment will be paid—for example, whether the $1,000 judgment will be paid off in five installments of $200 or in ten installments of $100. While these are meaningful options for tenants, they exist entirely within the parameters set by T-12 firms: that the settlement takes the structure of a civil probation agreement with specific rights and liabilities set by the T-12 firm; that the arrears are paid in full; and that the agreement's enforcement terms remain in place during the repayment period (and often after). This structure for "negotiation" is akin to Apple offering iPhone payment plans over a period of twelve, twenty-four, or forty-eight monthly installments. These are meaningful choices

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[209] *Compare* Rakoff, *Contracts of Adhesion*, *supra* note 21, at 1177 (finding that some terms in an adhesive contract may be negotiated), *and* KARL N. LLEWELLYN, THE COMMON LAW TRADITION: DECIDING APPEALS 370 (1960) (arguing that there is no assent to boilerplate clauses, but finding that some terms may be "dickered" over), *with* RADIN, BOILERPLATE, *supra* note 204, at 8–9 (arguing that contracts of adhesion cannot be altered).

[210] *See Google Terms of Service*, GOOGLE (May 22, 2024), https://perma.cc/FKN8-YWYH; *Microsoft Terms of Use*, MICROSOFT (Feb. 7, 2022), https://perma.cc/XTZ4-G338; *Netflix Brand Assets Terms and Conditions*, NETFLIX, https://perma.cc/XH69-DX3Z.

[211] *See* Tutt, *supra* note 21, at 441–42; Schwartz, *supra* note 21, at 346.

for consumers, but they do not change the fact that the payment plan's contract terms—including the price—are all set by Apple.

Second, unlike standard contracts of adhesion, eviction settlements are negotiable, but they are just not negotiated in practice. Their negotiability is evidenced by the finding that T-12 attorneys often deviate from their standard terms when the tenant has legal counsel.[212] And although exceptionally rare, some T-12 settlements with unrepresented tenants do contain alterations or deviations from the T-12 firm's standardized form.[213] Thus, these settlements are not take-it-or-leave-it forms in the classical sense; T-12 firms can and do make modifications, but they just do so very rarely, particularly when the tenant is unrepresented. A contract of adhesion, by contrast, cannot be modified in any circumstance or by even the most seasoned lawyer, as legal scholars writing on contracts of adhesion have noted based on their own everyday experiences.[214] The consumer has no possibility of agreeing to anything other than the form contract; if they desire the service or product offered, they must click "I agree."

The potential for negotiation is a meaningful conceptual difference between T-12 settlements and contracts of adhesion. But this difference ultimately bears more on the reforms needed than on the appropriateness of the conceptual framing. While T-12 settlements may be negotiable in theory, the empirical reality is that nearly all T-12 settlements are not negotiated. The settlements reached are standardized forms drafted by the landlord's attorney without meaningful input or influence by the tenant. Each T-12 firm creates a form settlement, and its form becomes the settlement in nearly all the cases it handles. For the average unrepresented tenant—and for nearly all unrepresented tenants—their experience of settling their eviction case is adhesive. The T-12 attorney presents the standardized settlement to them with the implication that the terms are nonnegotiable, and the tenant accepts that implication and signs. The data show that tenants are unable to achieve negotiated outcomes in practice. The fact that an outlying settlement is negotiated does not change this widespread reality. It does, however, suggest that certain reforms that would

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[212] *See infra* Appendix C. This finding is not meant to imply a causal conclusion that the different outcomes are a result of the tenant's legal counsel. The study design does not allow for such a conclusion to be drawn. Rather, the discussion of these findings is intended to demonstrate that some small portion of settlements are negotiated, regardless of the explanation for the negotiation.

[213] *See supra* Part III.B–D.

[214] *E.g.*, Radin, *Reconsidering Boilerplate*, *supra* note 201, at 620.

be ineffective to address problems with contracts of adhesion may be effective in this context because they force T-12 attorneys into negotiation. These reforms are discussed further in Part V.

Finally, eviction settlements differ from contracts of adhesion in that they are routinely read by the adherent prior to signing. A common feature associated with contracts of adhesion is that the terms are often (but not always) written in fine print that is hidden from the adherent.[215] Numerous empirical studies have documented that regardless of the accessibility of the terms, very few people who sign contracts of adhesion read them.[216] Eviction settlements, by contrast, are typically read. In my hallway observations of settlement conversations, the T-12 attorneys routinely read the settlement to the tenant line by line or nearly line by line. The attorneys often even described the terms in plain language that was more likely to be understandable to the tenant than the written text. Further, as a matter of Boston Housing Court protocol, court personnel review the settlement with any tenant who is unrepresented and offers the tenant an opportunity to ask questions prior to signing. It is quite possible the tenant still does not fully comprehend what they are signing even after these allocutions, and tenants may be unaware that they have meritorious claims in the case, which allocution would not correct.[217] Nevertheless, the extent to which the tenant is supported

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[215] *See* Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law*, 66 STAN. L. REV. 545, 546–49, 555 (2014) (summarizing literature arguing that consumers' failure to read contracts poses problems of consent and disincentivizes drafting firms from improving terms, and noting a decades-long struggle within courts on how to deal with unread terms in form contracts); RADIN, BOILERPLATE, *supra* note 204, at 7–9 (criticizing the presence of unread, fine-print terms of service in a variety of consumer contracts); Schwartz, *supra* note 21, at 350 (observing that contracts of adhesion "are frequently drafted in 'legalese,' 'fine print,' or 'boilerplate'"). *But see* Hoffman, *supra* note 201, at 1404–07 (highlighting the phenomenon of "relational" contracts of adhesion that contain "precatory fine print," *designed* to be read and followed by the adherent).

[216] *See* Florencia Marotta-Wurgler, *Will Increased Disclosure Help? Evaluating the Recommendations of the ALI's "Principles of the Laws of Software Contracts"*, 78 U. CHI. L. REV. 165, 179–81 (2011); Yannis Bakos, Florencia Marotta-Wurgler & David R. Trossen, *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts*, 43 J. LEGAL STUD. 1, 7, 19–22 (2014); *see also* Robert A. Hillman & Jeffrey J. Rachlinski, *Standard-Form Contracting in the Electronic Age*, 77 N.Y.U. L. REV. 429, 435–36 (2002) (contending that the typical consumer, when presented with a standard-form contract, "engaging in a rough but reasonable cost-benefit analysis . . . , understands that the costs of reading, interpreting, and comparing standard terms outweigh any benefits of doing so and therefore chooses not to read the form carefully or even at all").

[217] My study was not designed to assess tenants' comprehension of the settlements they signed, and I thus cannot draw conclusions about the extent of their understanding based on my own data, observations, and interviews. However, it is possible that tenants

in reading, reviewing, and gathering information about the terms far exceeds that of a typical consumer signing a contract of adhesion.

This difference ultimately affects the extent to which certain normative and doctrinal problems with contracts of adhesion map onto the settlement context, but it does not undermine the conceptual framing itself. Contracts are considered adhesive because the terms are fixed by the drafting party, not because the terms are unread.[218] Indeed, it is widely understood that a consumer's reading of a contract of adhesion does not result in successful negotiation over any of the terms.[219] As Professor Margaret Radin and others have explained, even when they (the scholars) read boilerplate, their attempts to alter it fall flat because the contract is offered on a take-it-or-leave-it basis.[220] In other words, reading a contract of adhesion does not lead to negotiated outcomes precisely because it is a contract of adhesion.

C. Normative and Theoretical Implications of Settlements of Adhesion

Scholars have long recognized that contracts of adhesion deviate from the classical contract form contemplated by traditional contract theory and doctrine. In 1943, Professor Friedrich Kessler wrote:

> A standardized contract, once its contents have been formulated by a business firm, is used in every bargain dealing with the same product or service. The individuality of the

face language, literacy, and educational barriers to comprehension given the known demographic characteristics of tenants who face eviction generally. *See supra* note 100 and accompanying text.

[218] *See* Kessler, *supra* note 203, at 632; Rakoff, *Contracts of Adhesion*, *supra* note 21, at 1177; ROBERT COOTER & THOMAS ULEN, LAW AND ECONOMICS 288 (4th ed. 2004); *see also* Hoffman, *supra* note 201, at 1404–07 (describing the presence of "precatory fine print" in contracts of adhesion, which contain instructions to the consumer that, rather than obscuring, firms want the consumer to read).

[219] *See* RADIN, BOILERPLATE, *supra* note 204, at 40; Todd D. Rakoff, *The Law and Sociology of Boilerplate*, 104 MICH. L. REV. 1235, 1240–41 (2006); Radin, *Reconsidering Boilerplate*, *supra* note 201, at 635–36.

[220] *See, e.g.*, RADIN, BOILERPLATE, *supra* note 204, at 9; *see also* Rakoff, *Contracts of Adhesion*, *supra* note 21, at 1225 (explaining that customers, who are aware of the "institutional arrangements behind the take-it-or-leave-it stance" of adhesion contracts, conclude that it is not worth it to attempt to bargain). Radin also noted that there are many reasons why recipients who read boilerplate clauses are unlikely to take them seriously, including that they are unlikely to think the risks will be applicable to them. *See* RADIN, BOILERPLATE, *supra* note 204, at 27.

> parties which so frequently gave color to the old type contract has disappeared.[221]

The same can now be said of eviction settlements in the study jurisdiction. Whereas classical settlement theory envisions settlements as custom-tailored based on the case's merits and the parties' preferences,[222] adhesion destroys any notion that specific case facts or party desires are driving settlement outcomes. When a settlement is adhesive, the primary determinant of the settlement terms is the law firm that represents the landlord.[223] Negotiation—long understood as the tool by which a party's legal claims and preferences are translated into settlement outcomes—does not occur in any meaningful sense.

As described in Part I, two core debates undergird settlement scholarship: (1) the extent to which case merits drive settlement outcomes; and (2) whether settlements are preferable to adjudication because they better resolve private disputes (i.e., better satisfy party preferences) or, alternatively, whether adjudication is preferable because it involves the expression of public norms and values. The phenomenon of settlements of adhesion reshapes both debates and raises novel normative concerns about settlement.

1. The merits do not matter: a going rate set by one side and the corrosion of the rule of law.

One of the most long-running scholarly and judicial debates about settlement concerns the role of the substantive law in driving settlement outcomes. As described in Part I, foundational models of civil settlement propose that settlements are reached in the shadow of the law. In general, the models posit that parties negotiate settlement based on their likelihood of success at trial, and therefore predict that settlement will approximate the trial outcome.[224] Settlements thus promote the rule of law, according to this theory, because legal entitlements shape settlement terms.

While economists and theorists have long critiqued this foundational model,[225] empirical scholarship upended it by demonstrating

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[221] Kessler, *supra* note 203, at 631.

[222] *See supra* Part I.

[223] *See supra* Part III.C–D.

[224] *See supra* notes 33–37 and accompanying text.

[225] *See supra* note 38 and accompanying text. These scholars noted that litigation costs, informational asymmetries, and inequalities in bargaining power, among other factors, "can crowd out the merits of a claim by influencing settlement outcomes." Glover, *supra* note 3, at 1727–28.

the existence of going rates for settlements in certain legal markets.[226] As described previously, Janet Cooper Alexander first found that SEC class action settlements uniformly settle for one-quarter of the damages alleged, regardless of the case's legal merits.[227] Years later, Nora Freeman Engstrom uncovered a similar phenomenon in a much larger legal market: automobile accident personal injury claims.[228] In her watershed study, presented in a pair of highly influential law review articles,[229] she found that these claims settle for formulaic going rates that are based on the amount of medical bills incurred for the plaintiff's injuries, regardless of the case's merits.[230] These going rates were arrived at through repeat negotiations by insurance agents and plaintiffs' law firms (firms Engstrom dubbed settlement mills) over time.[231] In both Engstrom's and Alexander's studies, the authors concluded that the case merits "do not matter" to the settlement outcomes.[232]

Settlements of adhesion indeed represent another context in which the merits "do not matter." As the data show, despite significant variation in case merits, virtually all settlements handled by the same landlord law firm have the exact same terms.[233] Among cases handled by the same landlord law firm, whether the tenant owes six months' rent or one month's rent—which has significant bearing on the strength of the landlord's case—is irrelevant to the settlement's terms. At the same time, a case in which a tenant owes one month's rent will be settled with different terms depending on whether Law Firm *A* or *B* represents the landlord, even though the merits are the same.[234] The case merits are not driving settlement outcomes—landlord law firms are.

Like Engstrom and Alexander found in their respective contexts, settlements of adhesion are reached at a going rate unrelated to the case merits. Each landlord law firm has a going rate for the settlement it reaches, and that rate dictates the settlement's

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226 *See supra* note 40 and accompanying text.

227 *See supra* notes 42–44 and accompanying text.

228 *See supra* note 45 and accompanying text.

229 *See generally* Engstrom, *Run-of-the-Mill Justice*, *supra* note 9; Engstrom, *Sunlight and Settlement Mills*, *supra* note 6.

230 *See supra* note 47 and accompanying text.

231 *See supra* note 46 and accompanying text.

232 Alexander, *supra* note 6, at 501; *see also* Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1533 (noting that "going rates are relatively unaffected by the many merit- and non-merit-based factors that would serve to increase or decrease a claim's value in a court of law").

233 *See supra* Part III.C.

234 This presumes that the value of tenants' counterclaims is roughly the same across cases handled by different landlord law firms.

terms. Yet the novelty and core distinction lie in how that rate is determined. In both previously studied contexts, the going rates are produced through repeated negotiations over time by sophisticated legal actors—law firms on both sides for SEC class actions, and specialized law firms and insurance agents for personal injury claims.[235] The going rates thus bear some relationship to the substantive law because both sides repeatedly invoked legal rules to argue what the going rate should be.[236] As a result, although the going rates do not account for the merits in any given case, they "reflect well-established legal rules and entitlements and bear *some* relation to past trial verdicts."[237] The going rates, in other words, reflect the general thrust of the law because the law informed the negotiations that set the going rate.

The going rates of settlements of adhesion, by contrast, are set unilaterally. Observations and interviews provide no evidence that tenants have played any role in setting these rates at any point.[238] The going rates are not negotiated. Landlord law firms set them. The result is that the merits "do not matter" for settlements of adhesion in a way that substantially differs from previously studied contexts. Whereas tort claims and SEC class actions settle for going rates that reflect a balance between both sides' interpretations of the scope of recovery the law generally allows,[239] eviction complaints settle for going rates that are entirely one-sided. For example, virtually no tenants received a rent abatement even though prior research suggests that a substantial portion of tenants would be entitled to one.[240] And the terms law firms impose related to the scope and substance of civil probation (i.e., those analyzed in Part III.C) all erode tenant rights—they expand the scope of civil probation, limit the tenant's ability to pursue claims in other actions, and restrict the tenant's right to

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[235] *See* Alexander, *supra* note 6, at 521–22; Engstrom, *Sunlight and Settlement Mills*, *supra* note 6, at 828; Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1529–30.

[236] *See* Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1532–33.

[237] *Id.* at 1533 (emphasis in original). *But see* Alexander, *supra* note 6, at 547 n.194 ("There may be no particular reason why the 'going rate' is set at a particular level.").

[238] The fact that represented tenants obtain substantially different settlements underscores that the going rates for unrepresented tenants are not influenced by such negotiation. *See infra* Appendix C.

[239] *See* Engstrom, *Sunlight and Settlement Mills*, *supra* note 6, at 828 (suggesting that "going rates" in settlement mills were "often calculated based on the medical bills the claimant has accumulated"); Engstrom, *Run-of-the-Mill Justice*, *supra* note 9, at 1532–33 (explaining that "going rates" are worked out in negotiations between law firms and insurance adjusters and "bear *some* relation to past trial verdicts" (emphasis in original)).

[240] *See supra* Part III.D.1; *supra* note 137 and accompanying text.

stay the eviction.[241] Each law firm's going rate settlement is a different version of a pro-landlord outcome. As written about previously, the overarching effect of civil probation agreements is to create a shadow legal system that eliminates statutorily created substantive and procedural protections for tenants.[242]

The result is that settlements of adhesion corrode the substantive law. Not only are the settlement terms unreflective of legal entitlements, but the settlements reshape the law to landlords' distinct advantage. By denying nearly all tenants monetary damages for counterclaims, for example, they render the laws giving rise to these claims irrelevant. And by overriding specific tenant protections, such as the right to stay an eviction order, the settlements eviscerate the statutory law. This result differs significantly from that of tort settlements, which reflect a balancing of legal entitlements in a general sense, albeit without regard to a particular case's merits. Here, the case merits do not matter, and the law does not matter. To the contrary, settlements of adhesion allow landlords to dictate settlement outcomes in a way that corrodes the substantive law by reshaping legal entitlements in their own favor.

It may appear to some that the settlements of adhesion described here are nevertheless advantageous to tenants because they offer an opportunity to remain in possession, and that this is a better outcome than the tenants would have received had they taken their case to trial. Two initial points bear mentioning. First, as I have argued previously, many landlords, particularly subsidized landlords, do not want physical removals for small amounts of rental arrears.[243] These evictions would not be cost-effective given the high costs associated with physical removal of the tenant and unit turnover.[244] The settlements instead offer something better for landlords (and worse for tenants): an opportunity for enhanced tenant control.[245] Second, the conclusion that these settlements are better for tenants than trial outcomes is not necessarily correct across the board. In 7% of T-12 cases, the settlement stated that the tenant owed no arrears at the time of the settlement. Although under Massachusetts law the tenant's right to cure

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241 *See supra* Part III.C; *see also* Summers, *Civil Probation*, *supra* note 6, at 888, 897–98.

242 Summers, *Civil Probation*, *supra* note 6, at 888–900.

243 *Id.* at 905; Nicole Summers, *Eviction Court Displacement Rates*, 117 NW. U. L. REV. 287, 298 (2022).

244 *See* Summers, *Civil Probation*, *supra* note 6, at 904–05.

245 For a full discussion of this argument, see Summers, *Civil Probation*, *supra* note 6, at 905–06; Garboden & Rosen, *supra* note 197, at 646–55.

technically expires before their first court date, in practice, Boston Housing Court judges are extremely reluctant to order evictions in nonpayment cases with a zero balance.[246]

The validity of the proposition that settlements of adhesion are better for tenants than trial outcomes also depends on the selection of the comparison group. It is true that many—if not most—unrepresented tenants in the Boston Housing Court would likely lose their cases if they took them to trial against represented landlords. The Boston Housing Court judges follow traditional trial court rules. Parties are adversaries responsible for presenting evidence and making legal claims within the formal rules of evidence and civil procedure, and judges act as neutral "referees." As many scholars have documented, unrepresented tenants are unable to effectively represent themselves in this system regardless of the strength of their case.[247] Specifically, most unrepresented tenants lack the ability to identify valid legal claims, properly marshal the rules of evidence, and present compelling legal arguments.[248] As a result, they are likely to lose their case at trial even if their defenses are meritorious.

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[246] This statement is based on my seven years of practice in Massachusetts housing courts, with six of those years at the Boston Housing Court. Recent statutory changes also reflect strong legislative desires to keep tenants housed where the landlord has been repaid. *See* MASS. GEN. LAWS ch. 239, § 15 (2025) (requiring that courts grant continuances when the tenant demonstrates nonpayment of rent was due to financial hardship and a pending application for emergency rental assistance); *id.* ch. 186, § 12 (providing that if a tenant receives a notice to quit and subsequently repays the amount in arrears within ten days, they may not be removed).

[247] *See, e.g.*, Jessica K. Steinberg, *Informal, Inquisitorial, and Accurate: An Empirical Look at a Problem-Solving Housing Court*, 42 LAW & SOC. INQUIRY 1058, 1064 (2017) [hereinafter Steinberg, *Informal, Inquisitorial, and Accurate*] (noting that 98% of tenants are unrepresented in eviction court and often fail to generate their own evidence); Sabbeth, *Eviction Courts*, *supra* note 12, at 397–99 (noting that judges often punish tenants in eviction courts for technical failures or failures to follow formal rules, and discussing proposals to simplify the courts "given the number of pro se litigants unable to navigate them"); Andrew Scherer, *The Case Against Summary Eviction Proceedings: Process as Racism and Oppression*, 53 SETON HALL L. REV. 1, 56–57 (2022) (describing the historical and structural reasons that summary eviction courts disadvantage tenants); Bezdek, *supra* note 180, at 535 (explaining that although the majority of tenants summoned to housing court have meritorious counterclaims against their landlords, the fact that they are unrepresented means that they are effectively left unheard). *See generally* Engler, *And Justice for All*, *supra* note 75.

[248] *See* Scherer, *supra* note 247, at 49 (noting that "[i]n some jurisdictions, the tenant may not even be permitted to present defenses or counterclaims in the proceeding which determines possession," pointing out the limited procedural tools available in housing court, and explaining that "even when some of these procedures are authorized, they are unavailing without counsel"); Steinberg, *supra* note 247, at 1064 (noting that tenants often fail to generate their own evidence); Engler, *And Justice for All*, *supra* note 75, at 2005 (noting that "the unrepresented litigant does not appear as an informed actor at the

However, comparison of settlement of adhesion outcomes against the trial outcomes tenants would have received if they *had* legal representation would likely yield a different conclusion. As described, Massachusetts law affords strong legal protections to tenants facing eviction. Among these, tenants are entitled to possession where they establish damages owed by the landlord in an amount greater than the arrears.[249] Five separate statutes create damage claims for tenants.[250] While we do not know the precise prevalence of these claims in the study population, all available evidence suggests that they are widespread. If tenants were able to effectively deploy their claims in litigation, it is far less evident that trial outcomes would consistently favor landlords. In nearly a quarter of T-12 cases, less than two months' rent is owed at the time of filing. These cases are winnable for any tenant with a single interference with quiet enjoyment claim (entitling the tenant to damages equivalent to three months' rent) or security deposit violation (same), among other possible viable defenses.[251] Indeed, a randomized control trial of the impact of legal counsel on tenants facing eviction in the Boston Housing Court showed significant gains for tenants.[252] Thus, while we do not know precisely what the trial win rate would be for tenants with counsel, legal analysis, case data, and outside evidence on the prevalence of tenant defenses all suggest that landlords would not prevail across the board.

These settlements are pro-landlord outcomes based on how the statutory law actually allocates legal entitlements. Nothing about Massachusetts landlord-tenant law suggests that over 95% of T-12 settlements (the percent of settlements with no evidence of negotiation) would have resulted in landlord wins had the cases gone to trial with effectively represented parties on both sides. The settlements reallocate legal entitlements in ways that strongly favor landlords because landlords and their attorneys unilaterally set the terms. Adhesive settlements thus dramatically reshape scholarly understandings and debates surrounding the possible

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decision-making stages"); Sabbeth, *Eviction Courts*, *supra* note 12, at 396–97 (noting that judges "have been shown to punish tenants for failing to understand or apply formal rules" and "swiftly decid[e] cases based on the tenants' technical failures").

249 *See supra* notes 114–15 and accompanying text.

250 *See supra* notes 103–10 and accompanying text.

251 *See supra* Part II.A.2.

252 D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 927 (2013).

relationships between settlement outcomes and the substantive law. Whereas previous empirical scholarship has critiqued the foundational shadow of the law theory of settlement by uncovering industry going rates negotiated by repeat players over time, the empirical findings presented here reveal going rates set by one side alone. Settlements of adhesion are not only divorced from the case merits, but they are unreflective of the dictates of the substantive law in any meaningful sense. Worse, they facilitate legal system capture by the more powerful party.

2. One-sided satisfaction of interests and perversion of the public realm.

The second core debate that runs throughout the settlement literature is whether settlements are preferable to adjudication because they better satisfy party interests, or whether the prioritization of private interests through settlement comes at the expense of the legal system's expression of public norms and values.[253] I argue in this Section that settlements of adhesion complicate both sides of this debate by presenting a context in which settlements satisfy only one side's interests and allow that party to usurp the public realm to further their own ends.

As described in Part I, proponents of what I have described as the ADR view believe that negotiation allows parties to resolve disputes according to their needs and preferences.[254] Therefore, these proponents argue, settlements lead to greater party satisfaction than adjudication. Settlements of adhesion, however, involve no such negotiation. Tenants have no opportunity to assert their needs and preferences outside of the repayment schedule; these settlements are drafted and their terms set entirely by the landlord and the law firm representing them. To argue otherwise would require making the claim that tenant preferences align perfectly with the law firm that represents their landlord. If all tenants with landlords represented by Law Firms *A* and *H* preferred that their probationary conditions do not include their full lease terms, for example, but no tenants with landlords represented by the other ten law firms cared, then the settlements would satisfy tenant preferences. Again, it would be almost impossibly coincidental for this to occur, and the data provide no support for it.

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[253] *See supra* Part I.

[254] *See supra* notes 49–52 and accompanying text.

It is also possible that tenants' only or strongest preferences are around the length of the repayment schedule. This certainly may be the case for some tenants. However, it is highly unlikely that it is the case for all tenants. As previously stated, 7% of tenants owed no arrears at the time of settlement, and therefore the repayment schedule is irrelevant to them. It is also not logically intuitive that tenants would have stronger preferences around the length of the repayment schedule rather than the total amount of the money judgment. If their concern is about their ability to meet the financial terms of the settlement, reducing the amount of money owed is just as good a way (arguably better) to achieve this as lengthening the repayment period. Moreover, differences in settlement outcomes, particularly in the terms related to the scope and conditions of civil probation, for represented tenants as compared to unrepresented tenants suggest that tenants prefer other terms when given the possibility to influence the settlement.[255]

In the context of contracts of adhesion, Margaret Radin has argued that the adherent's lack of choice over the terms negates the notion that the contract reflects the contracting parties' preferences.[256] "[T]o be true to the premise of individual welfare-maximization or preference-satisfaction," she argued, "there must be an assumed element of choice by individuals in accordance with their own welfare or preferences."[257] In other words, to satisfy their preferences in contracts, parties must be able to exert some influence over the terms. She argued that the absence of that influence in adhesive contracts destroys the notion that the agreement reflects the traded preferences of the parties.[258] Likewise in the context of settlements of adhesion, tenants have no influence over the vast majority of the terms. Landlords and their attorneys achieve exactly the outcomes they prefer through their exclusive dictation of terms. Aside from the length of repayment terms, settlements of adhesion do not reflect the tenant's stated preferences. Settlements of adhesion promote the one-sided, rather than mutual, satisfaction of preferences.

To be sure, tenants have the option to take their case to trial rather than settle, and as described, some may argue that these settlements offer a better outcome to tenants than trial likely would. Proponents of this viewpoint may believe that adhesive

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[255] *See infra* Appendix C.

[256] RADIN, BOILERPLATE, *supra* note 204, at 9, 72.

[257] *Id.* at 72.

[258] *Id.* at 40, 72.

settlements still satisfy tenants' preferences in a general sense by giving them the opportunity to remain in their home and avoiding an uncertain trial outcome. Even assuming these points arguendo, such a notion of preference satisfaction departs significantly from that promoted by the ADR view.[259] The ideal promoted by ADR is not that the more resourced and sophisticated party drafts a settlement that is minimally better than what its unrepresented adversary would achieve at trial, and therefore, settlement is desirable. Instead, the ADR view is that both parties can mutually advance their specific, tailored interests through the settlement process.[260] Adhesive settlements do not align with this ideal.

Those who have challenged the ADR view have generally argued that the objective of the legal system is not to provide a forum for the advancement of private interests but instead to give force to public values.[261] David Luban and others argued that settlements' private nature undermines the public values the legal system is supposed to embody, in part by keeping information and facts from the public.[262] Owen Fiss similarly drew a sharp contrast between settlement and adjudication, the latter of which, he contends, "uses public resources, and employs not strangers chosen by the parties but public officials chosen by a process in which the public participates."[263] Public officials' job, Fiss wrote, is "not to maximize the ends of private parties, nor simply to secure the peace, but to explicate and give force to the values embodied in authoritative texts."[264] Fiss further argued that settlements negate the judiciary's role in equalizing imbalances of power and

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[259] As described in detail in *Civil Probation*, these settlements are highly disadvantageous to tenants. Summers, *Civil Probation*, *supra* note 6, at 888. They eliminate tenants' substantive and procedural rights and allow for swifter and more certain evictions than would otherwise be allowed under Massachusetts law. *Id.* at 888–907.

[260] *See* Menkel-Meadow, *For and Against Settlement*, *supra* note 29, at 504–05 (arguing that, among other things, settlement "can be particularized to the needs of the parties, it can avoid win/lose, binary results, provide richer remedies than the commodification or monetarization of all claims, and achieve legitimacy through consent"); Lowenthal, *supra* note 74, at 73–74 (describing how, in the absence of direct conflict between parties, "neither participant is motivated primarily to enhance its interests at the expense of the other," thereby allowing them to "collaborate to find a solution that maximizes the overall satisfaction of the combined participants"). *See generally* FISHER & URY, *supra* note 49.

[261] *See supra* notes 56–59 and accompanying text.

[262] *See* Luban, *Settlements and the Public Realm*, *supra* note 7, at 2648–49; Coleman & Silver, *supra* note 58, at 114–19. Several scholars have argued that settlement outcomes are not as "secret" as some scholars make them out to be because they are known within legal communities and therefore act as "precedent" shaping future settlements. *E.g.*, Glover, *supra* note 3, at 1745–48; Depoorter, *supra* note 38, at 965–73.

[263] Fiss, *Against Settlement*, *supra* note 7, at 1085.

[264] *Id.*

therefore allows such imbalances to dictate outcomes.[265] According to Luban, by eschewing this public process, settlements erode the public realm.[266]

Far from eroding the public realm, settlements of adhesion pervert it. Not only are the settlements fully public, as they are recorded in the official court case file and available for public view, but they are reached within the public apparatus of the court. Landlords and their attorneys employ public resources at every step of the process to consummate settlements of adhesion. Public courthouses supply the physical space for landlords' attorneys to execute large volumes of settlements within a single court session. Court administrative staff review (or "allocute") the settlements with tenants, providing a veneer of procedural justice.[267] Perhaps most importantly, however, settlements of adhesion become orders of the court. As described previously, as a matter of routine court practice, all settlements are signed "SO ORDERED" by a judge.[268] All evidence suggests that judges sign settlements without modifying them, essentially issuing a rubber stamp. While the rubber-stamping and conversion of settlements into court orders as a matter of housing court practice raises concerns on their own, the effect for settlements of adhesion is that landlords and their attorneys ascend to the bench. They assume full drafting power over court orders at a widespread, systemic level.

While scholars have extensively debated the proper role of the judge in facilitating settlement conferences and the proper role of courts in operating ADR programs, the judicial role described here has been entirely overlooked.[269] Through settlements of adhesion, the courts become repurposed as an instrument through which landlords and their attorneys establish their preferred legal regime. Landlords and their attorneys set the settlement

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[265] *Id.* at 1076–78; Fiss, *The Forms of Justice*, *supra* note 56, at 24–25.

[266] Luban, *Settlements and the Public Realm*, *supra* note 7, at 2641, 2647–59.

[267] This judicial role differs significantly from those discussed in other scholarly conversations about settlement. Marc Galanter and attorney Mia Cahill, for example, have discussed judges as having a "ghostly but influential presence" in settlement negotiations through their rulings in other cases and through their expected decision in the case at hand. Galanter & Cahill, *supra* note 2, at 1340. Judith Resnik has described how federal judges bring the parties into chambers to encourage them to settle, sometimes even proposing specific settlement figures. Resnik, *Managerial Judges*, *supra* note 3, at 390, 401–02, 425.

[268] *See supra* Part II.A.1.

[269] *See generally, e.g.*, Resnik, *Managerial Judges*, *supra* note 3; Deason, *supra* note 3; Howard M. Erichson, *The Role of the Judge in Non-Class Settlements*, 90 WASH. U. L. REV. 1015 (2013); Galanter & Cahill, *supra* note 2; Menkel-Meadow, *For and Against Settlement*, *supra* note 29.

terms and, by way of public processes and with the use of public resources, the terms are endowed with full legal authority. Settlements of adhesion are public settlements devoid of public values. They degrade and pervert the public realm.

These outcomes upend the traditional debate about the private nature of settlement. They demonstrate that settlements can simultaneously fail to embody both sets of values held up as opposing poles in the existing debate. On the one hand, adhesive settlements fail to promote the mutual satisfaction of private interests. Drafted by one party and adhered to without negotiation, the settlements overwhelmingly serve one party's interests. The idealized form of problem-solving negotiation envisioned by Carrie Menkel-Meadow, Roger Fisher, William Ury, and others does not occur. On the other side of the debate, adhesive settlements undermine the view that the public realm is an alternative adjudicatory forum that stands ready to promote the expression of public norms and values. Here, the public realm plays a significant role in entrenching, rather than rectifying, private inequalities. By rubber-stamping settlements of adhesion and entering them as court orders, the weight of public authority is deployed to give legal force to an alternative legal regime that serves one-sided interests and directly undermines democratically enacted legislation.

V. REFORMS

The previous Section argued that settlements of adhesion generate normatively undesirable outcomes in the civil legal system not previously contemplated by settlement theorists. I turn in this Part to the question of what we ought to do about them. I begin by underscoring why these findings are a call for reform to the status quo. I then propose two specific reforms: (1) the creation of a judicial presumption against signing settlements of adhesion and entering them as court orders; and (2) the adoption of court forms for settlements that must be used in eviction cases with unrepresented tenants unless good cause is shown. I also discuss the potential impact of a tenant right to counsel or right to representation on settlements of adhesion and the need for further study of existing right to counsel laws.

To begin, the findings here strongly highlight the need for reform to the status quo in housing court. The high rate of settlement is often discussed as a sign that all is well and good in the Boston Housing Court. For example, former Chief Justice of the Boston Housing Court Timothy Sullivan stated in a public speech

before an association of landlords that, as summarized by the association, "84% of cases in mediation come to an agreement, which makes everyone happy."[270] High settlement rates are also used to push back against proposed reforms. Current Chief Justice Diana Horan testified against the extension of a COVID-19-era emergency statute that requires the stay of eviction cases while tenants' rental assistance applications are pending on the grounds that the statute discouraged and lowered the rates of settlement.[271] Politically, high rates of settlement are portrayed as good, which has facilitated the perception that courts and laws do not need to change. This perception appears to be grounded in the assumption that settlements are reached through processes of fair negotiation. For example, in a recent hearing on a tenant's motion seeking relief from a settlement, a current Boston Housing Court judge explained on the record that she was denying the motion because she assumed the tenant had chosen words in the settlement that were to their own benefit. The data presented here contradict this statement.

The study findings show that all is not well and good when eviction cases settle at a high rate. Reforms should be made to restore the role of law and ensure the judicial process facilitates protection of both parties' statutory rights. To directly address the prevalence of settlements of adhesion, judges should adopt a presumption against their approval.[272] As described, eviction settlements are typically consent judgments signed by a judge and entered as an order of the court, with the court retaining jurisdiction until the settlement's terms are satisfied.[273] Thus, unlike traditional

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[270] *Advice and News from the Chief Justice of the Housing Court*, MASSLANDLORDS, INC. (last updated Oct. 10, 2021), https://perma.cc/ZMN5-R2BQ.

[271] *See* State House News Serv., *New Secretary Also Mum on Housing Production Plans*, SPECTRUM NEWS 1 (June 1, 2023), https://perma.cc/MT9A-LV3E. According to a summary of her testimony, Chief Justice Horan argued that "[w]ithout the courts being able to enter judgment, landlords have been less willing to enter mediation—where most housing disputes are usually resolved." *Id.* As support for this statement, she cited data that in 2019, "99 percent of cases were mediated and 90 percent of them were settled," whereas in 2022, "79 percent of cases were mediated, and only 37 percent of those settled." *Id.* According to reporters, she "linked this decline in settlements to the new law." *Id.* The extension Chief Justice Horan testified against ultimately passed and the law is now permanent. *See* MASS. GEN. LAWS ch. 239, § 15 (2025).

[272] Additional reforms are needed even where right to counsel is adopted because some tenants will not be eligible for appointed counsel or will reject offers of counsel. *See* Vicki Been, Deborah Rand, Nicole Summers & Jessica Yager, *Implementing New York City's Universal Access to Counsel Program: Lessons for Other Jurisdictions*, N.Y.U. FURMAN CTR. 12–13 (Dec. 2018), https://perma.cc/59MS-AELN.

[273] *See supra* Part II.A.1.

out-of-court settlements when the court plays no role in the execution of the settlement other than to accept a joint dismissal (if a case has even been filed), in the context of settlements of adhesion, judges review and either approve or deny the settlement. Current legal standards require that the review determine whether the settlement is "fair, adequate, [and] reasonable" and that there has been "valid consent" by the parties.[274] A presumption should be made that settlements of adhesion do not meet this standard.

Legal standards aside, as a matter of practice, housing court judges routinely exercise discretion in approving settlements. A few years ago, for example, the Boston Housing Court judges decided to no longer approve civil probation agreements lasting longer than two years, citing concerns about the volume of the court's docket. One T-12 attorney reported in an interview that his firm's standardized form settlement has changed over time in part due to changes in the court's positions on the terms they are willing to accept. It is widely known among the members of the landlord-tenant bar that the court's approval of settlements is not automatic. Indeed, judges already read and review settlements before signing them. This practice would be meaningless if not accompanied by the authority to decline approval. It is both reasonable and within judges' legal authority to adopt a presumption against approving (and entering as court orders) settlements of adhesion.

Unless good cause is shown, cases with unrepresented parties should be encouraged, or even required, to use court-created settlement forms. These forms should be developed through a process that involves representatives from both the landlord and tenant bars, as well as housing court judges and staff, to ensure that the substance is fair and balanced on both sides.

Court forms would preserve the efficiency and time-saving benefits that come from settlements of adhesion while avoiding the attendant problems. With court forms, parties would not be required to negotiate each settlement from scratch; such an expectation

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[274] *See* Long v. State, 807 A.2d 1, 10 (Md. 2002) (quoting United States v. City of Miami, 664 F.2d 435, 441 n.13 (5th Cir. 1981)); SEC v. Randolph, 736 F.2d 525, 529 (9th Cir. 1984); Franks v. Kroger Co., 649 F.2d 1216, 1224 (6th Cir. 1981); Citizens for a Better Env't v. Gorsuch, 718 F.2d 1117, 1126 (D.C. Cir. 1983) (quoting Metro. Hous. Dev. Corp. v. Village of Arlington Heights, 616 F.2d 1006, 1014 (7th Cir. 1980)); *see also* Patterson v. Newspaper & Mail Deliverers' Union, 514 F.2d 767, 771 (2d Cir. 1975) (indicating that, in approving a settlement agreement, a district judge should "satisfy himself that the settlement was equitable to all persons concerned and in the public interest"); Note, *The Consent Judgment as an Instrument of Compromise and Settlement*, 72 HARV. L. REV. 1314, 1316 (1959).

likely would be unrealistic when one party is unrepresented. Instead, the forms would prompt the parties to negotiate over specific terms that are meaningful, such as the monetary judgment amount, the scope of any probation, and whether the tenant's claims will be waived. The forms should avoid excessive blank spaces that would encourage substantial tailoring by attorneys. To ensure that unrepresented parties' claims are known, a worksheet should be attached to the form for the parties to complete that would elicit facts and explain how those facts translate into legal claims. Ideally, court personnel would be available to assist unrepresented parties in completing and understanding the worksheet.

Parties may have good cause to create their own settlements that do not follow the court form.[275] Good cause may include unusual facts or the mutual desire to reach a nontraditional settlement (e.g., an agreement to enter a long-term lease with incremental rent increases) that is outside the scope of the court form.

This vision for the use of court forms should be feasible to implement. Many courts, including the Boston Housing Court, already have settlement forms available for the parties to use if they wish.[276] The mere existence of these forms is insufficient, however, to cure problems with settlements of adhesion. The forms typically are not required, contain many blank spaces that leave them vulnerable to attorney capture, and are unaccompanied by claims worksheets.[277] Court forms should be reenvisioned based on the principles outlined above to specifically address the phenomenon of settlements of adhesion. Court personnel whose role is to assist pro se litigants, such as mediators, housing specialists, and court attorneys, are already a staple of many housing courts.[278] Shifting their work to perform this specific role would not require a significant departure from current operating procedure.

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[275] This proposal is only intended to apply when at least one party is unrepresented. When both parties have legal representation, they should be free to craft their own settlements.

[276] *See, e.g.*, *Agreed Dismissal Order*, ILL. CTS., https://perma.cc/7GU3-H5PM (Illinois); *Settlement Agreement (Tenant Remains)*, N.J. CTS., https://perma.cc/WVL5-59Q8 (New Jersey); *Stipulation for Entry of Judgment (UD-115)*, JUD. BRANCH OF CAL. (Jan. 1, 2003), https://perma.cc/W9VJ-7DP5 (California); *Summary Process Agreement for Judgment*, MASS.GOV, https://perma.cc/4CUE-THMC (Massachusetts).

[277] *See supra* note 276.

[278] *See* EVICTION DIVERSION INITIATIVE, NAT'L CTR. FOR STATE CTS., REIMAGINING HOUSING COURT: A FRAMEWORK FOR COURT-BASED EVICTION DIVERSION 7 (2024) (describing participation in eviction diversion programs, which include mediation and providing assistance to connect tenants to resources, by twenty-four jurisdictions); *see also, e.g.*, *Landlord & Tenant Mediation*, D.C. CTS., https://perma.cc/NWR4-79NX (providing information

The conclusions of this study reveal what happens in the absence of tenant access to legal representation: Tenants enter into settlements that have been drafted entirely by landlords and their attorneys without negotiation, save for the specifics of an installment plan. This study, of course, was not designed to assess the impact of counsel on settlement outcomes.[279] But other studies have done so, and they have nearly consistently found that counsel improves outcomes for tenants.[280] Professor James Greiner and his coauthors, for example, found that an offer of counsel to tenants facing eviction for nonpayment of rent caused tenants to save approximately seven and one-half months' rent in rent abatements.[281] Professors Mike Cassidy and Janet Currie, in their study of New York City's early implementation of right to counsel, found that right to counsel was associated with large reductions in the probability of a possessory judgment (between 28.5% and 51.5%) and large reductions in the log monetary judgment amount (between 44.7% and 81.5%).[282] These studies have not specifically examined the impact of counsel on settlements, although they included settlement data in their overall results. However, my prior study of warranty of habitability claims in New York City did so by examining the impact of counsel on rent abatements in settlements. I found that tenants with meritorious claims were at least nine times more likely to obtain a rent abatement in their settlement when they had counsel.[283]

While the documented effects of counsel suggest that attorneys influence settlement terms, more research is needed to determine the precise effects of counsel on overall settlement negotiation and outcomes, and how these effects play out in a full-scale

about landlord-tenant mediation in D.C. courts); *Landlord/Tenant Mediation*, DIST. CT. OF MD., https://perma.cc/4F6X-FF5Q (providing information about landlord-tenant mediation in Maryland courts).

279 In Appendix C, I present the data showing differences in outcomes for represented versus unrepresented tenants. However, the study design does not allow for causal inferences to be drawn.

280 *See, e.g.* Greiner et al., *supra* note 252, at 925–36 (finding, among other results, that tenants who received an offer of counsel were significantly more likely to retain possession of their housing); Carroll Seron, Martin Frankel & Gregg Van Ryzin, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC'Y REV. 419, 426–29 (2001) (finding strong positive effects of counsel on a range of tenant outcomes).

281 Greiner et al., *supra* note 252, at 930.

282 Mike Cassidy & Janet Currie, *The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City's Universal Access Program*, 222 J. PUB. ECON. 1, 19 (2023).

283 Summers, *The Limits of Good Law*, *supra* note 137, at 205–10.

right to counsel program. Likewise, more research is needed to determine the effect of nonlegal advocates or "justice workers" on settlement negotiation.[284]

CONCLUSION

Through one of the largest empirical studies of negotiation in civil settlements to date, one of the only empirical studies of civil settlements that involve unrepresented parties, and the only study of eviction settlement negotiations, this Article surfaces the phenomenon that I have termed settlements of adhesion: standardized, form settlements written almost entirely by one party's representatives and signed onto without negotiation by the opposing party. Theoretical and empirical scholarship on civil settlement has focused almost entirely on settlements reached in federal courts, involving tort claims, and arising out of multidistrict litigation, and thus has overlooked this significant empirical reality.

Further research is needed to understand the prevalence of settlements of adhesion across jurisdictions. Research is also needed to uncover the extent of settlement negotiation in other areas of law in which parties are often unrepresented, such as debt collection, small claims, and family law matters. Whether settlements of adhesion are a phenomenon particular to eviction or are prevalent across other legal fields, particularly those that have long been a focal point of access to justice scholarship, is yet to be seen.

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[284] For robust discussions of the importance of nonlegal advocates (sometimes called "lay advocates" or "justice workers") and their potential to reduce the access to justice gap, see generally, for example, Tanina Rostain & James Teufel, *Measures of Justice: Researching and Evaluating Lay Legal Assistance Programs*, 51 FORDHAM URB. L.J. 1481 (2024), and Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 STAN. J.C.R. & C.L. 283 (2020). *See also* Rebecca L. Sandefur & Emily Denne, *Access to Justice and Legal Services Regulatory Reform*, 18 ANN. REV. L. & SOC. SCI. 27, 33–36 (2022) (conducting a survey of empirical evidence on the proliferation and impacts of efforts to expand the authorization to practice law beyond licensed lawyers).

APPENDIX A: MODEL SETTLEMENT AGREEMENT

[redacted]

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

HOUSING COURT DEPARTMENT
EASTERN DIVISION
SUMMARY PROCESS DEPARTMENT
Docket #: [redacted]

Marylou Muirhead
First Justice
Robert L. Lewis
Clerk Magistrate

[redacted] Landlord/Plaintiff

v.

[redacted] Defendant(s)

SUMMARY PROCESS AGREEMENT FOR JUDGMENT

THE UNDERSIGNED PARTIES HEREBY AGREE TO THE FOLLOWING FACTS AND TO ENTRY OF THE FOLLOWING JUDGMENT AS A RESOLUTION OF THEIR CASE AS FOLLOWS:

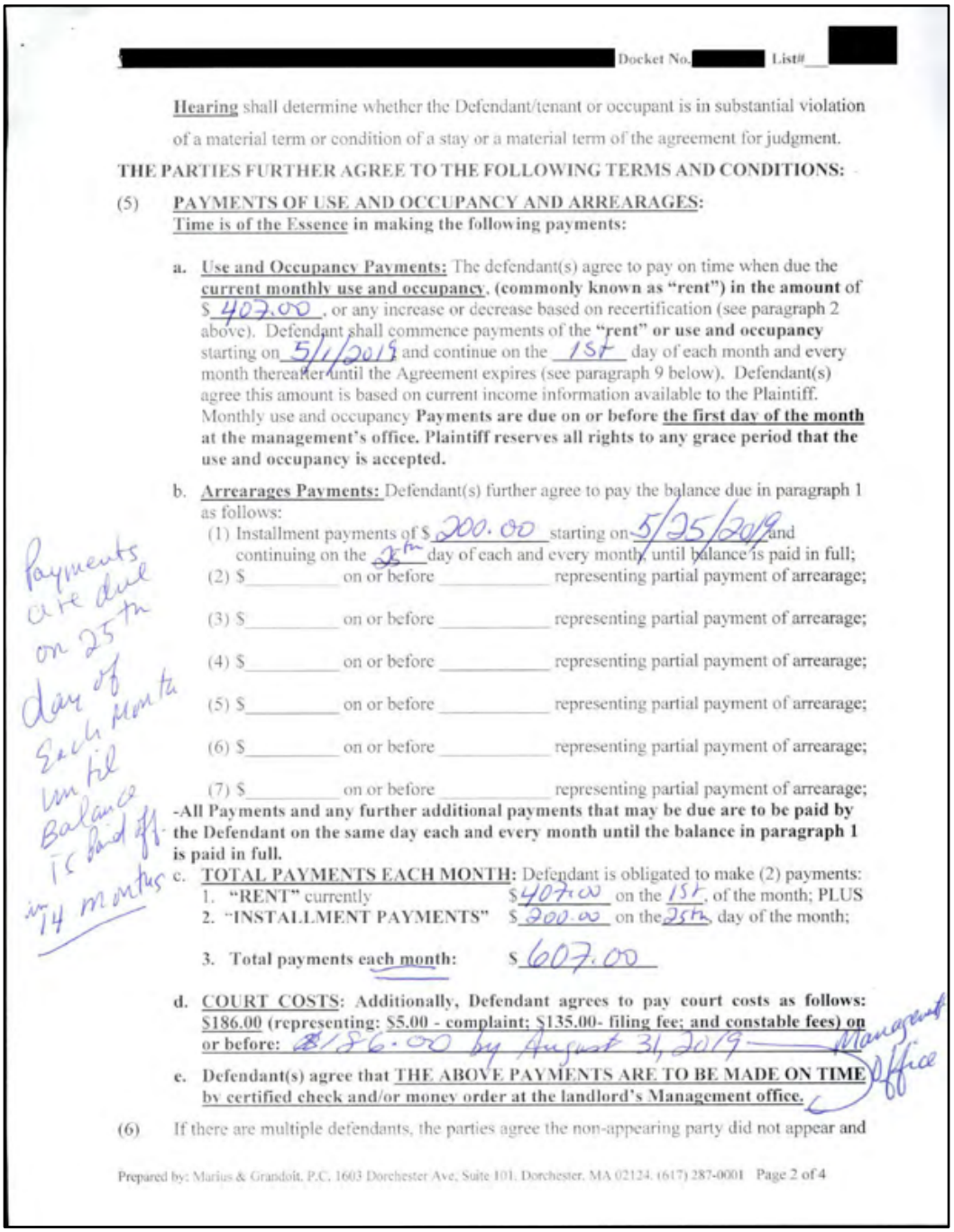
(1) Judgment for the Plaintiff/Landlord for possession of: [redacted]
Boston, Massachusetts, and for damages is to enter in the amount of $2,908.00*
Initials plus interest and costs as determined by the Clerk of the Court shall enter on 4/25/2019.
*For payment schedule see Paragraph 5 below.

(2)(a) Defendant(s) agree the balance in Paragraph 1 is based on the current income information available to the Plaintiff; and if there are any recertification due with respect to Defendant's change in income that may affect Defendant(s)' balance in Paragraph1; then Defendant(s) agree to adjustments in the balance in paragraph 1 upon verification of Defendant's income.

(2)(b) Defendant(s) further agree to comply with required interim and/or annual recertification as income changes may affect the defendant's monthly use and occupancy obligations under the agreement. Defendant(s) agrees to complete
Initials **and sign any necessary documents for their housing subsidy.**

(3) **Execution shall issue if requested pursuant to Paragraph 4 hereof.**

(4) If the Tenant(s)/Defendant(s) Fails to comply with any covenants or make payments in accordance with the agreement set forth below the Landlord/Plaintiff may request an Execution for possession, damages owed and costs and interest by filing a **Motion** which shall indicate what covenants or payments have not been complied with the balance owed. A copy of the **Motion** must be provided to the Tenant(s) /Defendant(s). The **Court** after a



[redacted] Docket No. [redacted] List# [redacted]

Hearing shall determine whether the Defendant/tenant or occupant is in substantial violation of a material term or condition of a stay or a material term of the agreement for judgment.

THE PARTIES FURTHER AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

(5) **PAYMENTS OF USE AND OCCUPANCY AND ARREARAGES:**
Time is of the Essence in making the following payments:

a. **Use and Occupancy Payments:** The defendant(s) agree to pay on time when due the **current monthly use and occupancy, (commonly known as "rent") in the amount** of $ 407.00, or any increase or decrease based on recertification (see paragraph 2 above). Defendant shall commence payments of the **"rent" or use and occupancy** starting on 5/1/2019 and continue on the 1st day of each month and every month thereafter until the Agreement expires (see paragraph 9 below). Defendant(s) agree this amount is based on current income information available to the Plaintiff. Monthly use and occupancy **Payments are due on or before the first day of the month at the management's office. Plaintiff reserves all rights to any grace period that the use and occupancy is accepted.**

b. **Arrearages Payments:** Defendant(s) further agree to pay the balance due in paragraph 1 as follows:
(1) Installment payments of $ 200.00 starting on 5/25/2019 and continuing on the 25th day of each and every month, until balance is paid in full;
(2) $_____ on or before _____ representing partial payment of arrearage;
(3) $_____ on or before _____ representing partial payment of arrearage;
(4) $_____ on or before _____ representing partial payment of arrearage;
(5) $_____ on or before _____ representing partial payment of arrearage;
(6) $_____ on or before _____ representing partial payment of arrearage;
(7) $_____ on or before _____ representing partial payment of arrearage;

Payments are due on 25th day of Each month until Balance is paid off in 14 months

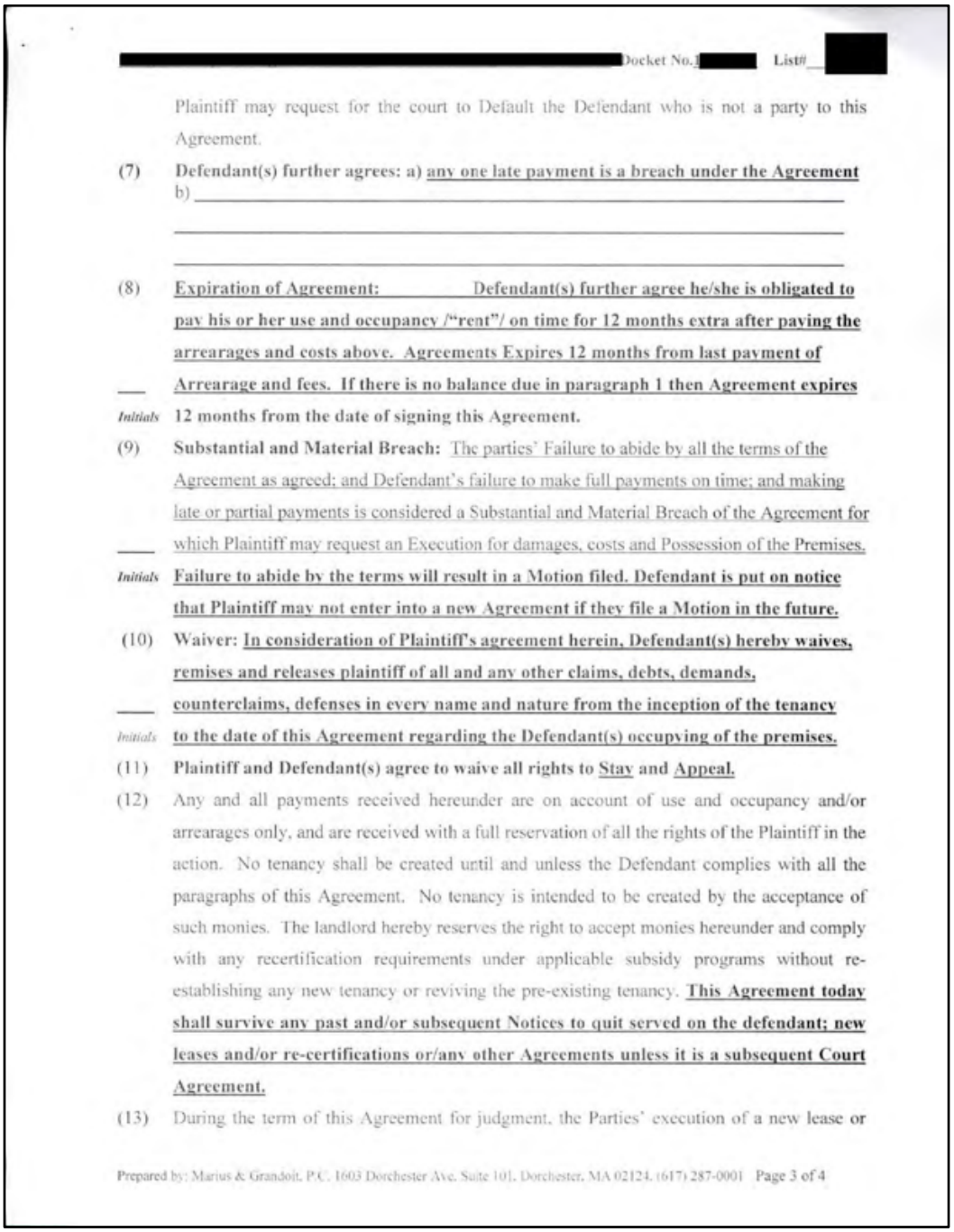
-All Payments and any further additional payments that may be due are to be paid by the Defendant on the same day each and every month until the balance in paragraph 1 is paid in full.

c. **TOTAL PAYMENTS EACH MONTH:** Defendant is obligated to make (2) payments:
1. "RENT" currently $407.00 on the 1st, of the month; PLUS
2. "INSTALLMENT PAYMENTS" $200.00 on the 25th, day of the month;
3. **Total payments each month:** $607.00

d. **COURT COSTS: Additionally, Defendant agrees to pay court costs as follows: $186.00 (representing: $5.00 - complaint; $135.00- filing fee; and constable fees) on or before:** $186.00 by August 31, 2019 Management Office

e. **Defendant(s) agree that THE ABOVE PAYMENTS ARE TO BE MADE ON TIME by certified check and/or money order at the landlord's Management office.**

(6) If there are multiple defendants, the parties agree the non-appearing party did not appear and



[redacted] Docket No. [redacted] List# [redacted]

Plaintiff may request for the court to Default the Defendant who is not a party to this Agreement.

(7) **Defendant(s) further agrees: a) any one late payment is a breach under the Agreement**
b) _____

_____

_____

(8) **Expiration of Agreement: Defendant(s) further agree he/she is obligated to pay his or her use and occupancy /"rent"/ on time for 12 months extra after paying the arrearages and costs above. Agreements Expires 12 months from last payment of**

___ **Arrearage and fees. If there is no balance due in paragraph 1 then Agreement expires**

Initials **12 months from the date of signing this Agreement.**

(9) **Substantial and Material Breach:** The parties' Failure to abide by all the terms of the Agreement as agreed; and Defendant's failure to make full payments on time; and making late or partial payments is considered a Substantial and Material Breach of the Agreement for

____ which Plaintiff may request an Execution for damages, costs and Possession of the Premises.

Initials **Failure to abide by the terms will result in a Motion filed. Defendant is put on notice that Plaintiff may not enter into a new Agreement if they file a Motion in the future.**

(10) **Waiver: In consideration of Plaintiff's agreement herein, Defendant(s) hereby waives, remises and releases plaintiff of all and any other claims, debts, demands,**

____ **counterclaims, defenses in every name and nature from the inception of the tenancy**

Initials **to the date of this Agreement regarding the Defendant(s) occupying of the premises.**

(11) **Plaintiff and Defendant(s) agree to waive all rights to Stay and Appeal.**

(12) Any and all payments received hereunder are on account of use and occupancy and/or arrearages only, and are received with a full reservation of all the rights of the Plaintiff in the action. No tenancy shall be created until and unless the Defendant complies with all the paragraphs of this Agreement. No tenancy is intended to be created by the acceptance of such monies. The landlord hereby reserves the right to accept monies hereunder and comply with any recertification requirements under applicable subsidy programs without re-establishing any new tenancy or reviving the pre-existing tenancy. **This Agreement today shall survive any past and/or subsequent Notices to quit served on the defendant; new leases and/or re-certifications or/any other Agreements unless it is a subsequent Court Agreement.**

(13) During the term of this Agreement for judgment, the Parties' execution of a new lease or

Prepared by: Marius & Grandoit, P.C. 1603 Dorchester Ave. Suite 101, Dorchester, MA 02124. (617) 287-0001 Page 3 of 4

[redacted] Docket No. [redacted] List# [redacted]

recertification documents (or lease amendments, including any addition to the household), or the defendant's transfer to a new address under Plaintiff's control, shall not create a new tenancy nor shall it waive plaintiff's rights under this Agreement. Should the Defendant's address change or ownership change during the course of this Agreement, the parties irrevocably agree to file an Assented Motion with the Court reflecting same and change the address covered by this Agreement to the transferred address or new ownership. The parties agree this Agreement shall be enforceable at the new/transferred address. During the term of this Agreement for Judgment, except as provided for herein, the terms of the parties lease shall continue to govern the tenancy including any new house rules and/or regulations.

____ *Initials*

(14) A NEW TENANCY SHALL BE CREATED AFTER DEFENDANT(s) HAS COMPLIED WITH THE AGREEMENT AND MADE ALL PAYMENTS IN ACCORDANCE WITH THE ABOVE PARAGRAPHS; AND THE DEFENDANT IS CURRENT WITH THE PAYMENTS FOR A PERIOD OF 12 MONTHS AS OF THE DATE OF SIGNING THE AGREEMENT OR IF THERE ARE ANY ARREARAGES, 12 MONTHS FROM THE DATE OF LAST PAYMENT OF ARREARAGE AND COSTS. FOLLOWING THE TIME PERIOD, IF AN EXECUTION HAS ISSUED, PLAINTIFF SHALL RETURN IT TO THE COURT AND DISMISS THE CASE.

(15) Every paragraph shall be considered to have equal importance and the bold section shall not have priority over the other.

(16) The parties hereby acknowledge that they have **READ** this Agreement for Judgment, that it contains all the terms of their agreement and that they have executed it as their free act and deed. When applicable, in signing this Agreement the Defendant acknowledges that he/she has had it Interpreted and understands the terms and conditions therein.

THE ABOVE STIPULATIONS IS AN AGREEMENT FOR JUDGMENT WHICH PLACES THE PARTIES UNDER THE RESTRAINT OF A DIRECT ORDER OF THE COURT, THAT THEY DO OR REFRAIN FROM DOING THE PARTICULAR ACTS STATED HEREIN. BOTH PARTIES ARE REQUIRED TO FOLLOW IT.

BOTH PARTIES UNDERSTAND THAT THEY HAVE THE RIGHT TO A HEARING ON THEIR CASE BEFORE A JUDGE, FOR A TRIAL TO PRESENT EVIDENCE OR A HEARING ON ANY MOTION TO PRESENT THE EVIDENCE BUT INSTEAD, THEY CHOSE TO SIGN THIS AGREEMENT. IF QUESTIONS ARISES, PLEASE CONSULT THE HOUSING SPECIALIST DEPARTMENT OF THE EASTERN HOUSING COURT.

Limited English Proficiency Notice .This is an Important Document. Please have it Translated. If you do not understand this document because of Limited English Proficiency, or a disability, you may request from the Court free oral translation of the document in your Language of Preference.

[redacted] 4/25/2019
Plaintiff Date

[redacted]
Defendant #1 Date / Defendant #2 Date

Defendant – Attorney of Record Date
Attorney for the Day Assistance (LAR):_____

SO ORDERED JUSTICE:

HSD Reviewed by: EJV Translated by:_____

Date: 4/25/19 Move Continuing

Prepared by: Marius & Grandoit, P.C. 1603 Dorchester Ave. Suite 101, Dorchester, MA 02124, (617) 287-0001 Page 4 of 4

APPENDIX B: CASE FILE CODING GUIDELINES

A. Background Information About the Case

Criteria	Coding Guidelines
Landlord	Name of the landlord as listed on the summons and complaint.
Type of landlord	Three options: "Corp," "PHA," and "Individual." "Corp" was entered whenever the landlord took a corporate form, including a nonprofit and LLC. "PHA" was entered whenever the landlord was a public housing authority. "Individual" was entered whenever the landlord was an individual person or persons unattached to a corporate form.
Landlord attorney	Name of the landlord law firm.
Tenant representation	Three options: "Yes," indicating that the tenant had full representation at the time of entering a settlement; "No," indicating that the tenant had no representation at the time of entering a settlement; and "LAR," indicating that the tenant had limited assistance representation at the time of entering a settlement. This information was taken from the settlement itself, as attorneys providing representation are required to sign settlement documents.
Amount owed on complaint	The numerical amount, as stated directly on the summons and complaint.
Monthly rent	The numerical amount, as stated on the settlement form.
Answer filed	"Yes" when the tenant had filed an answer and "No" when they had not.
Jury demand	"Yes" when the tenant had asserted a jury demand (which is required to be filed in writing prior to the answer date) and "No" when they had not.
Default judgment	"Yes" when a default judgment entered against the tenant prior to the first court date and "No" when no default judgment entered prior to the first court date.

First court date	Date as listed on the summons and complaint.
Settlement outcome	Three options: "CPA" for civil probation agreement, defined as a court-ordered settlement awarding a possessory judgment to the landlord with execution stayed pending tenant's compliance with specified conditions for a certain period of time, and allowing execution to issue upon motion for violation; "MO" for move-out agreement, defined as a court-ordered settlement requiring the tenant to vacate by a specified date; and "Other" for any other types of settlements that do not meet the criteria for either civil probation agreements or move-out agreements.

B. Settlement Structure and Form

Criteria	**Coding Guidelines**
Date of settlement	Date of the first dispositive settlement, as listed on the settlement.
Printed terms	"Yes" if the settlement contained any typewritten terms and "No" if it did not.
Number of printed terms	The number of printed terms in the settlement, including printed terms that contain a blank (such as a printed term stating that judgment will enter for ____, with the blank intended to be filled in by hand with the specific amount).
Alteration of printed terms	"Yes" if the settlement contained any handwritten alteration of printed terms and "No" if the settlement contained no handwritten alteration of printed terms. Alterations include deletions of printed language, insertions of additional language, and edits to printed language. Alterations do not include filling in blanks left by the printed language, such as where a printed term states that judgment will enter for ____, with the blank intended to be filled in by hand with the specific amount.

Alteration neutral	"Yes" if the alternation did not meaningfully alter the tenant's or landlord's rights or obligations compared to what was already included in the printed terms and "No" if the alteration meaningfully favored the tenant or landlord (see below).
Alteration favorable to tenant	"Yes" if the alteration created more favorable protections or obligations for the tenant, as compared to what was written in the printed term, and "No" if it did not.
Alteration favorable to landlord	"Yes" if the alteration created more favorable protections or obligations for the landlord, as compared to what was written in the printed term, and "No" if it did not.
Content of alteration	A brief description of the alteration.
Addition to printed terms	"Yes" if the settlement contained any handwritten terms additional to (and wholly separate from) the preprinted terms and "No" if it did not contain any such additions.
Addition neutral	"Yes" if the additional term did not meaningfully alter the tenant's or landlord's rights or obligations compared to what was already included in the printed terms and "No" if the addition meaningfully favored the tenant or landlord (see below).
Addition favorable to tenant	"Yes" if the additional term created more favorable protections or obligations for the tenant and "No" if it did not.
Addition favorable to landlord	"Yes" if the additional term created more favorable protections or obligations for the landlord and "No" if it did not.
Content of addition	A brief description of the additional term.

C. Scope and Conditions of Civil Probation

Criteria	Coding Guidelines
Compliance with lease terms	"Yes" if the CPA required the tenant to comply with all lease terms as a condition of civil probation and "No" if it did not.
Tenant waiver of claims	"Yes" if the settlement included a term in which the tenant agreed to waive all claims against the landlord and "No" if it did not.
Specific form of payment required	"Yes" if the settlement included a term requiring the tenant to make rental and/or arrears payments through a specific form of payment (regardless of the specifics of that form) and "No" if it did not.
Tenant waiver of right to request stay of execution	"Yes" if the settlement included a term in which the tenant agreed to waive their right to request a stay of execution and "No" if it did not.
Tenant income recertification required	"Yes" if the settlement included a term requiring the tenant to timely recertify their income and "No" if it did not.

D. Monetary Terms of Settlement

Criteria	Coding Guidelines
Judgment amount	The monetary judgment amount as listed on the settlement.
Rent abatement	"Yes" if the settlement awarded the tenant a rent abatement and "No" if it did not.
Court costs	"Yes" if the settlement required the tenant to pay court costs and "No" if it did not.

E. Repayment Terms of Settlement

Criteria	Coding Guidelines
Length of repayment term	Number of months in which the tenant is required to make payments under the terms of the settlement in order to satisfy the monetary judgment amount.
Monthly payment amount	Monetary amount that tenant must pay monthly toward satisfaction of the arrears under the terms of the settlement.

APPENDIX C: SUPPLEMENTAL EMPIRICAL DATA, ANALYSIS, AND FINDINGS

A. Represented Tenant Findings

Part III.B.1: Typewritten terms in T-12 settlements.

1. 62% of T-12 settlements with represented tenants contained the same number of terms as other settlements handled by the same firm. A comparison to the finding for unrepresented tenants is presented in the table below.

TABLE 1A: TYPEWRITTEN TERMS IN T-12 SETTLEMENTS

Tenant Representation Status	Number of Observations	Settlements in Conformity*
Unrepresented	1,008	99.2%
Represented	33	62.0%

*Conformity = with same number of typewritten terms as other settlements handled by same landlord law firm.

Part III.B.2: Handwritten alterations in T-12 settlements.

1. 13.8% of T-12 settlements with represented tenants contained handwritten alterations to the typewritten terms.
2. Of the alterations in T-12 settlements with represented tenants, 100% were favorable to tenants. Thus, 13.8% of T-12 settlements with represented tenants contained pro-tenant alterations.

TABLE 2A: HANDWRITTEN ALTERATIONS IN T-12 SETTLEMENTS

Tenant Representation Status	Number of Observations	Pro-Tenant Alterations
Unrepresented	1,008	2.5%
Represented	33	13.8%

Part III.B.3: Handwritten additions in T-12 settlements.

1. 51.7% of T-12 settlements with represented tenants contained handwritten terms in addition to the typewritten terms.

2. In T-12 settlements with represented tenants, handwritten additions favored the tenant 26.7% of the time, favored the landlord 13.3% of the time, and were neutral 66.7% of the time. (The sum of these percentages is greater than one hundred because some settlements contained multiple additional terms).
3. 13.8% of T-12 settlements with represented tenants had additional handwritten terms that favored the tenant.

TABLE 3A: HANDWRITTEN ADDITIONS IN T-12 SETTLEMENTS

Tenant Representation Status	Number of Observations	Pro-Tenant Additions
Unrepresented	1,008	0.9%
Represented	33	13.8%

B. Terms Related to the Substance and Scope of Civil Probation

Part III.C.1.

1. In 87.9% of T-12 settlements with represented tenants, the presence or absence of this term aligned with other settlements handled by the same firm.

Part III.C.2.

1. In 100% of T-12 settlements with represented tenants, the presence or absence of this term aligned with other settlements handled by the same T-12 firm.

Part III.C.3.

1. In 93.9% of T-12 settlements with represented tenants, the presence or absence of this term aligned with other settlements handled by the same T-12 firm.

Part III.C.4.

1. In 93.9% of T-12 settlements with represented tenants, the presence or absence of this term aligned with other settlements handled by the same T-12 firm.

Part III.C.5.

1. In 90.9% of T-12 settlements with represented tenants, the presence or absence of this term aligned with other settlements handled by the same T-12 firm.

Part III.C: Summary.

1. Among T-12 settlements with represented tenants, settlements contained to others handled by the same T-12 firm 93.3% of the time.

TABLE 4A: SUMMARY OF VARIATION IN T-12 SETTLEMENTS

Term	**Unrepresented Tenants: Conformity with Other Settlements Handled by Same T-12 Firm**	**Represented Tenants: Conformity with Other Settlements Handled by Same T-12 Firm**
Requirement to comply with lease	99.9%	87.9%
Requirement to timely recertify income	100%	100%
Requirement for specific form of payment	99.9%	93.9%
Waiver of right to request stay of execution	99.7%	93.9%
Tenant waiver of all claims	99.9%	90.9%
All terms	99.9%	93.3%

Part III.D.1: Monetary terms.

1. Zero T-12 settlements with represented tenants awarded the tenant a rent abatement.
2. 81.8% of T-12 settlements with represented tenants required the tenant to pay court costs.

TABLE 5A: MONETARY TERMS IN T-12 SETTLEMENTS

Term	Unrepresented Tenants	Represented Tenants
Rent abatement awarded	0.09%	0%
Court costs assigned to tenant	93.2%	81.8%

C. Monetary Judgment Amounts

Among all T-12 settlements, 30% of monetary judgments were less than $1,000, 57% were between $1,000 and $5,000, and 12% were greater than $5,000. These percentages varied within and across T-12 firms. Thus, there is no uniformity in the amounts of monetary judgments in T-12 settlements. Settlement monetary judgment amounts are presented in Table 6A below.

TABLE 6A: SETTLEMENT MONETARY JUDGMENTS*

Law Firm	Judgment <$1,000	Judgment $1,000–$5,000	Judgment >$5,000
A	35.9%	50.2%	13.9%
B	23.3%	65.0%	11.7%
C	19.1%	59.7%	21.2%
D	21.6%	62.5%	15.9%
E	24.7%	70.4%	4.9%
F	45.3%	46.7%	8.0%
G	53.5%	38.0%	8.5%
H	39.4%	47.0%	13.6%
I	33.3%	58.9%	7.8%
J	10.0%	73.3%	16.7%
K	3.4%	86.3%	10.3%
L	14.3%	71.4%	14.3%
All *A*–*L*	30.3%	57.2%	12.5%

*This data is based on CPA settlements in nonpayment evictions with unrepresented tenants only.

The data also show, however, that the arrears allegedly owed in these cases also varied significantly.[285] Overall, approximately 21% of the nonpayment eviction complaints sought arrears less than $1,000, 66% sought arrears between $1,000 and $5,000, and 14% alleged arrears over $5,000, with significant variation across T-12 firms. These values are presented in Table 7A below.[286]

TABLE 7A: ARREARS ALLEGED OWED IN NONPAYMENT EVICTION CASES THAT RESULTED IN SETTLEMENT*

Law Firm	**Arrears Alleged <$1,000**	**Arrears Alleged $1,000–$5000**	**Arrears Alleged >$5,000**
A	22.9%	62.4%	14.7%
B	20.4%	69.4%	10.2%
C	17.0%	61.7%	21.3%
D	9.1%	69.3%	21.6%
E	23.5%	71.6%	4.9%
F	16.0%	72.0%	12.0%
G	32.4%	59.1%	8.5%
H	22.7%	60.6%	16.7%
I	32.8%	57.8%	9.4%
J	20.0%	70.0%	10.0%
K	0%	86.2%	13.8%
L	14.3%	71.4%	14.3%
All *A*–*L*	20.6%	65.9%	13.5%

*This data is based on nonpayment evictions with unrepresented tenants that resulted in CPA settlements only.

To explore the relationship between arrears alleged owed and the monetary judgment amount, I ran a regression to estimate the alleged arrears amounts based on the monetary judgment amounts and other factors. The results show that increases in the monetary judgment are associated with significant increases

[285] The data discussed is only for T-12 nonpayment eviction cases with unrepresented tenants that resulted in CPAs.

[286] Discrepancies between the values in Tables 10 and 11 are expected regardless of any negotiation because tenants often make payments, either with their own money or through charitable assistance, in the period between the filing of the complaint and the date of the settlement (which is usually the first court date and therefore approximately one month after the filing of the complaint). Moreover, additional months of rent often come due in this period. Together, these changes make it difficult to interpret the meaning of the difference between the amount of arrears alleged owed and the monetary judgment amount.

($p < 0.001$) in the alleged arrears. Specifically, for every additional $1 increase in the monetary judgment amount, the amount of alleged arrears is expected to increase by about $0.7728, controlling for unobserved firm specific factors.[287] This finding suggests that the variation in the monetary judgments reflects this underlying variation: Greater monetary judgments are more likely for cases with greater amounts of rent owed, and lower judgment amounts are more likely for cases with lower amounts of rent owed.

D. Negotiation Over Repayment Term

TABLE 8A: LENGTH OF REPAYMENT SCHEDULES IN SETTLEMENTS*

Law Firm	Shorter than 6 Months	6–12 Months	Longer than 12 Months
A	70.6%	23.7%	5.7%
B	84.7%	15.3%	0%
C	45.7%	36.2%	18.1%
D	33.0%	17.0%	50.0%
E	37.0%	56.8%	6.2%
F	46.7%	30.6%	22.7%
G	40.8%	35.2%	24.0%
H	72.7%	18.3%	9.0%
I	50.0%	40.6%	9.4%
J	23.3%	56.7%	20.0%
K	6.9%	20.7%	72.4%
L	85.7%	14.3%	0%
All *A*–*L*	56.3%	28.5%	15.2%

*The data presented is for nonpayment evictions with unrepresented tenants that resulted in CPA settlements.

[287] The equation is: the alleged arrears amounts = $\beta_0 + 0.7728 \cdot$ the monetary judgment amounts + $\alpha + \varepsilon$. "The alleged arrears amounts" is a dependent variable represented alleged arrears amounts; β_0 is the intercept of the model, representing the baseline level of the alleged arrears when other variables are zero; 0.7728 is the estimated coefficient for the monetary judgment amounts variable; "the monetary judgment amounts" is an independent variable representing the monetary judgment amounts; α captures unobserved firm-specific effects, accounting for influences that vary by T-12 firm but are not explicitly included in the model; and ε is the error term.

TABLE 9A: MONTHLY PAYMENT AMOUNT REQUIRED BY REPAYMENT SCHEDULE IN SETTLEMENTS*

Law Firm	Less than $100	$100–$500	Greater than $500
A	17.6%	33.0%	49.4%
B	5.1%	33.6%	61.3%
C	20.2%	45.8%	34.0%
D	55.7%	29.5%	14.8%
E	21.0%	60.5%	18.5%
F	58.7%	37.3%	4.0%
G	54.9%	38.1%	7.0%
H	51.5%	28.8%	19.7%
I	26.6%	53.1%	20.3%
J	10.0%	56.7%	33.3%
K	13.8%	79.3%	6.9%
L	21.4%	35.7%	42.9%
All *A*–*L*	28.0%	40.0%	32.0%

*The data presented is for nonpayment evictions with unrepresented tenants that resulted in CPA settlements.

E. Civil Probation Agreements vs. Move-Out Agreements

1. To explore the relationship between the type of landlord and the type of settlement, I ran regressions with the dependent variable as the settlement type (as a binary variable representing whether the settlement is a move-out agreement or CPA) and landlord type as the independent variable as a categorical variable with three variables. The results of the regressions show that holding everything else constant, including firm fixed effects, having an individual landlord makes it 11.85 times and 6.06 times more likely to reach a move-out agreement than a CPA, compared to having a public housing authority and corporation as a landlord respectively. The first model specification is $\Pr(\text{Settlement Type} = \text{Move-Out}) = \beta_0 + \beta_1(\text{Landlord Type}) + \alpha + \epsilon$. Settlement type is a binary variable representing whether the settlement type is a move-out agreement versus CPA. Landlord type is an independent variable with three categories: individual owner, corporate owner, and the public housing authority. In the first model, the public housing authority is the reference category. α captures the unobserved characteristics

specific to each firm that might influence the settlement type. β_0 represents the baseline log-odds of having a move-out agreement when the independent variable and fixed effects are zero. β_1 consists of two coefficients for the corporate owner and the individual owner. It can be written as a vector with two elements that represent how much more (or less) likely the settlement is to be a move-out agreement (as opposed to a CPA) when the landlord is a corporation or individual compared to the public housing authority. The estimated corporate owner coefficient β_1^{Corp} = 0.6704, and the estimated individual owner coefficient β_1^{Individual} = 2.4719. I exponentiated the β_1^{Individual} coefficient to convert it into an odds ratio, which is approximately 11.85. ϵ is the error term, representing unaccounted-for variation in the settlement type. The second model specification uses corporate owner as the reference category. In this model, β_1 consists of two coefficients for the individual owner and the public housing authority. The estimated individual owner coefficient β_1^{Individual} = 1.8015, and the estimated PHA coefficient β_1^{PHA} = −0.6704. I exponentiated the β_1^{Individual} coefficient to convert it into an odds ratio, which is approximately 6.06. Both results are statistically significant ($p < 0.05$). The regression results also show that there is no statistically significant relationship ($p = 0.552$, $p > 0.05$) between having a public housing authority as a landlord and the likelihood of reaching a move-out agreement compared to a corporate owner.

2. The median rental arrears alleged for cases that result in move-out agreements is $4,760, compared to less than half that ($1,994) for cases that settle with CPAs. For cases that result in CPAs, the alleged arrears 5%, 25%, 50%, and 75% percentiles are $404, $1,130, $3,456.12, and $7,804 respectively. For cases that result in move-out agreements, the alleged arrears 5%, 25%, 50%, and 75% percentiles are $1,096, $2,600, $7,800, and $13,900 respectively.

3. To explore the relationship between the alleged arrears amount and the type of settlement, I ran a regression with the dependent variable as the alleged arrears amount and the independent variable as a binary variable

representing the type of settlement (1 if move-out agreement, 0 if CPA). The results of the regression show that move-out agreements are linked to significantly higher alleged arrears ($p < 0.001$), compared with CPAs. The alleged arrears amounts = $\beta_0 + 3128.185 \cdot$ move-out agreement + α+ ε, where β_0 represents the baseline value of the alleged arrears when the other variables are zero; 3128.185 is the estimated coefficient for the "move-out agreement" variable, indicating the change in the alleged arrears amount when a move-out agreement is in place, instead of a CPA; α captures unobserved T-12 firm-specific effects that might influence the arrears but are not explicitly included as variables in the model; and ε is the error term, representing random variability or factors not accounted for by the model.