

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JAKE MILLER and DOREEN MILLER,
husband and wife, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

GUENTHER MANAGEMENT, LLC, a
Washington limited liability company,

Defendant.

Case No.: 20-2-02604-32

~~PROPOSED~~ ORDER GRANTING
CLASS CERTIFICATION AND
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT

Plaintiffs Jake and Doreen Miller (“Plaintiffs”) have filed an Unopposed Motion for Class Certification and Preliminary Approval of Class Settlement (“Motion”). Having reviewed the Motion and supporting documents, the Court hereby ORDERS, ADJUDGES AND DECREES as follows:

A. Plaintiffs’ Counsel and Defendant Guenther Management, LLC (Guenther)’s Counsel have advised the Court that the Parties have agreed, subject to final approval by this Court following notice to the proposed Settlement Class and a hearing, to settle this Action on the terms and conditions set forth in the Settlement Agreement and Release (the “Agreement”).

B. The Court has reviewed the Agreement, as well as the files, records, and proceedings to date in this matter. The terms of the Agreement are hereby incorporated as

1 though fully set forth in this Order. Capitalized terms shall have the meanings attributed to them
2 in the Agreement.

3 C. Based upon preliminary examination, it appears that the Agreement is sufficiently
4 fair, reasonable, and adequate to warrant Notice to the proposed Settlement Class; that the
5 Settlement Class should be certified for settlement purposes; and that the Court should hold a
6 hearing after Notice to the Settlement Class to determine whether to enter a Final Approval
7 Order in this action based upon that Agreement.

8 Based upon the foregoing, the Court finds and concludes as follows:

9 1. ***Preliminary Approval of Proposed Settlement.*** The Agreement, including all
10 exhibits thereto, is preliminarily approved as fair, reasonable and adequate. The Court finds that
11 (a) the Agreement resulted from extensive arm's-length negotiations with participation of an
12 experienced mediator, and (b) the Agreement is sufficient to warrant notice thereof to members
13 of the Settlement Class and the Fairness Hearing described below.

14 2. ***Class Certification for Settlement Purposes Only.***

15 (a) Pursuant to CR 23(a) and (b)(3), the Court, for settlement purposes only,
16 conditionally certifies the following Settlement Class:

17
18 All persons who from June 24, 2017, through X date, 2021, applied to rent at any
19 property in the state of Washington, where the rental property on the date of
application was owned or managed by Guenther Property Management, LLC.

20 The Settlement Class does not include any persons who timely and validly request
21 exclusion from the Settlement Class, nor Guenther, any person or entity that has a controlling
22 interest in Guenther, Guenther's current or former directors and officers, as well as the parties'
23 counsel and their immediate families.

24 (b) In connection with the certification, the Court makes the following
25 preliminary findings:

1 (1) The Settlement Class satisfies CR 23(a)(1) because the Settlement Class
2 appears to be so numerous that joinder of all members is impracticable;

3 (2) The Settlement Class satisfies CR 23(a)(2) because there appears to be
4 questions of law or fact common to the Settlement Class;

5 (3) The Settlement Class satisfies CR 23(a)(3) because the claims of the
6 Plaintiffs named in the caption appear to be typical of the claims being resolved through the
7 proposed settlement;

8 (4) The Settlement Class satisfies CR 23(a)(4) because the Plaintiffs appear to
9 be capable of fairly and adequately protecting the interests of the above-described Settlement
10 Class in connection with the proposed settlement and because counsel representing the
11 Settlement Class are qualified, competent, and capable of prosecuting this action on behalf of the
12 Settlement Class.

13 (5) The Settlement Class satisfies the requirements of CR 23(b)(3) because,
14 for purposes of settlement approval and administration, common questions of law and fact
15 appear to predominate over questions affecting only individual Settlement Class Members and
16 because settlement with the above-described Settlement Class appears to be superior to other
17 available methods for the fair and efficient resolution of the claims of the Settlement Class. The
18 Settlement Class appears to be sufficiently cohesive to warrant settlement by representation.

19 (c) In making the foregoing findings, the Court has exercised its discretion in
20 conditionally certifying a settlement class.

21 **3. Plaintiffs.** For settlement purposes only, the Court hereby appoints Plaintiffs Jake
22 and Doreen Miller, as Class Representative Plaintiffs pursuant to CR 23, and finds that, for
23 settlement purposes only, Mr. and Mrs. Miller have and will fairly and adequately protect the
24 interests of the Settlement Class.

25 **4. Class Counsel.** For settlement purposes only, the Court appoints Kirk D. Miller
26 of Kirk D. Miller, P.S., and Shayne Sutherland of Cameron Sutherland, PLLC as counsel for the

1 Settlement Class (“Class Counsel”). For purposes of these settlement approval proceedings, the
2 Court finds that Class Counsel are competent and capable of exercising their responsibilities as
3 Class Counsel.

4 **5. Settlement Administrator.** The Court appoints JND Legal Administration
5 (“JND”) as the Settlement Administrator, which shall fulfill the Settlement Administration
6 functions, duties, and responsibilities of the Settlement Administrator as set forth in the
7 Agreement and this Order.

8 **6. Fairness Hearing.** A Fairness Hearing shall be held before this Court on
9 Dec 3 2021, at 2:30 a.m./p.m., to determine whether the Agreement is fair,
10 reasonable, and adequate and should be given final approval. Papers in support of final approval
11 of the Agreement and Class Counsel’s application for an award of attorneys’ fees and costs, and
12 for a service award to the Plaintiffs (the “Fee and Expense Application”) shall be filed with the
13 Court according to the schedule set forth in Paragraphs 12 and 13, below. The Court may
14 postpone, adjourn, or continue the Fairness Hearing without further notice to the Settlement
15 Class. After the Fairness Hearing, the Court may enter a Final Approval Order in accordance
16 with the Agreement, which will adjudicate the rights of the Settlement Class Members with
17 respect to the claims being settled.

18 **7. Class Notice.** The Court approves the form and content of the notices attached as
19 Exhibits B, and C to the Agreement. The Parties shall comply with the notice requirements of
20 the Agreement. In compliance with that Agreement, beginning no later than thirty (30) days
21 after entry of this Order, the Settlement Administrator shall cause Notice to be delivered in the
22 manner set forth in the Agreement, launch the Settlement website, and provide all notice and
23 claims services as set forth in the Agreement.

24 **8. Findings Concerning Class Notice.** The Court finds that the Class Notice and
25 the manner of its dissemination described in the Agreement constitutes the best practicable
26 notice under the circumstances, including individual notice to all Settlement Class Members who

1 can be identified through reasonable effort, and is reasonably calculated, under all the
2 circumstances, to apprise Settlement Class Members of the pendency of this action, the terms of
3 the Agreement, and their right to object to or exclude themselves from the Settlement Class. The
4 Court finds that the Notice is reasonable, that it constitutes due, adequate and sufficient notice to
5 all persons entitled to receive notice, and that it meets the requirements of due process, CR 23,
6 and any other applicable laws.

7 **9. *Exclusion from Settlement Class.*** Settlement Class Members who wish to
8 exclude themselves from the Settlement Class and follow the procedures set forth in this
9 Paragraph shall be excluded. Any potential member of the Settlement Class may mail a written
10 request for exclusion, in the form specified in the Class Notice, to the Settlement Administrator
11 at the address set forth in the Class Notice. In the written request for exclusion, Settlement Class
12 Members must include their full name, address, telephone number, signature, case name (to
13 allow the Settlement Administrator to ensure the exclusion request is for this and not another
14 case administered by the same Settlement Administrator), and a statement that they wish to be
15 excluded from the Settlement Class for purposes of this settlement. A request to be excluded
16 that does not include all of this information, or that is sent to an address other than that
17 designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and
18 the individual who submitted such a request shall be a member of the Settlement Class and shall
19 be bound as a Settlement Class Member by this Agreement. All such written requests must be
20 postmarked no later than sixty (60) days after the date established by the Court for the Settlement
21 Administrator to provide Class Notice. All persons who properly request exclusion from the
22 Settlement Class shall not be Settlement Class Members and shall have no rights with respect to,
23 nor be bound by, the Agreement, should it be finally approved. The names of all such excluded
24 individuals shall be attached as an exhibit to any Final Approval Order.

1 **10. Claims Procedures.** The Court approves the claims procedures set forth in the
2 Agreement. Here, unless Settlement Class Members timely exclude themselves from the
3 Settlement Class, they will receive disbursement of the funds allocated in the Agreement.

4 **11. Costs of Class Notice and Claims Processing.** Guenther shall bear all costs of
5 notice to the Settlement Class of the pendency and settlement of the Action and other Settlement
6 Administration costs as provided in the Agreement, up to \$20,865.00. If costs of class notice and
7 claims processing exceed \$20,865.00, Class Counsel shall be responsible for their payment.

8 **12. Objections and Appearances.**

9 (a) **Written Objections.** Any Settlement Class Member who has not timely
10 submitted a written request for exclusion from the Settlement Class, and thus is a Settlement
11 Class Member, may object to the fairness, reasonableness, or adequacy of the Agreement or the
12 Fee and Expense Application. Any Settlement Class Member who wishes to object to the
13 Agreement or the Fee and Expense Application must file with the Court and deliver to Class
14 Counsel and Guenther's counsel a written objection. The written objection, which the objecting
15 Settlement Class Member must personally sign, must state: (i) the objector's full name, address,
16 and current telephone number; (ii) an explanation of the reason why the objector claims to be a
17 Settlement Class Member; (iii) all grounds for the objection, including any documents, evidence,
18 and citations; (iv) the name and contact information of any and all attorneys representing,
19 advising, or in any way assisting the objector in connection with the preparation or submission of
20 the objection or who may profit or otherwise benefit from the pursuit of the objection; and (v)
21 whether the objector intends to appear at the Fairness Hearing on their own behalf or through
22 counsel. If a Settlement Class Member or any Objecting Attorney has objected to any class
23 action settlement where the objector or the Objecting Attorneys asked for or received any
24 payment in exchange for dismissal of the objection, or any related appeal, without any
25 modification to the settlement, then the objection must include a statement identifying each such
26 case by full case caption. Any documents that the objector wants the Parties and the Court to

1 consider must also be attached to the written objection. The written objection and any
2 supporting papers must be filed with the Court and delivered to Class Counsel and Guenther's
3 counsel no later than sixty (60) days after the date on which Class Notice is first transmitted.
4 Any objection not timely made in this manner shall be waived and forever barred.

5 (b) **Appearance at Fairness Hearing.** Objectors who timely and fully
6 comply with the requirements above may appear at the Fairness Hearing, either in person or
7 through an attorney hired at their own expense, to object to the fairness, reasonableness, or
8 adequacy of this settlement. Any Settlement Class Member who does not timely deliver a
9 written objection and notice of intention to appear by sixty (60) days from the date for delivery
10 of the Class Notice as set forth in Paragraph 7 above, in accordance with the requirements of this
11 Order, shall not be permitted to object or appear at the Settlement Hearing, except for good cause
12 shown, and shall be bound by all proceedings, orders and judgments of the Court.

13 (c) **Fees and Expense Application.** Class Counsel shall file their Fee and
14 Expense Application, together with all supporting documentation, no later than thirty (30)
15 calendar days prior to the Objection and Exclusion deadline, sufficiently in advance of the
16 expiration of the objection period that any Settlement Class Member will have sufficient
17 information to decide whether to object and, if applicable, to make an informed objection.

18 (d) **Motion for Final Approval and Responses to Objections.** Class Counsel
19 shall file with the Court their Motion for Final Approval of the Settlement and any responses to
20 any filed objections to the Agreement or the Fee and Expense Application, together with all
21 supporting documentation, no later than fourteen (14) days before the Fairness Hearing.

22 **13. Dates of Performance.** In summary, the dates of performance are as follows:

23 (a) Guenther shall provide contact and location information for Class
24 Members to Settlement Administrator on or before Monday, October 18, 2021, i.e., no later than
25 fifteen (15) days after entry of this Order;

1 (b) Guenther shall provide to the Settlement Administrator all costs necessary
2 for class administration, claims payments, Class Counsel's attorneys' fees and costs, and Service
3 Awards, in the amounts set forth in the Settlement Agreement to the Settlement Administrator on
4 or before Monday, October 25, 2021, i.e., no later than twenty-one (21) days after entry of this
5 Order;

6 (c) The Settlement Administrator shall send the Class Notice to potential
7 Settlement Class Members beginning on or before November 2, 2021, i.e., within fifteen (15)
8 days after receiving the Class Member contact and location information from Guenther;

9 (d) Class Counsel's Fee and Expense Application, and all supporting
10 materials, shall be filed no later than Monday, November 1, 2021, i.e., no later than thirty (30)
11 days after entry of this Order;

12 (e) Settlement Class Members who desire to be excluded shall mail requests
13 for exclusion postmarked by Monday, January 3, 2022, i.e., no later than sixty (60) days after the
14 date in subsection (c) above, excluding a holiday and the last Sunday;

15 (f) All objections to the Settlement, Agreement or the Fee and Expense
16 Application shall be filed with the Court and delivered to the Parties' counsel no later than
17 Monday, January 3, 2022, i.e., the same date as in subsection (e) above;

18 (g) Plaintiffs' final approval motion, any Parties' responses to objections, and
19 all supporting materials, shall be filed by Nov 12 2021, at least fourteen (14) days before
20 the date in subsection (i) below;

21 (h) If objections are received by the Parties' counsel and / or filed with the
22 Court after the objection deadline, any Party may file a response at any time prior to the Fairness
23 Hearing;

24 (i) The Fairness Hearing shall be held on Dec 3, 2021 2:30
25 a.m./p.m.;

1 (j) The Settlement Administrator shall distribute payments to Class Members
2 by Dec. 15 2021, no later than fifteen (15) days after the date in subsection (i) above; and

3 (k) The Settlement Administrator shall provide its report to the Court
4 verifying its compliance with the parties' Agreement, by Jan 7, 2022, no later than thirty
5 (30) days after the date in subsection (i) above.

6 **14. Effect of Failure to Approve the Agreement.** In the event the Court does not
7 approve the Agreement, or for any reason the Parties fail to obtain a Final Approval Order as
8 contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any
9 reason, then the following shall apply:

10 (a) All orders and findings entered in connection with the Agreement shall
11 become null and void and have no further force and effect, shall not be used or referred to for
12 any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

13 (b) The conditional certification of the Settlement Class pursuant to this Order
14 shall be vacated automatically, and the case shall return to its status as it existed before entry of
15 this Order;

16 (c) Nothing contained in this Order is, or may be construed as, any admission or
17 concession by or against Plaintiffs or Guenther on any point of fact or law, including, but not
18 limited to, factual or legal matters relating to any effort to certify this case as a class action for
19 purposes of considering settlement approval; and

20 (d) Nothing in this Order or pertaining to the Agreement shall be used as evidence
21 in any further proceeding in this case, including, but not limited to, motions or proceedings
22 pertaining to treatment of this case as a class action.

23 **15. Discretion of Counsel.** Counsel are hereby authorized to take all reasonable steps
24 in connection with approval and administration of the Settlement not materially inconsistent with
25 this Order or the Agreement, including, without further approval of the Court, making minor
26 changes to the content of the Class Notice that they jointly deem reasonable or necessary.

1 Presented by:

2 KIRK D. MILLER, P.S.
3 Attorney for Plaintiffs

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27 [PROPOSED] ORDER GRANTING CLASS CERTIFICATION
AND PRELIMINARY APPROVAL OF CLASS
SETTLEMENT - 11

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the state of Washington that on the date stated below I served a copy of this document in the manner indicated:

Jeffrey P. Downer	<input type="checkbox"/> First Class U.S. Mail
Carinne E. Bannan	<input type="checkbox"/> E-Mail
LEE SMART, P.S. INC.	<input type="checkbox"/> Hand Delivery
1800 One Convention Place	<input type="checkbox"/> Next Day Air
701 Pike Street	
Seattle WA 98101	

DATED this ____ day of June 2021.

Teri A. Bracken, Paralegal