

COPY
ORIGINAL FILED

JAN 28 2022

SUPERIOR COURT
SPOKANE COUNTY, WA

**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,)

Case No.: 20-2-02604-32

Plaintiffs,)

~~PROPOSED~~ **SETTLEMENT ORDER
AND FINAL JUDGMENT**

vs.)

GUENTHER MANAGEMENT, LLC, a)
Washington limited liability company,)

Defendant.)

THIS MATTER came before the Court on Plaintiffs' Unopposed Motion for Final Approval of the Proposed Class Settlement (the "Settlement") and Class Counsel's application for attorneys' fees and expenses, and service award to the Plaintiffs ("Fee and Expense Application"). The Court has considered all papers filed and proceedings in this matter and is fully informed regarding the facts surrounding the proposed Settlement. Based upon this information, the Court has determined the proposed Settlement as fair, reasonable, and adequate. The Court hereby enters this Settlement Order and Final Judgment ("Final Judgment"), which constitutes a final adjudication on the merits of all claims of the Settlement Class.

On October 1, 2021, this Court granted preliminary approval to the proposed Settlement between Plaintiffs and Defendant Guenther Management, LLC ("Guenther"). The proposed Settlement resolves all of the Settlement Class's claims against Guenther in exchange for Guenther's agreement to provide certain monetary and non-monetary consideration to Settlement

1 Class Members as set forth in the Settlement Agreement and Release (the "Agreement"). On
2 January 28, 2022, this Court held a Fairness Hearing to consider whether to grant final approval
3 to the Settlement and to consider Class Counsel's Fee and Expense Application. The Court
4 heard from the parties' counsel and others who elected to appear to voice their support for, or
5 objection to, the Settlement and/or the Fee and Expense Application.

6 Having read, reviewed and considered the papers filed in support of final approval of the
7 Settlement, including supporting declarations; oral arguments of counsel; Class Counsel's Fee
8 and Expense Application; the Agreement; and the pleadings, and with no objectors presenting
9 objections thereto, the Court finds and concludes as follows:

10 1. **Definitions.** The definitions and provisions of the Agreement are incorporated in
11 this Final Judgment as though fully set forth herein.

12 2. **Jurisdiction.** This Court has jurisdiction over the subject matter of the
13 Agreement with respect to and over all parties to the Agreement, including Plaintiffs and all
14 members of the Settlement Class. That Settlement Class is as Certified in the Court's Order
15 Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"):

16 All persons who from June 24, 2017, through June 24, 2020, applied to rent at
17 any property in the state of Washington, where the rental property on the date of
18 application was owned or managed by Guenther Property Management, LLC.

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

23 3. **Settlement Approval.** The Court hereby grants final approval to the Settlement
24 and finds the Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests
25 of the Settlement Class. The Court finds the Settlement is within the authority of the parties and
26 the result of extensive arm's length negotiations between experienced counsel.

1 **4. Class Certification.** This Court confirms the proposed Settlement Class satisfies
2 the requirements of CR 23, as the Court found in the Preliminary Approval Order. Accordingly,
3 this Court makes final the conditional class certification set forth in the Preliminary Approval
4 Order.

5 **5. Exclusion from Settlement Class.** Certain members of the Settlement Class have
6 timely and properly requested to be excluded from the Settlement Class and the Settlement.
7 **Exhibit A**, attached hereto, lists the Settlement Class Members who timely and properly
8 requested exclusion from the Settlement Class. Accordingly, this Final Judgment shall not bind
9 or affect Settlement Class Members listed on **Exhibit A**.

10 **6. Appointment of Class Counsel and Plaintiffs.** The Court confirms the
11 appointment of Kirk D. Miller, P.S. and Cameron Sutherland, PLLC, as Class Counsel. The
12 Court confirms the appointment of Jake and Doreen Miller as representatives of the Settlement
13 Class.

14 **7. No Objections.** There were no objections presented to the Settlement or terms
15 thereto.

16 **8. No Admission.** Neither this Final Judgment nor the Agreement is an admission or
17 concession by Guenther of the validity of any claims or of any liability or wrongdoing or of any
18 violation of law. This Final Judgment and the Agreement do not constitute a concession and
19 shall not be used as an admission or indication of any wrongdoing, fault or omission by Guenther
20 or any other person in connection with any transaction, event or occurrence, and neither this
21 Final Judgment nor the Agreement nor any related documents in this proceeding, nor any reports
22 or accounts thereof, shall be offered or received in evidence in any civil, criminal, or
23 administrative action or proceeding, other than such proceedings as may be necessary to
24 consummate or enforce this Final Judgment, the Agreement, and all releases given thereunder, or
25 to establish the affirmative defenses of *res judicata* or collateral estoppel barring the pursuit of
26 claims released in the Agreement.

1 **9. Dismissal with Prejudice.** This Court hereby dismisses with prejudice all claims
2 of Settlement Class Members against Guenther within the scope of the Released Claims defined
3 by the Settlement Agreement.

4 **10. Release.** Plaintiffs, for themselves and as representatives of the Settlement Class,
5 and on behalf of each Settlement Class Member who has not timely opted out and each of their
6 respective agents, successors, heirs, assigns, and any other person who can claim by or through
7 them in any manner, fully, finally, and forever irrevocably release, relinquish, and forever
8 discharge with prejudice all Released Claims against the Released Parties.

9 **11. Injunction Against Asserting Released Claims.** Plaintiffs, all Settlement Class
10 Members, and any person or entity allegedly acting on behalf of Settlement Class Members,
11 either directly, representatively or in any other capacity, are permanently enjoined from
12 asserting, commencing, or prosecuting against the Released Parties in any action or proceeding
13 in any court, tribunal, or other forum any of the Released Claims, provided, however, that this
14 injunction shall not apply to individual claims of any Settlement Class Members listed in
15 **Exhibit A** who timely and properly requested exclusion from the Settlement Class. This
16 injunction is necessary to protect and effectuate the settlement, this Order, and the Court's
17 flexibility and authority to effectuate this settlement and to enter judgment when appropriate and
18 is ordered in aid of the Court's jurisdiction and to protect its judgments.

19 **12. General Release Acknowledgement.** By operation of this Final Judgment,
20 Plaintiffs and Guenther expressly waive, and each Settlement Class Member is deemed to have
21 waived, any and all claims, rights, or benefits they may have under California Civil Code § 1542
22 and any similar federal or state law, right, rule, or legal principle that may apply. California
23 Civil Code § 1542 provides as follows:

24 A general release does not extend to claims which the creditor or
25 releasing party does not know or suspect to exist in his or her favor
26 at the time of executing the release and that, if known by him or her,
 would have materially affected his or her settlement with the debtor
 or released party.

1 **13. Class Notice.** JND Legal Administration (“JND”), the Settlement Class
2 Administrator approved by the Court, completed the delivery of Class Notices according to the
3 terms of the Agreement. The Class Notice given by the Settlement Class Administrator to the
4 Settlement Class, which set forth the principal terms of the Agreement and other matters, was the
5 best practicable notice under the circumstances, including individual notice to all Settlement
6 Class Members who could be identified through reasonable effort. The Class Notice program
7 prescribed by the Agreement was reasonable and provided due and adequate notice of these
8 proceedings and of the matters set forth therein, including the terms of the Agreement, to all
9 parties entitled to such notice. The Class Notice given to the Settlement Class Members satisfied
10 the requirements of CR 23 and the requirements of constitutional due process. The Class Notice
11 was reasonably calculated under the circumstances to apprise Settlement Class Members of the
12 pendency of this Action, all material elements of the Settlement, and their opportunity to exclude
13 themselves from, object to, or comment on the Settlement and appear at the Final Approval
14 Hearing. The Court has afforded a full opportunity to all Settlement Class Members to be heard.
15 Accordingly, the Court determines that all members of the Settlement Class, except those who
16 timely and properly excluded themselves from the Settlement Class, are bound by this Final
17 Judgment.

18 **14. Continuing Jurisdiction.** Without affecting the finality of this Final Judgment,
19 the Court retains continuing jurisdiction over (a) implementation of the Agreement, distribution
20 of the settlement Vouchers, incentive award, and attorneys’ fees and costs contemplated by the
21 Agreement, and processing of the claims permitted by the Agreement, until each and every act
22 agreed to be performed pursuant to the Agreement has been performed, and (b) all parties to this
23 Action and members of the Settlement Class for the purpose of enforcing and administering the
24 Agreement.

25 **15. Service Award.** As a service payment in compensation for the time, effort, and
26 risk they undertook as representative of the Settlement Class, the Court hereby awards \$2,500
27 each to Jake and Doreen Miller to be paid by the terms of Settlement Agreement.

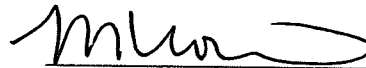
1 **16. Class Counsel Fee and Cost Award.** The Court hereby awards attorneys' fees
2 and costs to compensate Class Counsel for their time incurred and expenses advanced. The
3 Court has concluded that: (a) Class Counsel achieved a favorable result for the Settlement Class
4 by obtaining Guenther's agreement to make available to Settlement Class Members certain
5 monetary and non-monetary consideration; (b) Class Counsel devoted substantial effort to pre-
6 and post-filing investigation, legal analysis, and litigation; (c) Class Counsel prosecuted the
7 Settlement Class's claims on a contingent-fee basis, investing significant time and accumulating
8 costs with no guarantee that they would receive compensation for their services or recover their
9 expenses; (d) Class Counsel employed their knowledge of and experience with class action
10 litigation in achieving a valuable settlement for the Settlement Class, in spite of Guenther's
11 possible legal defenses and their experienced and capable counsel; (e) Plaintiffs have reviewed
12 the Agreement and has been informed of the Fee and Expense Application and has approved; (f)
13 the Class Notice informed Settlement Class Members of Class Counsel's fee and cost request
14 under the Agreement; and (g) Class Counsel filed and posted their Fee and Expense Application
15 in time for Settlement Class Members to make a meaningful decision whether to object to it. For
16 these reasons, the Court hereby approves Class Counsel's Fee and Expense Application and
17 awards to Class Counsel fees and costs in the total amount of \$50,000, to be paid in accordance
18 with the Settlement Agreement. All such fees are in lieu of statutory or other fees that Plaintiffs
19 and/or the Settlement Class might otherwise have been entitled to recover.

20 **17. Payment of Settlement Administrator Costs and Disbursement of Funds to**
21 **Settlement Class Members Who Did Not Exclude Themselves.** Guenther has paid the
22 Settlement Administrator all reasonable costs and fees incurred for all costs of notice and claims
23 administration incurred for this Action, up to \$20,865.00, according to the Agreement. The
24 Settlement Administrator shall also cause the distributions to Settlement Class Members and Cy
25 Pres recipients as required by the Agreement.

1 **18. Payment Timing.** Class Counsel and the service award to Plaintiffs shall be
2 issued the distributions afforded to them in this Order, in accordance with and at the times
3 prescribed by the Agreement.

4 **IT IS SO ORDERED.**

5 ENTERED: 1-28-22

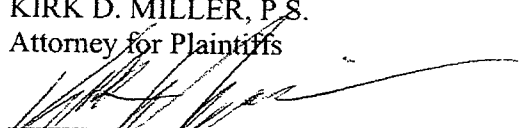
6
7
8 

9 HONORABLE MARYANN MORENO

10 MARYANN C. MORENO

11
12 Presented by:

13 KIRK D. MILLER, P.S.
14 Attorney for Plaintiffs

15 
16 Kirk D. Miller, WSBA #40025
17 421 W. Riverside Avenue, Ste. 660
18 Spokane, WA 99201
19 Telephone: (509) 413-1494
20 Email: kmiller@millerlawspokane.com

21 CAMERON SUTHERLAND, PLLC
22 Attorney for Plaintiffs

23 Approved Via Phone 1/28/22
24 Shayne J. Sutherland, WSBA #44593
25 421 W. Riverside Avenue, Ste. 660
26 Spokane, WA 99201
27 Telephone: (509) 315-4507
Email: ssutherland@cameronsutherland.com

1 LEE SMART, P.S., INC.
2 Attorney for Defendant

3 Jeffrey P. Downer, WSBA #12625
4 Carinne E. Bannan, WSBA #52564
5 701 Pike St., Suite 1800
6 Seattle WA 98101
7 Telephone: (206) 624-7990
8 Email: ceb@leesmart.com

EXHIBIT A

*[Proposed] Settlement Order and
Final Judgment
Miller v. Guenther Management, LLC
20-2-02604-32*



Miller v. Guenther Settlement

TIMELY AND VALID EXCLUSIONS

	<u>UNIQUE ID</u>	<u>NAME</u>	<u>CITY/STATE</u>	<u>STATUS</u>	<u>POSTMARK DATE</u>
1.	DFT3X-7ASME	M. S. P.	Spokane, WA	Valid	11/10/2021