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

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

11 Plaintiffs, )

12 vs. )

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

14 Defendant. )  
15 )

Case No.: 20-2-02604-32

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

16 **I. INTRODUCTION**

17 Plaintiffs and Class Counsel have achieved an excellent result for the Settlement Class<sup>1</sup>  
18 and believe the Settlement is fair, adequate, and reasonable. The Settlement Class Members'  
19 response to the Settlement show they agree. The deadline for Settlement Class Members to  
20 object or exclude themselves has now passed. None of the 1,759 Settlement Class Members who  
21 received notice filed an objection to the Settlement, and only one (1) Settlement Class Member

22  
23 <sup>1</sup> Terms capitalized herein are done so for purposes of consistency with defined terms in the parties' settlement agreement.

1 requested exclusion. (Miller Dec. ISO of Pls.' Mot. For Final Approval of Class Settlement  
2 "Miller Dec.", ¶ 8; Padelford Dec. ¶¶ 11, 17, 19). As a result of this litigation, and in addition to  
3 the monetary compensation provided to the Class Members, Defendant has also changed  
4 itstenant screening disclosures practices to provide all of RCW 59.18.257's required disclosures.  
5 (SN 8, ¶ 12). Given the Settlement's substantial monetary and non-monetary relief, the proposed  
6 Settlement is fair, reasonable, and adequate.

7 The Notice Program approved by the Court and implemented by Class Administrator  
8 JND Legal Administration, ("JND") was effective and satisfies due process. Out of 1,772 total  
9 possible Settlement Class Members, 1,700 had deliverable email addresses and 1,687 email  
10 notices (99%) were successfully delivered. (Padelford Dec., ¶ 7). JND proceeded to provide  
11 Postcard Notice via mailing to 85 Class Members who did not have a deliverable email address.  
12 *Id.* at ¶ 8. Of the 85 Postcard Notices sent, 72 were successfully delivered (after a re-mailing  
13 attempt) resulting in a total of 1,759 class members, or 99% being notified of the Settlement. *Id.*  
14 at ¶¶ 9-12. As only one (1) Settlement Class Member requested exclusion from the Settlement, a  
15 total of 1,758 Class Members will be issued payments in the amount of \$30.00 each. (SN 8, ¶  
16 11; Miller Dec. ¶ 8; Padelford Dec., ¶ 17).

17 Because the requirements of CR 23 are satisfied, Plaintiffs request that the Court grant  
18 final approval of the Settlement by: (A) determining that adequate notice was provided to the  
19 Settlement Class; (B) determining the Settlement was fair, adequate, and reasonable; (C) finally  
20 approving the Settlement Class; and (D) granting Class Counsel \$50,000 in combined attorneys'  
21 fees and costs, approving service awards of \$2,500 each to the two (2) Class Representatives,  
22 and directing JND to distribute the Settlement Funds in accordance with the parties' Settlement  
23 Agreement.



- 1 2. SN 8 (Declaration of Kirk D. Miller in Support of Plaintiffs' Unopposed Motion for  
2 Preliminary Approval of Class Settlement);
- 3 3. SN 14 (Declaration of Kirk D. Miller in Support of Unopposed Motion for Award of  
4 Attorneys' Fees, Costs, and Service Awards);
- 5 4. SN 15 and 16 (Plaintiffs' Motion and Memorandum in Support of Unopposed Motion for  
6 Award of Attorney's Fees, Costs, and Service Awards); and
- 7 5. SN 17 (Declaration of Shayne J. Sutherland in Support of Unopposed Motion for Award  
8 of Attorneys' Fees, Costs, and Service Awards).

9 This motion also relies on the following declarations filed concurrently with this motion:

- 10 (1) Declaration of Kirk D. Miller in Support of Plaintiffs' Motion for Final Approval of Class  
11 Settlement; and (2) Declaration of Vanessa Padelford regarding Class Notice and Settlement  
12 Administration.

### 13 III. AUTHORITY AND ARGUMENT

14 CR 23 is nearly identical to its federal counterpart, FRCP 23, and thus, federal cases  
15 interpreting the analogous federal provision are highly persuasive. *Brown v. Brown*, 6 Wn. App.  
16 249, 252 (1971). FRCP 23(e) requires the Court to direct notice in a reasonable manner to Class  
17 Members bound by the Settlement and to determine whether the Settlement is fair, reasonable,  
18 and adequate. FRCP 23(e)(1)-(2). "The primary concern of this subsection is the protection of  
19 those class members, including the named plaintiffs, whose rights may not have been given due  
20 regard by the negotiating parties." *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn. 2d 178,  
21 188 (2001).

22 ///

1       **A. The Notice Program Ordered by the Court Was Completed and Is Constitutionally**  
2       **Sound.**

3           This Court previously determined that the Notice Program proposed by the parties meets  
4       the requirements of due process and applicable law, provides the best notice practicable under  
5       the circumstances, and constitutes due and sufficient notice to all individuals entitled thereto.  
6       (SN 13, ¶ 8).

7           After the Court entered the Preliminary Approval Order, JND fully executed the Notice  
8       Program. (Padelford Dec., ¶¶ 6-11). Defendant provided JND with a list of 1,798 Settlement  
9       Class Member files, containing last known mailing addresses, email addresses (if available), and  
10      other contact information. *Id.* at ¶ 3. After executing a de-duplication process, JND determined  
11      that 1,772 unique Settlement Class Members existed to whom Notice should be issued. *Id.* at ¶  
12      4. Thereafter, JND was able to send out 1,700 email notices, of which 1,687, or 99.2% were  
13      delivered. *Id.* at ¶ 6.

14           JND also coordinated and caused the Postcard Notice to be sent via First-Class Mail to  
15      Settlement Class Members for whom (a) an email address was not available or an Email Notice  
16      was not successfully delivered and (b) a mailing address was available from the class data. *Id.* at  
17      ¶¶ 8-11. Prior to the sending of the Class Notice, JND updated the Class Notice List mailing  
18      address information using data from the National Change of Address (“NCOA”) database. *Id.* at  
19      5. The Postcard Notice included the web address to the Settlement Website for access to  
20      additional information, rights and options as a Settlement Class Member, and the dates by which  
21      to act on those options. *Id.* at ¶ 8, Ex. B. Of the 85 Postcard Notices mailed to Settlement Class  
22      Members, 72 or 85% have been deemed delivered. *Id.* at 10. As a result of JND’s efforts, a total

1 of 1,759 or 99.3% of Settlement Class Members were issued direct notice of the Settlement. *Id.*  
2 at ¶ 9-11.

3 JND also established a Settlement Website, where Settlement Class Members could  
4 obtain information about the Settlement, how to request exclusion or submit an objection, the  
5 dates and information for relevant Court proceedings, including the Final Fairness Hearing,  
6 contact information for JND, “FAQs,” and view relevant pleadings including Plaintiffs’ motions  
7 and supporting pleadings for preliminary approval as well as attorneys’ fees, costs, and service  
8 awards. *Id.* at ¶ 12.

9 Further, Class Counsel’s motion for an award of fees and costs was filed with the Court  
10 and posted on the Settlement Website at least thirty days before the deadline for Class Members  
11 to object to the Settlement, satisfying the requirements of Fed. R. Civ. P. 23(h). *In re Mercury*  
12 *Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010). Class Counsel filed their motion  
13 for award of attorneys’ fees, costs and service awards and supporting declarations in connection  
14 with the Settlement on November 1, 2021, and no Settlement Class Members specifically  
15 objected to the motion in any form or fashion. (Miller Dec., ¶ 8; Padelford Dec., ¶ 19).

16 **B. The Settlement is Fair, Reasonable, and Adequate.**

17 Although CR 23 is silent in guiding trial courts in their review of class settlements, it is  
18 universally stated that a proposed class settlement may be approved by the trial court if it is  
19 determined to be “fair, adequate, and reasonable.” *Pickett*, 145 Wn.2d at 188 (2001) (citing *Torrison*  
20 *v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir.1993); *In re Corrugated Container Antitrust*  
21 *Litig.*, 643 F.2d 195, 207 (5th Cir.1981); and *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173,  
22 1178 (9th Cir.1977)).

1           When considering a motion for final approval of a class action settlement under Rule 23, a  
2 court must determine whether the settlement is “fundamentally fair.” *Hanlon v. Chrysler Corp.*,  
3 150 F.3d 1011, 1026 (9th Cir. 1988). A settlement merits final approval when “the interests of the  
4 class as a whole are better served by the settlement than by further litigation.” *Manual for Complex  
5 Litigation* (Fourth) (“MCL 4th”) § 21.61, at 421–22 (2015). Although Rule 23 imposes strict  
6 procedural requirements on the approval of a class settlement, a district court’s role in reviewing  
7 the substance of that settlement is to ensure that it is “fair, adequate, and free from collusion.”  
8 *Hanlon*, 150 F.3d at 1026. Here, the parties engaged in arm’s-length, non-collusive negotiations  
9 to reach the Settlement Agreement. Moreover, all factors that courts consider when evaluating  
10 settlements indicate that it is fair, reasonable, and adequate. Thus, the Settlement should be  
11 approved.

12           **1. The Settlement is the product of informed and non-collusive negotiations.**

13           The Ninth Circuit puts “a good deal of stock in the product of an arm’s-length, non-  
14 collusive, negotiated resolution.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9<sup>th</sup> Cir. 2009).  
15 “Arm’s-length negotiations conducted by competent counsel constitute *prima facie* evidence of  
16 fair settlements.” *Ikuseghan v. Multicare Health Sys.*, No. 3:14-cv-05539-BHS, 2016 WL  
17 3976569, \*3 (W.D. Wash. July 25, 2016). Experienced, competent attorneys negotiated the  
18 Settlement reached in this case. (SN 8, ¶¶ 5, 8). The parties, through counsel, engaged in extensive  
19 settlement negotiations which ultimately resulted in the Settlement Agreement. (SN 8, ¶¶ 8, 9).  
20 Such negotiations are prima-facie evidence of a settlement that is fair and reasonable. *See Hughes  
21 v. Microsoft Corp.*, No. C98-1646C, C93-0178C, 2001 WL 34089697, \*7 (W.D. Wash. Mar. 26,  
22 2001) (“A presumption of correctness is said to attach to a class settlement reached in arms-length  
23 negotiations between experienced capable counsel after meaningful discovery.”); *see also Pelletz*

1 v. *Weyerhaeuser Co.*, 255 F.R.D. 537, 542–43 (W.D. Wash. 2009) (approving settlement “reached  
2 after good faith, arms-length negotiations”); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*,  
3 227 F.R.D. 553, 567 (W.D. Wash. 2004) (approving settlement “entered into in good faith,  
4 following arms-length and non-collusive negotiations”); *In re Omnivision Tech., Inc.*, 559 F. Supp.  
5 2d 1036, 1043 (N.D. Cal. 2007) (quoting *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal.  
6 1979)) (“The recommendations of plaintiffs’ counsel should be given a presumption of  
7 reasonableness.”).

8 Prior to the Settlement, Class Counsel spent a considerable amount of time engaging in  
9 investigation of Defendant’s business practices and corporate structure, written discovery, and  
10 document review and analysis. (SN 8, ¶ 8). *See also Hanlon*, 150 F.3d at 1027 (no basis to disturb  
11 the settlement, in the absence of any evidence suggesting that the settlement was negotiated in  
12 haste or in the absence of information).

## 13 **2. The Settlement Agreement is fair, reasonable, and adequate.**

14 To assess the fairness of a settlement, courts in the Ninth Circuit look at the strength of  
15 the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the  
16 risk of maintaining class action status throughout the trial; the amount offered in settlement; the  
17 extent of discovery completed and the state of the proceedings; the experience and views of  
18 counsel; the presence of a governmental participant; and the reaction of the class members to the  
19 proposed settlement. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9<sup>th</sup> Cir.  
20 2015).

### 21 **a. The Amount Offered in Settlement**

22 The Settlement Agreement required Defendant to pay \$130,015 into a Settlement Fund to  
23 pay Settlement Class Members, class administration costs, incentive awards to the class



1 representatives, and Class Counsel's attorneys' fees and costs. (SN 8, Ex. E, at II.1). JND will  
2 send settlement award checks in the amount of \$30.00 to all 1,758 Settlement Class Members who  
3 received notice and who did not opt of the Settlement. (SN 8, ¶ 11; Miller Dec. ¶ 8). In addition,  
4 any unclaimed funds will be disbursed evenly as *cy pres* donations between the Legal Foundation  
5 of Washington and Northwest Justice Project. (SN 8, ¶ 16).

6 Class Counsel considered that Settlement Class Members could have obtained a judgment  
7 for more than the amount of the Settlement had the case proceeded to trial. The Settlement Class  
8 Members could have obtained statutory damages up to \$100.00, under RCW 59.18.257, as well as  
9 \$20.00-\$25.00 under the unjust enrichment claim. However, the reduction from the maximum  
10 damages available reflected that the case was not fully resolved on its merits, the Court's discretion  
11 not to award full statutory damages of \$100.00, the Defendant's ability to pay, and the substantial  
12 delay in obtaining payments if the case proceeded to trial.

13 In addition, "[i]t is well-settled law that a cash settlement amounting to only a fraction of  
14 the potential recovery does not *per se* render the settlement inadequate or unfair." *In re Mego Fin.*  
15 *Corp. Sec. Litig.*, 213 F.3d 454, 458 (9<sup>th</sup> Cir. 2001) (quoting *Officers for Justice v. Civil Serv.*  
16 *Comm'n*, 688 F.2d 615, 628 (9<sup>th</sup> Cir. 1982)) (approving a settlement estimated to be worth 16-  
17 50% of the plaintiffs' estimated loss); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d at 1042  
18 (approving settlement amounting to 9% of estimated total damages).

19 This litigation has also resulted in a significant non-monetary benefit to the Settlement  
20 Class Members as Defendant is now providing all of RCW 59.18.257's required tenant screening  
21 disclosures to its prospective tenants. (SN 8, ¶ 12).

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24 MEMORANDUM IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT - 9

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1 experience that any case involving a class of consumers can, and often does, lead to costly litigation  
2 that goes on for years. (Miller Dec. ¶ 5). In contrast, the Settlement provides substantial relief to  
3 Settlement Class Members without delay.

4 **d. The Extent of Discovery Completed and the Stage of the Proceedings**

5 Final approval is favored because substantial investigation and discovery were completed  
6 prior to the Settlement. “A key inquiry is whether the parties had enough information to make an  
7 informed decision about the strength of their cases and the wisdom of settlement.” *Rinky Dink,*  
8 *Inc. v. World Bus. Lenders, LLC*, No. C14-0268-JCC, 2016 WL 3087073, at \*3 (W.D. Wash.  
9 May 31, 2016).

10 Class Counsel thoroughly analyzed the factual and legal issues involved in this case and  
11 participated in extensive discovery. (SN 8, ¶ 8). Although work remained, Class Counsel were  
12 well-informed about the strengths and weaknesses of their case at the time they entered settlement  
13 negotiations and the time they settled the case. *Id.* This factor favors final approval of the  
14 Settlement.

15 **e. The Experience and Views of Counsel**

16 Where Class Counsel is qualified and well informed, their opinion that a settlement is fair,  
17 reasonable, and adequate is entitled to significant weight. *See Pelletz v. Weyerhaeuser Co.*, 255  
18 F.R.D. at 543. Here, Class Counsel believes the Settlement is fair, reasonable, adequate, and in  
19 the best interest of the Settlement Class as a whole. (Miller Dec. ¶ 11).

20 **f. The Reaction of Settlement Class Members**

21 A positive response to a settlement by the class further supports final approval. *See Pelletz,*  
22 *255 F.R.D. at 543.* Here, the reaction to the Settlement has been overwhelmingly positive. Of the  
23 1,759 Settlement Class Members who were issued direct notice, none objected to the Settlement,

1 and only one Settlement Class Member requested exclusion from the Settlement. (Miller Dec. ¶  
2 8). Further, no Settlement Class Member specifically objected to Class Counsel's request for  
3 reasonable attorneys' fees, costs, and service awards to the Class Representatives. *Id.*

4 The fact that no Settlement Class Members objected to any part of the Settlement, and only  
5 one (1) out of the 1,759 Class Members who received notice opted out, indicates class-wide  
6 support for the Settlement and weighs in favor of approval.

7 **C. The Settlement Agreement Should be Finally Approved.**

8 In its October 1, 2021, Order, this Court conditionally certified this matter as a class action  
9 and preliminarily approved the Class Settlement. (SN 11). For all the reasons set forth in Plaintiffs'  
10 preliminary approval briefing, the supplemental briefing Plaintiffs provided herein and in their  
11 Motions for Award of Fees, Costs, and Approval of Service Awards and Preliminary Approval,  
12 the Court should finally approve the parties' Class Settlement.

13 **D. Class Counsel's Request for Attorneys' Fees, Costs, and Service Awards Should Be**  
14 **Granted and JND Should Proceed to Distribute the Settlement Fund in Accordance**  
15 **with the Settlement Agreement.**

16 Not a single Settlement Class Member specifically objected to Class Counsel's request for  
17 reasonable attorneys' fees, costs, and service award to the Class Representatives. (Miller Dec. ¶  
18 8). Class counsel spent approximately 120 hours litigating this case. (SN 14, ¶ 30, Ex. A.; SN 17,  
19 ¶¶ 14, 15). Class Counsel are requesting an award of \$50,000 in combined costs and fees, which  
20 is 38% percent of the total common fund. (SN 15, 7:10-17). As a lodestar cross-check, Class  
21 Counsel is requesting less than their lodestar, especially when considering the application of a  
22 multiplier, which are routinely factored in when cross-checking the reasonableness of an attorney  
23 fee request in a class action scenario. *Vizcaino v. Microsoft, Corp.*, 290 F.3d 1043, 1051 n.6 (9<sup>th</sup>

1 Cir. 2002) (noting that in the Ninth Circuit multipliers ranging from one to four are frequently  
2 awarded in class action litigation).

3 Finally, Class Representatives Jake and Doreen Miller request service awards of \$2,500  
4 each, which is appropriate given the effort they put forth in bringing this claim, the risk they  
5 incurred in doing so, and the recovery obtained for thousands of Washington tenants. Further,  
6 their requested awards are below the Ninth Circuit's "presumptively reasonable" benchmark of  
7 \$5,000. *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL  
8 4212811, at 5 (N.D. Cal. July 22, 2020).

9 Accordingly, Class Counsel respectfully requests that the Court find their attorneys' fee  
10 request reasonable and award their requested \$50,000 in combined attorney's fees and costs, award  
11 \$2,500 each to Plaintiff Representatives Jake Miller and Doreen Miller, and direct JND to  
12 distribute the Settlement Funds as set forth in the Settlement Agreement.

#### 13 IV. CONCLUSION

14 For all of the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order  
15 (A) determining that adequate notice was provided to the Settlement Class; (B) determining the  
16 Settlement was fair, adequate, and reasonable; (C) finally approving the Settlement Class; and (D)  
17 granting Class Counsel \$50,000 in combined attorneys' fees and costs, approving a service award  
18 of \$2,500 to each to the two (2) Class Representatives and allowing JND to distribute the  
19 Settlement Fund in accordance with the parties' Settlement Agreement.

20  
21 RESPECTFULLY SUBMITTED this 14th day of January, 2022.

KIRK D. MILLER, P.S.  
CAMERON SUTHERLAND, PLLC



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Shayne Sutherland, WSBA #44593  
Kirk D. Miller, WSBA #40025  
*Attorneys for Plaintiffs and Class*

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**CERTIFICATE OF SERVICE**

I hereby declare upon 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  
Carinne E. Bannan  
LEE SMART, P.S. INC.  
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- Hand Delivery
- Next Day Air

DATED this 14<sup>th</sup> day of January, 2022.



Teri A. Brown, paralegal