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 **MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR CLASS CERTIFICATION AND PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

I. NATURE OF THE CASE AND PLAINTIFFS' CLAIMS

Plaintiff Representatives, Jake and Doreen Miller, on behalf of themselves and all others similarly situated, filed a Complaint (the "Action") on September 22, 2020, against Defendant Guenther Management, LLC, ("Guenther") alleging violations of the Washington Residential Landlord Tenant Act, RCW 59.18, *et seq.*, ("RLTA") and unjust enrichment (Sub Number "SN" 1). The alleged violations arise from Guenther's alleged practice of charging prospective tenants a fee and collecting information from them without first providing required tenant screening disclosures in violation of RCW 59.18.257, and further, being unjustly enriched by that practice.

Kirk D. Miller, P.S.
421 W. Riverside Ave., Ste 660
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(509) 413-1494

Plaintiffs' Counsel has performed a thorough study of the law and facts relating to the claims asserted and have accounted for the contested issues involved, the expense and time necessary to pursue certification of the Action, the risks and costs of further prosecution of the Action, and the substantial benefits to be received by Plaintiffs and members of the settlement class pursuant to this agreement. Plaintiffs' Counsel and Plaintiffs have concluded that a settlement with Guenther is in the best interest of the parties and the settlement class. The terms set forth in the Settlement Agreement are fair, reasonable, and adequate, and are in the best interests of the settlement class, and it is in the parties' best interests to settle on the terms set forth in the agreement. The Settlement Agreement and Release of Claims, with attachments, is attached to the contemporaneously filed Declaration of Counsel Kirk D. Miller in support of this Motion as Exhibit E.

Guenther's Counsel has concluded that, because of the substantial expense of litigating the Action, the inconvenience involved, and the litigation risks, the settlement provided herein is fair and reasonable, and it is in their best interest to settle on the terms set forth in the Agreement. Guenther does not admit liability by entering into this settlement. Guenther elects to settle the case on the terms herein for the purpose of putting to rest the controversies in the Action.

II. RELIEF REQUESTED

With this Unopposed Motion, Plaintiff requests the Court entering an Order: A) Certifying this matter as a class for settlement purposes; B) preliminarily approving the Class Settlement; C) appointing JND Legal Administration, ("JND") as Class Administrator and approving notice to be sent to members of the settlement class; and D) setting a final fairness hearing pursuant to CR 23.

For purposes of the Settlement, the parties have agreed on the following class definition:

Kirk D. Miller, P.S.
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All persons who, from June 24, 2017, to June 24, 2020, applied to rent at any property in the state of Washington, where the rental property on the date of application was owned or managed by Guenther Property Management, LLC.

Excluded from the Class are Guenther, employees of Guenther, any person or entity that has a controlling interest in Guenther, Guenther's current or former directors and officers, as well as the parties' counsel and their immediate families, and any Class Member who timely outs per the requirements of the Agreement.

III. LEGAL ARGUMENT

A. Certification of the Settlement Class is appropriate as the requirements of CR 23(a) and (b)(3) are satisfied.

To settle a putative class action, the court must first approve a settlement class that meets the requirements of CR 23(a) and (b). *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 609–12 (1997). In *Sitton v. State Farm Mut. Auto. Ins. Co.*, 116 Wn. App. 245, 250 (2003) (internal quotations omitted), the court stated:

> Washington Courts favor a liberal interpretation of CR 23 as the rule avoids multiplicity of litigation, saves members of the class the cost and the trouble of filing individual suits and frees the defendant from harassment of identical future litigation.

The *Sitton* court further affirmed that "[w]e resolve close cases in favor of allowing or maintaining the class." *Id.* at 250; *see also Smith v. Behr Process Corp.*, 113 Wn. App. 306 (2002) ("in a doubtful case… any error, if there is to be one, should be committed in favor of allowing the class action"); *see also Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 515 (2018) (stating as CR 23 "avoids multiplicity of litigation, saves members of the class the cost and trouble of filing individual suits[,] and … also frees the defendant from the

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Spokane, WA 99201
(509) 413-1494

harassment of identical future litigation, courts should err in favor of certifying a class because the class is always subject to the trial court's later modification or decertification.")(internal citations and quotations omitted).

A primary function of a class action lawsuit is to provide a procedure for vindicating claims, which, if taken individually, would be too small to justify individual legal action but which are of significant size and importance if taken as a group. *See Olson v. The Bon, Inc.*, 144 Wn. App. 627 (2008), in which the court stated at 637-38:

> In cases such as this where the damages suffered is minimal, the ability to proceed as a class transforms a merely theoretically possible remedy into a real one. "[Class actions are] often the only meaningful type of redress available for small but widespread injuries. Without it, many consumers may not even realize that they have a claim. The class action provides a mechanism to alert them to this fact.

When deciding a class certification motion, the court accepts a plaintiff's allegations as true. *Schnall v. AT&T Wireless Servs., Inc.*, 171 Wn.2d 260, 290 (2011); *see also Arthur Young & Co. v. U.S. District Court*, 549 F.2d 686, 688 n. 3 (9th Cir. 1976). The determination of whether a plaintiff's claims should be certified as a class action does not depend on the merits of the plaintiff's claims. *Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975). After the class is certified, the veracity of the plaintiff's allegations may be resolved by dispositive motion or at trial.

A class action may be maintained where the requirements of CR 23(a) and at least one section of Rule 23(b) are met. CR 23(a) requires that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

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(509) 413-1494

Smith v. Behr Process Corp., 113 Wn. App. 306, 319 (2002). CR 23(b) requires that: (1) the prosecution of separate actions would create a risk of inconsistent adjudications or prejudice absent class members; (2) injunctive or declaratory relief is appropriate for the class as a whole; or (3) common questions of law or fact predominate over individual issues and that a class action is a superior method of adjudication.

1. Rule 23(a)(1) – Numerosity is satisfied

To satisfy the numerosity requirement, the proponent of class certification must demonstrate the class is so "numerous that joinder of all parties is impracticable." CR 23(a)(1); *Hart v. Valdez*, 186 F.3d 1280, 1288 (10th Cir. 1999). However, "[i]mpracticable does not mean impossible." *Rabidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993). The Court may consider reasonable inferences arising from the pleadings that the class is sufficiently numerous to make joinder impractical. *Gay v. Waiters and Dairy Lunchmen's Union*, 549 F.2d 1330, 1332 (9th Cir. 1977). "When the class is large, numbers alone are dispositive..." *Riordan v. Smith Barney*, 113 F.R.D. 60, 62 (N.D.Ill. 1986). Where the class numbers are twenty-five (25) or more, joinder is usually impracticable. *Cypress v. Newport News General & Nonsectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967) (18 sufficient); *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821 (2003) (class containing at least 40 members, creates a rebuttable presumption that joinder is impracticable). The court may "make common sense assumptions in order to find support for numerosity." *Evans v. United States Pipe & Foundry*, 696 F.2d 925, 930 (11th Cir. 1983).

Here, a thorough search of Guenther's records produced 1,805 class members. (Miller Dec. ¶ 11). Accordingly, numerosity is satisfied.

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Kirk D. Miller, P.S.
421 W. Riverside Ave., Ste 660
Spokane, WA 99201
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2. Rule 23(a)(2) – Commonality is satisfied

The commonality requirement is met if the plaintiff and the class allege a single common material issue of law or fact, or the defendant has engaged in a common course of conduct in relation to the potential class members. *Blackie*, 524 F. 2d at 902; *Harris v. Palm Springs Estates, Inc.*, 329 F.2d 909, 914 (1964); *Miller v. Farmer Bros. Co.,* 115 Wn. App. at 824 citing *Yslava v. Hughes Aircraft Co.*, 845 F. Supp. 705 (D. Ariz. 1993) ("commonality exists when the legal question linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated.") (internal quotations omitted)). "The commonality test is qualitative rather than quantitative, that is, there need be only a single issue common to all members of the class." *Behr Process Corp.*, 113 Wn. App. at 320 *citing In re Am. Med. Sys.*, 75 F.3d at 1080 (quoting *1 Herbert B. Newberg & Alba Conte, Newberg on Class Actions, § 3.10*, at 3–50 (3d ed.1992)); *see also In re Orthopedic Bone Screw Prods. Liab. Litig.*, 176 F.R.D. 158, 174 (E.D.Pa.1997) ("[A] common question need only *exist,* not predominate, for the [commonality] requirement to be satisfied.") (internal quotations omitted).

The United States Supreme Court has explained that "[c]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" such that "all their claims can be productively litigated at once." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). As such, "commonality is generally satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Benitz v. W. Milling, LLC*, No. 1:18-cv-01484-SKO, 2020 WL 309200, at *5 (E.D. Cal. Jan. 21, 2020) (internal quotation marks and citations omitted).

The common class issues are: 1) whether Guenther violated RCW 59.18.257 by failing to provide all of RCW 59.18.257's required disclosures to their prospective tenants, prior to

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obtaining information on those tenants; and 2) whether Guenther was unjustly enriched by collecting and retaining a fee it was not legally entitled to charge. With this Settlement Agreement (without an admission of liability) the common class questions are resolved in one stroke, as all the claims presented in this action will be settled. Therefore, commonality is satisfied.

3. Rule 23(a)(3) – Typicality is satisfied

The typicality requirement is met if the class representative's claims arise from the same course of conduct as the class claims or rely on the same legal theories. *See Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). "Where the same unlawful conduct is alleged to have affected both the named plaintiffs and the class members, varying fact patterns in the individual claims will not defeat the typicality requirement." *Behr Process Corp.*, 113 Wn. App. at 320 *citing Baby Neal v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994).

Here, Plaintiffs and the putative class members have suffered the same injury – Guenther allegedly failing to give required disclosures prior to obtaining information on them, in violation of RCW 59.18.257. The facts that give rise to Plaintiffs' claims are the same facts that give rise to the claims of each and every member. Because the named Plaintiffs and putative class members allege the same injury and the same harmful practice, typicality is satisfied.

4. Rule 23(a)(4) – Adequacy of Representation is satisfied

Adequacy of Representation is met if a plaintiff's counsel is qualified and competent to represent the class and the class representative does not have interests that are antagonistic to the members of the class. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Plaintiffs' Counsel has experience with class action lawsuits and have been found to be adequate class counsel in many other class action proceedings. (Miller Decl. ¶¶ 4 – 6). Further,

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Counsel has long focused on issues of consumer and tenant rights. (*Id.* ¶¶ 2, 5). Lastly, Plaintiffs' Counsel has committed and will continue to commit significant resources to the prosecution of this litigation. (*Id.* at ¶¶ 4, 6). Accordingly, Plaintiffs' Counsel is adequate and should be appointed Class Counsel. *See Marquardt v. Fein*, 25 Wn. App. 651, 656 (1980) (adequate representation is present when the class representative's attorneys are qualified, experienced, and generally able to conduct the litigation).

Plaintiffs have the same claims as the members of the Class. (Miller Dec. ¶ 14). They have and will continue to fairly and adequately represent the interests of the class members and have no interests that are antagonistic to the Class. (Miller Dec. ¶ 14). They have been and remain committed to vigorously litigating this matter. (Miller Dec. ¶ 14). They have demonstrated a commitment to serve as class representatives by participating in Counsel's investigation of her claims and discovery, reviewing and approving the complaint, and actively participating in the settlement agreement reached. (Miller Dec. ¶ 8). Accordingly, Plaintiffs are adequate.

5. *Rule 23(b)(3) – Common Questions of Law or Fact Predominate and a Class Action is Superior to Other Available Methods to Resolve This Controversy*

A class action may be maintained if the court finds that common questions of law or fact predominate and a class action is a superior method to other forms of adjudication. CR 23(b)(3). In *Sitton*, 116 Wn. App. 254-56 (footnotes omitted), Division I noted that:

> The predominance requirement is not a rigid test, but rather contemplates a review of many factors, the central question being whether "adjudication of the common issues in the particular suit has important and desirable advantages of judicial economy compared to all other issues, or when viewed by themselves." The predominance requirement is not a demand that common issues be dispositive, or even determinative; it is not a comparison of court time needed to adjudicate common issues versus individual issues; nor is it a balancing of the number of issues suitable for

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> either common or individual treatment. Rather, "[a] single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions." The presence of individual issues may pose management problems for the judge, but as the chief commentator has observed, courts have a variety of procedural options to reduce the burden of resolving individual damage issues, including bifurcated trials, use of subclasses or masters, pilot or test cases with selected class members, or even class decertification after liability is determined.

Thus, the relevant inquiry under the predominance prong is "whether the issue shared by class members is the dominant, central, or overriding issue in the litigation." *Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d at 516.

Here, the "central claim" to be adjudicated is whether Defendant violated RCW 59.18.257 by failing to provide all required screening disclosures to its prospective tenants prior to obtaining information on them. The claim is common to all class members, and there are no individual questions associated with these claims, as the recovery for the Class is identical. Accordingly, predominance is satisfied.

In determining if certification is proper under CR 23(b)(3), the court also considers if a class action is a superior method for the adjudication of the claims. In this case, a class action is clearly the superior method of resolution to the controversy. Under the superiority prong, courts first look to whether joinder is impracticable. *Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d at 520-521 (holding "[b]ecause this lawsuit involves well over 40 plaintiffs . . . a class action is superior to joinder for the resolution of these claims."). As discussed *supra*, this requirement is met with 1,805 putative class members.

In making the superiority determination under CR 23(b)(3), the court also considers the following factors:

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> (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

As to the first factor, the Washington Supreme Court has stated "[w]here individual damages are small, the class vehicle is usually deemed to be superior." *Our Lady of Lourdes Hosp. at Pasco,* 190 Wn.2d at 523 (citing *2 William B. Rubenstein, Newberg on Class Actions § 4:87*, at 363-65 (5th ed. 2012) ("[I]n a small claims case, a court can typically fulfill its entire function simply by stating that the case involves small claims. That implies that there is no alternative form of litigation, and … [that] 'the class action is necessarily the superior method of adjudication.'" (footnote omitted)); *see also Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 828 ("where individual claims of class members would be small, a class action will usually be deemed superior to other forms of adjudication"). In this case, the individual claims of class members are small and well suited for class-wide resolution. The recovery for the Class is limited to the statutory damage of the $20.00 or $25.00 screening fee, or up to $100.00, if the Court assessed the maximum statutory damages, which are likely not enough for individuals to file a separate action or convince most attorneys to offer representation.

As to the second factor, "the extent and nature of any litigation concerning the controversy already commenced," as Guenther is not engaged in other litigation concerning its disclosures, this factor favors certification. *Id.* at 524; (Miller Dec. ¶ 7).

As to the third factor, given the small amount of damages, and novelty of the class claim, certifying this class is likely the only way that Guenther's other prospective tenants will have their claims vindicated. Accordingly, this factor also favors certification. (Miller Dec. ¶ 11).

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Finally, there are no difficulties anticipated with the management of the class action. As class actions go, this one is extraordinarily simple. It contains two alleged violations with similar if not identical damages across the board. Not even one individualized question is anticipated for this Court to consider in this action. Accordingly, the final factor also favors certification of the Class. *Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d at 521-523 (stating that manageability concerns "will rarely, if ever be in itself sufficient to prevent class certification"; noting further that even in cases where individual questions need to be answered there are a litany of tools that can and should be used before determining that a class is unmanageable).

In this case, as in many class actions, denial of class status would effectively deny any judicial remedy. *Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3rd Cir. 1985). Prosecution of this case as a class action will "achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Advisory Comm. on Rule 23, Proposed Amends. to the Rules of Civ. Proc.*, 39 F.R.D. 69, 102-103 (1966). Here, a class action is superior form of adjudication. Accordingly, this Court should certify the Class.

B. The parties' class settlement is fair and reasonable.

In order to settle a putative class action, the court must first approve a settlement class that meets the requirements of CR 23(a) and (b). *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 609–12 (1997). Next, the court must find that the settlement is fair, adequate, and reasonable, and enter preliminary approval of the settlement agreement. *Staton v. Boeing Co.,* 327 F.3d 938, 952 (9th Cir. 2002) (analyzing FRCP 23(e)). Thereafter, notice and opportunity to object and opt-out must be given to all class members. Finally, the court must conduct a fairness hearing

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and, in order to approve the final settlement, make specific findings regarding the adequacy and fairness of the proposed settlement. *Id.*

1. Standard of Review for Class Action Settlements

A court's approval of a class-action settlement must be accompanied by a finding that the settlement is "fair, reasonable, and adequate." *Lane v. Facebook, Inc.*, 696 F.3d 811, 818 9th Cir. 2012). "[T]he district court [] must evaluate the fairness of a settlement as a whole, rather than assessing its individual components." *Id.* "[T]he question whether a settlement is fundamentally fair within the meaning of Rule 23(e) is different from the question whether the settlement is perfect." *Id.* at 819. Although CR 23 imposes strict procedural requirements on the approval of a class settlement, a court's only role in reviewing the substance of that settlement is to ensure that it is "fair, adequate, and free from collusion." *Id.* The Court must determine the fundamental fairness, adequacy, and reasonableness of the settlement, taken as a whole. *Evans v. Jeff D.*, 475 U.S. 717, 726–27 (1986). "The trial court should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might [be] gained." *Access Now, Inc. v. Claire's Stores, Inc.*, 2002 WL 1162422, at 4 (S.D. Fla. May 7, 2002). Significant weight should be given "to the belief of experienced counsel that settlement is in the best interest of the class." *Austin v. Pennsylvania Dep't. of Corrections,* 876 F. Supp. 1437, 1472 (E.D. Pa. 1995). Generally, a proposed settlement will be preliminarily approved unless it is outside the range of reasonableness or appears to be the product of collusion, rather than arms-length negotiation. *See, e.g., Officers for Justice v. Civil Serv. Comm'n of San Francisco,* 688 F.2d 615, 625 (9th Cir. 1982).

The primary question raised by a request for preliminary approval is whether the proposed settlement is "within the range of possible approval." *See* MANUAL FOR COMPLEX

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LITIGATION (THIRD) § 30.41, at 237; *accord, e.g., Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 273 (N.D. Cal. 1976). "[T]his determination is similar to a determination that there is 'probable cause' to think the settlement is fair and reasonable." *Alaniz,* 73 F.R.D. at 273.

To guide courts in assessing the fairness and reasonableness of a proposed settlement, the Ninth Circuit has identified several factors to employ, which may include, among others, some or all of the following: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d at 1026; *Smith v. Mulvaney*, 827 F.2d 558, 562 n.3 (9th Cir. 1987); *see also* Fed R. Civ. P. 23(e)(2) (listing similar factors).

2. *The Settlement is the Result of Arm's Length, Non-Collusive Negotiations and is Presumptively Fair*

Preliminary approval "establishes an initial presumption of fairness when the court finds that: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation." *In re General Motors Corp. Pick-Up Truck Prod. Liab. Litig.*, 55 F.3d 768, 785(3d Cir. 1995). Further, "[a]rm's length negotiations conducted by competent counsel constitute prima facie evidence of fair settlements." *Ikuseghan v. Multicare Health Sys.*, No 3:14-cv-05539-BHS, 2016 WL 3976569, *3 (W.D. Wash. July 25, 2016); *see also Ortiz v. Fiberboard Corp.*, 527 U.S. 815, 852 (1999) ("[O]ne may take a settlement amount as good evidence of the maximum available if one can

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assume that parties of equal knowledge and negotiating skill agreed upon the figure through arms-length bargaining.").

The proposed Settlement was reached after extensive investigation, discovery, and negotiations. (Miller Dec. ¶¶ 8, 9). The parties' attorneys negotiated the Settlement with the benefit of many years of prior experience and a solid understanding of the facts and law of this case. (Miller Dec. ¶ 2). The parties' attorneys have extensive experience litigating and settling class actions. (Miller Dec.). The recommendation of experienced counsel weighs in favor of granting approval and creates a presumption of reasonableness. *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 257 (N.D. Cal. 2015) ("The trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties." (citation omitted)). Accordingly, the Settlement reached here should be determined fair and reasonable.

3. The Relief Provided by the Settlement is Adequate Considering the Strength of Plaintiffs' Case, the Risk of Maintaining a Class Action Through Trial, and the Risk, Cost and Delay of Trial and Appeal

Guenther's agreement to pay $130,015.00 to settle this case and ensure compliance with RCW 59.18.257 going forward is more than adequate given the risks and delay of continued litigation. *Berry v. School Dist. of Benton Harbor,* 184 F.R.D. 93, 98 (W.D. Mich. 1998) ("one of the most important factors in assessing the fairness of a settlement agreement is the strength of the plaintiffs' case on the merits balanced against the relief offered in the settlement").

The monetary benefits of the settlement alone, which will pay class members more than the total assured damages under RCW 59.18.257[1] and 30% of the maximum damages available

[1] Guenther charged a $20.00 screening fee prior to June 1, 2018, and a $25.00 screening fee thereafter. Although the Court has the discretion to award up to $100.00 under RCW 59.18.257, the statute only prohibits a landlord from charging the tenant screening fee if the proper tenant screening disclosures are not provided.

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under RCW 59.18.257, exceeds or is on par with similar settlements approved by other courts. *See Knapp v. Art.com, Inc.*, 283 F.Supp.3d 823, 833 (N.D. Cal. 2017) (approving settlement of a consumer class action that provided 42% of the average total potential recovery and injunctive relief); *Cavnar v. BounceBack, Inc.*, No. 2:45-CV-235-RMP, ECF No. 154 (E.D. Wash. Sept. 15, 2015) (approving settlement providing 15.6% of alleged unlawful collection fees paid by class members alleging FDCPA and Consumer Protection Act violations); *Estate of Brown v. Consumer Law Assocs.*, No. , 2013 EL 2285368, at *3 (E.D. Wash. May 23, 2013) (approving settlement of class claims under the Consumer Protection Act, paying class members an estimated 30% of funds collected for challenged debt adjusting practices); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming the district court's approval of a settlement estimated to be worth between 16.67% and 50% of class members' estimated loss).

Though Plaintiffs are confident in the strength of their case, they are also pragmatic about the risks inherent in litigation and various defenses available to Guenther. In Plaintiffs' view, liability was relatively clear based on a review of Guenther's standard form tenant screening disclosures. However, success is not guaranteed. Absent this settlement, Plaintiffs would still have several hurdles to clear before resolution, including additional discovery, class certification, dispositive motions likely to be filed by both parties, and ultimately trial and any appeal that followed.

Litigating this case to trial and through any appeals would be expensive and time-consuming and would present risk to both parties. The Settlement, by contrast, provides prompt and certain relief for class members. *See Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009); *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("The Court shall consider the vagaries of litigation and compare the significance of

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immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." (citation omitted).

Here, Plaintiffs and Class Counsel's decision to settle was formed by extensive investigation, discovery, and negotiations with Guenther. The settlement negotiations were conducted at arm's length between experienced counsel for both parties. Plaintiffs' Counsel carefully explained the above risks as well as the proposed benefits and drawbacks of the settlement with the Plaintiffs. After Plaintiffs considered all of the above, while still remaining conscious of their duty to the putative class, determined this Settlement is in the best interest of the Class.

4. Class Counsel will Request Approval of a Fair and Reasonable Fee

Class Counsel intends to request an award of not more than $50,000.00 to compensate them for the work performed on behalf of the Class and to reimburse them for out-of-pocket expenses they have incurred in prosecuting this action. They will do so by preparing and filing a comprehensive motion for an award of attorneys' fees supported by detailed entry records within thirty (30) days after this Court enters a preliminary approval order in this matter. This motion will be posted on the Settlement Website at least 30 days before the deadline for class members to opt-out or object to the Settlement. (Miller Dec. ¶ 15). Guenther has agreed to pay for and not contest that amount. (Miller Dec. ¶ 15).

The attorneys' fees and costs Class Counsel seek are reasonable under the circumstances of this case. *See, In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (requiring that any attorneys' fee awarded be reasonable). District courts have discretion to use either the percentage-of-the-fund or the lodestar method to calculate a reasonable attorneys' fee from a common fund established by a class action settlement. *Vizcaino v. Microsoft Corp.*, 290

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F.3d 1043, 1047 (9th Cir. 2002). Here, Class Counsel will seek no more than 38% of the common fund recovered, which is reasonable.

5. Conclusion-The Court should Preliminarily Approve the Parties' Settlement Agreement

Based on the foregoing, Plaintiffs respectfully submit that the proposed settlement of this action satisfies all of the relevant legal standards for preliminary approval under CR 23. The Settlement is fair considering the amount of the recovery for the Class and the cost and risks of further litigation in this matter. The Settlement resulted from intensive, extended arm's-length negotiations over a period of multiple months, and reflects a reasonable compromise based on interests of the Class and the risks and expense of further litigation. All attorneys' fees, class representative fees, and class administration costs are being paid from the fund established by Guenther. (Miller Dec. ¶¶ 11-15).

C. The Court should appoint JND Legal Administration as Class Administrator and approve class notice.

After a competitive bidding process, Plaintiffs request the Court to appoint JND to act as the administrator of the Class. (Miller Dec. ¶ 13). JND has successfully acted as the class administrator in a number of other class actions filed in this state and throughout the United States. (Miller Dec. ¶ 13). Its responsibilities will include: printing and disseminating the class notice; following up on undelivered notices; establishing and maintaining a settlement website; establishing a toll-free number and responding to settlement class member calls; processing, logging, and reviewing exclusion requests for deficiencies; addressing deficiencies with those requesting exclusion and providing them with an opportunity to cure; administering the settlement fund; disbursing the settlement fund to settlement class members; and providing a report to this Court of the Settlement's success. (Miller Dec. ¶ 13).

Kirk D. Miller, P.S.
421 W. Riverside Ave., Ste 660
Spokane, WA 99201
(509) 413-1494

Filed contemporaneously with this Motion, attached as Exhibits B and C to the Declaration of Class Counsel Mr. Miller, are the proposed class notices. The parties request that the Court approve the notices and the dissemination of the notice to the class members by postcard via first class mail. As part of the Settlement Agreement, Guenther has agreed to pay all class administration fees and costs up to $20,865, which JND has estimated is sufficient to administer the Class. (Miller Decl. ¶ 13).

If any payments to class members are deemed undeliverable or remain unnegotiated 90 days after the check mailing date, the balance of all such payments shall be donated in equal amounts to the Legal Foundation of Washington and Northwest Justice Project as cy pres. (Miller Dec. ¶ 16). In addition, if the Court awards a lesser amount than agreed for a service award and/or attorneys' fees and costs, and class administration costs do not exceed JND's estimate, the difference shall be added to and included in the amount to be disbursed as cy pres. None of the settlement funds shall revert to Guenther. (Miller Dec. ¶ 16).

D. The Court should schedule a Final Approval Hearing.

The next steps in the settlement approval process are to schedule a final approval hearing, notify class members of the settlement and hearing, and provide class members with the opportunity to exclude themselves from, or object to, the Settlement. The parties propose the following schedule for final approval:

Action	Date
Guenther Providing Class Contact Information to Class Administrator	Within 15 days after entry of Preliminary Approval Order
Class Counsel to Provide Class Administration Costs and Class Member Payments to Class Administrator	Within 15 days after entry of Preliminary Approval Order

Kirk D. Miller, P.S.
421 W. Riverside Ave., Ste 660
Spokane, WA 99201
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Deadline for Delivering Class Notice	Within 15 days after receipt of class contact information from Guenther
Class Counsel's Fee and Costs Motion Submitted	Within 30 days after class notice is sent
Exclusions and Objections Deadline	60 days after class notice is sent
Final Settlement Hearing and Approval Order Entered	At the Court's discretion
Final Approval Motion Notice Deadline	Within 14 days of Final Approval Hearing Date
Distribution Date	Within 15 days following Final Approval
Class Adminstrator's Report to Court	Within 30 days following completion of Class Settlement Distribution

IV. CONCLUSION

The Plaintiffs respectfully request that the Court enter an order preliminarily certifying this matter as a class action, preliminarily approving the settlement of this action, appointing JND as the Class Action Administrator, and entering the administrative orders requested.

DATED this ___ day of September, 2021.

KIRK D. MILLER, P.S.

Kirk D. Miller, WSBA #40025
Attorney for Plaintiffs

CAMERON SUTHERLAND, PLLC

Shayne J. Sutherland, WSBA #44593
Attorney for Plaintiffs

Kirk D. Miller, P.S.
421 W. Riverside Ave., Ste 660
Spokane, WA 99201
(509) 413-1494

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
Carinne E. Bannan
LEE SMART, P.S. INC.
1800 One Convention Place
701 Pike Street
Seattle WA 98101

☐ First Class U.S. Mail
☒ E-Mail
☐ Hand Delivery
☐ Next Day Air

DATED this 17th day of September, 2021.

Teri A. Bracken, Paralegal

Kirk D. Miller, P.S.
421 W. Riverside Ave., Ste 660
Spokane, WA 99201
(509) 413-1494