

DISTRICT COURT CHAFFEE COUNTY, COLORADO 142 Crestone Avenue Salida, Colorado 81201 (719) 539-2561	DATE FILED: May 30, 2023 12:12 PM CASE NUMBER: 2018CV30021
<b>Plaintiffs:</b> JEREMIAH CANTONWINE, et al., individually, and on behalf of other CLASS MEMBERS similarly situated  <b>v.</b>  <b>Defendants:</b> JOHN G. MEHOS, et al.	
	<input type="checkbox"/> <b>COURT USE ONLY</b> <input type="checkbox"/>  Case Number: 2018CV300021 Div.: 2
<b>ORDER PRELIMINARILY APPROVING OF SETTLEMENT AND          APPROVING SETTLEMENT CLASS MEMBERS</b>	

Plaintiffs having made a motion for preliminary approval of a settlement agreement between a settlement Class Members and Defendants; and the Court having read and considered the material terms of the settlement between the parties, and Defendants' responses to Plaintiffs' motion **HEREBY ORDERS:**

1. For settlement purposes only and contingent upon the settlement being finally approved the Court finds that this action is maintainable as a class action against Defendants, for settlement purposes only, on behalf of three

Settlement Classes defined as follows:

- Negligence and PLA Class – Individuals who resided at D Street Apartment on May 2, 2017, including any of their heirs, executors, administrators, personal representatives, successors and/or assigns.
- Security Deposit Class – Anyone with a lease or security deposit that were not returned in the one year prior to the class action being filed (April 25, 2017) for tenants at the D Street, E. 1<sup>st</sup> Street, and F Street Apartments, including any of their heirs, executors, administrators, personal representatives, successors and/or assigns.
- Breach of Contract Class – Those who leased units from Defendants at D Street, E. 1<sup>st</sup> Street, and F Street from within 3 years prior to the class action being filed (April 25, 2015), including any of their heirs, executors, administrators, personal representatives, successors and/or assigns.

2. Subject to final approval and the entry of final judgment, the Court finds that the prerequisites of Colo.R.Civ.P. 23 are met and hereby certifies the foregoing defined Settlement Classes as the damage classes pursuant to Colo.R.Civ.P. 23(b)(3). If such final approval of the settlement is not granted, or if final judgment as contemplated herein is not entered, this Order shall be vacated, and the parties shall be restored without prejudice to their respective litigation positions prior to the date of this Order.

3. The Court finds that the manner and content of notice specified in the in Exhibit 2 will provide the best practicable notice to members of the Settlement Class and satisfies the requirements of due process. Notice shall be mailed to Settlement Class members, at Plaintiffs' counsel expense subject to reimbursement from the settlement fund, no later than 60 days after the date of this Order, in a form and content substantially similar to Exhibit 2. This notice will provide Settlement Class members with the opportunity to request exclusion from the Settlement Class. Such opt out rights may be exercised only individually by a Settlement Class Member, and not by any other person in a representative capacity. Plaintiffs' counsel shall also publish the notice in the Pueblo Chieftain, the Mountain Mail, the Chaffee County Times, and the Ark Valley Voice for four publications over four weeks. The notice shall also run as a prominent advertisement for two publications in two weeks, not as a legal notice, in the Mountain Mail and Chaffee County Times.

4. The Court preliminarily and conditionally approves the settlement of the Class claims for the total sum of \$1,000,000, and adopts and incorporates the other material settlement terms from Plaintiffs' Exhibit 1 filed with their motion for preliminary approval into this order. The Court preliminarily finds the settlement to be fair, reasonable, and adequate and in the best interests of the settlement Class Members.

5. The parties shall contact the Court Clerk to schedule a fair hearing to be held before this Court to consider and finally determine:
- a. Whether the settlement should be finally approved by the Court as fair, reasonable, and adequate.
  - b. Whether attorneys' fees and expenses should be awarded to

- Plaintiff's Counsel and payment should be made to the Class Representatives.
- c. Whether the plan of distribution is fair and reasonable; and
  - d. Objections, if any, made to the settlement, or any of its terms.

The Fairness Hearing may be postponed, adjourned, or continued by order of the Court without further notice to settlement Class Members.

6. Any person who wishes to opt out of the Settlement Class must send a written request for exclusion in the manner and to the address provided in the notice approved above. Any settlement Class Member who has not requested exclusion and who objects to approval of the proposed settlement may appear at the Fairness Hearing in person or through counsel retained at their own expense to show cause why the proposed settlement should not be finally approved as fair, reasonable, and adequate. However, no person (other than named Parties) may be heard at the Fairness Hearing, or file papers or briefs in connection therewith, unless on or before fourteen days prior to the hearing date, such person has filed with the Court and served on Class Counsel and Defendants' Counsel a timely written objection and notice of intent to appear, in accordance with the procedures specified in the notice. Any member of the Settlement Class who does not object to the settlement in the manner provided herein shall be deemed to have waived any such objection.

7. If the settlement is finally approved, the Court shall enter a settlement order and final judgment approving the settlement and incorporating it as the judgment of the Court, which judgment shall be binding upon all members of the Settlement Class who have not previously requested exclusion in accordance with this order.

8. If the proposed settlement is not approved by the Court, or entry of final judgment or final approval does not occur for any reason, then the settlement agreement, and all orders entered by the Court in connection therewith, shall become null and void, and shall not be used or referred to for any purpose in this litigation or in any other proceeding. In such event, the settlement agreement shall be withdrawn without prejudice to the rights of any of the parties, who shall be restored to their respective positions prior to the settlement.

9. Subject to final approval, all settlement Class Members who do not timely and properly exclude themselves from the settlement class are permanently enjoined, in either an individual or representative capacity, from filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as class members or otherwise, or seeking to certify a class in, or organizing persons into a separate class of persons, as a purported class action (including by seeking to amend a pending complaint to include class allegations) in or receiving any benefits or other relief from, any other lawsuit, arbitration or administrative, regulatory or other proceeding or order in any jurisdiction, based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in or underlying this action which qualify them as settlement Class Members.

10. With respect to the settlement of the minors' claims the Court hereby finds and declares that it is exercising concurrent jurisdiction as a probate court. § 15-10-201(10), C.R.S. defines "Court" for purposes of the probate code as the district court in all counties except for the City and County and Denver. Further, the Court finds that venue is appropriate in this Court because the interests of justice require

that these matters be consolidated in this Court to allow for fairness and consistency in administering the minor claims. Additionally, the Court finds that the property to be administered is located here in Chaffee County. § 15-10-303(3).

11. The Court specifically has considered that Colorado Probate Rule of Procedure 62(b) – the rule that addresses court approval of settlement claims of persons under disability, including minors – provides that venue for a petition brought under the rule “must be in accordance with § 15-14-108(3), C.R.S.” That subsection of 15-14-108 provides that venue for a protective proceeding is in the county of this state in which the respondent resides, or if the respondent does not reside in this state in any county of this state in which property of the respondent is located. Although Colorado Probate Rule 62(b) explicitly references subsection (3) of the statute as being the controlling subsection for venue, subsection (4) provides that if a proceeding is brought in more than one county in this state, the court of the county in which the proceeding is first brought has the exclusive right to proceed unless the court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred. § 15-14-108(4), C.R.S. This latter subsection suggests that venue for probate cases may be appropriate in some circumstances in counties other than where the person subject to probate proceedings resides.

12. The Court must decide whether the probate proceedings for minors contemplated here must be brought in the county in which each minor resides, as Rule 62(b) suggests, or whether this Court may exercise jurisdiction in probate to consider the minor claims involved here even if the minor does not reside in Chaffee

County. The Court raised its concern about the plain language of Rule 62(b) directing that venue must be in accordance with section 15-14-108(3), C.R.S., at the last hearing. The parties were to address this by further briefing, and Constantine Mehos argues that Rule 62(b) and section 15-14-108(3) requires that each minor open a probate proceeding in the county in which each is found to reside. In their Reply, Plaintiffs argue that Mr. Mehos's argument elevates procedure over substance, that Rule 62 does not address settling minor claims in the context of class action lawsuits which involves unique considerations, and that to the extent Rule 62(b) does not contemplate allowing venue pursuant to subsection (4) in addition to subsection (3), a conflict exists for which the statute must necessarily control. Plaintiffs also cite to Colorado Rule of Probate Procedure 20 (Reply, p. 2), but because this Rule addresses process and notice which are not at issue here, the Court understands Plaintiffs to instead be relying on Colorado Rule of Probate Procedure 5(b) which provides, "If no procedure is specifically prescribed by rule or statute, the court may proceed in any lawful manner not inconsistent with these rules of probate procedure and the Colorado Probate Code and must look to the Colorado Rules of Civil Procedure and to the applicable law if no rule of probate procedure exists." The Court understands Plaintiffs' argument to be that there is no rule of probate procedure addressing settlement of class actions involving minor claims, so the Court can look to Colorado Rule of Civil Procedure 23, which allows considerable discretion for trial courts to fashion the appropriate procedural path to settle claims in the class action context. C.R.C.P. 23(d). Plaintiffs also point out that a court's decision relating to venue does not impact its jurisdiction over a matter

and the decision is reviewed for an abuse of discretion.

13. The Court agrees that in the interests of justice, fairness, consistency, and judicial economy, venue for the minor claims in this class action case is appropriate with this Court (meaning the District Court in Chaffee County) sitting in probate. The Court will adopt the arguments of Plaintiffs for purposes of finding the Court has authority to deviate from Rule 62(b)'s direction that venue must be in the county in which the minor resides if the minor lives within the state given that this is a class action lawsuit involving minors, there is no probate rule addressing this scenario, and the Court can rely on C.R.C.P. Rule 23 to create a path to settlement which is in the interests of justice and promotes consistency, uniformity, and judicial economy. Further, the Court concludes venue is appropriate here because Chaffee County is where the property is located.

14. The Court therefore directs that the class administrator shall require that all minor claims submitted also show documentation of that minor's parent or legal guardian. After the minor claims are submitted the Court directs Plaintiffs' counsel to open a *separate* probate case for *each* minor by filing a petition pursuant to section 15-14-401, *et seq.*, and requesting either the parent be appointed as conservator, or Jenna Mazzucca as conservator. The parent or Ms. Mazzucca may be requested to be appointed as other than a conservator so long as they are still appointed as legal representative as defined in section 13-81-101, C.R.S., and the type of probate proceeding/request is appropriate to protect any minor settlement proceeds. Legal authority for the requested appointment shall be provided at the time the probate case is opened if appointment of other than a conservator is



requested.

15. Additionally, the Court appoints Jenna Mazzucca, Esq. as the GAL for all minors. Ms. Mazzucca shall appear at the fairness hearing to ensure that the settlement of the minors' claims is in their best interest.

Dated May 30, 2023.

BY THE COURT:



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Dayna Vise  
District Court Magistrate

This Order was issued for a function for which magistrate consent was necessary and any appeal must be taken pursuant to C.R.M. Rule 7(b).