

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

FRANCINE McCUMBER, ET AL.

Plaintiffs,

v.

INVITATION HOMES, INC., a Maryland
corporation

Defendant.

Case No. 3:21-cv-02194-B

Judge Jane J. Boyle

**ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiffs Francine McCumber, Erin Bird, Melissa Lynch, La Shay Harvey, Maryah Marciniak, Brian Majka, Chad Whetman, Tracy White, Rachel Osborn, Teresa Kerr, and Jose Rivera ("Plaintiffs") have applied to this Court for an order preliminarily approving the settlement of this action in accordance with a Joint Stipulation of Class Action Settlement and Release (the "Settlement" or "Settlement Agreement"), which, together with the exhibits thereto, sets forth the terms and conditions for a proposed settlement and dismissal of this pending action with prejudice upon the terms and conditions set forth therein; and

WHEREAS, the Court has read and considered Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, the Settlement Agreement, and the exhibits and declarations thereto;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Preliminary Approval Order incorporates by reference the definitions in the Settlement Agreement, and all terms defined therein shall have the same meaning in this Preliminary Approval Order as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the Action and all acts within the Action, and over all the Parties to the Action, including Plaintiffs, Class Members, and Defendant.

3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate, and reasonable. Indeed, the Court recognizes the significant value of the debt relief and monetary recovery provided to Class Members and finds that such recovery is fair, adequate, and reasonable when balanced against further litigation related to liability and damages issues. It appears that the Parties have conducted extensive investigation, formal and informal discovery, research, and litigation such that Class Counsel and defense counsel are able to reasonably evaluate their respective positions at this time. It further appears to the Court that the proposed Settlement, at this time, will avoid substantial additional costs by all Parties, as well as avoid the risks and delay inherent to further prosecution of the Action. It also appears that the Parties reached the Settlement as the result of intensive, serious, and non-collusive, arms-length negotiations facilitated by two experienced and neutral mediators. Thus, the Court finds on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. Accordingly, Plaintiffs' Motion for Preliminary Approval of Class Action Settlement is hereby **GRANTED**.

4. For purposes of this Settlement only, the Court hereby conditionally certifies a class of Class Members, consisting of the following Class:

All of Defendant's (i) Arizona tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017,

and November 29, 2023; (ii) California tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and November 29, 2023; (iii) Colorado tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and November 29, 2023; (iv) Florida tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and November 29, 2023; (v) Georgia tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2015, and November 29, 2023; (vi) Illinois tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2011, and November 29, 2023; (vii) Nevada tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and November 29, 2023; (viii) North Carolina tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2017, and November 29, 2023; (ix) Tennessee tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2015, and November 29, 2023; (x) Texas tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2019, and August 31, 2019; (xi) Washington tenants who were charged penalties or fees for paying rent that Defendant deemed as late or deficient between January 14, 2018, and November 29, 2023.

The Court finds that the requirements of Rule 23(a) have been satisfied. First, the proposed Class is sufficiently numerous, consisting of tens of thousands of individuals, that it would be impracticable to join separately or individually. Second, Plaintiffs, as former tenants of Defendant, have claims typical of the claims of the Class. Third, Plaintiffs and Class Counsel have no apparent conflicts with the Class and have demonstrated that they will adequately represent the class members' interests.

With respect to commonality, Plaintiffs have established that this case raises at least one common question of law or fact, including how Defendant set its standardized late fees and whether Defendant's standardized late fees were reasonable.

With respect to Rule 23(b), the Court further finds that certification is appropriate under 23(b)(3). Plaintiffs' claims satisfy Rule 23 (b)(3)'s "predominance" and "superiority" prongs. Whether Defendant's standard late fees were reasonable or the product of a reasonable endeavor

to estimate damages from the late payment of rent are common questions that predominate over any individualized ones. Class treatment is superior to thousands of mini actions because some claims may be quickly surpassed by the costs and other burdens of litigation. Judicial efficiency and the possibility of inconsistent judgments further support certification.

Should for whatever reason the Settlement not become final, the fact that the Parties were willing to stipulate to certification of the Class as part of the Settlement shall have no bearing on, nor be admissible in connection with, the issue of whether a class should be certified in a non-settlement context.

5. The rights of any potential dissenters to the proposed Settlement are adequately protected in that they may exclude themselves from the Settlement of the Released Claims, or they may object to the Settlement of the Released Claims and appear before this Court. However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of Settlement.

6. The Court approves, as to form and content, the proposed Notice of Class Action Settlement to Class Members and finds that the method selected for communicating the preliminary approval of the Settlement to Class Members is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to notice, and therefore satisfies due process.

7. For Settlement purposes only, the Court hereby appoints Plaintiffs Francine McCumber, Erin Bird, Melissa Lynch, La Shay Harvey, Maryah Marciniak, Brian Majka, Chad Whetman, Tracy White, Rachel Osborn, Teresa Kerr, and Jose Rivera as Class Representatives in the Action. Further, the Court preliminarily approves Service Awards to these Class

Representatives in a collective total amount not to exceed Fifty-Five Thousand Dollars (\$55,000) – i.e., \$5,000 to each Plaintiff.

8. For Settlement purposes only, the Court hereby appoints Craig Nicholas and Alex Tomasevic of Nicholas & Tomasevic, LLP as Class Counsel for Class Members, who it finds to be adequate counsel. The Court will await Class Counsels' submission of a formal motion in support of their attorneys' fees and costs before preliminarily approving any award amount. In particular, Class Counsel must provide the factual and legal basis for a preliminary award of 33%, versus 25% or 30%, of the Total Settlement Amount. Class Counsel's fees and costs will be subject to final approval of the Court.

9. The Court hereby appoints Angeion Group as the Settlement Administrator to administer the Notice of Settlement pursuant to the terms in the Settlement Agreement. The Settlement Administrator Costs will be subject to final approval of the Court.

10. No later than 45 calendar days after the entry of this Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class Information (as defined in the Settlement Agreement). No later than 14 calendar days after receipt of the Class Information, the Settlement Administrator shall use the Class Information to mail the Notice of Settlement to Class Members after conducting a national change of address search and a skip trace for the most current address of all Class Members and will update such addresses as necessary.

11. No later than 30 days after the Notice of Settlement to Class Members is sent out, Class Plaintiffs shall file a motion for final approval of the Settlement and an updated application for attorneys' fees and costs, laying out the factual and legal basis for Class Counsels' total award.

12. No later than 30 calendar days before the first date set for the Final Approval Hearing (i.e., the Opt-Out Date), any Class Member requesting exclusion from the Settlement must

submit his/her Request for Exclusion by mail or email to the Settlement Administrator as instructed in the Notice of Class Action Settlement. If the Court finally approves this Settlement, Class Members who fail to submit a timely and valid Request for Exclusion on or before the Opt-Out Date shall be Class Members bound by all terms of the Settlement and the Final Approval Order entered in the Action. To be valid, the Request for Exclusion must: (1) contain the full name, address, and last four digits of the social security number of the person requesting exclusion; (2) be signed by the person requesting exclusion (if mailed); and (3) state in substance: “I wish to exclude myself from the Settlement in the action titled *Francine McCumber et al. v. Invitation Homes, Inc.*, pending in the United States District Court for the Northern District of Texas, Case No. 3:21-CV-2194-B. I understand that by requesting to be excluded, I will receive no money from the Settlement.” Any Class Members who submit a timely and valid Request for Exclusion from the Class will not be entitled to any monetary recovery under the Settlement and will not be bound by the terms of the Settlement Agreement as it relates to the Released Claims. Any Class Members who submit a timely and valid Request for Exclusion from the Class will not have any right to object, appeal, or comment on the Settlement.

13. No later than 30 calendar days before the first date set for the Final Approval Hearing (i.e., the Objection Date), any Class Member wishing to object to the Settlement must submit his/her Notice of Objection by mail or email to the Settlement Administrator as instructed in the Notice of Class Action Settlement. Class Members who fail to submit a timely and valid Notice of Objection shall be deemed to have waived any objections and shall be foreclosed from making any objections to the Settlement.

14. The Final Approval Hearing shall be held on April 23, 2023, at 10:00 a.m., in the United States District Court for the Northern District of Texas, Courtroom 1516, 1100 Commerce

Street, Room 1520, Dallas, TX 75242, to consider the fairness, adequacy and reasonableness of the proposed Settlement, including without limitation the: Class Counsel Fees, Class Counsel Costs, Class Representative Service Awards, Settlement Administration Costs, Debt Relief, and Individual Settlement Payments to Participating Class Members.

15. This Settlement is not a concession or admission and shall not be used against Defendant or any of the Released Parties as an admission or indication with respect to any claim of any fault or omission by Defendant or any of the Released Parties. Whether the Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be: (a) construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant or any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (b) disclosed, referred to, or offered or received in evidence against any of the Released Parties in any further proceeding in the Action, or in any other civil, criminal or administrative action or proceeding, except for purposes of enforcing the Settlement. The Court's findings are for purposes of conditionally certifying the Class Members in the context of this Settlement and will not have any claim or issue or evidentiary preclusion or estoppel effect in any other action against Defendant or any of the Released Parties or in this litigation if the Settlement is not finally approved. If for any reason the Court does not execute and file a Final Approval Order, or if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason whatsoever, the Settlement Agreement and all evidence and proceedings had in connection therewith shall be without prejudice to the *status quo ante* rights

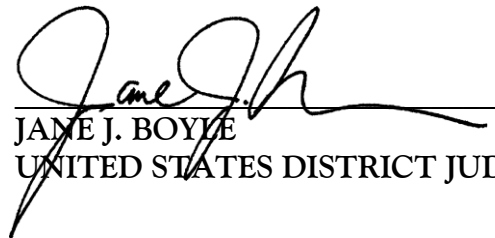
of the Parties to the Action, as more specifically set forth in the Settlement Agreement, and this Preliminary Approval Order shall be rendered null and void and shall be vacated.

16. Pending further orders of this Court, all proceedings in this matter except those contemplated in this Preliminary Approval Order and in the Settlement Agreement are stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to Class Members.

SO ORDERED.

SIGNED: November 29, 2023.


JANE J. BOYLE
UNITED STATES DISTRICT JUDGE