

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:21-CV-486-D

IRMA RODRIGUEZ and ETHEL)
DOLORES LAWSON, on behalf of)
themselves and all others similarly situated,)

Plaintiffs,)

v.)

RIVERSTONE COMMUNITIES, LLC,)
INDIAN CREEK PARENT, LLC,)
INDIAN CREEK MHP, LLC,)
INDIAN CREEK DEALER, LLC, and)
INDIAN CREEK ASSOCIATION, LLC,)

Defendants.)

Order

**PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING
CLASS AND SUBCLASS FOR PURPOSES OF SETTLEMENT,
DIRECTING NOTICE TO CLASS, AND SCHEDULING FAIRNESS HEARING**

WHEREAS, Plaintiffs Irma Rodriguez and Ethel Dolores Lawson, on behalf of themselves and the Settlement Class (“Plaintiffs”), and Defendants Riverstone Communities, LLC, Indian Creek Parent, LLC, Indian Creek MHP, LLC, Indian Creek Dealer, LLC, and Indian Creek Association, LLC (“Defendants”) (collectively referred to as the “Parties”), have executed a Settlement Agreement and Release (“Settlement Agreement”) resolving this action;

WHEREAS, the Settlement Agreement sets forth the terms and conditions of a proposed class action settlement and Plaintiffs have moved, pursuant to Fed. R. Civ. P. 23(e) and (g), for an Order seeking preliminary approval of that class action settlement, certifying a class for settlement, appointing settlement class counsel, directing notice to the class, and scheduling a fairness hearing (“Motion”);

Having duly considered the Settlement Agreement, the Motion, and arguments of counsel of record, it is hereby ORDERED that the Motion is GRANTED, subject to the following terms and conditions:¹

Class Certification for Settlement Purposes Only

1. The proposed Settlement Agreement submitted with the Motion is preliminarily approved, pending the notice and formal approval process set forth herein.
2. Based on the submissions of the Parties, and for purposes of this settlement only, the Court conditionally makes the following findings:
 - a. As defined in the Settlement Agreement, the members of the Settlement Class and the Unexercised Option Subclass are ascertainable and so numerous as to make joinder impracticable;
 - b. There are questions of law and fact common to the Settlement Class Members and the Unexercised Option Subclass Members and such questions predominate over any questions affecting only an individual Settlement Class Member or Unexercised Option Subclass Member;
 - c. Plaintiffs' claims are typical of the claims of the Settlement Class Members, and Plaintiff Irma Rodriguez's claims are typical of the Unexercised Option Subclass Members;
 - d. Plaintiffs and their counsel can fairly and adequately protect, and have fairly and adequately protected, the interests of the Settlement Class Members and Unexercised Option Subclass Members in this action; and

¹ Capitalized terms not otherwise expressly defined in this Order shall have the meaning ascribed to them by the Parties in the Settlement Agreement.

e. A class action is superior to other available methods for fairly and efficiently resolving the controversies placed at issue in this action.

3. Accordingly, for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), the Court preliminarily certifies the Settlement Class and Unexercised Option Subclass defined as:

Settlement Class: All persons who both (i) signed a Purchase Option with one or more Defendants for a Mobile Home and (ii) resided in that Mobile Home at Indian Creek at any time on or after October 15, 2017; provided, however, that the Settlement Class does not include those persons excluded as set forth below.

Unexercised Option Subclass: All Settlement Class Members who both (i) reside at Indian Creek on the Effective Date and (ii) have not, as of the Effective Date, exercised his/her/their Purchase Option. For clarification purposes, a Former Resident (*i.e.*, any Settlement Class Member who does not reside at Indian Creek on the Effective Date) is not in the Unexercised Option Subclass. For further clarification, if a Settlement Class Member resides at Indian Creek on the Effective Date but has already exercised his or her Purchase Option (*i.e.*, has purchased the Mobile Home) as of the Effective Date, then that Settlement Class Member is not in the Unexercised Option Subclass.

Excluded from the Settlement Class (and, thus, also excluded from the Unexercised Option Subclass) are: (i) any person who signed a Purchase Option, but who, instead of paying the Option Fee, purchased the Mobile Home in one payment; (ii) any person who timely and properly excludes him/herself from the Settlement Class as provided in the Settlement Agreement; (iii) any person employed by any Defendant during the Class Period; and (iv) the Court and the Court's immediate family.

The Effective Date is the fifth business day after all of the following events have occurred:

- a. Entry of this Order;
- b. Final approval by the Court of the Settlement Agreement, following notice to Settlement Class Members and a Fairness Hearing; and

- c. Entry by the Court of a Final Approval Order and a final judgment and the expiration of any time for appeal or review from the Final Approval Order and final judgment, or if any appeal is filed and not dismissed, after the Final Approval Order and final judgment is upheld on appeal in all material respects and is no longer subject to review on appeal or discretionary review by the United States Court of Appeals for the Fourth Circuit or by the United States Supreme Court.

Class Counsel and Class Representatives

4. Katharine Woomer-Deters, Jason Pikler, and Carlene McNulty of the North Carolina Justice Center and Stuart Rossman of the National Consumer Law Center are appointed as Class Counsel.

5. Irma Rodriguez and Ethel Dolores Lawson are appointed as representatives of the Settlement Class. Irma Rodriguez is also appointed as representative of the Unexercised Option Subclass.

Preliminary Approval

6. The Settlement Agreement is preliminarily approved as describing a settlement that is within the range of settlements that the Court would find to be fair, reasonable, and adequate.

7. The Court's preliminary approval is subject to the right of any Settlement Class Member to challenge the Settlement Agreement and to show cause, if any exists, why a Final Approval Order and final judgment dismissing this Action with prejudice based on the Settlement Agreement should not be entered, after due and adequate notice has been provided to the Settlement Class Members and a fairness hearing has been held as otherwise ordered herein.

8. The Court finds that the Settlement Agreement resulted from good-faith bargaining and arm's-length negotiations, extensive investigation, and in-depth preparation of and response to Defendants' motion to dismiss, and that the terms of the proposed Settlement Agreement are sufficiently fair and reasonable so as to warrant notice thereof to the Settlement Class, and to warrant a hearing concerning the settlement and the terms set forth in the Settlement Agreement.

Fairness Hearing

9. A hearing (the "Fairness Hearing") shall be held before this Court on February 2, 2024 at 1:00 a.m./p.m., or as soon as practical after Class Counsel files a motion for final approval, to determine whether:

- a. The Settlement Class and Unexercised Option Subclass provisionally certified herein in fact satisfy each of the prerequisites for class certification set forth in Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3);
- b. The settlement proposal described in the Settlement Agreement is fair, reasonable, and adequate;
- c. Orders granting final approval of the Settlement Agreement, entering final judgment and dismissing the Complaint with prejudice, as provided in the Settlement Agreement, should be entered; and
- d. The applications of Class Counsel for the payment of attorneys' fees and expenses and Plaintiffs' service awards should be approved.

10. At the Fairness Hearing, the Court will consider any objections presented by the Settlement Class Members and the Parties' responses to any such objections.

Pre-Hearing Notice

11. The Court finds that the manner and content of the Class Notice as set forth in the Settlement Agreement (and in the exhibits to the Settlement Agreement) will provide the best notice practicable to the Settlement Class Members under the circumstances.

12. Within 7 days of entry of this Order, Defendants will provide the Settlement Administrator with the information enumerated in Section 7.2 of the Settlement Agreement, including the names and, if known, the mailing and electronic mail addresses of all putative Settlement Class Members. The Settlement Administrator will have 45 days from entry of this Order to send the Class Notice by first-class mail and by electronic mail, if available, as well as posting of the Class Notice on the Settlement Website.

13. The Defendants shall provide the notification required under 28 U.S.C. § 1715 to the applicable federal and state agency.

Requests for Exclusion from Class

14. Any Settlement Class Member who wishes to be excluded from the proposed settlement must send a written request for exclusion to the Settlement Administrator no later than forty-five (45) days from the date on which the Class Notice is mailed (the “Class Notice Mailing Date” as defined in the Settlement Agreement).

15. To be valid, requests for exclusion must contain the following:

- a. The full name, address, and signature of the person requesting exclusion;
and
- b. A statement that the person wishes to be excluded from the settlement.

16. Any Settlement Class Member who does not submit a timely and valid written request for exclusion meeting the conditions described in the foregoing paragraph shall be bound

by the final settlement and by all subsequent proceedings, orders and judgments in this Action, even if such person has pending or subsequently initiates litigation or other proceedings against any Released Parties relating to matters or the claims released in this Action.

Objections to Settlement

17. Any Settlement Class Member who does not submit a timely and valid written request for exclusion may object to the fairness, reasonableness, or adequacy of the settlement.

18. Settlement Class Members may not seek to exclude themselves from the Settlement Class and file an objection to the proposed settlement, however.

19. Any Settlement Class Member who wishes to object to any aspect of the Settlement Agreement must deliver to Class Counsel and Defendants' Counsel, and file with the Court, no later than forty-five (45) days from the Class Notice Mailing Date, a written statement of his/her objection(s).

20. Written objections must:

- a. Provide the Settlement Class Member's name and current mailing address;
- b. Be signed by the Settlement Class Member;
- c. Include a statement of the Settlement Class Member's specific objections;
and
- d. State the grounds for objection, as well as identify any documents that the objector desires the Court to consider.

21. Settlement Class Members may raise an objection either on their own or through an attorney hired at their own expense.

22. Any Settlement Class Member who fails to comply with the provisions of the subsections concerning objections shall waive and forfeit any and all rights he or she may have to

appear separately and/or object, and shall be bound by all the terms of the settlement and by all proceedings, orders and judgments in this Action.

Retention of Administrator

23. The Court appoints American Legal Claims Services, LLC as the Settlement Administrator.

24. American Legal Claims Services, LLC shall do the following:

- a. Implement and administer the Notice Program as set forth in Section 7.3 of the Settlement Agreement, including the dissemination of Class Notice to Settlement Class Members as set forth in Section 7.3.1 and establishing and maintaining the Settlement Website as set forth in Section 7.3.2;
- b. Receiving, processing, and maintaining opt-out requests (or “Exclusion Requests” as defined in the Settlement Agreement), and sending copies of same to Class Counsel, Defendants’ Counsel, and, if requested, the Court;
- c. Respond to inquiries from Settlement Class Members received through the Settlement Website or by mail;
- d. Assist Class Counsel with other aspects of the settlement as necessary and directed by Class Counsel;
- e. Report to Class Counsel, and upon request Defendants’ Counsel, regarding the completion of the tasks identified in this paragraph;
- f. Issue other reports and provide any and all files, documents, and data related to the Settlement Agreement, upon request, to Class Counsel;
- g. Carry out other related tasks in accordance with the terms of the Settlement Agreement; and

- h. Agree to employ their best efforts to faithfully and fully perform any and all obligations and duties imposed on the Settlement Administrator pursuant to the Settlement Agreement and its exhibits and amendments (if any).

Effect of Final Approval

25. If the settlement proposed by the Parties is finally approved, the Court shall enter a separate order approving the settlement, entering final judgment and dismissing, with prejudice, the Class Action Complaint and the Action. That separate order, if issued, will direct the Settlement Administrator to implement and administer the terms of the Settlement Agreement that are to occur after the Effective Date (including, but not limited to, determination of the amounts owed to each Settlement Class Members from the Settlement Fund, the distribution of the Settlement Fund, dissemination of the Information Sheet, dissemination and processing of the Right-to-Cancel Forms, etc.).

26. Such Final Approval Order and final judgment shall be fully binding with respect to all Settlement Class Members and shall release each and every Defendant, along with any person, partnership, firm, corporation, limited liability company, trust, organization, or other entity in which any one or more of Defendants has a controlling interest or which is or was legally related to, or affiliated with, any one or more of Defendants, and their respective past or present members, managers, directors, officers, employees, insurers, reinsurers, sureties, attorneys, agents, partners, principals, advisors, investment advisors, auditors, accountants, and trustees, and all persons or entities who might be claimed to be jointly and severally liable with him, her, or it, from any and all duties, obligations, claims, actions, causes of action, damages, or liabilities, whether arising under local, state, or Federal law, whether by Constitution, statute, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or

equity, or contract, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, that (i) were raised or could have been raised in the Action or (ii) relate to the tax treatment for any payments made to Settlement Class Members pursuant to the Settlement Agreement or any tax forms provided to Settlement Class Members by the Settlement Administrator.

Schedule

27. The following deadlines shall apply unless modified by further order of the Court:
- a. Defendants shall provide the information enumerated in Section 7.2 of the Settlement Agreement to the Settlement Administrator within 7 days of entry of this Order.
 - b. Class Notice in the form of Exhibit B to the Settlement Agreement shall be sent to Class Members via first class mail and electronic mail, if available, and made available on the Settlement Website, as provided in the Settlement Agreement within 45 days of entry of this Order.
 - c. Class Counsel shall file with this Court their petition for an award of attorneys' fees and reimbursement of expenses and request for incentive awards to the Named Plaintiffs no later than 30 days after the Class Notice Mailing Date.
 - d. Any Exclusion Requests shall be submitted to the Settlement Administrator within 45 days of the Class Notice Mailing Date.
 - e. Any objections to the Settlement Agreement shall be filed with the Court within 45 days from the Class Notice Mailing Date.

- f. Class Counsel shall file and serve a motion for final approval of the settlement, including any responses to proper and timely objections filed thereto, by 30 days after the Opt-Out and Objection Deadlines.
- g. The Fairness Hearing shall be held on February 2, 2024, at 1:00 ~~a.m.~~ p.m., or as soon as practical after Class Counsel files the motion for final approval of the settlement, in Courtroom No. 1 of the United States District Court for the Eastern District of North Carolina.

SO ORDERED. This 9 day of October, 2023.

J. Dever
JAMES C. DEVER III
United States District Judge