

August 08 2023 11:27 AM

CONSTANCE R. WHITE  
COUNTY CLERK  
NO: 22-2-07296-8

The Honorable Stanley J. Rumbaugh  
Hearing Date: August 25, 2023  
Hearing Time: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

SAMANTHA D. DAVIS individually and on  
behalf of all those similarly situated,

Plaintiff,

vs.

AVILA-SORENSEN INC., a Washington  
Corporation,  
JEFFREY SORENSON, individually and his  
marital community if any, and  
LYNDIA MCELROY, individually and her  
marital community if any,

Defendants.

No. 22-2-07296-8

PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT

Pursuant to CR 23(e), Plaintiff Samantha D. Davis respectfully moves the Court for final approval of the class action settlement preliminarily approved by this Court on April 28, 2023, and for entry of the Final Approval Order. The common fund settlement requires Defendant to pay \$385,000 for the benefit of Defendants' employees who make up the Settlement Class. After this Court preliminarily approved the settlement, the settlement administrator sent a settlement notice to each Settlement Class Members. As of the date of this briefing, only two Settlement Class Member notices have been undeliverable, no Settlement Class Members have objected, and no Settlement Class Members opted out.

1 **I. STATEMENT OF FACTS**

2 The factual and procedural background of the case and description of the proposed  
3 settlement are set forth in Plaintiff’s Motion for Conditional Settlement Class Certification and  
4 Preliminary Approval of Class Action Settlement and the accompanying Declaration of James B.  
5 Pizl, filed on April 19, 2023. In the interests of brevity, Plaintiff will not repeat those facts here.

6 On May 31, 2023, Counsel provided the court-approved settlement administrator, CPT  
7 Group (“CPT”), with electronic files containing the names, social security numbers, last-known  
8 addresses, and hire and termination dates for all time each Settlement Class Member. *Declaration*  
9 *of Kaylie O’Connor on behalf of CPT Group Inc.* (O’Connor Decl.) ¶5. CPT subsequently updated  
10 Settlement Class Members’ address information using data from the National Change of Address  
11 (NCOA) database. *Id.* at ¶6. On June 1, 2023, counsel provided a data file that contained paystub  
12 information to assist in computing total wages paid. *Id.* at ¶5. The finalized class list contained  
13 174 Class Members. *Id.*

14 As required by the Court’s Preliminary Approval Order, CPT sent the approved Notice of  
15 Settlement (“Notice”) via First Class Mail and email to Settlement Class Members on June 7, 2023.  
16 O’Connor Decl. ¶¶6-7. The Notice informed Settlement Class Members that anyone who wanted  
17 to be excluded from the Settlement (“opt out”) could do so by submitting a written request for  
18 exclusion to CPT postmarked on or before July 22, 2023. *Id.* at ¶10. The Notice also informed  
19 Settlement Class Members that anyone who wanted to object to the Settlement could do so by  
20 filing a written objection with the Court and mailing it to counsel for the parties, postmarked on  
21 or before July 22, 2023. *Id.*

22 To date, CPT has tracked 13 notices from the mailings that were returned as undeliverable,  
23 11 were forwarded or remailed using skip traces. *Id.* at ¶¶8-9. 2 notices remain undeliverable. *Id.*  
24 at ¶9.

25 To date, no Settlement Class Members have submitted valid requests for exclusion from  
26 the Settlement Class. *Id.* at ¶12. No Settlement Class Member objections to the settlement have

1 been received. *Id.* at ¶11; *Declaration of James B. Pizl in Support of Plaintiff’s Motion for Final*  
2 *Approval of Class Action Settlement* (“Pizl Decl.”) ¶2. 100% of class members will participate in  
3 the settlement. O’Conner Decl. ¶13.

## 4 **II. EVIDENCE RELIED UPON**

5 Plaintiff relies on the prior submissions in the case, particularly the papers filed in support  
6 of preliminary approval of the settlement, the Declarations of Kaylie O’Connor and James B. Pizl  
7 being filed herewith.

## 8 **III. DISCUSSION**

### 9 **A. The Court Should Grant Final Approval of The Proposed Settlement.**

10 A class action settlement should be approved if it is “fair, adequate, and reasonable.”  
11 *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 188 (2001) (quoting *Torrise v. Tucson*  
12 *Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)). This is a “largely unintrusive inquiry.” *Id.* at  
13 189. A detailed analysis of the standard of review for final approval of a class action settlement  
14 and the factors supporting final approval in this case are addressed in Plaintiff’s preliminary  
15 approval motion. There have been no new developments since the Court’s April 28, 2023 order  
16 granting preliminary approval that calls into question the fairness, reasonableness, or adequacy of  
17 the settlement.

18 In addition, no Settlement Class Members have raised any objection to any element of the  
19 settlement and no Settlement Class Members have opted out of the settlement to date. The absence  
20 of objections and requests for exclusion is strong evidence supporting the fairness and  
21 reasonableness of the settlement.

### 22 **B. The Requested Attorney’s Fees and Litigation Costs Are Reasonable and** 23 **Should Be Approved.**

24 Where attorneys have obtained a common fund settlement for the benefit of a class,  
25 Washington courts use the “percentage of recovery approach” in calculating and awarding  
26 attorneys’ fees. *Bowles v. Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72 (1993). Because this is a common

1 fund settlement, the “percentage of recovery approach” applies. *See id.* “Under the percentage of  
2 recovery approach . . . attorneys are compensated according to the size of the benefit conferred,  
3 not the actual hours expended.” *Lyzanchuk v. Yakima Ranches Owners Ass’n, Phase II, Inc.*, 73  
4 Wn. App. 1, 12 (1994). As the Washington Supreme Court has recognized, “[i]n common fund  
5 cases, the size of the recovery constitutes a suitable measure of the attorneys’ performance.”  
6 *Bowles*, 121 Wn.2d at 72. Public policy supports this approach: “When attorney fees are available  
7 to prevailing class action plaintiffs, plaintiffs will have less difficulty obtaining counsel and greater  
8 access to the judicial system. Little good comes from a system where justice is available only to  
9 those who can afford its price.” *Id.* at 71.

10 As noted in the preliminary approval motion, Class Counsel asks the Court to approve an  
11 attorney’s fee award of 30% of the common fund in this case, or \$115,500, plus litigation costs of  
12 \$5,758.74. Pizl Decl. ¶4. This fee award is consistent with governing case law and authorities.

13 The typical range of attorneys’ fees in common fund class action cases is between 20% and  
14 33%. *See Bowles*, 121 Wn.2d at 73 (citing 3 *Newberg on Class Actions* § 14.03 for the proposition  
15 that 20 to 30 percent had been the usual range for common fund fee awards); 4 *Newberg on Class*  
16 *Actions* § 14:6 (4th ed. online) (“common fee awards fall in the 20 to 33 per cent range” and  
17 “empirical studies show that, regardless whether the percentage method or the lodestar method is  
18 used, fee awards in class actions average around one-third of the recovery”). The 30% award Class  
19 Counsel seeks here is consistent with this range, and in fact lower than what counsel would  
20 ordinarily recover in an individual case. *See Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wn.2d 157,  
21 161-66 (2010) (discussing contingency fee percentages between 33 1/3 percent and 44 percent and  
22 reinstating trial court’s order that “40 percent contingency fee based on the \$5 million settlement  
23 was fair and reasonable”).

24 The 30% fee award is also well in line with percentage fee awards approved in other  
25 employment law class actions. *See, e.g., Gonzalez v. Roche Fruit Co., Inc.*, Yakima County  
26 Superior Court No. 19-2-0402039 (February 18, 2022) (finding “an attorney fee award of one-

1 third of the common fund is fair and reasonable” for common fund class action settlement); *Blasco*  
2 *v. El Gaucho Tacoma, LLC*, Pierce County Superior Court No. 16-2-07538-5 (April 20, 2018)  
3 (awarding 33 percent of the maximum common fund amount); *Stamey v. State of Washington*,  
4 Pierce County Superior Court No. 03-2-06201-0 (August 5, 2004) (awarding fees in the amount  
5 of “one-third of settlement proceeds”); *Mader v. Health Care Authority*, King County Superior  
6 Court No. 98-2-30850-8 SEA (May 14, 2004 Order at ¶ 25) (awarding \$3.6 million fee of \$11  
7 million cash settlement, equaling approximately 32.7 percent of cash settlement).

8 Settlement Class Members were informed in the Notice that Class Counsel would seek this  
9 award, and no one has objected to date. Further, given the favorable result for Settlement Class  
10 Members in this case, the time and effort expended by Class Counsel in litigating the case, and the  
11 importance of Class Counsel’s skill and experience in this arena to obtain this result, this award is  
12 appropriate. While any class action is risky, this case presented unique challenges that could have  
13 resulted in no recovery for the class if this Court declined to certify the class or otherwise found  
14 that Defendant’s practices were lawful. Defendant consistently argued that its employees were  
15 properly paid and denied liability for the claims. Nonetheless, Class Counsel took the risk of  
16 litigating the case on a contingency basis without any guarantee of compensation for their work  
17 and advanced necessary costs. Pizl Decl. ¶4. Class Counsel took their charge seriously and  
18 endeavored to represent the interests of the workers to the greatest extent possible.

19 Application of 30% fee is further justified by the complexity of the litigation. This case  
20 involved approximately 176 potential class members and implicated multiple legal claims,  
21 defenses, and issues. Class Counsel have spent scores of hours investigating the claims, engaging  
22 in discovery, carefully analyzing documents and data, gathering evidence, litigating the case,  
23 constructing a damages model to negotiate intelligently, negotiating the settlement, and seeking  
24 court approval. *Id.*

25 For common fund settlements, litigation costs are awarded in addition to percentage fee  
26 awards. *See Bowles*, 121 Wn.2d at 70–74 (affirming common fund fee award of \$1.5 million and

1 costs award of \$17,000). “Reasonable costs and expenses incurred by an attorney who creates or  
2 preserves a common fund are reimbursed proportionately by those class members who benefit  
3 from the settlement.” *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal.  
4 1996). Here, Class Counsel has or will incur litigation expenses of \$5,758.74. Pizl Decl. ¶4. These  
5 expenses include but are not limited to: (1) filing fees; (2) court reporter fees; (3) working copies;  
6 (4) mediation expenses; and (5) other related expenses. *Id.* The expenses were reasonable and  
7 necessary to secure the successful resolution of this litigation. *See In re Immune Response Sec.*  
8 *Litig.*, 497 F. Supp. 2d 1166, 1177–78 (S.D. Cal. 2007) (finding costs such as filing fees, online  
9 legal research fees, and mediation expenses are relevant and necessary expenses in class action  
10 litigation). The actual litigation costs of \$5,758.74 are less than the amount stated in settlement  
11 notices issued to Settlement Class Members (\$7,000).

12 Accordingly, the proposed fee and cost awards should be approved.

13 **C. The Proposed Service Award Is Reasonable And Should Be Approved.**

14 Class Counsel also asks the Court to approve a service award in the amount of \$7,500 for  
15 the named class representative, Samantha D. Davis, for her time and effort in representing the  
16 Settlement Class. Such treatment of class representatives is fair and reasonable and is frequently  
17 requested and approved. *See, e.g., Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329-30 &  
18 n.9 (W.D. Wash. 2009) (citing decisions approving service awards up to \$40,000).

19 In this case, Ms. Davis diligently represented the class over the course of the litigation by  
20 responding to discovery requests, consulting with counsel about the facts of the case, litigation  
21 strategy, informal settlement negotiations, and formal negotiations at a full-day mediation. Pizl  
22 Decl. ¶3. Ms. Davis providing input and assistance before and during the settlement negotiations  
23 significantly contributed to the substantial benefits obtained for the Settlement Class. *Id.*

24 Finally, as with all elements of the settlement, the proposed service award was disclosed  
25 in the Notice and no member of the Settlement Class has objected to it. For these reasons, the  
26 service award of \$7,500 is reasonable and should be approved.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**D. The Court Should Approve the Settlement Administrator’s Fees and Expenses.**

The Settlement Administrator, CPT Group, will charge a total of \$10,000 in costs associated with the administration of the settlement. See O’Connor Decl. ¶15. These fees and costs were disclosed in the Notice and no member of the Settlement Class has objected to them. For these reasons, the Court should approve payment of these fees and costs out of the Common Fund Payment.

**IV. CONCLUSION**

For the foregoing reasons and the reasons stated in the Plaintiff’s Motion for Conditional Settlement Class Certification and Preliminary Approval of Class Action Settlement, the Court should enter the accompanying Final Approval Order, which grants final approval of the class settlement, approves the awards of attorneys’ fees and litigation costs to Class Counsel, approves the service award for the named Plaintiff, and approves payment of the settlement administration costs.

DATED this 8th Day of August, 2023.

ENTENTE LAW PLLC

s/ James B. Pizl  
James B. Pizl, WSBA #28969  
Justin O. Abbasi, WSBA #53582  
Ari M. Robbins Greene, WSBA #54201  
315 – 39<sup>th</sup> Avenue SW, Suite 14  
Puyallup, WA 98373  
*Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 I certify that I caused to be served in the manner noted below a copy of the foregoing  
3 Plaintiff's Motion for Final Approval of Class Action Settlement and supporting declarations on  
4 the following individual(s):

5 *Counsel for Defense:*

6 Darren A. Feider, WSBA #22430

7 Tina M. Aiken, WSBA #27792

8 Sebris Busto James P.S.

9 15375 SE 30<sup>th</sup> Place, Suite 310

10 Bellevue, WA 98007

11 P 425-454-4233

12 [dfeider@sbj.law](mailto:dfeider@sbj.law)

13 [taiken@sbj.law](mailto:taiken@sbj.law)

- 14  Via Facsimile
- 15  Via First Class Mail
- 16  Via Messenger
- 17  Via Email
- 18  Via EFiled/EService

19 DATED: August 8th, 2023, at Puyallup, Washington.

20 /s/ Anjeanette Deloney

21 Anjeanette Deloney, Paralegal

22 Entente Law PLLC

23 315 Thirty-Ninth Ave SW, Suite 14

24 Puyallup, WA 98373-3690

25 (253) 446-7668

26 [anjeanette@ententelaw.com](mailto:anjeanette@ententelaw.com)