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**NO: 22-2-10789-3**

The Honorable Susan B. Adams  
Hearing Date: July 28, 2023  
Hearing Time: 9:00 a.m.

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

No. 22-2-10789-3

WILLIAM D. BROEKER and AMAN ARMIN,  
individually and on behalf of all those similarly  
situated,

Plaintiffs,

vs.

ROTO-ROOTER SERVICES COMPANY, a  
foreign corporation,

Defendant.

PLAINTIFFS' MOTION FOR  
CONDITIONAL SETTLEMENT CLASS  
CERTIFICATION AND PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

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1 denies and continues to deny Plaintiffs' allegations both with respect to Plaintiffs' claims and those  
2 of the proposed class, the parties agreed to work towards efficient and early resolution.

3 Throughout the litigation, the Parties have conducted substantial informal and formal  
4 discovery and investigation of the facts and the law. Pizl Decl. ¶6. The parties and their counsel  
5 have also interviewed witnesses; collected and analyzed extensive electronic time and payroll data,  
6 documents, and other information concerning the composition of the Settlement and the merits  
7 and possible extent of Plaintiffs' claims and Defendant's defenses. *See generally id.* ¶¶5-11. The  
8 parties feel they have amply considered and analyzed their respective claims and defenses. *See id.*

9 The Parties then engaged in good faith and arm's length negotiations including a full-day  
10 mediation with an experienced mediator. *See id.* at ¶6. Those negotiations resulted in the proposed  
11 class settlement presented here. *See id.* at ¶6, Exh. 1.

12 Named Plaintiffs and their counsel have determined that the proposed settlement is fair,  
13 reasonable, adequate, and in the best interests of the Settlement Class and that it is desirable that  
14 the litigation be settled in the manner and upon the terms and conditions set forth therein. *Id.* at  
15 ¶15. The Settlement will permit Settlement Class to receive compensation without the time, risk,  
16 and expense of further litigation, and permit Defendant to avoid the risk, expense, and  
17 inconvenience of further legal proceedings, despite its ongoing denial of the allegations in the  
18 Complaint. *Id.* at ¶¶16-18.

19 **B. The Proposed Settlement.**

20 A copy of the proposed Settlement Agreement is attached as Exhibit 1 to the accompanying  
21 Pizl Declaration. The key terms of the Agreement are as follows:

22 **1. Settlement Class**

23 The Settlement Class includes:

24 All individuals employed by Defendant in Washington state performing plumbing  
25 and other services for Defendant's customers and paid on a piecework, commission,  
26 and/or other productivity basis at any time between December 19, 2019, and  
through the earlier of (a) the date of preliminary approval or (b) August 7, 2023  
("Settlement Class Period").

1 *Id.* at ¶7.

2 Defendant does not oppose certification of the Settlement Class for purposes of settlement  
3 only, but reserves the right to oppose certification of any litigation class in the event the Settlement  
4 is not approved.

## 5 **2. Settlement Fund**

6 Defendant will make a Settlement Fund payment of \$300,000.00 to pay for Settlement  
7 Awards to Settlement Class Members, Attorneys' fees and costs, Settlement Administration  
8 expenses, and any Class Representative Service Award and Full Release Award approved by the  
9 Court. *Id.* at ¶6, Exh. 1. If any settlement checks remain uncashed after 120 days after distribution,  
10 the funds from those checks will be sent in the Settlement Class member's name to the Unclaimed  
11 Property Fund for the State of Washington. Defendant will not receive funds from any uncashed  
12 checks. *Id.*

## 13 **3. Payments to Individual Settlement Class**

14 The Class Fund, after Court-approved attorney's fees and costs, settlement administration  
15 expenses, service awards, and full release awards, will be allocated to Settlement Class. Individual  
16 Settlement Awards to Settlement Class Members will be calculated proportionally based on the  
17 total number of workweeks worked by Settlement Class Members, as recorded in Defendant's  
18 records for the Settlement Class Period. *Id.* at ¶12. For tax purposes, individual settlement awards  
19 will be allocated 50% to wages and 50% to non-wages (penalties, enhancements, and prejudgment  
20 interest.) *Id.* at ¶14.

## 21 **4. Attorneys' Fees and Costs**

22 At final approval, Class Counsel will request an award of attorney's fees of \$90,000.00 or  
23 30% of the Settlement Fund, plus actual litigation costs of no more than \$5,000.00. *Id.* at ¶20.

## 24 **5. Settlement Administration**

25 Subject to Court approval, CPT Group Class Action Administrators shall be appointed as  
26 "Settlement Administrator" responsible for establishing a Qualified Settlement Fund ("QSF")



1 pursuant to IRC § 468B(g), mailing and/or emailing Class Notices, issuing settlement awards to  
2 Settlement Class Members, processing and filing all appropriate tax forms and documents  
3 including but not limited to W2s, 1099s, 1120-SF, etc. Subject to approval by the Court, the  
4 Settlement Administrator will receive up to \$10,000.00 from the Settlement Fund to compensate  
5 for services provided. *Id.* at ¶19.

#### 6 **6. Class Representative Payment**

7 Subject to approval by the Court, Named Plaintiffs William Broeker and Aman Armin will  
8 receive an additional \$7,500.00 each from the Settlement Fund in recognition of, among other  
9 things, the substantial benefits obtained for the Settlement Class through their work as class  
10 representatives, the time devoted by them in consulting with counsel about the facts of the case,  
11 litigation strategy, and their input and assistance during settlement negotiations at mediation. *Id.*  
12 at ¶21.

#### 13 **7. Full Release Award**

14 Subject to approval by the Court, in addition to the class claims, Named Plaintiffs William  
15 Broeker and Aman Armin will receive an additional \$7,500.00 in exchange for a release of all  
16 individual claims, known or unknown, pled or unpled in the Case, including, but not limited to,  
17 claims relating to their application for employment, employment, and/or cessation of employment.  
18 The amount allocated for their individual claims is a conservative and reasonable amount to  
19 compensate them for their individual claims. *Id.* at ¶22.

#### 20 **8. Notice to Settlement Class Members**

21 A copy of the Notice of Proposed Class Settlement and Notice of Proposed Class  
22 Settlement (“Class Notice”) is attached as Exhibits 1, respectively, to the settlement agreement.  
23 *Id.* at ¶6, Exh. 1 (“Settlement Agreement”). Within thirty (30) days after the Court grants  
24 preliminary approval, the Settlement Administrator will mail the Class Notices via first-class mail  
25 to the last known addresses of Settlement Class Members, as updated through use of a reputable  
26

1 tracing service. *Id.* Returned notices will be remailed where an updated or valid address can be  
2 identified. *Id.*

3 Settlement Class members will be given forty-five (45) calendar days from the initial  
4 mailing of the Class Notices to opt out of the Settlement Class or to object to the Settlement  
5 (“Notice Deadline”). *Id.* Settlement Class members who agree to participate in the Settlement (*i.e.*,  
6 who do not opt-out) will have their individual settlement awards distributed to them by the  
7 Settlement Administrator. *Id.*

8 Class Counsel will file a supplemental memorandum in support of final approval motion  
9 within the later of twenty-one (21) calendar days after the Notice Deadline, or seven (7) calendar  
10 days following resolution of class member exclusion issues pursuant to the process described in  
11 Section VI.8.c. of the Settlement Agreement, to inform the Court of any Settlement Class Members  
12 who have opted out of the Settlement and to respond to any Objections to the Settlement. *Id.*

13 At the final fairness hearing, the Court will be asked to enter a final order approving the  
14 Settlement Agreement. *Id.* If the Settlement Agreement is approved, Defendant will fund the QSF  
15 within ten (10) business days after the Effective Date or as otherwise provided in the Settlement  
16 Agreement. *Id.* The Settlement Administrator will create and mail the individual settlement checks  
17 along with the Forms W-2 and 1099 to each Settlement class member within ten (10) business  
18 days following receipt of funds from Defendant, or as soon thereafter as practicable. *Id.*

### 19 **9. Release of Claims**

20 Under the Settlement Agreement, the Named Plaintiffs and all Settlement Class members  
21 who have not opted out of the Settlement Class will be held to have released all claims that were  
22 raised in the Complaint or based on the facts alleged in the Complaint and that arose during the  
23 Settlement Class Period. *Id.* The Released Claims for the Settlement Class specifically include,  
24 but are not limited to, (1) any claims for unpaid overtime (including claims for failure to pay  
25 overtime at the regular rate of pay); (2) any claims arising out of or relating to any alleged missed,  
26 interrupted, shortened, untimely, unpaid, and/or non-compliant rest breaks, (3) any claims arising

1 out of or relating to the alleged failure to pay separate and additional compensation for rest periods  
2 taken; (4) any claims arising out of or relating to any alleged missed, interrupted, shortened,  
3 untimely, unpaid, and/or non-compliant meal periods; and (5) any attendant claims for unpaid  
4 wages, overtime payments, premium payments, interest of any kind, exemplary damages, and  
5 attorneys' fees and costs relating to any of the foregoing. *Id.* The additional Released Claims for  
6 Named Plaintiffs specifically include cover all known and unknown claims arising out of their  
7 application for employment, employment, and/or cessation of employment. *Id.*

### 8 III. ISSUES PRESENTED

- 9 A. Whether the Court should conditionally certify the Settlement Class.  
10 B. Whether the Court should preliminarily approve the Settlement pursuant to CR 23(e).  
11 C. Whether the Court should approve distribution of the Class Notices and schedule a  
12 final fairness hearing.

### 13 IV. EVIDENCE RELIED UPON

14 Plaintiff relies upon the pleadings on file in this case and the accompanying Declaration of  
15 James B. Pizl.

### 16 V. DISCUSSION

#### 17 A. The Settlement Class Satisfies the Criteria of CR 23.

18 Like other classes, Settlement Classes may only be certified if they meet the criteria of CR  
19 23(a) and one or more of the subsections of CR 23(b). Under CR 23(a), a proposed Settlement  
20 Class must satisfy the requirements of numerosity, commonality, typicality, and adequacy of  
21 representation, while under CR 23(b)(3) it must meet the standards of predominance and  
22 superiority.

23 Class actions are favored in Washington and elsewhere as an effective means of  
24 adjudicating numerous, similar claims. *See Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190  
25 Wn.2d 507, 523 (2018) (discussing s class action is preferred when individual claims of class  
26 members are potentially relatively small and would be well suited for class-wide resolution”).

1 Washington courts interpret CR 23 liberally to effectuate its objectives. “Not only does liberal  
2 application of the rule avoid multiplicity of litigation, but (1) it saves members of the class the cost  
3 and trouble of filing individual suits; and (2) it also frees the defendant from the harassment of  
4 identical future litigation.” *Sitton v. State Farm*, 116 Wn. App. 245 (2003); *see also Scott v.*  
5 *Cingular Wireless*, 160 Wn.2d 843, 851 (2007) (“state policy favor[s] aggregation of small claims  
6 for purposes of efficiency, deterrence, and access to justice”).

7 **1. The Settlement Class Satisfies CR 23(a)**

8 **a. Numerosity**

9 Rule 23(a)(1)’s numerosity requirement does not require a certain number of members for  
10 class certification. It only requires that “the class is so numerous that joinder of all members is  
11 impracticable.” CR 23(a)(1). Impracticable does not mean impossible. Rather it means that joinder  
12 would be “extremely difficult or inconvenient.” *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815,  
13 821 (2003) (quoting *Hum v. Dericks*, 162 F.R.D. 628, 634 (D. Haw. 1995)). Washington courts  
14 agree with many federal courts that a group of 40 or more plaintiffs is presumed impracticable to  
15 join. *Chavez*, 190 Wn.2d at 520.

16 Here, the proposed Settlement includes approximately 183 individuals. Pizl Decl. ¶7. On  
17 numbers alone, the numerosity requirement under CR 23(a)(1) is satisfied.

18 **b. Commonality**

19 The second prerequisite for class certification is the existence of “a single issue common  
20 to all members of the class.” *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320 (2002); CR  
21 23(a)(2). As Washington courts have noted, “there is a low threshold to satisfy this test.” *Smith*,  
22 113 Wn. App. at 320. The rule does not require that every question of law or fact be common to  
23 every member, nor does it require that class members be identically situated or have suffered the  
24 same degree of injury. *King v. Riveland*, 125 Wn.2d 500, 519 (1995); *Brown v. Brown*, 6 Wn.  
25 App. 249, 255 (1971).

1 Here, there are common factual and legal questions that bind the Settlement Class,  
2 including, but not limited to:

- 3 1. Did Defendant violate WAC 296-126-092 by failing to provide adequate rest breaks  
4 and meal periods to Named Plaintiffs and members of the Settlement Class?
- 5 2. Was Defendant was required to compensate Named Plaintiffs and members of the  
6 Settlement Class for rest periods separately and in addition to piecework,  
7 commission, or other productivity-based pay?
- 8 3. Was Defendant required to and did it fail to compensate Named Plaintiffs and  
9 members of the Settlement Class with additional wages when rest breaks and meal  
10 periods were not provided in compliance with Washington law?
- 11 4. Did Defendant fail to pay Named Plaintiffs and members of the Settlement Class  
12 one and one-half their regular rate of pay for all hours over forty, and fail to pay  
13 overtime compensation at the correct regular rate of pay, inclusive of the additional  
14 time to compensate for missed or otherwise noncompliant meal and rest periods?

15 Thus, there is at least one issue common to each member of the Settlement Class, which satisfies  
16 CR 23(a)(2).

17 **c. Typicality.**

18 A plaintiff's claim is typical if it "arises from the same event or practice or course of  
19 conduct that gives rise to the claims of other class members, and if his or her claims are based on  
20 the same legal theory." *Smith*, 113 Wn. App. at 320 (internal citation and quotation omitted).

21 Here, Named Plaintiffs William Broeker and Aman Armin provided plumbing services on  
22 a piecework, commission, and/or other productivity basis and were subject to Roto-Rooter's same  
23 policies and practices as the other members of the Settlement Class regarding the allegations in  
24 the Complaint. *See* Pizl Decl. ¶5. Thus, Named Plaintiffs' claims are typical of those of the  
25 Settlement Class.

1                                   **d. Adequacy of Representation.**

2           This prerequisite has two elements: (1) there must be no adversity of interest between the  
3 class representatives and other class members; and (2) the attorneys for the class representatives  
4 must be qualified to conduct the proposed litigation. *See DeFunis v. Odegaard*, 84 Wn.2d 617, 622  
5 (1974); *Marquardt v. Fein*, 25 Wn. App. 651, 656 (1980). Here, there is no adversity of interest  
6 between Named Plaintiffs and the proposed Settlement Class, and Named Plaintiffs and the  
7 Settlement Class are represented by counsel who is highly experienced in wage and hour class  
8 actions. *See* Pizl Decl. ¶¶3-4.

9                                   **B. The Settlement Class Satisfies the Criteria of CR 23(b)(3).**

10           Under CR 23(b)(3), a class may be certified where common issues of law and fact  
11 predominate over individual questions and a class action is the superior means of adjudicating the  
12 dispute. *Chavez*, 190 Wn.2d at 517. In the context of a proposed Settlement Class, the court may  
13 consider that the class is being certified for settlement purposes only, so a showing of  
14 manageability for trial is not required. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 618  
15 (1997).

16                                   **1. Predominance**

17           Whether common issues predominate over individual ones is a “pragmatic” inquiry into  
18 whether there is a “common nucleus of operative facts” as to all class claims. *Smith*, 113 Wn.  
19 App. at 323.

20           In *Sitton*, the court explained that the predominance prong should be applied flexibly with  
21 an eye toward serving the underlying purposes of CR 23:

22           The predominance requirement is not a rigid test, but rather contemplates a review  
23 of many factors, the central question being whether “adjudication of the common  
24 issues in the particular suit has important and desirable advantages of judicial  
25 economy compared to all other issues, or when viewed by themselves.” The  
26 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 either common or individual treatment. Rather, “[a] single  
common issue may be the overriding one in the litigation, despite the fact that the

1 suit also entails numerous remaining individual questions.”  
2 116 Wn. App. at 254 (citations omitted).

### 3 **2. Superiority**

4 The alternative to a class action settlement is multiple individual lawsuits for relatively  
5 small amounts of damages which employees may be unable or unwilling to bring due to financial  
6 constraints, lack of sufficient incentive, or concerns regarding possible adverse employment  
7 consequences.

8 The purpose of the class action vehicle is to “achieve economies of time, effort, and  
9 expense, and promote uniformity of decision as to persons similarly situated, without sacrificing  
10 procedural fairness or bringing about other undesirable results.” Advisory Comm. on Rule 23,  
11 proposed Amends. to Rules of Civ. Proc., 39 F.R.D. 69, 102-103 (1966). This purpose would be  
12 well served by certification of the Settlement Class here, where pursuit of individual claims by  
13 Settlement Class members would be inefficient, wasteful of judicial resources, and risk  
14 inconsistent results among similarly situated employees.

### 15 **C. The Proposed Settlement Is Fair, Adequate, And Reasonable.**

16 Washington Civil Rule 23(e) states:

17 A class action shall not be dismissed or compromised without the approval of the  
18 court, and notice of the proposed dismissal or compromise shall be given to all  
members of the class in such manner as the court directs.

19 CR 23(e). “The requirements of CR 23(e) are for the most part procedural, requiring notice of a  
20 proposed settlement be given to class members and that they be given an opportunity to object to  
21 the settlement.” *Pickett v. Holland America Line-Westours, Inc.*, 145 Wn.2d 178, 188 (2001). In  
22 this case, as in *Pickett*, class members also will be given the opportunity to opt out of the class. *Id.*

23 The issue of final approval of the Settlement Agreement is not presently before the Court;  
24 it will come before the Court at the final approval hearing. However, it is common for courts to  
25 satisfy themselves that a proposed settlement is the result of arm’s length negotiations and falls  
26 within the range of possible approval before ordering notice to the class. *Adams v. Inter-Con*

1 *Security Systems, Inc.*, 2007 WL 322466, \*3 (N.D. Cal. Oct. 30, 2007). As it bears on the question  
2 of preliminary approval, therefore, Plaintiffs will address the standards for final approval now.

3 In *Pickett*, the Court explained:

4 Although CR 23 is silent in guiding trial courts in their review of class settlements,  
5 it is universally stated that a proposed class settlement may be approved by the trial  
6 court if it is determined to be “fair, adequate, and reasonable.” *Torrison v. Tucson*  
7 *Elec. Power Co.*, 8 F.3d 1370, 1375 (9<sup>th</sup> Cir. 1993)... The criteria generally utilized  
8 to make this determination include: the likelihood of success by plaintiffs; the  
amount of discovery or evidence; the settlement terms and conditions;  
recommendation and experience of counsel; future expense and likely duration of  
litigation; recommendation of neutral parties, if any; number of objectors and  
nature of objections; and the presence of good faith and the absence of collusion.

9 145 Wn.2d at 188-89. Not all factors are relevant in all cases, and the importance of each factor  
10 will depend on the facts of each case. *Id.* (citing *Officers for Justice v. Civil Service Comm’n*, 688  
11 F.2d 615, 625 (9<sup>th</sup> Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983)). Review of a proposed  
12 settlement “is a delicate, albeit largely unintrusive, inquiry by the trial court.” *Id.*

13 [T]he court’s intrusion upon what is otherwise a private consensual agreement  
14 negotiated between the parties to a lawsuit, must be limited to the extent necessary  
15 to reach a reasoned judgment that the agreement is not the product of fraud or  
overreaching by, or collusion between, the negotiating parties, and that the  
settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

16 *Id.* (quoting *Officers for Justice*, 688 F.2d at 625). Indeed, the general principles favoring  
17 settlement of disputed claims apply to class actions. “[I]t must not be overlooked that voluntary  
18 conciliation and settlement are the preferred means of dispute resolution.” *Id.* at 190 (quoting  
19 *Officers for Justice*, 688 F.2d at 625).

20 In the present case, the settlement was arrived at by the parties through arm’s length  
21 negotiations that took place after significant discovery, extensive document and data review and  
22 analysis, and good faith and arm’s length negotiations. Pizl Decl. ¶6. Application of the criteria  
23 enumerated in *Pickett* supports a preliminary determination that the settlement is fair, reasonable,  
24 and adequate.



1                   **1.       The Likelihood of Success by Plaintiffs.**

2           Named Plaintiffs and their counsel vigorously worked toward obtaining litigation class  
3 certification and proving liability in this case. In addition to general risks involved in any litigation,  
4 there are specific, identifiable risks with respect to this case that could either defeat or limit the  
5 recovery by Named Plaintiffs and other members of the Settlement Class. *Id.* at ¶16. Those risks  
6 include:

- 7           • The Court may find that Plaintiffs executed an arbitration agreement that  
8 precludes class claims.
- 9           • The Court might deny litigation class certification on predominance,  
10 superiority, or other grounds.
- 11           • The Court may find meal and rest breaks need not be paid separately for non-  
12 agricultural workers paid on a piecework, commission, and/or other  
13 productivity basis.
- 14           • The Court may find more limited damages on Named Plaintiffs’ claims than the  
15 assumptions underlying the Settlement Agreement.

16 *Id.*

17           In addition, there are risks of intervening changes in governing statutes and regulations,  
18 agency interpretations, or case law relating to the Washington’s minimum wage and rest break and  
19 meal period requirements, and the risk of antipathy to Plaintiffs’ claims. *Id.* at ¶17. The proposed  
20 settlement eliminates all of these risks while at the same time providing substantial benefits to the  
21 Settlement Class Members. *Id.* at ¶18.

22                   **2.       The Settlement Terms and Conditions.**

23           The Settlement Terms are fair, reasonable, and adequate, including the size of the  
24 Settlement Payment, the settlement awards to be paid to individual Settlement Class Members,  
25 and the distribution plan.

26           The common fund created by the Settlement is fair and adequate in light of the damages  
alleged in the case. The Settlement Fund provides a gross recovery, before any reductions for  
court-approved fees and costs, of over 98.5% of the total class damages based on reasonable

1 assumptions. *Id.* at ¶¶8-11. Although the Settlement does not cover all potential damages  
2 including exemplary damages and prejudgment interest, the discount off full recovery represented  
3 by the Settlement is reasonable given the multiple litigation and other risks present in the case and  
4 the benefits to Settlement Class Members of an early resolution.

5 Finally, the Settlement Class need not submit any claim form to receive payment under the  
6 Settlement. The simplicity of the distribution process also argues in favor of the fairness of the  
7 Settlement.

### 8 **3. Future Expense and Likely Duration of Litigation.**

9 The Settlement avoids a number of significant, identifiable risks that could preclude,  
10 reduce, or delay recovery by all or a large portion of the Settlement Class, including disputes over  
11 liability and risks of obtaining and maintaining certification of a litigation class. In the absence of  
12 settlement, Plaintiffs would incur significant costs in additional discovery and motions' practice,  
13 expert fees to further analyze all of Defendant's payroll and timekeeping data, and the costs of  
14 trial. Finally, the Settlement avoids the potential for additional delays in the outcome of the case,  
15 including delays from interlocutory or post-judgment appeals. *Id.* at ¶18.

### 16 **4. The Amount of Discovery or Evidence.**

17 Before entering into the proposed Settlement, Defendant provided Class Counsel with  
18 payroll and timekeeping data for approximately 35 different individuals and 2,372 workweeks,  
19 based on a total of 20,545 workweeks, to ascertain potential meal and rest period violations for  
20 approximately 183 class members. *Id.* at ¶¶8-11.

21 Both Plaintiffs' and Defendant's counsel have significant experience in class action and  
22 other complex wage and hour lawsuits. *Id.* at ¶¶3-4. Counsel is therefore well-positioned to assess  
23 the strength of Plaintiffs' claims and Defendant's factual and legal defenses. Class Counsel  
24 negotiated this Settlement with firm knowledge of the facts of this case and with the benefit of  
25 insights gained from the course of similar litigation. *Id.* at ¶¶6, 8-11.

1                   **5. Recommendation and Experience of Counsel.**

2                   As noted above, counsel for both parties are experienced in wage and hour class litigation.  
3                   “When experienced and skilled class counsel support a settlement, their views are given great  
4                   weight.” *See Pickett*, 145 Wn.2d at 200.

5                   **6. The Presence of Good Faith and Absence of Collusion.**

6                   The parties have maintained an adversarial, albeit professional, posture throughout this  
7                   case. This settlement was reached only after thoughtful negotiations and with the assistance of an  
8                   experienced mediator in a full-day mediation session. There is no evidence of collusion or bad  
9                   faith of any sort.

10                  In sum, both parties and their counsel believe that the Settlement represents a fair,  
11                  reasonable, and adequate resolution of this matter for the Settlement Class. The Settlement falls  
12                  within the range of possible final approval, and preliminary approval is appropriate.

13                  **D. The Requested Attorneys’ Fees, Costs, and Awards are Reasonable.**

14                   **1. Attorneys’ Fees and Costs.**

15                  At final approval, Class Counsel will ask the Court for approval of an attorneys’ fees and  
16                  cost award of \$90,000 or 30% of the gross Settlement plus actual and projected litigation costs not  
17                  to exceed \$5,000. *Id.* at ¶20.

18                  The typical range of attorneys’ fees in a common fund recovery in class action cases is  
19                  between 20% and 33%. *See Bowles v. Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72-73 (1993) (citing 3  
20                  *Newberg on Class Actions* § 14.03 for the proposition that 20 to 30 percent is the usual range for  
21                  fee awards in a common fund action); 4 *Newberg on Class Actions* § 14:6 (4th ed. online)  
22                  (“common fee awards fall in the 20 to 33 per cent range” and “empirical studies show that,  
23                  regardless whether the percentage method or the lodestar method is used, fee awards in class  
24                  actions average around one-third of the recovery”). The 30% award that Class Counsel seeks here  
25                  is consistent with this range, and less than what counsel would ordinarily recover in an individual  
26                  case. *See Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wn.2d 157, 161-66 (2010) (discussing

1 contingency fee percentages between 33 1/3 percent and 44 percent and reinstating trial court's  
2 order that "40 percent contingency fee based on the \$5 million settlement was fair and  
3 reasonable").

4 Given the significant recovery for Settlement Class in this case and the importance of  
5 counsel's skill and experience in this area to obtaining this result, the requested fee award of 30%  
6 is appropriate. In any event, final approval of the fee award will occur at the final fairness hearing.  
7 Thus, this fee request should be preliminarily approved at this time and is described in the notice  
8 to the Settlement Class.

### 9 **2. Service Award.**

10 Subject to Court approval, the Named Plaintiffs will receive \$7,500 each from the  
11 Settlement Fund as a service award for their role in representing the Settlement Class. Such  
12 treatment of class representatives is fair and reasonable and is frequently requested and approved.  
13 *See Hughes v. Microsoft Corp.*, 2001 WL 34089697, \*12 (W.D. Wash. March 26, 2001). The  
14 service award recognizes, among other things, the substantial benefits obtained for the Settlement  
15 Class through their role in consulting with counsel about the facts of the case, litigation strategy,  
16 and settlement negotiations, as well as providing input and assistance during the mediation session.  
17 Pizl Decl. ¶21. The service award also recognizes the risk of adverse consequences in the  
18 workplace and the labor market faced by workers who sue an employer. As with the attorneys'  
19 fees award, the Settlement is not contingent on Court approval of any particular amount of a service  
20 award.

### 21 **3. Full Release Award**

22 Subject to Court approval, the Named Plaintiffs will receive \$7,500 from the Settlement  
23 Fund as a full release award in exchange for a release of all individual claims, known or unknown,  
24 pled or unpled in the Case, including, but not limited to, claims relating to their application for  
25 employment, employment, and/or cessation of employment.

1           **E.     The Proposed Class Notice Satisfies CR 23(e) and Due Process.**

2                   **1.     Method of Giving Notice.**

3           Generally, a settlement notice must in substance be reasonably calculated, under all of the  
4           circumstances, to apprise settlement class members of the terms of the settlement and the  
5           opportunity to present objections. In the present case, Class Notices will be sent by first-class mail  
6           and/or email to all Settlement Class Members. The addresses used will be updated to the extent  
7           reasonably possible. These steps are calculated to apprise Settlement Class Members of the  
8           litigation and the Settlement to the greatest extent reasonable and satisfy the requirements of CR  
9           23 and due process.

10                   **2.     Contents of the Class Notice.**

11           A CR 23(e) notice should: (1) describe the nature of the pending action and the general  
12           terms of the settlement; and (2) inform settlement class that complete and detailed information is  
13           available from the court files and that any settlement class member may appear and be heard at the  
14           final fairness hearing.

15           The proposed Class Notice meets the requirements. It is written in plain English, is clearly  
16           and concisely written, and provides all necessary information regarding the Settlement, including  
17           a statement of the gross recovery for the Settlement Class, allocation plan, proposed attorneys'  
18           fees, costs, and class representative service award, applicable deadlines for action, and how  
19           Settlement Class members may obtain further information or file objections or requests for  
20           exclusion from the Settlement Class. *See* Pizl Decl. ¶6, Exh. 1.

21                   **F.     Scheduling of Final Approval Hearing.**

22           As discussed above, CR 23(e) contemplates a final approval hearing after providing the  
23           Class notice and an opportunity to comment. The Settlement Agreement provides that the  
24           settlement administrator will mail the Class Notices within 45 calendar days of the Order granting  
25           preliminary approval of the Settlement and that Settlement Class Members will have 45 days to  
26           opt out or file objections. *Id.* The Settlement Agreement further provides that Class Counsel will

1 file a supplemental memorandum in support of final approval motion within the later of 21  
2 calendar days after the Notice Deadline, or 7 calendar days following resolution of class member  
3 exclusion issues pursuant to the process described in Section VI.8.c. of the Settlement Agreement,  
4 informing the court of any Settlement Class Members who have opted out of the settlement and  
5 respond to any objections to the settlement. *Id.* In light of these timelines, the final approval hearing  
6 should be scheduled on December 8, 2023, or as soon thereafter as the Court’s calendar permits.

7  
8 **VI. CONCLUSION**

9 For the foregoing reasons, Named Plaintiffs request that the Court enter an Order  
10 conditionally certifying the Settlement Class, preliminarily approving the Settlement Agreement,  
11 approving the proposed Class Notices, and setting a date for a final fairness hearing on December  
12 8, 2023, or as soon thereafter as the Court’s calendar permits.

13 DATED this 19th day of July, 2023

14 ENTENTE LAW PLLC

15 *s/ James B. Pizl*

16 \_\_\_\_\_  
17 James B. Pizl, WSBA #28969  
18 Justin Abbasi, WSBA #53582  
19 Ari Robbins Greene, WSBA #54201  
20  
21  
22  
23  
24  
25  
26

1 **CERTIFICATE OF SERVICE**

2 I certify that I caused to be served in the manner noted below a copy of the foregoing  
3 Plaintiffs’ Motion for Conditional Settlement Class Certification and Preliminary Approval of  
4 Class Action Settlement and Supporting Declaration of James B. Pizl on the following  
5 individual(s):

6 *Counsel for Defense:*

7 Laurence Shapero, WSBA #31301  
8 Ogletree Deakins Nash Smoak Stewart PC  
9 1201 3rd Ave Ste 5150  
10 Seattle, WA 98101-3066  
11 [Laurence.shapero@ogletree.com](mailto:Laurence.shapero@ogletree.com)

- Via Facsimile
- Via First Class Mail
- Via Messenger
- Via Email
- Via EFiled/EService

12 Spencer C. Skeen, *pro hac vice*  
13 Jesse C. Ferrantella, *pro hac vice*  
14 Ogletree, Deakins, Nash, Smoak Stewart, P.C.  
15 4660 La Jolla Village Drive, Suite 900  
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19 Dated this 19th day of July, 2023 at Puyallup, Washington.

20 /s/ Anjeanette Deloney

21 Anjeanette Deloney  
22 Paralegal

23 Entente Law PLLC  
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25 Puyallup, WA 98373-3690

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