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**NO: 22-2-07701-3**

The Honorable Stanley J. Rumbaugh  
Hearing Date: June 23, 2023  
Hearing Time: 9:00 a.m.

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

JESSICA A. STONE, individually and on  
behalf of all those similarly situated,  
  
Plaintiff,  
  
vs.  
  
HY-SECURITY GATE, INC., a Washington  
Corporation  
  
Defendant.

No. 22-2-07701-3

PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT

Pursuant to CR 23(e), Plaintiff Jessica A. Stone respectfully moves the Court for final approval of the class action settlement preliminarily approved by this Court on March 17, 2023, and for entry of the Final Approval Order. The common fund settlement requires Defendant to pay \$325,000.00 for the benefit of Defendant's 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.

**I. STATEMENT OF FACTS**

The factual and procedural background of the case and description of the proposed settlement are set forth in Plaintiff's Motion for Conditional Settlement Class Certification and

1 Preliminary Approval of Class Action Settlement and the accompanying Declaration of James B.  
2 Pizl, filed on March 8, 2023. In the interests of brevity, Plaintiff will not repeat those facts here.

3 On April 18, 2023, Counsel provided the court-approved settlement administrator, CPT  
4 Group (“CPT”), with electronic files containing the names, social security numbers, last-known  
5 addresses, and payroll and timesheet data for all time each Settlement Class Member worked in a  
6 covered position. *Declaration of Chantal Soto-Najera on behalf of CPT Group Inc.* (Soto-Najera  
7 Decl.) ¶4. CPT subsequently updated Settlement Class Members’ address information using data  
8 from the National Change of Address (NCOA) database. *Id.* at ¶5.

9 As required by the Court’s Preliminary Approval Order, CPT sent the approved Notice of  
10 Settlement (“Notice”) via First Class Mail to Settlement Class Members on April 21, 2023. *Id.* at  
11 ¶6. The Notice informed Settlement Class Members that anyone who wanted to be excluded from  
12 the Settlement (“opt out”) could do so by submitting a written request for exclusion to CPT  
13 postmarked on or before June 5, 2023. *Id.* at ¶10. The Notice also informed Settlement Class  
14 Members that anyone who wanted to object to the Settlement could do so by filing a written  
15 objection with the Court and mailing it to counsel for the parties, postmarked on or before June 5,  
16 2023. *Id.*

17 To date, CPT has tracked 4 notices from the mailings that were returned as undeliverable,  
18 3 were forwarded or remailed using skip traces. *Id.* at ¶¶8-9. 2 notices remain undeliverable. *Id.* at  
19 ¶9.

20 To date, no Settlement Class Members have submitted valid requests for exclusion from  
21 the Settlement Class. *Id.* at ¶12. No Settlement Class Member objections to the settlement have  
22 been received. *Id.* at ¶11; *Declaration of James B. Pizl in Support of Plaintiff’s Motion for Final*  
23 *Approval of Class Action Settlement* (“Pizl Decl.”) ¶2.

1 **II. EVIDENCE RELIED UPON**

2 Plaintiff relies on the prior submissions in the case, particularly the papers filed in support  
3 of preliminary approval of the settlement, the Declarations of Chantal Soto-Najera and James B.  
4 Pizl being filed herewith.

5 **III. DISCUSSION**

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

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

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

19 **B. The Requested Attorney’s Fees and Litigation Costs Are Reasonable and**  
20 **Should Be Approved.**

21 Where attorneys have obtained a common fund settlement for the benefit of a class,  
22 Washington courts use the “percentage of recovery approach” in calculating and awarding  
23 attorneys’ fees. *Bowles v. Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72 (1993). Because this is a common  
24 fund settlement, the “percentage of recovery approach” applies. *See id.* “Under the percentage of  
25 recovery approach . . . attorneys are compensated according to the size of the benefit conferred,  
26 not the actual hours expended.” *Lyzanchuk v. Yakima Ranches Owners Ass’n, Phase II, Inc.*, 73

1 Wn. App. 1, 12 (1994). As the Washington Supreme Court has recognized, “[i]n common fund  
2 cases, the size of the recovery constitutes a suitable measure of the attorneys’ performance.”  
3 *Bowles*, 121 Wn.2d at 72. Public policy supports this approach: “When attorney fees are available  
4 to prevailing class action plaintiffs, plaintiffs will have less difficulty obtaining counsel and greater  
5 access to the judicial system. Little good comes from a system where justice is available only to  
6 those who can afford its price.” *Id.* at 71.

7 As noted in the preliminary approval motion, Class Counsel asks the Court to approve an  
8 attorney’s fee award of 30% of the common fund in this case, or \$97,500, plus litigation costs of  
9 \$5,000.00. Pizl Decl. ¶4. This fee award is consistent with governing case law and authorities.

10 The typical range of attorneys’ fees in common fund class action cases is between 20% and  
11 33%. *See Bowles*, 121 Wn.2d at 73 (citing 3 *Newberg on Class Actions* § 14.03 for the proposition  
12 that 20 to 30 percent had been the usual range for common fund fee awards); 4 *Newberg on Class*  
13 *Actions* § 14:6 (4th ed. online) (“common fee awards fall in the 20 to 33 per cent range” and  
14 “empirical studies show that, regardless whether the percentage method or the lodestar method is  
15 used, fee awards in class actions average around one-third of the recovery”). The 30% award Class  
16 Counsel seek here is consistent with this range, and in fact lower than what counsel would  
17 ordinarily recover in an individual case. *See Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wn.2d 157,  
18 161-66 (2010) (discussing contingency fee percentages between 33 1/3 percent and 44 percent and  
19 reinstating trial court’s order that “40 percent contingency fee based on the \$5 million settlement  
20 was fair and reasonable”).

21 The 30% fee award is also well in line with percentage fee awards approved in other  
22 employment law class actions. *See, e.g., Gonzalez v. Roche Fruit Co., Inc.*, Yakima County  
23 Superior Court No. 19-2-0402039 (February 18, 2022) (finding “an attorney fee award of one-  
24 third of the common fund is fair and reasonable” for common fund class action settlement); *Blasco*  
25 *v. El Gaucho Tacoma, LLC*, Pierce County Superior Court No. 16-2-07538-5 (April 20, 2018)  
26 (awarding 33 percent of the maximum common fund amount); *Stamey v. State of Washington*,

1 Pierce County Superior Court No. 03-2-06201-0 (August 5, 2004) (awarding fees in the amount  
2 of “one-third of settlement proceeds”); *Mader v. Health Care Authority*, King County Superior  
3 Court No. 98-2-30850-8 SEA (May 14, 2004 Order at ¶ 25) (awarding \$3.6 million fee of \$11  
4 million cash settlement, equaling approximately 32.7 percent of cash settlement).

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

16 Application of 30% fee is further justified by the complexity of the litigation. This case  
17 involved approximately 88 potential class members and implicated multiple legal claims, defenses,  
18 and issues. Class Counsel have spent scores of hours investigating the claims, engaging in  
19 discovery, carefully analyzing documents and data, gathering evidence, litigating the case,  
20 constructing a damages model to negotiate intelligently, negotiating the settlement, and seeking  
21 court approval. *Id.*

22 For common fund settlements, litigation costs are awarded in addition to percentage fee  
23 awards. *See Bowles*, 121 Wn.2d at 70–74 (affirming common fund fee award of \$1.5 million and  
24 costs award of \$17,000). “Reasonable costs and expenses incurred by an attorney who creates or  
25 preserves a common fund are reimbursed proportionately by those class members who benefit  
26 from the settlement.” *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal.

1 1996). Here, Class Counsel has or will incur litigation expenses of \$5,250.14. Pizl Decl. ¶4. These  
2 expenses include but are not limited to: (1) filing fees; (2) process server fees; (3) working copies;  
3 (4) mediation expenses; and (5) other related expenses. *Id.* The expenses were reasonable and  
4 necessary to secure the successful resolution of this litigation. *See In re Immune Response Sec.*  
5 *Litig.*, 497 F. Supp. 2d 1166, 1177–78 (S.D. Cal. 2007) (finding costs such as filing fees, online  
6 legal research fees, and mediation expenses are relevant and necessary expenses in class action  
7 litigation). Although actual litigation costs are more, Class Counsel is only requesting the  
8 estimated amount stated in settlement notices issued to Settlement Class Members (\$5,000).

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

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

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

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

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

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

3 The Settlement Administrator, CPT Group, will charge a total of \$8,500 in costs associated  
4 with the administration of the settlement. *See* Soto-Najera Decl. at ¶17. These fees and costs were  
5 disclosed in the Notice and no member of the Settlement Class has objected to them. For these  
6 reasons, the Court should approve payment of these fees and costs out of the Common Fund  
7 Payment.

8 **IV. CONCLUSION**

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

15 DATED this 13th day of June, 2023.

16 ENTENTE LAW PLLC

17 *s/ James B. Pizl*  
18 James B. Pizl, WSBA #28969  
19 315 – 39<sup>th</sup> Avenue SW, Suite 14  
20 Puyallup, WA 98373  
21 *Attorney for Plaintiff*  
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 Plaintiff's Motion for Final Approval of Class Action Settlement and supporting declarations on  
4 the following individual(s):

5 *Counsel for Defense:*

6 Joseph A. Hamell, WSBA #29423

7 Montgomery Purdue PLLC

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9 Seattle, WA 98104

10 [jhamell@montgomerypurdue.com](mailto:jhamell@montgomerypurdue.com)

- 11  Via Facsimile
- 12  Via First Class Mail
- 13  Via Messenger
- 14  Via Email
- 15  Via EFiled/EService

16 DATED: June 13th, 2023, at Puyallup, Washington.

17 /s/ Anjeanette Deloney

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