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DEPARTMENT 12

Noted for Consideration: November 4, 2019 at 1:30 p.m.
With Oral Argument

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

CLARE THOMAS, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

TOM DOUGLAS' SEATTLE KITCHEN, INC.;
TERRY AVENUE RESTAURANT, INC.; and
THOMAS DOUGLAS

Defendants.

No. 18-2-56923-1 SEA

**PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

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I. INTRODUCTION

The common fund settlement in this class action requires Defendants to pay \$2,400,000 for the benefit of the Settlement Class, to provide a \$200 gift card to each Qualified Class Member, and to provide significant non-monetary relief for their restaurant workers. As a result of this case, Defendants have also developed new rest break policies to ensure workers receive the breaks to which they are entitled.

After this Court preliminarily approved the settlement as “fair, reasonable and adequate,” the settlement administrator sent a settlement notice with an individual estimated award to each Settlement Class Member. No Settlement Class Member has objected to the settlement or requested exclusion to date.

Plaintiff therefore asks that the Court grant final approval of the settlement by: (1) finding it is fair, adequate, and reasonable; (2) approving the payment of attorneys’ fees and costs, settlement administration expenses, and the class representative service award; and (3) determining the settlement administrator provided adequate notice to the Class.

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II. STATEMENT OF FACTS

Plaintiff brought this case on behalf of 1,360 current and former employees of Defendants’ restaurants in Seattle.¹ Plaintiff alleged that Defendants failed to pay service employees 100% of the service charges paid by customers without adequate disclosures on menus and itemized receipts and failed to provide proper rest and meal breaks. Plaintiff outlined the facts in the preliminary approval motion, which this Court granted on August 29, 2019. Here, Plaintiff summarizes relevant facts for final approval.

The parties participated in mediation on June 18, 2019. Cote Decl. ¶ 2. After over 11 hours of negotiations, the parties reached agreement on the basic parameters of a class action

¹ The parties previously believed there were 1,368 class members, but the settlement administrator identified eight duplicates, most due to name changes. Declaration of Marc C. Cote in Support of Motion for Final Approval of Class Action Settlement (“Cote Decl.”), ¶ 4.

1 settlement the evening of June 18 and then negotiated the detailed terms of the settlement over
2 the next two months. *Id.*

3 Defendants then compiled a list of Settlement Class and Subclass Members. *Id.* ¶ 4. The
4 list revealed approximately 1,368 Settlement Class Members. *Id.* After this Court granted
5 preliminary approval, the settlement administrator identified several duplicate entries, which the
6 parties investigated. *Id.* With the assistance of the parties, the settlement administrator then
7 created a revised list that includes 1,360 Settlement Class Members, of which 567 are Subclass
8 Members. *Id.* The list also includes employee hours data and service-role “commission” data
9 for the Settlement Class and Subclass periods.

10 Using this data, the settlement administrator calculated the estimated settlement award
11 for each Settlement Class Member, which was included in each Settlement Class Member’s
12 notice. *Id.* ¶ 5. The settlement administrator completed the notice mailing to each Settlement
13 Class Member on September 9, 2019. *See* Declaration of Emilio Cofinco on Behalf of CPT
14 Group, Inc. Regarding Class Notification and Administration (“Cofinco Decl.”), ¶¶ 5-6. That
15 same day, the settlement administrator also sent notice by email to each Settlement Class Member
16 for whom Defendants had provided an email address. *Id.* ¶ 6. Each Settlement Class Member’s
17 notice contains his or her individualized estimated award amount; information regarding the
18 settlement; the amounts requested for attorneys’ fees, costs, administration expenses, and service
19 awards; and instructions on how to opt out or object. Declaration of Marc C. Cote in Support of
20 Plaintiff’s Motion for Preliminary Approval (August 21, 2019), Ex. A, Ex. 1. To date, no
21 Settlement Class Member has opted out or objected to the settlement. *See* Cofinco Decl. ¶¶ 9-
22 10.

23 III. AUTHORITY AND ARGUMENT

24 When considering final approval of a class action settlement, a court determines whether
25 the settlement is “fair, adequate, and reasonable.” *Pickett v. Holland Am. Line-Westours, Inc.*,
26 145 Wn.2d 178, 188 (2001) (quoting *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375

1 (9th Cir. 1993)). This is a “largely unintrusive inquiry.” *Id.* at 189. Although the Court
2 possesses some discretion in determining whether to approve a settlement,

3 the court’s intrusion upon what is otherwise a private consensual agreement
4 negotiated between the parties to a lawsuit must be limited to the extent necessary
5 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.

6 *Id.* (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)).
7 Moreover, “it must not be overlooked that voluntary conciliation and settlement are the preferred
8 means of dispute resolution.” *Id.* at 190 (quoting *Officers for Justice*, 688 F.2d at 625).

9 In evaluating whether a class settlement is “fair, adequate, and reasonable,” courts
10 reference the following criteria: the likelihood of success by Plaintiff; the amount of discovery
11 or evidence; the settlement terms and conditions; recommendation and experience of counsel;
12 future expense and likely duration of litigation; recommendation of neutral parties, if any;
13 number of objectors and nature of objections; and the presence of good faith and absence of
14 collusion. *Id.* at 188-89 (citing 2 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*
15 § 11.43 (3d ed. 1992)). This list is “not exhaustive, nor will each factor be relevant in every
16 case.” *Id.* at 189 (quoting *Officers for Justice*, 688 F.2d at 625). Here, the settlement easily
17 meets the criteria for final approval.

18 **A. The settlement is fair, adequate, and reasonable.**

19 The settlement, which provides a total value of \$2,672,000, including a common fund
20 payment of \$2,400,000, a \$200 gift card for each Qualified Class Member, and important non-
21 monetary relief, is fair, adequate, and reasonable. As described below, the relevant criteria favor
22 final approval.

23 1. Plaintiff’s likelihood of success supports final approval.

24 The existence of risk and uncertainty to Plaintiff and the Settlement Class “weighs heavily
25 in favor of a finding that the settlement was fair, adequate, and reasonable.” *See Pickett*, 145
26 Wn.2d at 192. In the absence of a settlement, the workers would have faced significant hurdles

1 to relief, including Defendants' opposition to class certification, Defendants' argument that its
2 service charge model complied with RCW 49.46.160, disputes regarding the availability of
3 damages for violations of RCW 49.46.160 before January 1, 2017, disputes regarding the legal
4 standards for rest and meal breaks, challenges to Plaintiff's evidence of failure to provide proper
5 breaks, and challenges to Plaintiff's damages model. Defendants have maintained their service
6 charge disclosures were proper and compliant with RCW 49.46.160. They have also maintained
7 workers received intermittent rest breaks, waived full, thirty-minute meal breaks, and were paid
8 for all work. If Defendants were able to succeed on these defenses, the workers would recover
9 nothing.

10 Furthermore, there is risk of losing inherent in any jury trial. If Defendants were able to
11 convince a jury Plaintiff's allegations were overstated or unfounded, they could effectively
12 reduce or eliminate the Settlement Class's recoverable damages. Even if the jury agreed
13 Defendants were liable, the jury (or this Court) could have rejected Plaintiff's assumptions
14 regarding damages calculations, significantly limiting recovery.

15 Plaintiff also considered the risk this Court could deny class certification. Defendants
16 argued that differences between seventeen individual restaurants' practices would preclude class
17 certification. If Defendants had succeeded in challenging class certification, it would have left
18 Plaintiff to pursue individual claims and would have allowed no recovery to 1,359 other workers.
19 Other workers who wanted to sue Defendants would then face the daunting prospect of doing so
20 on their own.

21 If Plaintiff obtained class certification and proved liability and damages, any recovery
22 could have been delayed for years by an appeal, and an appellate court could ultimately reverse
23 any favorable ruling obtained at the trial court. *See Cooper v. AlSCO*, 186 Wn.2d 357, 370-71,
24 376 P.3d 382 (2016) (reversing summary judgment in favor of class of drivers who asserted wage
25 claims and remanding for entry of judgment in favor of employer).

1 Finally, closely held restaurant companies have narrow profit margins and limited funds
2 to satisfy large judgments. That reality gave rise to judgment collectability questions that
3 presented risks for Plaintiff and her counsel to consider, particularly where there was no
4 insurance available to cover the class damages.

5 The settlement eliminates all these risks and provides substantial compensation to the
6 Settlement Class Members without delay.

7 2. The settlement terms and conditions support final approval.

8 Defendants have agreed to pay a total settlement value of \$2,672,000, which includes a
9 common fund payment of \$2,400,000 and a \$200 gift card for each of the 1,360 Settlement Class
10 Members (a \$272,000 value for the gift cards). If the Court approves the proposed allocations,
11 workers will share in over \$1,757,000, not including the value of the gift cards. Cote Decl. ¶ 6.
12 The average award will be almost \$1,300 and may be significantly higher, considering the
13 possibility of a second distribution. *Id.* The average award for Subclass Members who possess
14 the higher-value service charge claims will be almost \$2,600. *Id.* Over a hundred workers will
15 receive settlement awards for more than \$5,000 each, and the highest award will be over \$14,000.
16 *Id.* Based on the risks in this case, these payments represent a strong result for the workers.

17 In assessing the fairness of a class action settlement, courts also examine whether there
18 is equitable treatment “between class members.” *Pickett*, 145 Wn.2d at 189. Here, settlement
19 funds will be allocated in an equitable manner. Without needing to file a claim form, each
20 Qualified Class Member will receive an award from the Class Portion of the Net Settlement Fund
21 based on the number of hours they worked. *See* Cote Preliminary Approval Decl., Ex. A, §
22 III.G.3. Each Qualified Subclass Member will also receive an award from the Subclass Portion
23 of the Net Settlement Fund based on the amount of service charges they earned. *Id.* Settlement
24 Class and Subclass funds are allocated based on the relative amount of potential damages for
25 each claim. *Id.* Qualified Class Members who worked the most hours and earned the most
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1 service charges, and thus had the highest potential damages, will receive the largest awards. This
2 approach ensures equitable treatment between Settlement Class members.

3 The settlement's treatment of residual funds is also fair. No settlement funds will revert
4 to Defendants. *See* Cote Preliminary Approval Decl., Ex. A, § III.K.12. Instead, if the amount
5 of uncashed checks exceeds \$100,000, the residual funds will be distributed proportionally to
6 workers who cashed their original checks. *Id.* If the amount does not exceed \$100,000, the
7 residual funds will be distributed as *cy pres* to the Legal Foundation of Washington (50%) and
8 FareStart (50%). *Id.*; *see* CR 23(f)(2).

9 Finally, the release of claims is limited. To receive a settlement payment, Qualified Class
10 Members release only the specific rest break and meal break claims that were or could have been
11 asserted based on the facts alleged in this lawsuit. Cote Preliminary Approval Decl., Ex. A,
12 §III.C. Qualified Subclass Members release only the specific service charge disclosure claims
13 that were or could have been asserted based on the facts alleged in the lawsuit. *Id.*

14 3. The amount of discovery and evidence supports final approval.

15 Where “extensive discovery” takes place before a class settlement, final approval is
16 favored. *See Pickett*, 145 Wn.2d at 199. Here, Class Counsel investigated the rest break, meal
17 break, and service charge claims and gathered relevant facts for approximately three months
18 before even filing this lawsuit. Cote Preliminary Approval Decl. ¶ 2. After filing, Class Counsel
19 engaged in extensive formal and informal discovery relating to class certification, liability, and
20 damages throughout the first half of 2019. *Id.* ¶ 3. This included multiple meet-and-confer calls
21 to ensure Class Counsel had the necessary evidence and data to prepare for mediation. *Id.* ¶¶ 3-
22 4. Class Counsel's work resulted in the production of over 1,100 pages of documents and
23 important timekeeping data, payroll data, and service charge data. *Id.* ¶ 5. Class Counsel also
24 made many calls to workers to gather evidence. *Id.* ¶ 6. In sum, Class Counsel have spent
25 hundreds of hours reviewing and analyzing the documents, data, and legal claims, litigating the
26 action, calculating potential damages, preparing for mediation, and working through settlement

1 issues. *Id.* ¶ 15.

2 4. The positive recommendation and extensive experience of counsel support
3 final approval.

4 “When experienced and skilled class counsel support a settlement, their views are given
5 great weight.” *Pickett*, 145 Wn.2d at 200. Class Counsel, who are experienced and skilled in
6 class action litigation, support the settlement as fair, reasonable, adequate, and in the best interests
7 of the Settlement Class. Cote Decl. ¶ 7; Cote Preliminary Approval Decl. ¶¶ 15-20. Given Class
8 Counsel’s knowledge and experience in litigating class actions and their evaluation of the
9 strengths and weaknesses of this case, counsel believe the settlement is a strong result under the
10 circumstances. *Id.*

11 5. Future expense and likely duration of litigation support final approval.

12 Another factor for the Court to consider in assessing the fairness of a settlement is the
13 expense and likely duration of the litigation had a settlement not been reached. *Pickett*,
14 145 Wn.2d at 188. This settlement guarantees a substantial recovery for the workers while
15 obviating the need for lengthy, uncertain, and expensive litigation. At the time the parties agreed
16 to mediation, Class Counsel were gathering evidence for class certification, which would have
17 taken extensive time and resources. Moreover, depositions of workers and Defendants’
18 management officials, expert discovery and depositions, motions for summary judgment,
19 motions regarding proper methods for calculating damages, pretrial preparation, and a lengthy
20 class action trial would have been likely. Even if the Class prevailed against Defendants at trial,
21 Defendants would likely appeal any adverse rulings, thereby delaying relief to the workers.

22 6. The reaction of the class supports final approval.

23 A court may infer a class action settlement is fair, adequate, and reasonable when few
24 class members object to it. *See Pickett*, 145 Wn.2d at 200–01. Here, the deadline to opt out or
25 object to the settlement is October 9. As of September 25, no Settlement Class Member has
26 objected or opted out. Cote Decl. ¶ 8; Cofinco Decl. ¶¶ 9-10. Plaintiff will update this

1 information and respond to any objections by October 23.

2 7. The presence of good faith and absence of collusion support final
3 approval.

4 In determining the fairness of a settlement, the Court should consider the presence of
5 good faith and absence of collusion. *Pickett*, 145 Wn.2d at 201. Here, there has been no
6 collusion or bad faith. The settlement is the result of extensive, arm's-length negotiations
7 between experienced attorneys who are highly familiar with class action litigation and the legal
8 and factual issues of this case. Cote Decl. ¶ 7. At all times, the negotiations leading to the
9 settlement were adversarial, non-collusive, and at arm's length. *Id.* ¶¶ 3, 7.

10 For these reasons, final approval of the settlement is appropriate.

11 **B. Settlement Class Members received the best notice practicable.**

12 This Court determined the notice program meets the requirements of due process and
13 applicable law, provides the best notice practicable, and constitutes sufficient notice to all
14 Settlement Class Members. Order Granting Plaintiffs' Motion for Preliminary Approval of Class
15 Action Settlement (August 29, 2019), ¶ 9. The settlement administrator, CPT Group, Inc., has
16 now successfully implemented the notice program. *See* Cofinco Decl. ¶¶ 5-8. Class Counsel
17 provided CPT Group with a spreadsheet containing the names of Settlement Class Members, last
18 known addresses, and estimated awards on August 30. *Id.* ¶ 4. CPT Group then identified
19 duplicate Settlement Class Members and recalculated the estimated settlement awards. Cote
20 Decl. ¶¶ 4-5. After creating the final class list with the help of the parties, CPT Group sent notice
21 by mail and email to each Settlement Class Member using the most recent contact information
22 available. Cofinco Decl. ¶¶ 4-6. Ten notices have been returned to CPT Group, but through skip
23 traces or forwarding addresses, CPT Group has re-mailed nine notices. *Id.* ¶¶ 7-8. Only one
24 Notice Packet returned by mail to date remains undelivered. *Id.*

25 **C. The payment of attorneys' fees at the benchmark level is fair and reasonable.**

26 Where attorneys have obtained a common fund settlement for the benefit of a class,

1 Washington courts use the “percentage of recovery approach” in calculating and awarding
2 attorneys’ fees. *Bowles v. Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993). Because
3 this is a common fund settlement, the “percentage of recovery approach” applies. *See id.* “Under
4 the percentage of recovery approach . . . attorneys are compensated according to the size of the
5 benefit conferred, not the actual hours expended.” *Lyzanchuk v. Yakima Ranches Owners Ass’n,*
6 *Phase II, Inc.*, 73 Wn. App. 1, 12 (1994). As the Washington Supreme Court has recognized,
7 “[i]n common fund cases, the size of the recovery constitutes a suitable measure of the attorneys’
8 performance.” *Bowles*, 121 Wn.2d at 72. Public policy supports this approach: “When attorney
9 fees are available to prevailing class action plaintiffs, plaintiffs will have less difficulty obtaining
10 counsel and greater access to the judicial system. Little good comes from a system where justice
11 is available only to those who can afford its price.” *Id.* at 71.

12 Contingency fee percentages in individual cases are usually in the range of 33 to 40
13 percent. *See Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wn.2d 157, 161-66, 240 P.3d 790 (2010)
14 (discussing contingency fee percentages between 33 1/3 percent and 44 percent and reinstating
15 trial court’s order that “40 percent contingency fee based on the \$5 million settlement was fair
16 and reasonable”). The typical range for attorneys’ fees awarded in common fund class action
17 settlements is between 20 and 33 percent. *See Alba Conte et al.*, 4 Newberg on Class Actions §
18 14.6 (4th ed. 2002) (recognizing “fee awards in class actions average around one-third of the
19 recovery”); *Bowles*, 121 Wn.2d at 72 (noting fee awards for common fund cases are often in
20 range of 20 to 30 percent).

21 “In common fund cases, the ‘benchmark’ award is 25 percent of the recovery obtained.”
22 *Bowles*, 121 Wn.2d at 72. Here, Class Counsel request approval of 25 percent of the common
23 fund amount of \$2,400,000, not including the value of the gift cards. Because the fee request is
24 for exactly 25 percent of the common fund, it is reasonable under the “percentage of recovery”
25 method. *See id.* at 72-73 (noting that only in “special circumstances” is the benchmark figure
26 “adjusted upward or downward”). Settlement Class Members received settlement notices stating

1 counsel would request a fee of 25 percent, and no Settlement Class Member has objected to the
2 fee request. Cote Decl. ¶ 8.

3 A 25 percent benchmark fee is appropriate. This is less than the standard contingency
4 fee range for individual cases, and well in line with percentage fee awards in other employment
5 law class actions. *See, e.g., Storti v. University of Washington*, King County Superior Court No.
6 04-2-16973-9 SEA (May 12, 2006 Order at ¶ 14) (awarding 30% of common fund); *Mader v.*
7 *Health Care Authority*, King County Superior Court No. 98-2-30850-8 SEA (May 14, 2004
8 Order at ¶ 25) (awarding approximately 32.7% of cash settlement, or 28.8% if including
9 additional health benefit contributions). Furthermore, the level of risk Class Counsel faced in
10 this case warrants approval of a 25 percent fee. While any class action is risky, this case presented
11 unique challenges involving closely held restaurant companies with no insurance to cover the
12 class claims. Furthermore, Defendants have consistently argued workers received full and
13 adequate breaks (or validly waived their meal breaks) and their service charge policy complied
14 with RCW 49.46.160. Nonetheless, Class Counsel took the case on a contingency basis and
15 advanced almost \$6,000 in costs. Cote Decl. ¶¶ 10-11. Based on the risks in the case, there was
16 a real possibility that Class Counsel would recover nothing for their work. That said, counsel
17 took their charge seriously and endeavored to represent the interests of the workers to the greatest
18 extent possible.

19 Application of a 25 percent fee is further justified by the complexity of the litigation.
20 This case involved 1,360 class members who worked in seventeen different restaurants. The
21 litigation implicated several legal claims, defenses, and issues. Class Counsel worked diligently
22 throughout the litigation with no guarantee of being compensated for their time and effort.
23 Counsel thoroughly investigated the claims, engaged in formal and informal discovery, carefully
24 analyzed documents and data, and worked to construct a damages model to present a persuasive
25 case at mediation. Armed with extensive data and documents, counsel then carefully negotiated
26

1 a strong settlement. In light of the challenges presented by this case, Class Counsel achieved a
2 strong result.

3 For these reasons, Class Counsel ask that this Court approve the fee of \$600,000, which
4 is 25 percent of the common fund settlement amount, not including the value of the gift cards
5 counsel also obtained for the Settlement Class.

6 **D. Reimbursement of Class Counsel’s litigation costs is reasonable.**

7 For common fund settlements, litigation costs are awarded in addition to percentage fee
8 awards. *See Bowles*, 121 Wn.2d at 70–74 (affirming common fund fee award of \$1.5 million
9 and costs award of \$17,000). “Reasonable costs and expenses incurred by an attorney who
10 creates or preserves a common fund are reimbursed proportionately by those class members who
11 benefit from the settlement.” *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D.
12 Cal. 1996). Here, Class Counsel have incurred approximately \$5,544.31 in litigation expenses.
13 Cote Decl. ¶ 11. These expenses include: (1) filing fees; (2) courier and service expenses; (3)
14 computer research expenses; (4) mediation expenses; and (5) meals for meetings/mediation. *Id.*
15 The expenses were reasonable and necessary to secure the successful resolution of this litigation.
16 *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177–78 (S.D. Cal. 2007) (finding
17 costs such as filing fees, travel expenses, online legal research fees, and mediation expenses are
18 relevant and necessary expenses in class action litigation). Class Counsel anticipate incurring
19 some additional costs through the end of the case, but they do not seek additional compensation
20 for those costs. Cote Decl. ¶ 11. Thus, Class Counsel request reimbursement of \$5,544.31 in
21 total costs. This is less than the estimated amount stated in settlement notices issued to Settlement
22 Class Members (\$6,000). The remaining amount will be included in the settlement funds
23 distributed to Qualified Class and Subclass Members.

24 **E. The settlement administration expenses award is reasonable.**

25 The settlement agreement provides for payment of no more than \$22,000 in settlement
26 administration expenses from the common fund. Cote Preliminary Approval Decl., Ex. A at §§

1 III.F, III.J.3. CPT Group is required to establish a Qualified Settlement Fund, format settlement
2 notices with individual estimated awards for each Settlement Class Member, mail notices, handle
3 undeliverable notices and skip traces, calculate appropriate tax withholdings, issue taxes to the
4 appropriate government entities, process settlement payments and issue them to Qualified Class
5 Members, and handle tax reporting duties. *See* Cote Preliminary Approval Decl., Ex. A at §§
6 III.J-K. The administration expenses are reasonable and necessary to inform Settlement Class
7 Members of the settlement and ensure it is administered fairly. Thus, Plaintiff requests approval
8 for payment of settlement administration expenses not to exceed \$22,000.

9 **F. The requested class representative service award is reasonable.**

10 Service awards compensate class representatives for work done on behalf of the class. *In*
11 *re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). These awards promote
12 the public policy of encouraging individuals to undertake the responsibility of representative
13 lawsuits. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). Such awards
14 are approved so long as they are reasonable and do not undermine the adequacy of the class
15 representatives. *See Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1164 (9th Cir. 2013).

16 The requested award of \$15,000 for Plaintiff Clare Thomas is reasonable and in line with
17 awards approved by other courts. *See, e.g., Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322,
18 1329-30 & n.9 (W.D. Wash. 2009) (approving combined service payments of \$30,000 and citing
19 decisions approving awards up to \$40,000 in other cases). Ms. Thomas has been committed to
20 this case from the beginning. She assisted Class Counsel in investigating the claims, gathering
21 evidence, preparing the complaint, contacting witnesses, and understanding the facts. Cote Decl.
22 ¶ 9. She provided evidence to support the claims, participated in mediation and multiple
23 meetings, stayed in contact with Class Counsel, and was prepared to testify in her deposition and
24 at trial. *Id.* The service award will compensate Ms. Thomas for her time and effort in stepping
25 forward to serve as class representative. *Id.* The award is well deserved and should be approved.

1 **IV. CONCLUSION**

2 The common fund settlement is fair, adequate, and reasonable. Moreover, it is
3 appropriate for the Court to grant an award of 25 percent of the common fund for attorneys' fees
4 and \$5,541.31 for costs given the high-quality work performed and successful result achieved.
5 An award not to exceed \$22,000 for settlement administration expenses is also appropriate.
6 Finally, a service award of \$15,000 is reasonable. Plaintiff respectfully requests that the Court
7 grant final approval.

8 *I certify that this memorandum contains 4,157 words, in compliance with the Local Civil*
9 *Rules.*

10 RESPECTFULLY SUBMITTED AND DATED this 25th day of September, 2019.

11
12 FRANK FREED SUBIT & THOMAS LLP

13
14 By: /s/ Marc C. Cote, WSBA #39824
15 Marc C. Cote, WSBA #39824
16 Email: mcote@frankfreed.com
17 Jillian M. Cutler, WSBA #39305
18 Email: jcutler@frankfreed.com
19 705 Second Avenue, Suite 1200
20 Seattle, Washington 98104
21 Telephone: (206) 682-6711
22 Facsimile: (206) 682-0401

23
24 *Attorneys for Plaintiff, Settlement Class, and Subclass*

CERTIFICATE OF SERVICE

I, Marc C. Cote, declare and say as follows:

1. I am a citizen of the United States and a resident of the state of Washington; I am over the age of 18 years and not a party to this case. I am a partner with the law firm of Frank Freed Subit & Thomas LLP, whose address is 705 Second Avenue, Suite 1200, Seattle, Washington 98104.

2. On September 25, 2019, I caused true and correct copies of the foregoing documents to be delivered to Defendant in the above-captioned matter, by the means indicated below:

Sheehan Sullivan, WSBA #33189
Email: sulls@dwt.com
Mary Sanden, WSBA #45608
Email: marysanden@dwt.com
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1640
Phone: (206) 757-8152
Facsimile: Fax: (206) 757-7152

- U.S. Mail
- Hand Delivered via Messenger Service
- Overnight Courier
- Facsimile
- Electronic Mail
- Via the King County Electronic Filing Notification System

Attorneys for Defendants

I hereby declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington on this 25th day of September 2019.

/s/ Marc C. Cote, WSBA #39824
Marc C. Cote, WSBA #39824