The Honorable William L. Dixon
Noted for Hearing: October 11, 2024, 9:00 a.m.
With Oral Argument

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

ALEXANDRA BRADLEY, LENA ZELL, and EVAN GALLO, on behalf of themselves and all others similarly situated,

Plaintiff,

v.

CANLIS, INC., a Washington corporation; BRIAN CANLIS, an individual, MARK CANLIS, an individual,

Defendants.

Case No.: 23-2-12427-8-SEA

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION AND RELIEF REQUESTED

The common fund settlement in this class action requires Defendants to pay $1,450,000 for the benefit of the Settlement Class. After this Court preliminarily approved the settlement as "fair, reasonable and adequate," the settlement administrator sent a class action settlement notice to each Settlement Class Member. No Settlement Class Member has objected to the settlement or opted out of the settlement.

Plaintiffs therefore ask that the Court grant final approval of the settlement by: (1) finding it is fair, adequate, and reasonable; (2) approving the payment of attorney fees and costs,

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

settlement administration expenses, and the class representative service awards; and (3) determining the settlement administrator provided adequate notice to the Class.

II. STATEMENT OF FACTS

A. Factual and Procedural Background

Plaintiffs brought this case on behalf of 309 current and former employees of Defendants' restaurant, Canlis, located in Seattle. Plaintiffs alleged that Defendants required all non-management employees to work their first shift unpaid, unlawfully retained customers' money received as a "service charge" by not distributing those funds to their employees, and failed to provide servers with paid 10-minute rest breaks for every four hours of work. Plaintiffs outlined the facts in the preliminary approval motion, which this Court granted on July 31, 2024. Here, Plaintiffs summarize the relevant facts for final approval.

After conducting informal and formal discovery over the course of several months, the Parties participated in mediation on January 26, 2024. O'Laughlin Preliminary Approval Decl., ¶¶ 2-5. The mediation lasted over 10 hours, but was ultimately unsuccessful. *Id*. at ¶ 5. The Parties continued negotiations and reached a tentative settlement on April 16, 2024, subject to Court approval. *Id*. at ¶ 10. At all times, the negotiations leading to this Settlement were adversarial, non-collusive, and at arm's length. *Id*. at ¶¶ 5-10; Maloney Preliminary Approval Decl., ¶ 10.

On June 12, 2024, June 26, 2024, and July 2, 2024, Defendants sent the settlement administrator lists of Settlement Class and Subclass Members containing their names, last known mailing addresses, email addresses, Social Security numbers, phone numbers, and other information necessary to calculate individual settlement amounts. Declaration of Kaylie O'Connor (on behalf of CPT Group, Inc.) with respect to Notification and Administration, ¶ 5.

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

The finalized class list contained a total of 309 Class Members, including 218 members of the *Stage* Class, 309 members of the Service Charge subclass and 100 members of the Rest Break Subclass. *Id*.

After this Court granted preliminary approval, the settlement administrator used this data to calculate the estimated settlement award for each Settlement Class Member. O'Connor Decl., ¶¶ 14-16. On August 7, 2024, CPT conducted a National Change of Address (NCOA) database search in an attempt to update the addresses on the class list and ensure it was as accurate as possible. *Id*. at ¶ 6. On August 9, 2024, the settlement administrator completed the notice mailing to each Settlement Class Member. *Id.*, at ¶ 7. Each Settlement Class Member's notice contains information regarding the settlement; the amounts requested for attorneys' fees, costs, administration expenses, and service awards; and instructions on how to opt out or object. *Id*. at Ex. A.

After the initial mailing, 31 notice packets were returned by the Post Office. O'Connor Decl., ¶ 8. The settlement administrator then performed skip traces using hundreds of databases to locate these Class Members. *Id*. As a result, 30 Notice Packets were re-mailed. *Id*. at ¶ 9. To date, only four notice packets have been deemed undeliverable. *Id*. To date, no Settlement Class Member has objected to the settlement or opted out of the settlement. *Id*. at ¶¶ 11-12.

III. EVIDENCE RELIED UPON

Plaintiffs rely on the declarations of Matt J. O'Laughlin, Amy K. Maloney, Steven A. Toff, in support of Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement, the declaration of Kaylie O'Connor in support of this motion, the exhibits attached to Mr. O'Laughlin's and Ms. O'Connor's declarations, and all pleadings and papers filed in this action.

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

IV. ARGUMENT AND AUTHORITIES

When considering final approval of a class action settlement, a court determines whether the settlement is "fair, adequate, and reasonable." *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 188 (2001) (quoting *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)). This is a "largely unintrusive inquiry." *Id.* at 189. Although the Court possesses some discretion in determining whether to approve a settlement,

> [t]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary 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.

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

In evaluating whether a class settlement is "fair, adequate, and reasonable," courts reference the following criteria: 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 absence of collusion. *Id.* at 188-89 (citing 2 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11.43 (3d ed. 1992)). This list is "not exhaustive, nor will each factor be relevant in every case." *Id.* at 189 (quoting *Officers for Justice*, 688 F.2d at 625). Here, the settlement easily meets the criteria for final approval.

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

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

The settlement, which provides a common fund payment of $1,450,000 to the Settlement Class, is fair, adequate, and reasonable. As described more fully below, the relevant criteria favor final approval.

1. Plaintiff's likelihood of success supports final approval.

The existence of risk and uncertainty to Plaintiffs and the Settlement Class "weighs heavily in favor of a finding that the settlement was fair, adequate, and reasonable." *See Pickett*, 145 Wn.2d at 192. In the absence of a settlement, the workers would have faced significant hurdles to relief, including the risk that this Court could only partially certify this case as a class action based on the change in the service charge disclosure language in July 2022, and the fact that during the first year of the class period, many of the service charges were collected from deliveries, not from dining in. As such, there was a risk that this fact would undermine the typicality of the Class Representatives claims during the first year of the class period because they were all servers, not delivery drivers.

Plaintiffs also considered the substantial risk of losing inherent in any jury trial. Defendants assert that the Rest Break Subclass Members received rest breaks in accordance with the law. Plus, Defendants contend that their service charge disclosures were proper and that the amount of service charges collected was entirely directed to compensation and benefits of the employees, all of whom were paid above the minimum wage. If Defendants were able to convince a jury that Plaintiffs' allegations were overstated or unfounded, then it could effectively reduce or eliminate the Class's recoverable damages.

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

There was also the risk that further litigation would have resulted in depletion of available funds for the Settlement Class and the risk that even if the Class prevailed, any recovery could be delayed for years by an appeal or by collection efforts involving a closely held company with financial constraints. In contrast, the settlement eliminates all risk and provides monetary relief to Settlement Class Members immediately. In light of the financial constraints and narrow profit margins restaurant businesses face and the associated judgment collectability risks, this settlement provides substantial compensation to the Settlement Class Members without delay.

2. The settlement terms and conditions support final approval.

Defendants have agreed to pay a common fund payment of $1,450,000. If the Court approves the proposed allocations, workers will share in the Net Settlement Fund of $1,027,707.61. O'Connor Decl., ¶ 14. The *Stage* Class consists of 218 members, the Service Charge Subclass consists of 309 members, and the Rest Break Subclass consists of 100 members. O'Connor Decl., ¶ 5. The average amount Service Charge Subclass members will receive is $3,052.38. *Id*. at ¶ 15. The average amount Rest Break Subclass members will receive is $496.41. *Id*. at ¶ 16. And each *Stage* Class Member will receive $160 from the Net Settlement Fund. *Id*. at ¶ 14. Based on the risks in this case, these payments represent a strong result for the workers.

In assessing the fairness of a class action settlement, courts also examine whether there is equitable treatment "between class members." *Pickett*, 145 Wn.2d at 189. Here, settlement funds will be allocated in an equitable manner. Without needing to file a claim form, each

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200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

Qualified Class Member will receive an award from the Class Portion of the Net Settlement Fund based on the number of hours they worked. *See* O'Laughlin Preliminary Approval Decl., Ex. 1, ¶ 12.A. Settlement Class funds are allocated based on the relative amount of potential damages for each claim. *Id.* Qualified Class Members who worked the most hours and thus had the highest potential damages, will receive the largest awards. This approach ensures equitable treatment between Settlement Class members.

The settlement's treatment of residual funds is also fair. No settlement funds will revert to Defendants. *Id*. at Ex. 1, ¶ 11.e. Instead, if the amount of uncashed checks exceeds $100,000, the residual funds will be distributed proportionally to workers who cashed their original checks. *Id.* If the amount does not exceed $100,000, the residual funds will be distributed as *cy pres* to the Legal Foundation of Washington (50%) and Columbia Legal Services (50%). *Id.*; *see* CR 23(f)(2).

Finally, the release of claims is limited. To receive a settlement payment, Qualified Class and Subclass Members release only the specific *stage*, service charge, and rest break claims that were or could have been asserted based on the facts alleged in this lawsuit. O'Laughlin Preliminary Approval Decl., Ex. 1, ¶ 13.

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

Where "extensive discovery" takes place before a class settlement, final approval is favored. *See Pickett*, 145 Wn.2d at 199. Here, Class Counsel investigated the rest break, meal break, and service charge claims and gathered relevant facts for several months before filing this lawsuit. Toff Preliminary Approval Decl., ¶ 2. After filing, Class Counsel engaged in extensive

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

formal and informal discovery relating to class certification, liability, and damages throughout the second half of 2023. *Id.* at ¶ 3; O'Laughlin Preliminary Approval Decl., ¶¶ 2-3.

Class Counsel's work resulted in the production of over 3,600 pages of documents and important timekeeping data, payroll data, and service charge data. *Id.* at ¶ 3. In sum, Class Counsel have spent hundreds of hours reviewing and analyzing the documents, data, and legal claims, litigating the action, calculating potential damages, preparing for mediation, and working through settlement issues. *Id*. at ¶ 3.

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

"When experienced and skilled class counsel support a settlement, their views are given great weight." *Pickett*, 145 Wn.2d at 200. Class Counsel, who are experienced and skilled in class action litigation, support the settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class. O'Laughlin Preliminary Approval Decl., ¶¶ 10; 19-22; Maloney Preliminary Approval Decl., ¶¶ 2-10. Given Class Counsel's knowledge and experience in litigating class actions and their evaluation of the strengths and weaknesses of this case, counsel believe the settlement is a strong result under the circumstances. *Id*.

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

Another factor for the Court to consider in assessing the fairness of a settlement is the expense and likely duration of the litigation had a settlement not been reached. *Pickett*, 145 Wn.2d at 188. This settlement guarantees a substantial recovery for the workers while obviating the need for lengthy, uncertain, and expensive litigation. At the time the parties agreed to mediation, Class Counsel were gathering evidence for class certification, which would have

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

taken extensive time and resources. Moreover, depositions of workers and Defendants' management officials, expert discovery and depositions, motions for summary judgment, motions regarding proper methods for calculating damages, pretrial preparation, and a lengthy class action trial would have been likely. Even if the Class prevailed against Defendants at trial, Defendants would likely appeal any adverse rulings, thereby delaying relief to the workers.

6. The reaction of the class supports final approval.

A court may infer a class action settlement is fair, adequate, and reasonable when few class members object to it. *See Pickett*, 145 Wn.2d at 200–01. Here, the deadline to opt out or object to the settlement was September 9, 2024. Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (July 31, 2024), ¶¶ 11; 13. As of September 16, 2024, no Settlement Class Member has objected to the settlement or opted out of the class. O'Connor Decl., ¶¶ 11-12.

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

In determining the fairness of a settlement, the Court should consider the presence of good faith and absence of collusion. *Pickett*, 145 Wn.2d at 201. Here, there has been no collusion or bad faith. The settlement is the result of extensive, arm's-length negotiations between experienced attorneys who are highly familiar with class action litigation and the legal and factual issues of this case. O'Laughlin Preliminary Approval Decl., ¶¶ 4-10; Maloney Preliminary Approval Decl., ¶ 10. At all times, the negotiations leading to the settlement were adversarial, non-collusive, and at arm's length. *Id.* For these reasons, final approval of the settlement is appropriate.

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

B. Settlement Class Members received the best notice practicable.

This Court determined the notice program meets the requirements of due process and applicable law, provides the best notice practicable, and constitutes sufficient notice to all Settlement Class Members. Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (July 31, 2024), ¶ 9. The settlement administrator, CPT Group, Inc., has now successfully implemented the notice program. O'Connor Decl., ¶¶ 5-8. On June 12, 2024, June 26, 2024, and July 2, 2024, CPT Group received data files from Defendants containing the names of Settlement Class Members, last known addresses, and other information necessary to calculate individual settlement amounts. *Id.* at ¶ 5.

After preliminary approval of the class action settlement, CPT Group sent notice by mail and email to each Settlement Class Member using the most recent contact information available. *Id*. at ¶¶ 6-7. Thirty-one notices were returned to CPT Group, but using skip traces or forwarding addresses, CPT Group was able to re-mail 30 notices. *Id.* ¶¶ 7-8. As of September 16, 2024, only four notice packets returned by mail remain undelivered. *Id.*

C. The payment of attorney fees at the benchmark level is fair and reasonable.

Where attorneys have obtained a common fund settlement for the benefit of a class, Washington courts use the "percentage of recovery approach" in calculating and awarding attorney fees. *Bowles v. Dep't of Ret. Sys.*, 121 Wn.2d 52, 72 (1993). Because this is a common fund settlement, the "percentage of recovery approach" applies. *See id*. "Under the percentage of recovery approach . . . attorneys are compensated according to the size of the benefit conferred, not the actual hours expended." *Lyzanchuk v. Yakima Ranches Owners Ass'n, Phase II, Inc.*, 73 Wn. App. 1, 12 (1994). As the Washington Supreme Court has recognized, "[i]n common fund

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

cases, the size of the recovery constitutes a suitable measure of the attorneys' performance." *Bowles*, 121 Wn.2d at 72. Public policy supports this approach: "When attorney fees are available to prevailing class action plaintiffs, plaintiffs will have less difficulty obtaining counsel and greater access to the judicial system. Little good comes from a system where justice is available only to those who can afford its price." *Id.* at 71.

Contingency fee percentages in individual cases are usually in the range of 33 to 45 percent. *See Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wn.2d 157, 161-66 (2010) (discussing contingency fee percentages between 33 1/3 percent and 44 percent and reinstating trial court's order that "40 percent contingency fee based on the $5 million settlement was fair and reasonable"). The typical range for attorney fees awarded in common fund class action settlements is between 20 and 30 percent. *See Bowles*, 121 Wn.2d at 72.

"In common fund cases, the 'benchmark' award is 25 percent of the recovery obtained." *Id*. Here, Class Counsel request approval of 25 percent of the common fund amount of $1,450,000. Because the fee request is for exactly 25 percent of the common fund, it is reasonable under the "percentage of recovery" method. *See id.* at 72-73 (noting that only in "special circumstances" is the benchmark figure "adjusted upward or downward"). Settlement Class Members received settlement notices stating counsel would request a fee of 25 percent, and no Settlement Class Member has objected to the fee request. O'Connor Decl., ¶ 11.

A 25 percent benchmark fee is appropriate. This is less than the standard contingency fee range for individual cases, and well in line with percentage fee awards in other employment law class actions. *See, e.g.*, *Spencer v. FedEx Ground Package Sys.*, No. 14-2-30110-3 SEA, 2016 Wash. Super. LEXIS 12083, *4 (King Co. Sup. Ct., Dec. 2, 2016) (approving 25% of

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

common fund); *Hill v. Garda CL Northwest, Inc.*, No. 09-2-07360-1 SEA, 2015 Wash. Super. LEXIS 179, *5 (King Co. Sup. Ct., Dec. 10, 2015) (awarding 30% of common fund). Moreover, the level of risk Class Counsel faced in this case warrants approval of a 25 percent fee. While any class action is risky, this case presented unique challenges involving a closely held restaurant. Furthermore, Defendants have consistently argued workers were not performing work during their *stage*, that the nature of the restaurant business allowed for workers to take intermittent rest breaks, and that they were in compliance with the service charge law for a large portion of the class period. Nonetheless, Class Counsel took the case on a contingency basis and advanced almost $5,000 in costs. O'Laughlin Preliminary Approval Decl., ¶ 15. Based on the risks in the case, there was a real possibility that Class Counsel would recover nothing for their work. That said, counsel took their charge seriously and endeavored to represent the interests of the workers to the greatest extent possible.

Application of a 25 percent fee is further justified by the complexity of the litigation. This case involved 309 class members. The litigation implicated several legal claims, defenses, and issues. Class Counsel worked diligently throughout the litigation with no guarantee of being compensated for their time and effort. Counsel thoroughly investigated the claims, engaged in formal and informal discovery, carefully analyzed documents and data, and worked to construct a damages model to present a persuasive case at mediation. Armed with extensive data and documents, counsel then carefully negotiated a strong settlement. In light of the challenges presented by this case, Class Counsel achieved a strong result. For these reasons, Class Counsel ask that this Court approve the fee of $362,500, which is 25 percent of the common fund settlement amount.

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200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

D. Reimbursement of Class Counsel's litigation costs is reasonable.

For common fund settlements, litigation costs are awarded in addition to percentage fee awards. *See Bowles*, 121 Wn.2d at 70–74 (affirming common fund fee award of $1.5 million and costs award of $17,000). "Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996). Here, Class Counsel have incurred approximately $4,792.39 in litigation expenses. O'Laughlin Preliminary Approval Decl. ¶ 15. These expenses include: (1) filing fees; (2) copying fees; (3) and mediation expenses. *Id*.

The expenses were reasonable and necessary to secure the successful resolution of this litigation. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177–78 (S.D. Cal. 2007) (finding costs such as filing fees, photocopies, and mediation expenses are relevant and necessary expenses in class action litigation). Class Counsel anticipate incurring some additional costs through the end of the case, but they do not seek additional compensation for those costs. Thus, Class Counsel request reimbursement of $4,792.39 in total costs. This is less than the estimated amount stated in settlement notices issued to Settlement Class Members ($5,000).

E. The settlement administration expenses award is reasonable.

The settlement agreement provides for payment of no more than $10,000 in settlement administration expenses from the common fund. O'Laughlin Preliminary Approval Decl., Ex. 1, ¶ 11.c. CPT Group is required to establish a Qualified Settlement Fund, format settlement notices with individual estimated awards for each Settlement Class Member, mail notices, handle undeliverable notices and skip traces, calculate appropriate tax withholdings, issue taxes to the

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

appropriate government entities, process settlement payments and issue them to Qualified Class Members, and handle tax reporting duties. O'Connor Decl., ¶ 3. The administration expenses are reasonable and necessary to inform Settlement Class Members of the settlement and ensure it is administered fairly. Thus, Plaintiffs request approval for payment of settlement administration expenses not to exceed $10,000.

F. The requested class representative service award is reasonable.

Service awards compensate class representatives for work done on behalf of the class. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). These awards promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). Such awards are approved so long as they are reasonable and do not undermine the adequacy of the class representatives. *See Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1164 (9th Cir. 2013). The requested award of $15,000 for each Class Representative is reasonable and in line with awards approved by other courts. *See, e.g., Pelletz v. Weyerhauser Co.*, 592 F. Supp. 2d 1322, 1329-30 & n.9 (W.D. Wash. 2009) (approving combined service payments of $30,000 and citing decisions approving awards up to $40,000 in other cases).

Plaintiffs have been committed to this case from the beginning. They assisted Class Counsel in investigating the claims, gathering evidence, preparing the complaint, contacting witnesses, and understanding the facts. O'Laughlin Preliminary Approval Decl., ¶ 13; Toff Preliminary Approval Decl., ¶¶ 4-5; 10. They also provided evidence to support the claims, participated in mediation and multiple meetings, stayed in contact with Class Counsel, and were prepared to testify in depositions and at trial. O'Laughlin Preliminary Approval Decl., ¶ 13. The

MALONEY O'LAUGHLIN, PLLC
200 WEST MERCER STREET, STE. 506
SEATTLE, WA 98119
206.513.7485

service award will compensate the Plaintiffs for their time and effort in stepping forward to serve as class representatives. The award is well deserved and should be approved.

IV. CONCLUSION

The common fund settlement is fair, adequate, and reasonable. Moreover, it is appropriate for the Court to grant an award of 25 percent of the common fund for attorney fees and $4,792.39 for costs given the high-quality work performed and successful result achieved. An award not to exceed $10,000 for settlement administration expenses is also appropriate. Finally, a service award of $15,000 per Class Representative is reasonable. Plaintiffs respectfully request that the Court grant final approval of the class action settlement.

Dated this 23rd day of September, 2024

Respectfully submitted,

By: /s/ *Matt J. O'Laughlin*

Matt J. O'Laughlin, WSBA 48706
Amy K. Maloney, WSBA 55610
Steven A. Toff, WSBA 59575
MALONEY O'LAUGHLIN, PLLC
200 W. Mercer Street, Ste. 506
Seattle, Washington 98119
matt@pacwestjustice.com
amy@pacwestjustice.com
steven@pacwestjustice.com
Tel: 206.513.7485
Fax: 206.260.3231

Attorneys for Plaintiffs and the Proposed Settlement Class and Subclasses

I hereby certify that this memorandum contains 3939 words in compliance with the Local Rule for dispositive motions.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2024, I served the foregoing document via the Court's electronic filing system on the following:

Darren A. Feider
Monica Ghosh
Sebris Busto James
15375 SE 30th Pl., Ste. 310
Bellevue, Washington 98007
(425) 454-4233
dfeider@sbj.law
mghosh@sbj.law

Attorneys for Defendants

By: /s/ *Matt J. O'Laughlin*