

Honorable Catherine Shaffer
Trial Date: March 22, 2021
Hearing Date: December 14, 2020

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

ZACHARY HUDSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

OATRIDGE SECURITY GROUP, INC., a
Washington corporation; and CY A.
OATRIDGE, individually and on behalf of
the marital community composed of Cy and
J. Doe OATRIDGE,

Defendants.

No. 18-2-23611-8 SEA

PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

I. RELIEF REQUESTED

Pursuant to CR 23(e), the Named Plaintiff, Zachary Hudson, seeks an order that (1) preliminarily approves the parties' class-wide settlement, (2) approves the proposed notice of settlement to be sent to Class Members, and (3) schedules a final settlement approval hearing. This relief should be granted because the proposed settlement provides fair, reasonable, and adequate compensation for the Certified Classes. Defendants Oatridge Security Group, Inc. ("Oatridge Security") and Cy A. Oatridge (collectively, "Oatridge")

1 have reviewed this motion and do not oppose it.¹

2 **II. STATEMENT OF FACTS**

3 **A. Factual and Procedural Background.**

4 Defendant Oatridge Security is a Washington corporation that provides security
5 guards to companies doing business or hosting events in King County, Washington and
6 elsewhere in Washington state.

7 Plaintiff and the approximately 389 other members of the Certified Classes were
8 employed by Oatridge as Security Guards and Shift Supervisors in Washington between
9 September 20, 2014 and October 20, 2020 and were paid on an hourly basis. Plaintiff claims
10 that Oatridge failed to provide employees with rest and meal breaks, failed to ensure those
11 employees take the rest and meal breaks to which they are entitled, failed to compensate
12 those employees for missed rest and meal breaks, failed to compensate those employees for
13 all hours worked, both by requiring the employees to work off the clock and by altering
14 timekeeping records so as to reduce the number of work hours reported, and failed to pay all
15 overtime wages owed in violation of RCW 49.12.020, RCW 49.46.090, RCW 49.46.130,
16 RCW 19.86.090, WAC 296-126-092, and SMC 14.20.020.

17 Oatridge denies any wrongdoing and denies that Plaintiff and the Members of the
18 Classes are entitled to any relief.

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¹ Because his motion is unopposed, and in the interests of time and efficiency, Plaintiff has noted this motion
22 for consideration without oral argument. If the Court has questions or requires further information before
23 approving this motion, counsel are prepared to respond either by presenting the motion at a virtual or
24 telephonic hearing or through supplemental filings.

1 The Court granted Plaintiff's motion for class certification in this case on December
2 20, 2019, certifying a Class and Subclass. *See* Dkt No. 84.² Class notice was duly sent to 372
3 putative Class Members, and two putative Class Members timely requested exclusion.

4 Between January and October 2020, the parties engaged in extensive document
5 discovery. Oatridge produced tens of thousands of payroll and timekeeping records, policy
6 and procedure documents, and written communications relating to work performed by Class
7 Members. Plaintiff also served a subpoena duces tecum on Oatridge's third-party payroll
8 services provider to obtain electronic payroll records that could be used in Plaintiff's expert
9 damages analysis. And Oatridge served subpoenas duces tecum on Plaintiff's cellular phone
10 service provider as well as several absent Class Members.

11 On October 20, 2020, the parties engaged in a full-day mediation with Judge Paris K.
12 Kallas, ret., an experienced Seattle-based neutral. That mediation was successful, resulting in
13 a settlement that was subsequently formalized and is now presented for Court approval.
14 Hanley Decl. ¶5.

15 Plaintiff and his counsel have determined that the proposed settlement is fair,
16 reasonable, adequate, and in the best interests of the Class and that it is desirable that the
17 litigation be settled in the manner and upon the terms and conditions set forth therein. The
18 Settlement will permit Class Members to receive additional compensation without the time,
19 risk, and expense of further litigation, and permits Oatridge to avoid the risk, expense, and

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21 ² The Subclass comprises Members of the Class who worked in Seattle during the Class period and thus have
22 claims under Seattle's wage-theft ordinance. The recovery under those claims overlaps with the recovery
23 available under the claims brought on behalf of the entire Class. Thus, all Class Members, including Subclass
24 Members, will be treated equally for purposes of settlement award calculations, and further references in this
25 motion will be to the Class, singular.

1 inconvenience of further legal proceedings.

2 **B. The Proposed Settlement.**

3 A copy of the proposed Settlement Agreement is attached as Exhibit 1 to the
4 accompanying Hanley Declaration. The key terms of the Agreement are as follows:

5 (1) The Settlement Fund: Oatridge will fund a Settlement Fund of \$1,750,000 to
6 pay back wages to Class Members, interest and exemplary damages on those back wages,
7 any reasonable attorneys' fees and costs approved by the Court, any class representative fee
8 approved by the Court, and any settlement administration fees and costs approved by the
9 Court. If there are residual amounts from the Settlement Fund, 50 percent of the residual
10 funds will go to the Legal Foundation of Washington pursuant to CR 23(f)(2) and the other
11 50 percent will go to the Fair Work Center, a nonprofit that educates and advocates for low
12 wage workers on employment rights.

13 (2) Payments to Individual Settlement Class Members: The net Settlement Fund,
14 after deducting any Court-approved fees and costs, will be distributed *pro rata* among Class
15 Members based on their hours of work and hourly wage rates during the Class Period. The
16 calculations for the distribution will be performed by Plaintiff's expert based on timekeeping
17 and payroll data produced by Oatridge and its payroll vendor, which are presumed to be
18 accurate. Individual settlement awards will be allocated 50 percent to back pay and 50
19 percent to prejudgment interest. Hanley Decl. ¶¶7 and 9.

20 (3) Changes to Oatridge Practices: As part of the Settlement, Oatridge will make
21 reasonable changes to its practices to ensure compliance with Washington law, including
22 requiring its employees to record rest and meal break time, establishing a system that
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1 provides compensation to employees for missed rest and meal breaks, and training
2 employees on the prohibition against off-the-clock work. Oatridge will also regularly remind
3 employees that it expects them to be clocked whenever work is performed.

4 (4) Attorneys' Fees and Costs: Subject to approval by the Court, Class Counsel
5 will receive 30 percent of the gross Settlement Fund, or \$525,000, as attorneys' fees, plus
6 reasonable litigation costs of approximately \$25,000. Hanley Decl. ¶15.

7 (5) Settlement Administration: ILYM Group, Inc., an experienced third party
8 claims administrator, will be responsible for delivering Class Notice to Class Members and
9 shall prepare and deliver the settlement checks and tax documents to the Class Members. The
10 estimated cost of their services is \$10,695.25, with a maximum cost of \$12,000. Hanley Decl.
11 ¶16, Ex. 2.

12 (6) Class Representative Payment: Subject to approval by the Court, the Named
13 Plaintiff, Zachary Hudson, will receive an additional \$5,000 from the Settlement Fund in
14 recognition of his services to the Class and his efforts in the litigation.

15 (7) Notice to Settlement Class Members: Copies of proposed Notices of Class
16 Action Settlement ("Class Notices") are attached as Exhibits A and B to the Settlement
17 Agreement. Class Notice A will be sent to Class Members who previously received notice
18 and an opportunity to request exclusion from the Class. Class Notice B will be sent to
19 individuals who were first employed by Oatridge and became Class Members between the
20 date of initial Notice and October 20, 2020, the end of the Class Period under the proposed
21 Settlement. Those individuals will have an opportunity to request exclusion from the
22 Settlement within 30 days of the mailing of the Notice. The Notices will be mailed by the
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1 Settlement Administrator, via first-class mail and email where available, to the last known
2 addresses of all Class Members, as updated through use of a reputable tracing service, within
3 thirty (30) calendar days of the date of preliminary approval. Returned notices will be
4 remailed where an updated or valid address can be identified. Where cell phone numbers are
5 available, the Settlement Administrator will also send a follow-up Text Message to Class
6 Members in the form appended as Exhibit C to the Settlement Agreement to ensure they
7 received Notice and are aware of the proposed Settlement.

8 Class Members will be given thirty (30) calendar days from the date on the Notice to
9 object to the Settlement and, in the case of new Class Members, to request exclusion.

10 Plaintiff will file pleadings in support of final approval and Class Counsel's
11 attorneys' fee and cost petition no later than sixteen (16) calendar days after the mailing date
12 of the Notices. Plaintiff will file responses to any objections within forty (40) days after the
13 mailing date. At the final fairness hearing, the Court will be asked to enter a final order
14 approving the Settlement Agreement. If the Settlement Agreement is approved, Oatridge will
15 deliver the Settlement Fund to the Settlement Administrator within ten (10) days of the
16 Effective Date of the Court's final approval. The Settlement Administrator will mail the
17 individual settlement checks within twenty-one (21) days after receipt from Oatridge.

18 (8) Release of Claims: Under the Settlement Agreement, all Class Members,
19 including the Named Plaintiff, who have not requested exclusion will be held to have
20 released all state, federal, and contractual wage and hour claims accruing between September
21 20, 2014 and October 20, 2020 that were or could have been asserted based on the facts and
22 circumstances alleged in the lawsuit.

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III. STATEMENT OF ISSUES

A. Whether the Court should preliminarily approve the Settlement pursuant to CR 23(e).

B. Whether the Court should approve distribution of the Class Notices and schedule a final fairness hearing.

IV. EVIDENCE RELIED UPON

Plaintiff relies upon the pleadings on file in this case and the accompanying Declaration of Elizabeth A. Hanley and exhibits thereto.

V. DISCUSSION

A. The Proposed Settlement Is Fair, Adequate, And Reasonable.

Washington Civil Rule 23(e) states:

A class action shall not be dismissed or compromised without the approval of the 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.

CR 23(e). “The requirements of CR 23(e) are for the most part procedural, requiring notice of a proposed settlement be given to class members and that they be given an opportunity to object to the settlement.” *Pickett v. Holland America Line-Westours, Inc.*, 145 Wn.2d 178, 188 (2001).

The issue of final approval of the Settlement is not presently before the Court but will come before the Court at the final approval hearing. However, it is common for courts to satisfy themselves that a proposed settlement is the result of arm’s-length negotiations and falls within the range of possible approval before ordering notice to the class. *Adams v. Inter-Con Security Systems, Inc.*, 2007 WL 322466, *3 (N.D. Cal. Oct. 30, 2007). As it bears on the question of preliminary approval, therefore, Plaintiff will address the standards for final

1 approval now.

2 In *Pickett*, the Court explained:

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

13 145 Wn.2d at 188-89. Not all factors are relevant in all cases, and the importance of each
14 factor will depend on the facts of each case. *Officers for Justice v. Civil Service Comm’n*, 688
15 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983) (cited in *Pickett*, 145
16 Wn.2d at 189). Review of a proposed settlement “is a delicate, albeit largely unintrusive,
17 inquiry by the trial court.” *Pickett*, 145 Wn.2d at 189.

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

24 *Officers for Justice*, 688 F.2d at 625. Indeed, the general principles favoring settlement of
25 disputed claims apply to class actions. “[I]t must not be overlooked that voluntary
26 conciliation and settlement are the preferred means of dispute resolution.” *Id.* (quoted in
Pickett, 145 Wn.2d at 190).

In the present case, the settlement was arrived at by the parties through arm’s-length
negotiations that took place after significant exchange of information and motions practice.
Application of the criteria enumerated in *Pickett* supports a preliminary determination that

1 the settlement is fair, reasonable, and adequate.

2 **1. The Likelihood of Success by Plaintiff.**

3 Plaintiff believes there would be a strong likelihood of success in proving liability in
4 this case. However, there are risks of loss in any litigation. Hanley Decl. ¶¶12-14. There are
5 also specific, identifiable risks with respect to this case that could either defeat or limit the
6 Class's recovery, including:

- 7 • The jury could find, in light of conflicting or ambiguous testimony and
8 evidence, that Class Members, either in general or at particular work sites, did
9 get adequate time for rest and meal breaks, or may find they received more
10 rest and meal breaks than contended by Plaintiff.
- 11 • The jury could find, in light of conflicting or ambiguous testimony and
12 evidence, that Class Members, either in general or at particular work sites, did
13 not engage in off-the-clock pre- and post-shift work or engaged in less off-the-
14 clock work than contended by Plaintiff.
- 15 • The Court might conclude that some or all of Plaintiff's claims do not
16 constitute violations of the Consumer Protection Act, shortening the Class
17 Period from four to three years.
- 18 • The Court might decertify or partially decertify the Class on predominance or
19 other grounds based on perceived differences between work sites at or after
20 trial.

21 *Id.* The proposed settlement eliminates all of these risks while at the same time providing
22 substantial benefits to the Class Members.

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2. The Settlement Terms and Conditions.

The settlement terms are fair, reasonable, and adequate, including the size of the Settlement Fund, the settlement awards to be paid to individual Class Members, the distribution plan, and the prospective equitable relief.

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 approximately 85% of the back pay and prejudgment interest owed to the Class Members under the “best case” assumptions used in Plaintiff’s calculations. Hanley Decl. ¶¶7-8. Any discount off full recovery represented by the net Settlement is reasonable, given the multiple litigation risks present in the case, the benefits to Class Members of a prompt and certain resolution, and the possibility that a jury could find less off-the-clock hours had been worked or fewer rest and meal breaks had been missed than assumed in the calculations either in general or for particular work sites.

The net Settlement Fund will be allocated among the Settlement Class Members based on *pro rata* calculations that take into account their individual wage rates, dates of work, and hours and number of shifts worked. Each Class Member’s award will be divided half to back wages (reported on a W-2 and subject to payroll withholding taxes) and half to prejudgment interest (reported on a Form 1099 and not subject to tax withholding), Oatridge will separately pay all employer-side taxes associated with all wage payments made from the Settlement Fund. Hanley Decl. ¶9.

1 Overall, the proposed allocation of the net Settlement Fund is fair, reasonable, and
2 adequate and is designed to distribute the settlement in proportion to the damages suffered by
3 each Class Member to the greatest degree practicable.

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

7 Finally, the Settlement obligates Oatridge to take several steps to amend its practices
8 in ways that will provide ongoing benefits to Class Members who are still employed by the
9 company.

10 **3. Future Expense and Likely Duration of Litigation.**

11 The Settlement avoids a number of significant, identifiable risks that could preclude,
12 reduce, or delay recovery by all or a large portion of the Class, including disputes over
13 liability and damages and risks of maintaining class certification throughout trial and appeals.
14 In the absence of settlement, Plaintiff would incur significant costs in additional discovery,
15 motions practice, and trial. Finally, the Settlement avoids the potential for additional delays
16 in the outcome of the case, including delays from post-judgment appeals. Hanley Decl. ¶14.

17 **4. The Amount of Discovery or Evidence.**

18 Before entering into the proposed Settlement, the parties engaged in significant
19 discovery, including comprehensive production of documents and data, third party subpoenas
20 of Oatridge's payroll vendor and Plaintiff's cell phone provider, and depositions of Plaintiff
21 and the CR 30(b)(6) representative Cy Oatridge. Class Counsel also interviewed numerous
22 Class Members, benefited from information learned in a separate lawsuit against Oatridge,
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1 and engaged in substantial motions practice, including a contested motion for class
2 certification. Hanley Decl. ¶¶3-4.

3 Both Plaintiff's and Defendants' counsel have extensive experience in wage and hour
4 suits. Hanley Decl. ¶¶10-11. Counsel are therefore well-positioned to assess the strength of
5 Plaintiff's claims and Oatridge's factual and legal defenses. *Id.* Class Counsel negotiated this
6 Settlement with firm knowledge of the facts of this case and with the benefit of insights
7 gained from the course of similar litigation.

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

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

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

13 The parties have maintained an adversarial, albeit professional, posture throughout
14 this case. This settlement was reached only after extended negotiations, with the assistance of
15 a highly skilled mediator, and there is no evidence of collusion or bad faith of any sort.

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

19 **B. Fees and Costs.**

20 **1. Attorneys' Fees and Costs.**

21 Class Counsel will ask the Court for approval of an attorneys' fee award of 30% of
22 the gross Settlement Fund, or \$525,000, plus actual litigation costs of approximately
23 \$25,000. Hanley Dec. ¶15.

1 The typical range of attorneys’ fees in a common fund recovery in class action cases
2 is between 20% and 33%. *See Bowles v. Department of Retirement Systems*, 121 Wn.2d 52,
3 72-73 (1993) (citing 3 *Newberg on Class Actions* § 14.03 for the proposition that 20 to 30
4 percent is the usual range for fee awards in a common fund action); 4 *Newberg on Class*
5 *Actions* § 14:6 (4th ed. online) (“common fee awards fall in the 20 to 33 per cent range” and
6 “empirical studies show that, regardless whether the percentage method or the lodestar
7 method is used, fee awards in class actions average around one-third of the recovery”). The
8 30% fee award that Plaintiff’s Counsel seeks here is consistent with this range, reasonable in
9 light of the extensive litigation in the matter, and less than what counsel would ordinarily
10 recover in an individual case. *See Goodrich, F. & Silber, R., Common Fund and Common*
11 *Fund Problems: Fee Objections and Class Counsel's Response*, 17 Rev. Litig. 525, 548-49
12 (Summer 1998) (“The percentage awarded should mimic the market.... In non-class
13 litigation, one-third contingency fees are typical.”) (quoted in 4 *Newberg on Class Actions* §
14 14:6 (4th ed. online)).

15 Moreover, the litigation costs incurred by Plaintiff are reasonable given the extent and
16 complexity of the litigation to date. The majority of these costs relate to legal research,
17 deposition costs, expert analysis of Oatridge’s payroll and timekeeping data, and mediation
18 expenses. Hanley Decl. ¶15.

19 Given the significant recovery for Class Members in this case and the importance of
20 counsel’s skill and experience in this area to obtaining this result, the requested fee and cost
21 award is appropriate. In any event, final approval of the fee award will occur at the final
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1 fairness hearing. Thus, this fee request should be preliminarily approved at this time, and
2 described in the notice to the Class.

3 **2. Class Representative Service Award.**

4 Subject to Court approval, Mr. Hudson will receive an additional \$5,000 from the
5 Settlement Fund as an incentive award for his role in representing the Class. Such treatment
6 of class representatives is fair and reasonable and is frequently requested and approved. *See*
7 *Hughes v. Microsoft Corp.*, 2001 WL 34089697, *12 (W.D. Wash. March 26, 2001). This
8 incentive payment recognizes, among other things, the time spent by Mr. Hudson in
9 responding to discovery, being deposed, participating in mediation, and consulting with
10 counsel about the facts of the case, litigation strategy, and settlement negotiations, and the
11 substantial benefits obtained for the Class through Plaintiff's actions. Hanley Decl. ¶17. The
12 class representative service award also recognizes the risk of adverse consequences in the
13 workplace and the labor market faced by workers who sue an employer. Finally, as with the
14 attorneys' fee award, the Settlement is not contingent on Court approval of any particular
15 amount of class representative payment.

16 **C. The Proposed Notice Satisfies CR 23(e) and Due Process.**

17 **1. Method of Giving Notice.**

18 Generally, a settlement notice must in substance be reasonably calculated, under all of
19 the circumstances, to apprise Class Members of the terms of the settlement and the
20 opportunity to present objections. In the present case, notice will be sent by first-class mail to
21 all Class Members. The addresses used will be updated to the extent reasonably possible. The
22 notice also will be emailed to Class Members whose email addresses are available, and text
23 notifications will be sent to Class Members whose cell phone numbers are known. These

1 steps are calculated to apprise Class Members of the Settlement to the greatest extent
2 reasonable and satisfy the requirements of CR 23 and due process.

3 **2. Contents of the Notice.**

4 A CR 23(e) notice should: (1) describe the nature of the pending action and the
5 general terms of the settlement; and (2) inform Class Members that complete and detailed
6 information is available from the court files and that any Class Member may appear and be
7 heard at the final fairness hearing. The settlement notice need not include a copy of the
8 Settlement Agreement. The federal Manual for Complex Litigation (Fourth) § 21.312 (Fed.
9 Jud. Ctr. 2004) provides the following guideline:

10 If the agreement itself is not distributed, however, the notice must contain a
11 clear, accurate description of the key terms of the settlement and inform class
12 members where they can examine or obtain a copy, such as from the Internet,
13 the clerk's office, class counsel, or another readily accessible source.

14 The proposed Notice meets these requirements. It is written in plain English, is
15 clearly and concisely written, and provides all necessary information regarding the
16 Settlement, including a statement of the gross recovery for the Settlement Class, allocation
17 plan, proposed attorneys' fees, costs, and class representative awards, applicable deadlines
18 for action, and how Class Members may obtain further information or file objections.

19 **D. Scheduling of Final Approval Hearing.**

20 As discussed above, CR 23(e) contemplates a final approval hearing after providing
21 the Class notice and an opportunity to comment. The Settlement Agreement provides that
22 Class Counsel will mail the Class Notice within 30 calendar days of the Order granting
23 preliminary approval to the Settlement and that Class Members will have 30 days, plus three
24 days for mailing, to file objections. The Settlement Agreement further provides that Class

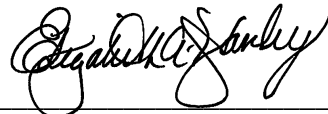
1 Counsel will respond to any objections within forty days of the notice mailing, or ten days
2 after the end of objection period. In light of these timelines, the final approval hearing should
3 be scheduled no sooner than 77 days (11 weeks) after entry of the Order granting preliminary
4 approval to the Settlement and as soon thereafter as the Court's calendar permits.

5 **VI. CONCLUSION**

6 For the foregoing reasons, Plaintiff requests that the Court enter the accompanying
7 Order preliminarily approving the Settlement Agreement, approving the proposed Notice
8 plan, and setting a date for a final fairness hearing that is no earlier than 77 days from the
9 date of preliminary approval and as soon thereafter as the Court's calendar permits.

10 DATED this 1st day of December, 2020.

11 SCHROETER GOLDMARK & BENDER

12 

13 By: _____
14 ELIZABETH A. HANLEY, WSBA #38233
ADAM J. BERGER, WSBA #20714
Attorneys for Plaintiff

15 I certify that this memorandum contains
16 3938 words, in compliance with the Local
17 Civil Rules.

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CERTIFICATE OF SERVICE

I certify that I caused to be served in the manner noted below a copy of the foregoing pleading on the following individual(s):

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