

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

JERRY MICHAEL BROOKS, on his own
behalf and on the behalf of all others similarly
situated,

Plaintiff,

v.

EITANE EMERALD CORP, (D/B/A
EMERALD CITY COMICON CORP), a
Washington for-profit Corporation; GEORGE
DEMONAKOS, individually and the marital
community composed of GEORGE
DEMONAKOS and JANE DOE
DEMONAKOS; and, JIM DEMONAKOS,
individually and the marital community
composed of JIM DEMONAKOS and JANE
DOE DEMONAKOS,

Defendants.

CLASS ACTION

NO. 16-2-11493-8 SEA

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Jerry Brooks has reached a class action settlement with all Defendants EITANE EMERALD CORP., Inc., GEORGE DEMONAKOS, GEORGE DEMONAKOS and their martial communities. (collectively, "ECCC" or "Defendants"). Plaintiff therefore respectfully moves the Court for preliminary approval of the settlement agreement. For the

1 reasons set forth in this memorandum and the supporting documents, the settlement
2 agreement is fair and reasonable and serves the best interests of the settlement class members.
3 Accordingly, Plaintiff respectfully requests that the Court take the following initial steps in
4 the settlement approval process: (1) grant preliminary approval of the settlement, including
5 the settlement payment to the class and the fees and costs payment to Plaintiff’s counsel; (2)
6 provisionally certify the proposed settlement class; (3) appoint Jerry Brooks as the Class
7 Representative; (4) appoint as Class Counsel the law firm of Rekhi & Wolk, P.S.; (5) appoint
8 Settlement Services Inc. to serve as the Settlement Administrator; (6) approve the proposed
9 notice plan and claim form; and, (7) schedule the final fairness hearing and related dates as
10 proposed by the parties.

11 **II. STATEMENT OF FACTS**

12 **A. Factual and Procedural Background**

13 Defendant Eitane Emerald Corp is a Washington for-profit corporation, registered in
14 the State of Washington. *See* Dkt. No. 1 at ¶ 5 (Class Action Complaint). It does business as
15 Emerald City Comicon Corp (“ECCC”). *Id.* Defendants George Demonakos and Jim
16 Demonakos are principals and/or owners of ECCC. *Id.* at ¶ 7.

17 From 2003 until 2015, ECCC planned and executed the Emerald City Comicon. In
18 2014, The Emerald City Comicon (ECCC) website described the event “as the premier comic
19 book and pop culture convention in the pacific northwest!” *See* Declaration of Hardeep S.
20 Rekhi (“Rekhi Decl”), Ex 2 (Content from Defendant ECCC’s website from 2014). The
21 event takes place in the spring of each year and in 2013 and 2014 was located at the
22 Washington State Convention Center. About 70,000 and 80,000 people attended the ECCC
23 event in 2014 and 2015 respectively. *See* Dkt. No. 6 (Defendants’ Answer). The event took

1 place over a three-day period in 2014 and 2015. *See* Rekhi Decl. at Ex. 1. (Deposition
2 Transcript of James Demonakos) 24:6-10.

3 In order to staff the event during the three-day period in 2014 and 2014, ECCC relied
4 upon “Minions.” “Minions” were volunteers that applied to work at the ECCC event. There
5 were approximately 761 Minions in 2015. *Id.* at ¶ 4. Many Minions that volunteered in 2015
6 had previously volunteered in 2014. *Id.* at ¶ 5, Ex. 5 (Signed Declarations). If a person
7 wanted to be a Minion, they were required to apply through an online application process. *Id.*
8 at Ex. 1. 29:24-30:25. The application process required Minions to agree to a Minion Code of
9 Conduct. *Id.* at Ex. 2. ECCC retained the right to screen each minion as deemed necessary.
10 *Id.*

11 If a person was selected to be a Minion, the Minion would be assigned to one of
12 several different departments. *Id.* at Ex. 1. 55:22-25. Minions were also classified as either a
13 Full-Time Super Minion, Full-Time Minion, Part-Time Minion or Single Shift Minion
14 depending on the number of hours they were willing to work. *See* Rekhi Decl. Ex 2.
15 Defendants’ website claimed that Full-Time Super Minions worked more than 8 hours per
16 day. *Id.* Full-Time Minions worked 8 hours per day. *Id.* Part-Time Minions worked multiple
17 6 hours shifts. *Id.* Finally, Single Shift Minions worked one shift of 4-6 hours. *Id.* The
18 website information was consistent with interview data.

19 Additionally, in 2015 Defendants required Minions to check in and check out.
20 Defendants provided check-in/check-out data for 2015. *See* Rekhi Decl. at ¶ 7. Assuming that
21 a Minion worked from the moment he/she checked in to the moment he/she checked out, the
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1 total hours worked by Minions in 2015 was 12,748.43.¹ *Id.* The data for 2015 provided by
2 Defendants was consistent with information obtained in interview data. *Id.* In addition to a
3 commitment to work at the event, Minions were required to attend a two-hour orientation. *Id.*
4 at Ex. 1. 38:13-14.

5 Minions were not compensated for their time through any hourly wage. *Id.* at Ex. 1.
6 105:21-24. Minions did receive entry to the event and T-shirt, however, Minions were not
7 paid minimum wage for each hour worked. *Id.*

8 After conducting discovery, both written and through deposition, investigating the
9 facts, interviewing minions, researching and analyzing their respective legal positions, and
10 assessing potential damages, Plaintiff and Defendants engaged in settlement negotiations for
11 over 6 months. *See* Rekhi Decl. at ¶ 11. All of the settlement negotiations have been non-
12 collusive and at arm's length. *Id.*

13 **B. The Proposed Settlement**

14 The settlement's details are contained in the Class Action Settlement Agreement and
15 Release (the "Settlement Agreement") between Plaintiff and Defendants. *See* Rekhi Decl. ¶
16 12, Ex. 3 (Settlement Agreement). For purposes of preliminary approval, the following
17 summarizes the Settlement Agreement's terms.

18 1. The Settlement Class

19 The proposed settlement class (the "Settlement Class" or "Settlement Class
20 Members") includes:

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22
23

¹ This assumption likely over estimates working hours because it does not account for any unpaid meal
breaks.

1 All people classified as volunteers who worked for Eitane
2 Emerald Corp, (d/b/a Emerald City Comicon Corp) in 2014
and/or 2015 at the Emerald City Comicon Conventions in
3 Seattle, Washington.

4 The Settlement Class excludes any entity in which Defendants have a controlling interest or
5 which has a controlling interest in Defendants, and Defendants' legal representatives,
6 assignees and successors. Also excluded are the Judge to whom this case has been assigned
7 and any member of the Judges' immediate family. *Id. at Ex. 3.* The release also specifically
8 releases Reed Elsevier, Inc. and Reed Exhibitions. *Id.* It is believed that these entities
9 purchased the ECCC event. *Id. at Ex. 1. 100:17-19.*

10 If any one of the proposed class member submits a timely exclusion request, that
11 individual shall lose their proposed class member status and shall not benefit from nor be
12 bound by the Settlement Agreement.

13 2. Settlement Relief

14 For the benefit of the Settlement Class, and to pay Plaintiff's attorneys' fees and costs
15 for litigating this suit, including the fees and costs to the Settlement Administrator, as
16 explained in more detail below, ECCC will pay a gross amount of \$493,227.84 (the
17 "Settlement Fund"). Settlement Agreement § II.B.

18 **Incentive Award:** If approved by the Court, Plaintiff Brooks will also receive a
19 \$5,000 incentive award as the Class Representative out of the Settlement Fund. Settlement
20 Agreement § II.B.1. This award will compensate the proposed Class Representative for his
21 time and effort and for the risk he undertook in prosecuting the case against Defendants. *See*
22 *Rekhi Decl. at ¶ 13.*

1 **Attorneys' Fees and Costs:** Subject to Court's approval, the Settlement Agreement
2 provides for a payment to Class Counsel for attorneys' fees, expenses, and costs. Settlement
3 Agreement § II.B.2. Plaintiff's request a total payment of \$124,830.51 for fees and costs. As
4 discussed below, this amount is reasonable. Plaintiffs' counsel estimate they have and will
5 incur approximately \$1,500 in actual costs to prosecute this case through final approval. *See*
6 *Rekhi Decl.* at ¶ 14. As for attorneys' fees, Plaintiff's counsel are applying for an award of
7 25% of the Settlement Fund, which equals \$123,306.96. *Id.* An award of these fees will
8 compensate and reimburse Plaintiff's counsel for the work they have already performed in
9 this case as well as the work remaining to be performed in securing Court's approval of the
10 settlement, making sure that the settlement is fairly administered and implemented, obtaining
11 dismissal of the action, finalizing the settlement approval, briefing and attending hearings to
12 resolve any objections raised by others to the settlement of these claims. *See* Settlement
13 Agreement §§ II.B.2 & II.C.

14 **Settlement Administration:** Plaintiff's estimate the cost to administer the settlement
15 will cost \$15,000. *See* *Rekhi Decl.* at ¶ 15. The settlement administrator will provide service
16 for sending payment to class members, calculate and withhold payroll taxes, manage the
17 claims form process, the opt-out process, the objection process, the notice process, create
18 online process for claims, create a website. *Id.* In the event the cost to administer the
19 settlement is less than \$15,000, the remaining funds will be added to the class fund. *See* *Rekhi*
20 *Decl.* at Ex. 3

21 Assuming this Court approves the above-requested awards and costs, the class fund is
22 at least \$348,397.33 (the "Class Fund"). The Class Fund will be distributed to the Settlement
23 Class members who submit valid and timely claim forms ("Eligible Class Members"). The

1 calculation of settlement awards to each Eligible Class Member will represent a pro rata
2 proportion of the Class Fund based on the Eligible Member's hours worked. *See* Settlement
3 Agreement § II.E. Specifically, each Eligible Class Member shall be entitled to a pro rata
4 proportion based on the number of hours worked for the ECCC event. *Id.* Based on
5 Plaintiff's calculations, the collective gross amount of potential damages for the Settlement
6 Class is \$348,397.33. *See* Rekhi Decl. ¶ 16. As such, the Settlement Class will recover in
7 excess of 100% of the alleged actual wages owed to them based on the estimated hours
8 worked. The estimated hours worked is based on interviews with class members and data
9 provided by Defendants for hours worked in 2015. *Id.* at ¶ 7. This includes payment for time
10 spent during orientation. Further, it assumes includes 100% participation by members of the
11 proposed class. Even after accounting for the requested attorneys' fees and costs, as well as
12 the requested incentive award for the proposed Class Representative, each minion will earn
13 more than 1.4 times the minimum wage for each hour worked.

14 In exchange for the benefits allowed under the settlement, Settlement Class Members
15 will release all claims that arise out of or relate to the allegations brought against Defendants
16 in this lawsuit. Settlement Agreement § III.B.

17 3. Settlement Administration and Notice

18 As set forth in the Settlement Agreement, and upon Court approval, Plaintiff's counsel,
19 Rekhi & Wolk, P.S. will retain a settlement administrator to administer the settlement. Thus,
20 the Settlement Agreement also provides for payment to cover these administration expenses.
21 Settlement Agreement § II.C. Plaintiff's counsel anticipates that such expenses will amount
22 to approximately \$15,000. *See* Rekhi Decl. ¶ 15. Plaintiff will request approval of the final
23 amount actually incurred at the final approval hearing.

1 If the Court grants preliminary approval, Plaintiff will ask the Court to approve a
2 notice program. The settlement administrator will issue notice forms directly to Proposed
3 Class Members through emails address maintained. In addition, notice forms will be
4 distributed through social media channels including the Minion Facebook page. *See* Rekhi
5 Decl. ¶ 12, Ex. 3. The notice will inform the members of the Settlement Agreement and their
6 rights under it. Settlement Agreement § II.F, Ex. A (the Proposed Notice and Claim Form).
7 Along with the notice forms, Proposed Class Members will receive claim forms that must be
8 returned in order to obtain a pro rata portion of the Class Fund. *Id.*

9 The Settlement Administrator will also maintain an online version of the notice and
10 claim form. The Settlement Administrator will email a link to notices and claim forms to
11 Settlement Class Members based on their last known email addresses that Defendants have
12 maintained. *Id.* Settlement Agreement § II.F.5. Rekhi & Wolk, P.S., acting as Class Counsel
13 will also publish on its website, a notice substantially in the form of Exhibit A to the
14 Settlement Agreement.

15 Once the Settlement Administrator issues the notice to the Settlement Class through
16 email and publishing, members will have thirty days from the date of the initial
17 publishing/ mailing to object to the Settlement. *Id.* § II.F. Once this period has passed,
18 assuming the Court grants final approval, the Settlement Administrator will calculate the
19 settlement awards for the Eligible Class Members. The Settlement Administrator will prepare
20 and mail checks to those individuals. *Id.* ¶ II.C.3. If any of the issued checks remain uncashed
21 after a period of 130 days after the effective date, 40% funds will be distributed to the Legal
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1 Foundation of Washington.² The remaining residuals funds shall be retained by Defendants.
2 Settlement Agreement § II.E.

3 III. STATEMENT OF ISSUES

- 4 1. Whether preliminary approval of the Settlement Agreement should be granted?
5 2. Whether the Settlement Class should be provisionally certified?
6 3. Whether Plaintiff Jerry Brooks should be appointed as Class Representative?
7 4. Whether Rekhi & Wolk, P.S. should be appointed as Class Counsel?
8 5. Whether Settlement Services Inc. should be appointed as Settlement Administrator?
9 6. Whether the notice plan, form of Notice, and Claim Form should be approved?
10 7. Whether the final fairness hearing and related dates proposed by the parties should be
11 scheduled?

12 IV. EVIDENCE RELIED UPON

13 Plaintiff relies upon the Declaration of Hardeep S. Rekhi and the exhibits attached
14 thereto, and all pleadings and papers filed in this action.

15 V. AUTHORITY AND ARGUMENT

16 A. Settlement and Class Action Approval Process

17 As a matter of “express public policy,” Washington courts strongly favor and
18 encourage settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258, 947 P.2d 223 (1997);
19 *see also Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 190, 35 P.3d 351
20 (2001), *recon. denied, cert. denied*, 536 U.S. 941 (2002) (“voluntary conciliation and
21 settlement are the preferred means of dispute resolution.”) This is particularly true in class
22 actions and other complex matters where the inherent costs, delays, and risks of continued

23 ² The effective date is defined in the settlement agreement. Settlement Agreement II.D. The effective date is the later of
(1) the expiration of the time for filing an appeal from the court’s entry of final judgement order (31calendar days from Entry
of Judgment) or (2) if a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals
resulting in final judicial approval of the Settlement.

1 litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See*
2 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (acknowledging that a
3 “strong judicial policy . . . favors settlements, particularly where complex class action
4 litigation is concerned”); *see also* 4 Herbert B. Newberg & Alba Conte, *Newberg on Class*
5 *Actions* § 13: 1 (5th ed. 2016) (citing cases) (“*Newberg*”). The traditional means for handling
6 claims like those at issue here — individual litigation — would unduly tax the court system,
7 require a massive expenditure of public and private resources, and, given the small value of
8 the claims of the individual Settlement Class Members, would be wholly impracticable. The
9 proposed settlement here is the best vehicle for Settlement Class Members to receive the relief
to which they are entitled in a prompt and efficient manner.

10 *Newberg* describes a three-step procedure for approval of class action
settlements:

11 *First*, the parties present a proposed settlement to the court for
12 so-called ‘preliminary approval’...

13 *Second*, if the court does preliminarily approve the settlement...
14 notices is sent to the class ... and the court holds a fairness
hearing at which class members may appear and support or
object to the settlement...

15 *Third*, taking account of all the information learned during that
16 process, the court decides whether or not to give ‘final
approval’ to the settlement....

17 *Newberg* at § 13.10.

18 With this motion, Plaintiff requests that the Court take the first step in the settlement
19 approval process by granting preliminary approval of the proposed settlement. The purpose
20 of preliminary evaluation of proposed class action settlements is to determine whether the
21 settlement is within the “range of reasonableness,” and thus whether notice to the class of the
22 settlement’s terms and the scheduling of a formal fairness hearing is worthwhile. *Id.* The
23 decision to approve or reject a proposed settlement is committed to the Court’s sound

1 discretion. *See Pickett*, 145 Wn.2d at 190 (an appellate court will “intervene in a judicially
2 approved settlement of a class action only when the objectors to that settlement have made a
3 clear showing that the [trial court] has abused its discretion”).

4 The Court’s grant of preliminary approval will allow all potential Settlement Class
5 Members to receive notice of the terms of the proposed settlement, and the date and time of
6 the “formal fairness hearing” or final settlement approval hearing, at which Eligible Class
7 Members may be heard regarding the settlement, and at which further evidence and argument
8 concerning the fairness, adequacy, and reasonableness of the settlement may be presented.
9 *See Newberg* at § 13.10. At the preliminary approval/provisional class certification stage, the
10 Court may grant the requested relief upon an informal application by the settling parties, and
11 may conduct any necessary hearing in court or in chambers, at the Court’s discretion. *Id.*

12 **B. The Parties’ Settlement Meets the Criteria for Preliminary Approval**

13 The purpose of preliminary evaluation of proposed class action settlements is to
14 determine whether the settlement is within the “range of reasonableness” and whether notice
15 to the class of the terms and conditions of the settlement, and the scheduling of a final
16 approval hearing, is worthwhile. *Newberg* § 13.10; *see also Pickett*, 145 Wn.2d at 188 (“a
17 proposed settlement may be approved by the trial court if it is determined to be fair, adequate,
18 and reasonable”) (internal quotations omitted). Neither formal notice nor a hearing is
19 required at the preliminary approval stage. The Court may grant such relief upon an informal
20 application by the settling parties, or even on the basis of information already known, at the
21 Court’s discretion. *Newberg* § 13.10.

22 While consideration of the requirements for final approval is unnecessary at this stage,
23 the settlement proposed here not only meets the criteria for preliminary approval but also

1 meets the heightened standard for final approval because it is “fundamentally fair, adequate,
2 and reasonable” for the reasons set forth below. *City of Seattle*, 955 F.2d at 1276. This proves
3 the settlement is “within the range of reasonableness” and should be preliminarily approved.

4 1. The Settlement is a Product of Serious, Informed and Arm’s-Length
5 Negotiations

6 Courts recognize that arm’s-length negotiations conducted by competent counsel are
7 prima facie evidence of fair settlements. As the United States Supreme Court has held, “[o]ne
8 may take a settlement amount as good evidence of the maximum available if one can assume
9 that parties of equal knowledge and negotiating skill agreed upon the figure through arms-
10 length bargaining” *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 852, 119 S. Ct. 2295, 144 L.
11 Ed. 2d 715 (1999); *see also In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 227 F.R.D.
12 553, 567 (W.D. Wash. 2004) (approving settlement entered into in good faith, following
13 arms-length and non-collusive negotiations).

14 The Settlement Agreement here is the result of intensive, arm’s-length negotiations
15 between experienced attorneys who are highly familiar with class action litigation in general
16 and with the legal and factual issues of this case in particular. Counsel for the parties are
17 particularly experienced in the litigation, certification, trial, and settlement of wage and hour
18 class actions. *See generally* Rekhi Decl., ¶¶ 11, 19-27. In negotiating this settlement,
19 Plaintiff’s counsel had the benefit of many years of prior experience combined with
20 knowledge of the facts and law of this case. *Id.*

21 The parties participated in arm’s-length settlement negotiations over the course of six
22 months resulting in the detailed Settlement Agreement. *See* Rekhi Decl., ¶ 11. Prior to, and
23 even during that time, the parties investigated the relevant facts and law based on all of the

1 information necessary to determine the size of the class, the potential scope of damages, and
2 the risks associated with necessary motions and an eventual trial on the merits of the claims.
3 *Id.* at ¶¶ 9-10. Plaintiff interviewed dozens of witnesses. Plaintiff obtained eleven sworn
4 declarations. *Id.* at ¶ 8. Plaintiff prepared public records requests and review records from
5 those requests. *Id.* at ¶ 10. Plaintiff conducted a 30(b)(6) deposition of Defendant ECCC. *Id.*
6 at ¶ 8. Plaintiff and his counsel are fully informed and support the resulting settlement as fair,
7 and as providing reasonable relief to the Settlement Class Members. *Id.* at ¶ 14.

8 2. The Settlement Provides Substantial Relief to the Settlement Class and Treats
9 All Settlement Class Members Fairly

10 Plaintiff has calculated that these Eligible Class Members will receive in excess of
11 100% percent of the total wage damages at issue in this case. *Id.* at ¶ 16. During the 2015
12 ECCC event, Defendants required Minions to check in and check out. *Id.* at ¶ 7. The total
13 number of compensable hours for the 2015 ECCC event is 12,748.43 hours assuming that
14 each Minion worked from check in to check out. *Id.* In 2014, we estimate there were fewer
15 compensable hours because the event was slightly smaller. *Id.* at ¶ 16. However, for purposes
16 of evaluating the reasonableness of the settlement amount, we assume the same number of
17 working hours for 2014. *Id.*³ The total estimated compensable hours for both the 2014 and
18 2015 ECCC events is therefore 25,496.86 (12,748.43 x 2). *Id.* Based on these estimates, and
19 assuming full participation, each minion will be compensated on average \$13.66 for each hour
20 worked in 2014 and 2015. The minimum wage for 2014 was \$9.32. For 2015, the minimum
21 wage was \$9.47. *Id.* Therefore, assuming full participation, the Class Fund is sufficient to
22 compensate each Eligible Class Member 140% of the 2015 minimum wage for each hour
23

1 worked during the 2014 and 2015 ECCC events. The Settlement Agreement provides
2 substantial monetary relief—payment in excess of \$348,397.33 by Defendants—to Settlement
3 Class Members who timely submit a Claim Form. *Id.* § II.B.1.

4 This percentage of recovery is well above settlements approved by other courts. *See,*
5 *e.g., Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (approving settlement
6 amounting to 30 percent of the damages estimated by the class expert; court noted that even if
7 the plaintiffs were entitled to treble damages that settlement would be approximately 10
8 percent of the estimated damages); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th
9 Cir. 2000) (approving a settlement estimated to be worth between 1/6 to 1/2 the plaintiffs'
10 estimated loss); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008)
11 (approving settlement amounting to nine percent of estimated total damages).

12 The funds distributed to the Eligible Class Members will be allocated in a manner that
13 is fair and reasonable, and no segment of the Settlement Class is excluded from relief or
14 consigned to inferior benefits. Each Eligible Class Member's share will be based on the
15 Member's hours worked. Settlement Agreement at § II.E.

16 3. The Settlement is Fair and Reasonable in Light of the Alleged Claims and
17 Defenses

18 Plaintiff and his counsel are confident in the strength of Plaintiff's case but also
19 pragmatic in their awareness of the risks inherent to litigation and the various defenses
20 available to Defendants. The reality that Eligible Class Members could end up recovering
21 only a fraction of their claimed damages or even losing at trial was significant enough to
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23 ³ Defendant did not retain check-in/check-out data for the 2014 ECCC event.

1 convince Plaintiff and his counsel that the settlement reached with Defendants outweighs the
2 gamble and expense of further litigation.

3 One of the primary disagreements during the negotiations was whether Defendants can
4 utilize a volunteer staff. This practice is common in the industry. Other issues include the
5 number of hours worked and factual issues related to rest breaks and meal breaks. In
6 addition, Defendants asserted a defense to willfulness, and hence exemplary damages, under
7 RCW 49.52.050. *See* Rekhi Decl. ¶ 17.

8 Obviously, there is a substantial risk of losing inherent in any jury trial. Even if
9 Plaintiff did prevail, any recovery could be delayed for years by an appeal. The settlement
10 obtained provides substantial monetary benefits to the Settlement Class for the prevailing
11 minimum wage claim without further delay.

12 4. The Settlement Class Representative Incentive Award is Reasonable

13 Subject to Court's approval, the Settlement Agreement provides that the named
14 Plaintiff may be paid a reasonable incentive award of \$5,000. *Id.* at § II.B.1. Service awards
15 that serve as premiums in addition to any claims-based recovery from the settlement promote
16 the public policy of encouraging individuals to undertake the responsibility of representative
17 lawsuits. *See Rodriguez*, 563 F.3d at 958–59 (9th Cir. 2009). A stipend may also be
18 appropriate to “compensate class representatives for work done on behalf of the class, to
19 make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
20 to recognize their willingness to act as a private attorney general.” *Id.* at 958. Unlike
21 unnamed Settlement Class Members, who will enjoy the benefits of Plaintiff's efforts without
22 taking any personal action, Plaintiff Brooks initiated the litigation; he exposed himself to
23 Defendants' investigation; he remained in contact with the attorneys throughout the litigation

1 and worked with counsel in regard to settlement negotiations; and he committed herself to all
2 the rigors of litigation in the event the case did not settle. *See* Rekhi Decl., ¶ 13. He assisted
3 in the preparation for contacting class members. *Id.* He additionally assisted in the
4 preparation for and attended the 30(b)(6) deposition of Defendant ECCC. *Id.*

5 Stipends will not be approved if they undermine the adequacy of the representation.
6 *See Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1663 (9th Cir. 2013 (finding that
7 incentive award must not “corrupt the settlement by undermining the adequacy of the class
8 representatives and class counsel”). For example, in *Radcliffe*, stipends were explicitly
9 conditioned on the class representatives’ support for the settlement, and the Court found that
10 such “conditional incentive awards caused the interests of the class representatives to diverge
11 from the interests of the class.” *Id.* at 1161. The Court further found that “the significant
12 disparity between the incentive awards and the payments to the rest of the class members
13 further exacerbated the conflict,” where representatives “in support of the [s]ettlement” would
14 receive \$5,000 and the rest of the class would receive monetary relief ranging from \$26 to
15 \$750, with the majority of class members receiving about \$26. *Id.* at 1165-67.

16 Such concerns are not present here. The proposed stipend is separate from any
17 recovery by Settlement Class Members and not conditioned on the Court awarding any
18 particular amount or any award at all, in stark contrast to *Radcliffe*. Settlement Agreement
19 § II.B.1. The award sought is no more than \$5,000 and reasonable in light of the Plaintiff’s
20 efforts and time expended supporting the litigation as well as the substantial prospective relief
21 obtained. *See, e.g., Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329-30 & n.9 (W.D.
22 Wa. 2009 (approving \$7,500 service awards and collecting decisions approving awards
23 ranging from \$5,000 to \$40,000).

1 5. The Attorneys' Fees and Expenses Payment is Fair and Reasonable

2 Plaintiff's counsel seeks an award of 25% of the Settlement Fund, also referred to as
3 the "common fund." The "percentage of the fund" approach is appropriate here since the fees
4 will be drawn from a common fund that is shared with the class. *See Bowles v. Dept. of*
5 *Retirement*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993). Here, the requested attorneys' fees
6 award falls within the range of recovery regularly approved under the "percentage of the
7 fund" approach. *See, e.g., A. Hirsch & D. Sheehey, Awarding Attorneys' Fees and Managing*
8 *Fee Litigation* p. 68 (Federal Judicial Center 1994) ("most district courts select a percentage
9 in the 20% to 30% range, and the Ninth Circuit has indicated that 25% is the 'benchmark
10 award.'") The benchmark in Washington is 25 percent of the fund. *See Bowles*, 121 Wn.2d
11 at 72.

12 Here, Plaintiff's counsel seek 25% percent of the common fund. The fee request is in
13 line with the 25% benchmark and is therefore reasonable. In this case, Plaintiff's counsel has
14 been litigating this case for over a year without any compensation to date. Plaintiff's counsel
15 has incurred costs. Plaintiff's counsel has expended substantial time and effort, including
16 staff time. Plaintiff's counsel has conducted important investigation and discovery, including,
17 written discovery, deposition of the defendant, and interviews of dozens of class members
18 (including obtaining statements from eleven class members).

19 6. The Requested Cost and Expense Award is Reasonable

20 The litigation expenses Plaintiff's counsel incurred in this case include the following:
21 (1) filing fees, (2) filing, copying and mailing expenses; (3) computer research expenses; and
22 (4) Deposition expenses. *See Rekhi Decl.* ¶ 28. Plaintiff is seeking only some of the out-of-
23 pocket expenses incurred. These out-of-pocket costs were necessary to secure the resolution

1 of this litigation. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-1178
2 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy costs, travel expenses,
3 postage, telephone and fax costs, computerized legal research fees, and mediation expenses
4 are relevant and necessary expenses in a class action litigation). “Reasonable costs and
5 expenses incurred by an attorney who creates or preserves a common fund are reimbursed
6 proportionately by those class members who benefit from the settlement.” *In re Media Vision*
7 *Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (citing *Mills v. Electric Auto-Lite*
8 *Co.*, 396 U.S. 375, 391-392, 90 S. Ct. 616, 24 L. Ed. 2d 593 (1970)). These expenses are
9 estimated to be approximately \$1,500.00. *See* Rekhi Decl. ¶ 28.

10 Plaintiff’s counsel will also be employing a settlement administrator to administer the
11 class settlement. Plaintiff’s counsel estimates the costs for administrating the settlement will
12 be \$15,000. *Id.* at ¶ 15.

13 **C. Provisional Certification of the Settlement Class Is Appropriate**

14 This Court has not yet certified this case as a class action. For settlement purposes,
15 Plaintiff respectfully requests that the Court provisionally certify the following class: All
16 people classified as volunteers who worked for Eitane Emerald Corp, (d/b/a Emerald City
17 Comicon Corp) in 2014 and/or 2015 at the Emerald City Comicon Conventions in Seattle,
18 Washington. *See* Settlement Agreement § II.A. Provisional certification will allow the
19 potential Settlement Class Members to receive notice of the settlement and its terms,
20 including the right to submit a claim and recover money if the settlement is approved, the
21 right to be heard on the settlement’s fairness, the right to opt out of the settlement, and the
22 date, time and place of the formal settlement hearing.

1 1. The Proposed Class Meets the Requirements CR 23(a)

2 Certification of the Settlement Class for settlement purposes is appropriate under CR
3 23(a) and (b)(2). The numerosity requirement of CR 23(a) is satisfied because the Settlement
4 Class consists of over 761 Minions who worked for the 2014 and 2015 Emerald City
5 Comicon Convention in Washington State. *See* CR 23(a)(1); *see also Miller v. Farmer Bros.*
6 *Co.*, 115 Wn. App. 815, 821, 64 P.3d 49 (2003). The commonality requirement is satisfied
7 because there are many questions of law and fact common to the Settlement Class, questions
8 that center on Defendants’ conduct and the legality of that conduct. *See* CR 23(a)(2); *see also*
9 *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d 665 (2002). The typicality
10 requirement is satisfied because Plaintiff’s claims arise from the same course of conduct that
11 gives rise to the claims of other Settlement Class Members. *See* CR 23(a)(3); *see also Pellino*
12 *v. Brink’s Inc.*, 164 Wn. App. 668, 267 P.3d 383, 392 (2011). The adequacy of representation
13 requirement is satisfied because Plaintiff’s interests are coextensive with, and not antagonistic
14 to, the interests of the Settlement Class. *See* CR 23(a)(4); *see also Hansen v. Ticket Track,*
15 *Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003).

16 2. The Proposed Class Meets the Requirements of CR 23(b)(3)

17 The predominance requirement of CR 23(b)(3) is satisfied because common questions
18 present a significant aspect of the case and can be resolved for all Settlement Class members
19 in a single adjudication. *See* CR 23(b)(3); *see also Brink’s*, 267 P.3d at 392, n. 5 (common
20 questions of law or fact predominate over questions affecting only individual class members,
21 or there is a “common nucleus of operative facts” to each class member’s claim) (citations
22 and internal quotations omitted). Because the claims are being certified for purposes of
23 settlement, there are no issues with manageability, and resolution of claims in one action is far

1 superior to individual lawsuits and promotes consistency and efficiency of adjudication. *See*
2 CR 23(b)(3); *see also Connor v. Automated Accounts, Inc.*, 202 F.R.D. 265, 271–72 (E.D.
3 Wash. 2001). For these reasons, certification of the Settlement Class for purposes of
4 settlement is appropriate.

5 **D. The Proposed Notice Program is Constitutionally Sound**

6 To protect the proposed class members’ rights, the Court must provide them with the
7 best notice practicable regarding the proposed settlement. CR 23(c)(2).⁴ The best practicable
8 notice is that which is “reasonably calculated, under all the circumstances, to apprise
9 interested parties of the pendency of the action and afford them an opportunity to present their
10 objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The
11 language of the proposed Notice and accompanying Claim Form is plain and easily
12 understood, providing neutral and objective information about the nature of the settlement.
13 *See id.* The Notice and Claim Form include the definition of the Settlement Class, a statement
14 of each Settlement Class member’s rights, detailed explanations of how to submit a claim and
15 share in the settlement funds, an explanation of how Settlement Class Members can object to
16 the settlement, and methods for contacting Plaintiff’s counsel and obtaining more information.
17 *See id.*

18 **Email Notice:** Plaintiff has obtained email addresses for over 300 proposed
19 Settlement Class Members identified through Defendants’ own records and Plaintiff’s
20 records. Plaintiff proposes sending Notice in the form attached as Exhibit A to the Settlement
21

22 ⁴ *See also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (provision of “best notice practicable”
23 under the circumstances with description of the litigation and explanation of opt-out rights satisfies due process);
Silber v. Mabon, 18 F.3d 1449, 1454 (9th Cir. 1994) (holding “[w]e do not believe that *Shutts* changes the
traditional standard for class notice from ‘best practicable’ to ‘actually received’ notice”).

1 Agreement directly via email to Class Members. *See* Settlement Agreement at § II.F, Ex. A.
2 This approach will ensure that direct notice reaches as many Settlement Class Members as
3 possible.

4 **Settlement Website.** The Settlement Administrator shall create and maintain a
5 Settlement Website through the Effective Date. The Settlement Website shall provide the
6 same notice and information as provided in the Notice emailed to members. *See* Settlement
7 Agreement at § II.F, Ex. A. Class Counsel will also maintain on their website a page
8 directing class members to the Settlement administrator website.

9 **Publication Notice.** The Parties shall supplement direct notice by making efforts to
10 post on the Minion Facebook.com group. The ECCC Minions have formed a Facebook.com
11 group. It is a closed group. Minions were encouraged to join this group. *See* Rekhi Decl. at ¶
12 18. We estimate the group has 324 members. *Id.* The posting to the Minion Facebook Group
13 will link to the Settlement Website. *See* Rekhi Decl. Ex. 3 § 4.1.3. All costs associated with
14 implementing the Notice Plan, including the fees and costs of the Settlement Administrator,
15 will be paid out of the Settlement Fund.

16 **E. The Scheduling of a Final Fairness Hearing is Appropriate**

17 The last step in the settlement approval process is a final fairness hearing at which the
18 Court may hear all evidence and argument necessary to make its final evaluation. Proponents
19 of the settlement may explain the terms and conditions of the settlement and offer argument in
20 support of final approval. In addition, Settlement Class Members, or their counsel, may be
21 heard in support of or in opposition to the Settlement Agreement. After this hearing, the
22 Court will determine whether the settlement should be finally approved, and whether to enter
23 a final order and judgment under CR 23(e). Plaintiff requests that the Court set a date for a

1 hearing on final approval at the Court's convenience at least 50 days after an order
2 preliminarily approving the Settlement Agreement is entered.

3 Plaintiff's counsel has contacted the Court and obtained available hearing dates for in
4 August 2017 for the hearing. Counsel for both parties have conferred and reserved August
5 23, 2017 at 10:00 a.m. with the Court for the final hearing. *See* Rekhi Decl. at ¶ 30.

6 VI. CONCLUSION

7 For all of the foregoing reasons, Plaintiff respectfully request that the Court: (1) grant
8 preliminary approval of the settlement, including the settlement payment to the class and the
9 fees and costs payment to Plaintiff's counsel; (2) provisionally certify the proposed settlement
10 class; (3) appoint Jerry Brooks as the Class Representative; (4) appoint as class counsel the
11 law firm of Rekhi & Wolk, P.S.; (5) appoint Settlement Services Inc. to serve as the
12 settlement administrator; (6) approve the proposed notice plan and claim form; and, (7)
13 schedule the final fairness hearing as proposed by the parties.

1 RESPECTFULLY SUBMITTED this 18th day of May, 2017.

2 **REKHI & WOLK, PS**

3 By: /s/ Hardeep S. Rekhi

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9 I certify that this memorandum contains 5,912
10 words, which does not comply with the Local Civil
11 Rules. However, we are contemporaneously filing
12 a motion for over-length brief to explain and
13 request relief for filing this over-length brief.