THE HONORABLE STANLEY RUMBAUGH
Hearing Date: November 23, 2022 at 9:00 a.m.

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

TRAVIS WORLEY AND ANDREW HAMRY, on their own behalf and on behalf of others similarly situated, Plaintiffs, v. CEDAR RECYCLING INC., a Washington Corporation, VALLEY RECYCLING INC., a Washington Corporation, BURT GILLELAND, and/or his marital community, and ANGELA LEE, and/or her marital community, Defendants.	No. 17-2-09587-2 **PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I. INTRODUCTION

Plaintiffs Travis Worley and Andrew Hamry move the Court for preliminary approval of a class action Settlement Agreement reached with Defendants Cedar Recycling Inc. ("Cedar"), Valley Recycling Inc. ("Valley"), Burt Gilleland, and Angela Lee ("Defendants"). Plaintiffs and a certified class of non-managerial, hourly paid employees of Defendants Cedar and Valley claim they are entitled to compensation under Washington wage and hour laws.

Subject to approval by the Court and other conditions set forth in the Settlement Agreement, the Settlement requires Defendants to pay $1,000,000 for the benefit of the class, in

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exchange for a complete release of all claims that were alleged in the operative Class Action Complaint during the Settlement Class Period, defined as the period from August 20, 2015 through October 6, 2022. Subject to Court approval, the $1,000,000 Settlement Proceeds includes payments for service awards to the two Plaintiffs of up to $5,000 each, attorneys' fees of up to $333,333.33, and reimbursement of litigation costs of up to $22,500.

The Settlement satisfies the requirements for preliminary approval because it was negotiated at arm's length, has no obvious deficiencies, treats all class members equally, and is within the range of possible approval. Thus, Plaintiffs request the Court take the following initial steps in the settlement approval process: (1) grant preliminary approval of the Settlement; (2) approve the proposed notice plan and class notice forms; (3) appoint Simpluris to serve as the Settlement Administrator; and (4) schedule the final fairness hearing and related dates.

II. STATEMENT OF FACTS

A. Factual and Procedural Background.

Defendants Cedar and Valley, based in Pacific, Washington, are in the business of material handling and recycling in Washington State. 4th Amended Complaint ¶ 1.1. Defendant Gilleland is a governing person of both Valley and Cedar responsible for paying wages to the Class for both Cedar and Valley. *Id.* ¶ 1.2. Defendant Lee is also responsible for paying wages to the Class for both Cedar and Valley. *Id*. ¶ 1.3. Plaintiffs alleged that Defendants engaged in a systemic course of wage and hour abuses against their hourly, nonmanagerial employees including: (1) failing to pay minimum wages to the Class for all hours worked; (2) failing to pay overtime compensation when Class members work more than 40 hours a week; (3) failing to provide and pay for statutorily required rest and meal breaks; and, (4) failing to pay Class

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members all owed wages upon termination. *Id*. ¶¶ 6.1-9.5. Plaintiffs also allege Defendants' violations of Washington law were willful. *Id.* ¶¶ 10.1-10.6. Defendants deny Plaintiffs' claims.

Plaintiff Travis Worley filed his complaint against Cedar on July 19, 2017, amending his complaint on October 03, 2019 to add Andrew Hamry as a co-plaintiff. *See* Complaint and 4th Amended Complaint. The Parties have engaged in substantial discovery and investigation. Class counsel has engaged in extensive litigation on behalf of the Class, including conducted a multi-year investigation that involved reviewing and analyzing payroll and timekeeping data, contacting and interviewing Class members, deposing Defendants, and reviewing other relevant documents. Declaration of Gregory A. Wolk in support of Plaintiffs' Motion for Preliminary Approval ("Wolk Decl.") ¶ 2. The Court certified the Class as to the rest and meal break claims on March 23, 2020. At the same time, the Court certified to Division II for interlocutory appeal the Order granting in part and denying in part class certification. Division II accepted discretionary review and issued an Opinion on June 14, 2022 affirming the grant of class certification as to the break claims, and remanding the denial of certification as to the other Class claims. *See* Washington State Court of Appeals, Div. II, Case No. 54900-0-II.

The Parties engaged in a full-day mediation on October 3, 2022 with a former King County Superior Court Judge and experienced mediator, the Honorable William Downing (ret.). and were ultimately able to reach a resolution three days later, on October 6, 2022. Wolk Decl. ¶ 2. The Parties then drafted, finalized, and executed the long-form settlement agreement ("Agreement"), attached to the Wolk Declaration as **Exhibit 1**.

All of the Parties' settlement negotiations have been non-collusive and at arm's length. Wolk Decl. ¶ 3. Plaintiffs and Class Counsel believe the Agreement is fair, adequate, reasonable, and in the best interests of the proposed class. Wolk Decl. ¶ 3; *see also* Agreement § I.F.

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B. The Proposed Settlement.

The full details of the Settlement are contained in the Agreement. *See* Wolk Decl., Ex. 1.

1. <u>The Settlement Class.</u>

The Settlement Class is defined to include:

> [U]p to one-hundred and ninety (190) current and former hourly, non-managerial employees who worked for Defendants in Washington State from August 20, 2015 through October 6, 2022, exclusive of those who timely opt out of the Settlement Agreement pursuant to the procedures identified below.

Agreement § II.A.4. Defendants, within ten (10) business days after executing the Settlement, have agreed to provide the Settlement Administrator with the most up-to-date contact information for each potential Settlement Class Member. *Id*. § II.D.2(a). The Settlement Class will include all Class Members who do not opt-out of the Settlement. *Id*. § II.A.4. To date, Defendants have identified 190 individuals who comprise the Class. Wolk Decl. ¶ 4.

2. <u>Settlement payments.</u>

The Settlement Agreement requires Defendant to pay a total $1,000,000 for the benefit of the Settlement Class. *Id*. § II.B. Subject to Court approval, these settlement proceeds will be used to pay service awards to Plaintiffs, attorneys' fees and costs, and awards to eligible members of the Settlement Class (the "Class Fund") as set forth in more detail below. *Id*. § II.B.1, 3-4. Defendants will separately pay for the Settlement Administration expenses, with Defendants agreeing to pay Simpluris up to $15,000 for their such services. *Id*. § II.B.2; Wolk Decl. ¶ 4.

a. *Plaintiffs' service awards.*

The Settlement Agreement contemplates service awards of $5,000 each to Named Plaintiffs to compensate them for the time they devoted to this litigation and the risk they undertook in stepping forward as representatives of the Class. Agreement § II.B.1. Subject to approval, these Service Awards shall be paid out of the Settlement Proceeds. *Id*.

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b. *Attorneys' fees and litigation expenses.*

Class Counsel will request an award of attorneys' fees of no more than one-third of the Settlement Fund ($333,333.33) and reimbursement of expenses not to exceed $22,500. *Id.* § II.B.3. Subject to approval, these fees and costs shall be paid out of the Settlement Proceeds. *Id.*

c. *Payments to Settlement Class Members.*

Assuming the Court approves the amounts set forth above, the remaining $634,166.67 shall be considered the Class Fund and be distributed directly to Settlement Class Members. *Id.* § II.B.4. Each will be paid a pro-rata share of the Class Fund based on the class member's total damages, which will be calculated by Class Counsel using payroll information provided by Defendants during the Class Period and their rates of pay; Class Counsel will also rely on declarations and other information provided by Plaintiffs and Class Members to calculate the awards. *Id.* §§ II.2.C.1-2. Settlement Class Members will receive a minimum of twenty-five dollars with forty percent (40%) of the Settlement Award treated as wages and the other sixty percent (60%) will be treated as non-wages. *Id.* § II.C.2-3. Within fourteen (14) days after the Effective Date, the Settlement Administrator shall mail the Settlement Award checks to the Settlement Class Members. *Id.* § II.E.1.

After one hundred (100) days following the Settlement Administrator's issuance of awards to Settlement Class Members, the Settlement Administrator will advise the parties of any funds from uncashed checks. Id. § II.E.5. Class Counsel will them inform Defendants and the Settlement Administrator whether a second distribution of such unclaimed funds will be provided to those Settlement Class Members who cashed their initial award checks. *Id.* Any funds from uncashed checks within ninety (90) days following the second distribution shall be distributed to the Legal Foundation of Washington. *Id.* §§ II.E.6. No funds will revert to Defendants. *Id.*

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3. Settlement Class Members' release.

In exchange for the benefits provided under the Settlement, Named Plaintiffs and all Settlement Class Members who do not opt-out will release all claims against Defendants that were brought and alleged in the operative Complaint during the Class Period. *Id.* § III.

4. Settlement Administration.

The Agreement provides that a Settlement Administrator will issue the Notice of Settlement to the Proposed Class Members by mail, trace undeliverable mailings, record and track responses and exclusion requests, track and respond to any inquiries made by any Class Members, and mail the Settlement Awards checks in two separate distributions. *Id.* §§ II.D.2, E, 1, 5. Plaintiffs propose that the Court approve Simpluris as the Settlement Administrator to perform these tasks as Class Counsel has relied upon them for over a dozen class action settlements and Defendants have confirmed their preference for Simpluris. Wolk Decl. ¶ 4.

III. STATEMENT OF ISSUES

Whether the Court should: (1) grant preliminary approval of the Settlement Agreement; (2) approve the proposed notice plan and class notice forms; (3) appoint Simpluris to serve as the Settlement Administrator; and (4) schedule the final fairness hearing and related dates.

IV. EVIDENCE RELIED UPON

Plaintiffs rely on the Declarations of Gregory A. Wolk in support of this motion and the attached exhibit(s), as well as the pleadings and records on file with the Court.

V. AUTHORITY AND ARGUMENT

A. Class action settlement approval process.

As a matter of "express public policy," Washington courts strongly favor and encourage settlements. *City of Seattle v. Blume,* 134 Wn.2d 243, 258, 947 P.2d 223 (1997); *see also Pickett*

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v. Holland Am. Line-Westours, Inc., 145 Wn.2d 178, 190, 35 P.3d 351 (2001). This is particularly true in class actions and other complex matters where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

The Manual for Complex Litigation describes a three-step procedure for approval of class action settlements: (1) preliminary approval of the proposed settlement; (2) dissemination of notice of the settlement to all affected class members; and (3) a "fairness hearing" at which class members may be heard and evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. *Manual for Complex Litigation (Fourth)* §§ 21.632–21.634 (2004) (Ann. ed. 2019) ("*MCL 4th*"). This procedure safeguards class members' due process rights and enables the court to fulfill its role as the guardian of class interests. *See* William B. Rubenstein, *Newberg on Class Actions* § 13:1 (5th ed. 2019) ("*Newberg*").

Plaintiffs request that the Court take the first step in the process by granting preliminary approval of the proposed Settlement. The decision to approve or reject a proposed Settlement is committed to the Court's sound discretion. *See Pickett*, 145 Wn.2d at 190. The Court's preliminary approval will allow Settlement Class members to receive notice of the settlement terms and the time of the final approval hearing, at which they may be heard and where further evidence and argument concerning the settlement may be presented. *See MCL 4th* §§ 21.632-21.634. Neither notice nor a hearing is required at this stage; the Court may grant preliminary approval upon an informal application by the Parties, at the Court's discretion. *Id.* at § 21.632.

B. The Settlement satisfies the criteria for preliminary approval.

Proposed class action settlements must be approved by the Court. CR 23(e). At the preliminary approval stage, courts "undertake *some* review of the settlement" but do not conduct

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the more thorough analysis required at the final approval stage. *Newberg* §13.10 (emphasis in original). The purpose of this evaluation is to determine whether the settlement is within the "range of possible approval" and, as a result, whether notice to the class of the settlement's terms and scheduling a formal fairness hearing is worthwhile. *Id.* § 13:13. Courts typically consider whether "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible [judicial] approval." *Id.* (citation omitted). The proposed Settlement satisfies these requirements.

1. <u>The Settlement is the product of serious, informed, and arm's-length negotiations.</u>

This Settlement is the result of years of hard-fought litigation and arm's-length settlement negotiations between attorneys experienced in class action litigation and the legal and factual issues of this case. Class Counsel have extensive experience in litigating wage-and-hour class actions, including the claims at issue here. Wolk Decl. ¶¶ 10-11. "When experienced and skilled class counsel support a settlement, their views are given great weight." *Pickett*, 145 Wn.2d at 200 (citation omitted). Indeed, a "presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." *Hughes v. Microsoft Corp.*, No. C98-1646C, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001) (quoting *Manual for Complex Litigation (Third)* § 30.42 (1995)).

The signed Agreement is the result of dedicated efforts to obtain and analyze data and testimony sufficient to evaluate the alleged claims. The Parties engaged in an all-day mediation conducted by an experienced mediator and retired Judge on October 3rd before reaching an agreement on October 6, 2022. Wolk Decl. ¶ 2. Prior to mediation, the Parties exchanged voluminous written discovery, conducted several depositions, engaged in motions practice

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including the motion to certify the class as well as briefing and oral argument before Division II to review the Court's order on class certification, and engaged in extensive analysis about the strengths and weaknesses of their respective cases. *Id.* ¶¶ 2, 5. Class counsel also spent hundreds of hours interviewing Plaintiffs and Class Members and analyzing the payroll data, and other information to determine and assess the risks associated with a trial on the merits of the claims. *Id.* ¶ 5. Based on the damages analysis performed by Class Counsel and information obtained in discovery and directly from Class members, Class Counsel was well prepared for mediation and to draft the Settlement Agreement, which the Parties signed in October 2022. *Id.* ¶¶ 2, 5.

2. <u>The Settlement has no obvious deficiencies and does not grant preferential treatment to any class members.</u>

The Settlement treats all Settlement Class Members equally and provides relief that is proportional to the alleged damages. Each Settlement Class Member will receive a pro rata share of the Class Fund based on their employment and estimated work hours during the Class period. Agreement § II.C. The Settlement does not exclude any Class Members, unless they exclude themselves upon receiving the notice of the Settlement, and the Settlement does not require Class Members to submit a claim form to obtain payment. *Id.* §§ II.A.4., II.C.

The Settlement Fund is non-reversionary. *Id.* § II.E.6. Plaintiffs request the Court approve payment in *cy pres* to the Legal Foundation of Washington of any undistributed amounts. *Id.*

The Agreement contemplates service awards of $5,000 each for Plaintiffs in recognition of their efforts for the Class, including sitting for deposition, assisting counsel with investigation and litigation, reviewing discovery responses, certifying discovery answers, and providing input prior to, during, and after mediation. *Id.* § II.B.1; *see* Wolk Decl. ¶ 6. Service awards "are intended to compensate class representatives for work undertaken on behalf of a class" and "'are fairly typical in class action cases.'" *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943

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(9th Cir. 2015) (citation omitted); *see Probst v. State of Washington Dep't of Ret. Sys.*, 150 Wn. App. 1062 (2009) (affirming payment of $7,500 to named plaintiff). Plaintiffs' support of the Agreement is not conditioned on the Court awarding an amount or any award at all.

Subject to Court approval, the Settlement provides for a payment to Class Counsel for attorneys' fees and costs. Agreement § II.B.3. Plaintiffs' counsel will seek an award of 1/3rd of the Settlement Proceeds, also referred to as the "common fund." The "percentage of the fund" approach is appropriate here since the fees will be drawn from a common fund shared with the class. *Bowles v. Dept. of Retirement*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993). Our courts have recognized that a percentage of the fund approach typically falls within the 25-40% range. *Id.* Here, the requested attorneys' fees award reflects that range and are warranted by the extensive litigation this case has involved. To date, Class Counsel have incurred in excess of $400,000 in fees and $22,500.00 in costs, for which they have not been compensated, and will continue to incur fees and costs through final approval. Wolk Decl. ¶ 7. An award of these fees and costs, totaling up to $355,833.33, will only partially compensate and reimburse Class Counsel for the work they have already performed, as well as the work remaining to be performed in securing the Court's approval, ensuring that the settlement is fairly administered and implemented, and obtaining final approval and dismissal of the action. *See* Agreement §§ II.C, IV.A, C. The Settlement Agreement is not contingent on the amount of attorneys' fees or costs awarded.

3. The Settlement falls within the range of possible judicial approval.

The Settlement provides substantial monetary relief: payment of $1,000,000 by Defendants. Agreement § II.B. After payments for the above-proposed awards, the amount to be disbursed to the Settlement Class will be, at a minimum, approximately $635,000. *Id.* All

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Settlement Class members who do not timely opt out will receive a pro rata portion based on Class Counsel's calculations. *Id.* § II.C.

Class Counsel has analyzed data to calculate the Class Members' estimated wage loss damages. Wolk Decl. ¶ 8. Using the payroll data provided by Defendants during discovery, as well as the declarations, interviews, and supporting documentation provided by Class Members, Class Counsel has calculated that the Class was underpaid by approximately $750,000.00 – including approximately $150,000 in missed rest breaks, $325,000 in missed meal breaks, $160,000 in unpaid overtime, and $110,000 in unpaid additional work. *Id.* Settlement Class Members will recover 85% of potential unpaid wages and constitutes an excellent recovery. *Id.* This percentage is substantially above the percentage recoveries obtained in settlements approved by other courts. *See, e.g., Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 964-66 (9th Cir. 2009) (approving settlement to thirty percent of estimated damages).

Plaintiffs are confident in the strength of their case but also recognize that continued litigation would also be expensive and time-consuming, requiring the parties to engage in trial preparation and ultimately, a lengthy trial. Trial is always risky and even if Plaintiffs prevailed, they would likely face an appeal. *See Nat'l Rural Telecommc'ns Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). The reality that Settlement Class Members could end up recovering only a fraction of their damages or losing some claims at trial was significant enough to convince Plaintiffs and Class Counsel that the settlement reached with Defendants outweighs the gamble and expense of further litigation. This Settlement eliminates all these risks and provides relief to Settlement Class Members without further delay.

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C. The proposed notice program should be approved.

When a class action is settled, "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). To protect absent members' rights, class members should receive the best notice practicable regarding the settlement. *See* CR 23(c)(2). The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Defendants will provide the Settlement Administrator with the name, last known address, last known telephone number, and social security number of each Class Member. Agreement § II.D.2. Upon receipt of this information, the Settlement Administrator will mail the Notice of Settlement (Exhibit A to Settlement Agreement) to all those Settlement Class Members. *Id*. Class Counsel will also establish a website to provide Settlement Class Members with additional information about the Settlement. *See id.* Ex. A, § 18. This approach will ensure direct notice reaches as many Settlement Class Members as possible. Settlement Class Members may opt-out of the Settlement by making a written request by Notice Deadline, which will be 45 days after the notice mailing date. *Id*. § II.A.6; Ex. A, §12.

The language of the proposed notice is straightforward and easily understood. The proposed notice provides: (1) the nature of this litigation; (2) the general terms of the Settlement; (3) a statement of Settlement Class Members' rights under the Settlement; (4) an explanation of how Settlement Class Members can object to or exclude themselves from the Settlement; (5) the identity of Class Counsel and the amount of fees to be paid to counsel; (6) the settlement website they can visit for additional information; and (7) telephone numbers Settlement Class Members

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can call with questions regarding the settlement. *See id*, Ex. A. The notice will also provide the date and time of the final approval hearing, at which the Court will decide whether to approve the requested awards. *Id.; see also Newberg* § 8:17.

D. The scheduling a final fairness hearing is appropriate.

The last step in the settlement approval process is a final fairness hearing at which the Court will make its final evaluation. Plaintiffs respectfully request that the Court set a final approval hearing on or after February 20, 2023.

VI. CONCLUSION

Plaintiffs respectfully request that the Court grant their motion.

RESPECTFULLY SUBMITTED AND DATED this 10th day of November, 2022.

REKHI & WOLK, P.S.

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