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TIMOTHY J. HARTZGALD
SPOKANE COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE**

JAKE MILLER and DOREEN MILLER,)
husband and wife, on behalf of themselves and)
all others similarly situated,)

Plaintiffs,)

vs.)

GUENTHER MANAGEMENT, LLC, a)
Washington limited liability company,)

Defendant.)

Case No.: 20-2-02604-32

**MEMORANDUM IN SUPPORT OF
UNOPPOSED MOTION FOR AWARD OF
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS**

I. INTRODUCTION

Plaintiff Representatives, Jake and Doreen Miller, on behalf of themselves and all others similarly situated, filed a Complaint (the "Action") on April 16, 2019, against Defendant Guenther Management, LLC, ("Guenther") alleging violations of the Washington Residential Landlord Tenant Act, RCW 59.18, *et seq.*, ("RLTA"). (SN 1). The violations arise from Guenther's alleged practice of charging prospective tenants a fee and collecting information from them without first providing required tenant screening disclosures in violation of RCW 59.18.257, and further, being unjustly enriched by that practice.

MEMORANDUM IN SUPPORT OF UNOPPOSED
MOTION FOR AWARD OF ATTORNEYS' FEES,
COSTS, AND SERVICE AWARDS - 1

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Spokane, WA 99201
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1 This Court preliminarily approved the parties' Class Settlement Agreement on October 1,
2 2021, entering an amended order to that fact on October 7, 2021. (SN 13). Consistent with
3 parties' settlement agreement, Class Representatives Jake and Doreen Miller request this Court
4 award them combined attorneys' fees and costs of \$50,000 and statutory damages and service
5 award payments of \$2,500 each of them. Pursuant to the parties' settlement agreement
6 Guenther does not contest that these amounts should be awarded to Class Counsel and the Class
7 Representatives.

8 Class Counsel has devoted a substantial number of hours to the prosecution of this case.
9 (Miller Dec. ISO Unopposed Mot. for Atty Fees "Miller Dec.", ¶ 29, Ex. A; Sutherland Dec. ISO
10 Unopposed Mot. for Atty Fees "Sutherland Dec." ¶ 14). In addition, Class Counsel's fee request
11 includes the amount in litigation costs Class Counsel has incurred. (Miller Dec. ¶ 30). The
12 attorneys' fees as well as the combined statutory damages and service award payments that the
13 Class Representatives seek are reasonable and are on par with or less than those typically sought
14 in class action cases. Accordingly, the Class Representatives and Class Counsel request that the
15 Court grant their motion.

16 II. ARGUMENT AND AUTHORITY

17 A. Plaintiffs and Class Counsel vigorously litigated on behalf of the Class and negotiated 18 an outstanding settlement for Class Members.

19 After this case was served in June of 2020, Plaintiffs and their Counsel have investigated
20 Guenther's business practices, engaged in extensive discovery, and reviewed and analyzed
21 documents and data to ascertain a reasonable range of damages. (SN 8, ¶ 8). To bring an
22 amicable resolution to this matter Plaintiffs and Class Counsel engaged in extensive negotiations
23 with Guenther's Counsel and have and will continue to draft and present several necessary

1 pleadings to the Court so this matter may be approved. (SN 8, ¶ 8; Sutherland Dec. ¶ 15, Miller
2 Dec. ¶ 31).

3 Following extensive settlement negotiations, the parties reached a class-wide settlement
4 agreement. (SN 8, ¶ 9). The settlement requires Guenther to establish a settlement fund in the
5 amount of \$130,015 which will be used to pay the class members, class administration costs, class
6 representative service awards, and attorneys' fees and costs. (SN 8, ¶ 9, Ex. E at 0037; ¶ 11). If the
7 Court approves the settlement, \$54,150 will be divided evenly by approximately 1,805 class
8 members resulting in a payment of \$30.00 to each class member who does not affirmatively opt-
9 out of the settlement. (SN 8, ¶ 11). Given the unavailability of any case law on RCW 59.18.257,
10 it's two-sided fee-shifting, its limited amount of available damages, and Guenther's ability to pay,
11 the result is exceptional.

12 As part of the settlement agreement reached, Guenther agreed not to contest service awards
13 of \$2,500 to each Class Representative and \$50,000 to Class Counsel as combined attorneys' fees
14 and costs. (SN 8, ¶¶ 14, 15). Guenther also agreed to pay all class administration costs under
15 \$20,865 which the parties are on track to accomplish. (SN 8, ¶ 13). And finally, as part of the
16 settlement, Guenther has agreed to fully comply with RCW 59.18.257's requirements going
17 forward. (SN 8, ¶ 12).

18 **B. Class Counsel requests a reasonable award of attorneys' fees and costs.**

19 "Attorneys' fees provisions included in proposed class action settlement agreements are,
20 like every other aspect of such agreements, subject to the determination whether the settlement is
21 'fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir
22 2003) (quoting Fed. R. Civ. P. 23(e)). "The plain text of [Fed. R. Civ. P. 23(h)] requires that any
23 class member be allowed an opportunity to object to the fee 'motion' itself." *In re Mercury*

1 *Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993-994 (9th Cir. 2010). Class Counsel are submitting
2 their fee motion in advance of final approval, as required by *In re Mercury Interactive Corp.*, and
3 will address any objections in their motion for final approval.

4 **1. The percentage-of-the-common fund method is the appropriate calculation for**
5 **attorney's fees in this case.**

6 Courts have discretion to use either the percentage-of-the-fund method or the lodestar
7 method to calculate a reasonable attorneys' fee from a common fund established by a class action
8 settlement. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *In re Mercury*
9 *Interactive Corp. Sec. Litig.*, 618 F.3d at 993-994. The method a court chooses to use, and its
10 application of that method, must achieve a reasonable result. *See In re Bluetooth Headset Prods.*
11 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) ("Though courts have discretion to choose which
12 calculation method they use, their discretion must be exercised so as to achieve a reasonable
13 result."). As the Ninth Circuit has instructed, "[r]easonableness is the goal, and mechanical or
14 formulaic application of either method, where it yields an unreasonable result, can be an abuse of
15 discretion." *In re Coord. Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602,
16 607 (9th Cir. 1997).

17 Notwithstanding, the percentage-of-the-fund method is generally considered the
18 appropriate method for calculating fees when, as in this case, a common fund has been created.
19 *See, e.g., In re Bluetooth*, 654 F.3d at 942 ("Because the benefit to the class is easily quantified in
20 common-fund settlements, we have allowed courts to award attorneys a percentage of the common
21 fund in lieu of the often more time-consuming task of calculating the lodestar."); *In re Omnivision*
22 *Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (observing that "use of the percentage

1 method in common fund cases appears to be dominant” and discussing its advantages over the
2 lodestar method).

3 In *Bowles v. Dep't. of Ret. Sys.*, 121 Wn.2d 52, 847 P.2d 440 (1993), the Washington
4 Supreme Court held that, where attorneys create a common fund or benefit, they are entitled to
5 collect attorneys' fees from that fund. *Id.* at 72. In recognizing this equitable theory for the award
6 of attorneys' fees, the court stated:

7 We note in passing that this holding also furthers important policy interests.
8 When attorney fees are available to prevailing class action plaintiffs,
9 plaintiffs will have less difficulty obtaining counsel and greater access to
the judicial system. Little good comes from a system where justice is
available only to those who can afford its price.

10 *Id.* at 71.

11 After recognizing the equitable common fund theory, the *Bowles* court held that the
12 “percentage of recovery approach” is the appropriate one to use to calculate attorney’s fees in
13 common fund cases. *Id.* at 73. The Court explained that under this approach, “[t]he attorneys are
14 to be compensated according to the size of the judgment recovered, not the actual hours expended.”
15 *Id.* at 75. The rationale for applying the percentage method is explained in the *Manual for Complex*
16 *Litigation* as follows:

17 Indeed, one purpose of the percentage method is to encourage early
18 settlements by not penalizing efficient counsel, thus insuring that competent
19 counsel continues to be willing to undertake risky, complex, and novel
20 litigation. Generally, the factor given the greatest emphasis is the size of the
fund created, because a common fund is itself the measure of success and
represents the benchmark from which a reasonable fee will be awarded.

21 See MCL 4th § 14.121 at 193; see also *Bowles*, 122 Wn.2d at 72 (“In common fund cases,
22 the size of the recovery constitutes a suitable measure of the attorneys’ performance.”).

1 In *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002), the court noted the
2 following:

3 The bar against risk multipliers in statutory fee cases does not apply to common fund cases.
4 Indeed, courts have routinely enhanced the lodestar to reflect the risk of non-payment in
5 common fund cases. This mirrors the established practice in the private legal market of
6 rewarding attorneys for taking the risk of nonpayment by paying them a premium over
7 their normal hourly rates for winning contingency cases. In common fund cases attorneys
8 whose compensation depends on their winning the case[] must make up in compensation
9 in the cases they win for the lack of compensation in the cases they lose.

7 (internal citation and quotation omitted).

8 The advantage of using the percentage of recovery method is also addressed in the well-
9 recognized class action treatise, *Newberg on Class Actions*. There, the author points out that under
10 the percentage of recovery method, the more the attorney succeeds in benefitting the client, with
11 the fewest number of legal hours expended to reach that result, the higher the dollar amount of
12 fees the lawyer earns. Thus,

13 [o]ne of the primary advantages of the POR [percentage of recovery]
14 method is that it is thought to equate the interests of class counsel with those
15 of the class members and encourage class counsel to prosecute the case in
16 an efficient manner.

16 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* 14:06, at 566-67 (4th ed. 2002).

17 In *Bowles*, the Washington Supreme Court rejected the defendant's arguments regarding
18 application of Lodestar where there is a common benefit, stating: "We reject these arguments. This
19 being a common fund case, we apply the percentage of recovery approach. The Department's
20 arguments relate only to the lodestar approach." *Bowles* at 73. The *Bowles* court recognized that
21 in such common fund cases "20 to 30 percent is the usual common fund award." *Id.* (citing *see*
22 *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (1990); *see also* 3 *Newberg*
23 *on Class Actions* § 14.03).

1 Ninth Circuit authority in Washington cases has provided a range or benchmark of between
2 25% to 40% of the total common fund. *See, e.g., Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wn.2d
3 157, 161–66 (2010) (awarding 40% contingency fee based on the \$5 million settlement was fair
4 and reasonable); *In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming an
5 award equal to 33% of the common fund); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 500
6 (D.D.C. 1981) (awarding 45% of \$7.3 million settlement fund); *In re Mego Fin. Corp. Sec. Litig.*,
7 213 F.3d 454, 460 (9th Cir. 2000) (affirming award of attorneys’ fees equal to 33% of the total
8 recovery); *see also Beech Cinema, Inc. v. Twentieth Century Fox Film Corp.*, 480 F. Supp. 1195,
9 1198–99 (S.D.N.Y. 1979) (awarding attorneys’ fees in excess of 50% of the settlement fund).

10 Here, Class Counsel expended a significant amount of time and effort on this case, while
11 also working to prevent unnecessary and expensive discovery and litigation. The settlement in
12 this case involved lengthy and creative negotiation by skilled attorneys, resulting in an agreement
13 that conferred substantial benefits on the class members, while preserving the viability of the
14 Guenther’s business. Class Counsel requests, and Guenther does not object to Class Counsel’s
15 request of 38% of the total common fund as an award of attorneys’ fees and costs. That percentage
16 is well within the range of percentage of the fund case law in Washington state and the Ninth
17 Circuit.

18 **2. The lodestar method as a crosscheck illustrates that Class Counsel’s request for**
19 **attorney’s fees is reasonable.**

20 One way that a court may demonstrate that its use of a particular method or the amount
21 awarded is reasonable is by conducting a cross-check using the other method. For example, a
22 crosscheck using the lodestar method “can confirm that a percentage of recovery amount does
23

1 not award counsel an exorbitant hourly rate.” *Bluetooth*, 654 F.3d at 945 (internal quotation
2 omitted).

3 The lodestar method may be employed where, a fee-shifting statute authorizes “the award
4 of fees to ensure compensation for counsel undertaking socially beneficial litigation.” *Bluetooth*,
5 654 F.3d at 941. Here, the certified claim arises under a statute that provides for fee-shifting to
6 encourage litigation in the public interest. *See* RCW 59.18.257 (RLTA).

7 The lodestar approach involves two (2) steps. First, the trial court multiplies “a
8 reasonable hourly rate by the number of hours reasonably expended on the matter.” *Mahler v.*
9 *Szucs*, 135 Wn.2d 398, 434 (1998); *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 147 (1993);
10 *Bowers*, 100 Wn.2d at 597. When attorneys have an established rate for billing clients, that rate
11 will likely be a reasonable rate. *Bowers*, 100 Wn.2d at 597; *McGreevy v. Oregon Mut. Ins. Co.*,
12 90 Wn. App. 283, 293 (1998).

13 If circumstances warrant, the court may adjust the award “either upward or downward to
14 reflect factors not already taken into consideration.” *Ross v. State Farm Mut. Auto. Ins. Co.*, 82
15 Wn. App. 787, 800 (1996), *reversed on other grounds*, 132 Wn.2d 507 (1997); *see also Bowers*,
16 100 Wn.2d at 598-99. The lodestar amount may be adjusted to account for subjective factors
17 such as the level of skill required by the litigation, the amount of potential recovery, time
18 limitations imposed by the litigation, the attorney’s reputation, and the undesirability of the case.
19 *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 171 (2007); *Bowers*, 100 Wn.2d at 597;
20 *see also* RPC 1.5(a). The rates of comparably skilled law firms are a likely basis for a reasonable
21 hourly fee. *Id.*

22 The lodestar-multiplier method confirms the propriety of the requested fee in this matter.

23 Class Counsel have submitted detailed declarations and time records with this motion. The time
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1 records include the number of hours worked, the work performed, and the attorney or staff
2 member who performed the work.

3 As the declarations and time records so far show, Class Counsel has already spent over
4 90 hours on this litigation. (Miller Dec. ¶ 30, Ex. A; Sutherland Dec. ¶ 14). Another 30 hours is
5 minimally expected to assist with class administration and prepare for the final fairness hearing.
6 (Miller Dec. ¶ 31; Sutherland Dec. ¶ 15). Those hours alone, without even considering a
7 multiplier, which as discussed *supra* is routinely included in lodestar-crosscheck calculations,
8 eclipse Class Counsel's combined attorneys' fees and costs request.

9 **a. Class Counsel does not request a multiplier to the lodestar amount, but a
10 multiplier would be appropriately granted in this class action matter.**

11 The Washington Supreme Court has stated that an "award of fees under the percentage of
12 recovery theory is not improper merely because it is three times the lodestar amount." *Bowles*,
13 121 Wn.2d at 73 (citing *In re GNC S'holder Litigation: All Actions*, 668 F. Supp. 450, 451 (W.D.
14 Pa. 1987).

15 In the Ninth Circuit, multipliers "ranging from one to four are frequently awarded," in
16 class action litigation. *Vizcaino*, 290 F.3d at 1051 n.6. Courts find higher multipliers appropriate
17 when using the lodestar method as a crosscheck for an award based on the percentage method.
18 *See, e.g., Steiner v. Am. Broad Co., Inc.*, 248 F. App'x 780, 783 (9th Cir. 2007) (finding a
19 multiplier of approximately 6.85 to be "well within the range of multipliers that courts have
20 allowed" when crosschecking a fee based on a percentage of the fund); *Van Vranken v. Atl.*
21 *Richfield Co.*, 901 F. Supp. 294, 298-99 (N.D. Cal. 1995) (finding that a multiplier of 3.6 was
22 "well within the acceptable range" and explaining that "[m]ultipliers in the 3-4 range are
23 common").

1 Counsel undertook this litigation with substantial risk that they might not obtain any
2 recovery for Plaintiffs and the Settlement Class, a significant factor in the award of fees. See
3 *Omnivision*, 559 F. Supp. 2d at 1047; *In re Wash. Pub. Power Supply Sys. Secs. Litig. (WPPSSSL)*,
4 19 F.3d 1291, 1299-1301 (9th Cir. 1994). As endorsed by the Ninth Circuit, the risk of litigation
5 is an important, if not the foremost, factor in determining the attorneys' percentage fee award. See
6 *Vizcaino*, 290 F.3d at 1048-49 (that the case is "fraught with risk and recovery is far from certain"
7 is "a relevant circumstance" that courts must take into account); see also *Am. Apparel*, 2014 WL
8 10212865 at *21 ("The risks assumed by Class Counsel, particularly the risk of non-payment or
9 reimbursement of expenses, is a factor in determining counsel's proper fee award."). Further, there
10 was no parallel government action, making the contingent risk even higher.

11 Class Counsel is well aware of the risk of non-payment in contingent fee cases as they have
12 been involved in numerous consumer rights cases that, for various reasons, were either dismissed
13 or not certified. (Miller Dec. ¶ 27; Sutherland Dec. ¶ 12). In these cases, Class Counsel received
14 no payment for the firm's services and lost all the money spent on expenses. Despite these risks,
15 and prior disappointments, Class Counsel invested large amounts of resources and time to litigate
16 this matter. Class Counsel obtained a substantial and meaningful recovery for the Class. As the
17 Ninth Circuit has observed "[c]ontingent fees that may far exceed the market value of the services
18 if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of
19 assuring competent representation for plaintiffs who could not afford to pay on an hourly basis
20 regardless whether they win or lose." *WPPSSSL*, 19 F.3d 1291, 1299 (9th Cir. 1994).

21 Here, Class Counsel do not request an adjustment from the Lodestar calculation of
22 attorney's fees. However, as a crosscheck for their requested percentage of the common fund, if

1 the Ninth Circuit’s 4X benchmark was applied, this Court could have comfortably awarded 4
2 times the amount of attorneys’ fees that Class Counsel requests.

3 **b. Class Counsel expended a reasonable number of hours litigating this case.**

4 The more than 90 hours that Class Counsel devoted to investigation, discovery, and
5 achieving a favorable settlement are reasonable. *See Moreno v. City of Sacramento*, 534 F.3d
6 1106, 1111 (9th Cir. 2008) (“The number of hours to be compensated is calculated by
7 considering whether, in light of the circumstances, the time could reasonably have been billed to
8 a private client.”).

9 After the Complaint was filed, the parties engaged in discovery and reviewed and
10 analyzed documents and data to ascertain a reasonable range of damages, engaged in extensive
11 settlement negotiations with Guenther’s Counsel, and have and will continue to draft and present
12 significant pleadings to assist in administration of the class and allow the Court and the class to
13 assess the fairness of the settlement . (SN 8, ¶ 8; SN 9; SN 10).

14 Class Counsel reviewed their time records and exercised billing judgment to reduce time.
15 (Sutherland Dec. ¶ 16). A court may reduce the overall number of hours only when it
16 specifically finds that the work was “unnecessarily duplicative.” *Moreno*, 534 F.3d at 1113.
17 “One certainly expects some degree of duplication as an inherent part of the process. There is no
18 reason why the lawyer should perform this necessary work for free.” *Id.* at 1112. Courts are
19 particularly reluctant to reduce hours for duplication where, as here, counsel worked on a
20 contingency fee basis. *Id.* As the Ninth Circuit noted, “lawyers are not likely to spend
21 unnecessary time on contingency cases in the hope of inflating their fees. The payoff is too
22 uncertain, as to both the result and the amount of the fee.” *Id.* Thus, “[b]y and large, the court
23

1 should defer to the winning lawyer's professional judgment as to how much time was required to
2 spend on the case; after all, he won, and might not have, had he been more of a slacker.” *Id.*

3 **c. Class Counsel’s rates are consistent with community rates for similar**
4 **attorneys’ work of comparable skill, experience, and reputation.**

5 In determining a reasonable rate, the court considers the “experience, skill and reputation
6 of the attorney requesting fees.” *Trevino v. Gates*, 99 F.3d 911, 924 (9th Cir. 1996). Courts also
7 look at the prevailing market rates in the relevant community, which is the forum in which the
8 district court sits. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013). Courts
9 approve rates that are comparable to “the fees that private attorneys of an ability and reputation
10 comparable to that of prevailing counsel charge their paying clients for legal work of similar
11 complexity.” *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007); *see also Dang v.*
12 *Cross*, 422 F.3d 800, 813 (9th Cir. 2005) (hourly rates are reasonable if they fall within the range
13 of “prevailing market rates in the relevant community” given “the experience, skill, and
14 reputation of the attorney”). Courts consider declarations from plaintiffs’ counsel and fee awards
15 in other cases as evidence of prevailing market rates. *Welch*, 480 F.3d at 947.

16 The eastern district has approved non-contingent rates in a non-complex motion to
17 dismiss of \$425 for a senior attorney (billed to client at \$745 per hour) and \$300 per hour for a
18 junior attorney (billed to client at \$495 per hour). (Miller Dec. ¶ 24), In the Western District,
19 courts have regularly approved as reasonable hourly rates billed by attorneys up to \$650,
20 paralegals up to \$185, and litigation staff up to \$125. *See* Final Approval Order and Final
21 Judgment at 7, *Miller v. PSC, Inc.*, No. 3:17-cv-05864-RBL (W.D. Wash. Jan. 10, 2020), ECF
22 No. 75 (approving partner rates of \$400-\$550 per hour, associate rate of \$325 per hour, paralegal
23 rate of \$175, and litigation staff rate of \$125 per hour); *Nugussie v. HMS Host N. Am.*, No. 2:16-

1 cv-00268, 2018 WL 9662641, at 1 (W.D. Wash. Feb. 22, 2018) (approving attorney rates
2 ranging from \$310 to \$565); *Paulson v. Principal Life Ins. Co.*, No. 16-5268 RJB, 2017 WL
3 4843837, at 4 (W.D. Wash. Oct. 26, 2017) (approving attorney rates of \$450-\$500 and a
4 paralegal rate of \$185); *Rinky Dink v. World Business Lenders, LLC*, No. 2:14-cv-0268-JCC
5 (W.D. Wash. May 31, 2016), ECF No. 92 at 7-8 (approving partner rates of \$500 -\$650 per hour,
6 associate rates of \$250-\$400 per hour, paralegal rate of \$250, and litigation staff rates of \$100-
7 \$200).

8 Class Counsel's contingent class action hourly rates of \$450-\$525, paralegals at \$150,
9 and \$90 for litigation staff are well within the prevailing market range. (Miller Dec. ¶¶ 23, 24,
10 29; Sutherland Dec. ¶ 13). Class Counsel have provided the Court with declarations describing
11 the basis for their hourly rates, including their education, legal experience, and reputation in the
12 legal community. Counsel set the rates for attorneys and staff members based on a variety of
13 factors, including the experience, skill and sophistication required for the types of legal services
14 typically performed, the rates customarily charged in the market, and the experience, reputation
15 and ability of the attorneys and staff members. (Miller Dec. ¶¶ 23, 24; Sutherland Dec. ¶¶ 13,
16 17). Because they are in line with rates approved in the Eastern and Western Districts for class
17 action contingency work, Class Counsel's hourly rates are reasonable.

18 **C. Class Counsel's costs were necessarily and reasonably incurred.**

19 "Reasonable costs and expenses incurred by an attorney who creates or preserves a
20 common fund are reimbursed proportionately by those class members who benefit from the
21 settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996). Class
22 Counsel incurred out-of-pocket costs totaling \$760.00 primarily to cover expenses related to filing
23

1 fees, service of process, and administrative costs such as copying and scanning. (Miller Dec. ¶ 30,
2 Ex. B).

3 Class Counsel put forward these out-of-pocket costs without assurance that they would
4 ever be repaid. *Id.* As with the attorney's fees, the class settlement requires Guenther to pay the
5 reasonable litigation costs. Here, the costs are subsumed in Class Counsel's request for the 38%
6 of the common fund, or \$50,000.

7 **D. The Class Representatives request reasonable service awards.**

8 Service awards are "fairly typical in class actions." *Barovic v. Ballmer*, Nos. C14-0540
9 JCC, *et al.*, 2016 WL 199674, at 5 (W.D. Wash. Jan. 13, 2016) (citation omitted). They "are
10 intended to compensate class representatives for work done on behalf of the class, to make up for
11 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize
12 their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d
13 948, 958-59 (9th Cir. 2009). Service awards "help promote the public policy of encouraging
14 individuals to undertake the responsibility of representative lawsuits." *Byles*, 2019 WL 3936663,
15 at *2.

16 The criteria courts consider when determining whether to make an incentive award and
17 the amount of the award include the risk to the class representative, both financial and otherwise,
18 the notoriety and personal difficulties encountered by the class representative, the amount of time
19 and effort spent, the duration of the litigation, and the personal benefit enjoyed by the class
20 representative as a result of the litigation. *Carideo v. Dell, Inc.*, No. 06-CV-01772-PET, 2010
21 WL 11530555, at 3 (W.D. Wash. Dec. 17, 2010).

22 Class Representatives Jake and Doreen Miller each request combined statutory damage
23 and service award payments of \$2,500 in recognition of their service to the Class. (SN 8, ¶ 14).

1 The Millers assisted in investigating the Defendants' practices, drafting the complaint, and
2 participated extensively with Class Counsel in negotiating an agreed settlement in this matter.
3 Their requested service awards are below the Ninth Circuit's "presumptively reasonable"
4 benchmark of \$5,000 and should be awarded. *In re Yahoo! Inc. Customer Data Sec. Breach*
5 *Litig.*, No.16-MD-02752-LHK, 2020 WL 4212811, at 5 (N.D. Cal. July 22, 2020); *see also*
6 *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 JLR, 2019 WL 5536824, at 3
7 (W.D. Wash. Oct. 25, 2019) (approving service award of \$10,000).

8 **E. The Presence or Absence of Substantial Objections**

9 Guenther does not oppose the Class Representatives' requests for attorneys' fees, costs or
10 service awards. In addition, Class Counsel anticipates that the reaction of the class members to
11 this settlement will be overwhelmingly positive. Although class members still have ample time to
12 object or opt out, it is highly unlikely in Class Counsel's experience that many, if any, will do so.
13 If there are any objections, they will be brought to the Court's attention prior to the final fairness
14 hearing and addressed at that time.

15 **III. CONCLUSION**

16 For the foregoing reasons, the Representative Plaintiffs and Class Counsel respectfully
17 request the Court grant their motion.

18 DATED this 1st day of November, 2021.

19 KIRK D. MILLER, P.S.

20 

21 Kirk D. Miller, WSBA #40025
Attorney for Plaintiffs

CAMERON SUTHERLAND, PLLC

20 

21 Shayne J. Sutherland, WSBA #44593
Attorney for Plaintiffs

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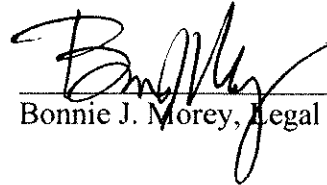
CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the state of Washington that on the date stated below I served a copy of this document in the manner indicated:

Jeffrey P. Downer
Carinne E. Bannan
LEE SMART, P.S. INC.
1800 One Convention Place
701 Pike Street
Seattle WA 98101

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DATED this 1 day of November, 2021.



Bonnie J. Morey, Legal Assistant