Kirk D. Miller, WSBA #40025
KIRK D. MILLER, P.S.
421 W. Riverside Ave., Ste. 660
Spokane, WA 99201
(509) 413-1494 Telephone
kmiller@millerlawspokane.com
Attorney for Plaintiff

Shayne Sutherland, WSBA #44593
CAMERON SUTHERLAND, PLLC
421 W. Riverside Ave., Ste. 660
Spokane, WA 99201
(509) 315-4507 Telephone
ssutherland@cameronsutherland.com
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRIANNA MORRIS, on behalf of herself and all others similarly situated, Plaintiff, vs. FPI MANAGEMENT, INC., a California corporation, Defendant.	Case No.: 2:19-CV-0128-TOR **MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR CLASS CERTIFICATION AND PRELIMINARY APPROVAL OF CLASS SETTLEMENT** **Hearing Date: November 1, 2021** **No Oral Argument Requested**

////

////

////

I. NATURE OF THE CASE AND BACKGROUND

Plaintiff Representative, Brianna Morris on behalf of herself and all others similarly situated, filed a Complaint on April 16, 2019, against Defendant FPI Management, Inc. ("FPI") alleging violations of the Washington Residential Landlord Tenant Act, RCW 59.18, *et seq*., ("RLTA"). (ECF No. 1). The alleged violations arise from FPI collecting information from, and charging fees to, prospective tenants without first providing certain required tenant screening disclosures in violation of RCW 59.18.257, and further, charging prospective tenants a holding fee for a dwelling unit, prior to unconditionally offering the dwelling unit to the prospective tenants in violation of RCW 59.18.253. (ECF No. 1). FPI has denied these allegations and asserted various defenses to the claims made by Plaintiff. (ECF No. 10).

Now, after performing a thorough study and investigation of the law and facts relating to the claims asserted, participating in extensive discovery, and participating in mediation, Plaintiff and her counsel have concluded that a settlement with FPI is in the best interest of the parties. In making the decision, Plaintiff and her counsel took into account the contested issues involved, the expense and time necessary to pursue certification of the Action, the risks and costs of further prosecution of the Action, the uncertainties of complex litigation,

and the substantial benefits to be received by Plaintiff and members of the settlement class in reaching this decision.

Similarly, FPI has concluded that, because of the substantial expense of litigating the Action, the inconvenience involved, the litigation risks, and for the purpose of putting to rest the controversies engendered by the Action, that it is in FPI's best interest to settle on the fair and reasonable terms proposed in the parties' Settlement Agreement, which is attached to the contemporaneously filed Declaration of Class Counsel Kirk D. Miller in Support of this Motion as **Exhibit 1** (ECF No. 37). Additionally, as part of the Settlement Agreement, FPI has agreed to fully comply with the requirements of RCW 59.18.257 and 59.18.253, Class Counsel has reviewed FPI's policies concerning those statutes and find them to be consistent with the statutory requirements. (ECF No. 37, ¶¶ 12 – 13 and Exhibits 2 and 3 attached thereto.)

II. RELIEF REQUESTED

With this Unopposed Motion, Plaintiff requests the Court entering an Order: A) Certifying this matter as a class for settlement purposes only; B) preliminarily approving the Class Settlement; C) appointing Postlethwaite & Netterville, APAC, ("P&N") as Class Administrator and approving notice to be sent to members of the Settlement Class; and 4) setting a final fairness hearing pursuant to Fed. R. Civ. P. 23.

For purposes of the settlement, the parties have agreed on the following class definition:

> All individuals who (1) from April 16, 2016 through the date of preliminary Court approval of the Agreement, submitted an application to rent a residential property then-managed by FPI and located in Washington State ("Rental Application"), and (2) meet one of the following criteria:
>
> (a) in conjunction with the submission of a Rental Application, paid a tenant screening fee through FPI to the owner of the property for which the individual submitted the Rental Application;
>
> (b) in conjunction with the submission of a Rental Application, had one or more consumer credit reports pulled by FPI or any other entity acting on its behalf; or
>
> (c) in conjunction with the submission of a Rental Application, paid a holding deposit through FPI to the owner of the property for which the individual submitted the Rental Application.
>
> Excluded from the class are FPI, any person or entity that has a controlling interest in FPI, FPI's current or former directors and officers, as well as the parties' counsel and their immediate families. The Plaintiff Class also does not include any persons who validly requests exclusion from the Plaintiff Class under the Opt-out Procedures described in this Agreement.

III. ARGUMENT

A. Certification of the Settlement Class is Appropriate as the Requirements of Fed. R. Civ. P. 23(a) and (b)(3) are Satisfied.

In order to qualify for class certification, a plaintiff must demonstrate that that he or she is likely to satisfy the four requirements under Fed. R. Civ. P. 23(a):

"(1) the class is so numerous that joinder of all members is impracticable

['numerosity']; (2) there are questions of law or fact common to the class ['commonality']; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class ['typicality']; and (4) the representative parties will fairly and adequately protect the interests of the class ['adequacy of representation']." Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) if the Court find that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Here, the putative class satisfies these requirements.

1. Numerosity is Satisfied

The proposed class satisfies the numerosity requirement under Fed. R. Civ. P. 23(a)(1). Rule 23(a)(1) does not "demand that the class be so numerous that joinder is impossible but rather simply that joinder of the class is impracticable." *Smith v. Univ. of Wash. Law Sch.*, 2 F. Supp.2d 1324, 1340 (W.D. Wash. 1998) citing *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913 (9th Cir. 1964). In general, a class consisting of 40 or more members is presumed to be sufficiently numerous. *In re Washington Mut. Mortgage-Backed Secs. Litig.*, 276 F.R.D. 658, 665 (W.D. Wash. 2011).

FPI's thorough search of its own records and databases has produced no more than 53,000 potential class members in this matter. (ECF No. 37, ¶ 11). This

number of putative class members is well in excess of that which would make joinder impractical.

2. The Class Presents Common Questions of Law and Fact

Rule 23(a)(2) requires "questions of law or fact common to the class." The commonality requirement has "'been construed permissively' and '[a]ll questions of fact and law need not be common to satisfy the rule." *Ellis*, 657 F.3d at 981 (alteration in original) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)). Commonality can be satisfied by even "a single *significant* question of law or fact." *Abdullah v. U.S. Sec. Assoc., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (citation omitted). The common questions must generate common answers that are "apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Commonality is thus satisfied where the claims of all class members "depend upon a common contention … of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. As such, "commonality is generally satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Benitz v. W. Milling, LLC*, No. 1:18-CV-01484-SKO, 2020 WL 309200, at *5 (E.D. Cal. Jan. 21, 2020) (internal quotation marks and citations omitted).

The Court need not resolve the merits of Plaintiff's claims to determine whether commonality is satisfied. "[W]hether class members could actually prevail on the merits of their claims is not a proper inquiry in determining the preliminary question whether common questions exist." *Stockwell v. City and Cty. of San Francisco*, 749 F.3d 1107, 1112 (9th Cir. 2014) (internal citations and quotations omitted).

Here, the common primary questions presented by the putative class are whether FPI violated Washington state's RLTA, by charging prospective tenants a tenant screening fee, without providing the required statutory disclosures in violation of RCW 59.18.257, by charging prospective tenants a holding fee for a dwelling unit, prior to unconditionally offering the dwelling unit to the prospective tenants, in violation of RCW 59.18.253, and whether FPI was unjustly enriched because of those actions.

With this Settlement Agreement (without an admission of liability) the common class questions are resolved in one stroke, as all the claims presented in this action will be settled. Therefore, commonality is satisfied. *See Wal-Mart Stores, Inc.*, 564 U.S. at 350 (commonality satisfied when plaintiff shows that a class wide proceeding would "generate common *answers* apt to drive the resolution of the litigation.").

////

3. The Representative Plaintiff's Claims are Typical of the Class

Here, typicality is satisfied because Plaintiff's claims are "reasonably coextensive with those of the absent class members." See Fed. R. Civ. P. 23(a)(3); *Hansen v. Ticket Track, Inc*., 213 F.R.D. 412, 415 (W.D. Wash. 2003). The Supreme Court has stated that "typicality" means that the named plaintiffs "suffer the same injury as the class members." *Wal-Mart*, 564 U.S. at 348. However, it is not necessary "that the named plaintiffs' injuries be identical with those of the other class members, only that the unnamed class members have injuries similar to those of the named plaintiffs and that the injuries result from the same, injurious course of conduct." *Armstrong*, 275 F.3d at 869; *see also Parsons*, 754 F.3d at 686 ("Rule 23(a)(3) requires only that [named plaintiffs'] claims be 'typical' of the class, not that they be identically positioned to each other or to every class member.").

Here, Plaintiff alleges that she and the putative class members have suffered the same or nearly the same injury – that FPI allegedly failed to give required disclosures to Plaintiff and the class prior to obtaining information on them, in violation of RCW 59.18.257, and/or failed to unconditionally offer a dwelling unit to her and the class prior to charging them a holding fee for a dwelling unit. The facts that give rise to Plaintiff's claim are the same facts that give rise to the claims of each and every member. Because the named Plaintiff and putative class

members allege the same injury and the same harmful practice, typicality is satisfied for purposes of this settlement. *See, e.g., Armstrong,* 275 F.3d at 868.

4. The Representative Plaintiff Will Fairly and Adequately Protect the Interests of the Class

The adequacy requirement is satisfied when the class representatives will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4), (g)(1). This element of class certification is required in order to satisfy due process concerns that "absent class members must be afforded adequate representation before entry of judgment which binds them." *Hanlon v. Chrysler Corp*., 150 F.3d at 1020 (citing *Hansberry v. Lee*, 311 U.S. 32, 42–43 (1940)). Determining adequacy of representation requires applying a two-prong test: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members; and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class" *Id.*

The operative Complaint affirms that the Representative Plaintiff has the same claims as the members of the class. (ECF No. 1, ¶ 7.4). She has, and will, continue to fairly and adequately represent the interests of the class members and has no interests antagonistic to the class. *(Id.* at ¶ 7.5; ECF No. 37, ¶ 15). She has been and is committed to vigorously litigating this matter. *(Id.* at ¶ 7.6; ECF No. 37, ¶ 15). She has demonstrated her commitment to serve as class representative

by participating in counsel's investigation of her claims and discovery, reviewing and approving the complaint, and actively participating in the Settlement Agreement reached. Accordingly, Plaintiff is adequate.

5. Representative Plaintiff's Counsel are Qualified to Litigate this Action and Should be Appointed Class Counsel

In certifying a class, the Court must also appoint class counsel. *See* Fed. R. Civ. P. 23(g). The Court must consider: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class[.]" *See id.* at 23(g)(1)(A). Class counsel must also "fairly and adequately represent the interests of the class." *Id.* at 23(g)(4).

Here, Class Counsel satisfies the requirements of Fed. R. Civ. P. 23(g). Counsel has experience with class action lawsuits and have been found to be adequate class counsel in many other class action proceedings. (ECF No. 37, ¶¶ 4 – 6). Further, counsel has long focused on issues of consumer and tenant rights. (*Id*. ¶¶ 2, 5). Lastly, class counsel has committed and will continue to commit significant resources to the prosecution of this litigation. (*Id.* at ¶¶ 4, 6).

////

6. The Proposed Class Claims Raise Common Legal and Factual Questions That Predominate Over Individual Ones and a Class Action is a Superior Method to Adjudicate This Controversy

For purposes of the settlement only, class certification is appropriate under Rule 23(b)(3) if the Court finds that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). The predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623–24 (1997).

a. Predominance is Satisfied

Predominance is satisfied when "the common, aggregation-enabling issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted). "[I]f just one common question predominates, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately." *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557 (9th Cir. 2019) (en banc).

Determining whether the common questions predominate is not a matter of "nose-counting," rather, "more important questions apt to drive the resolution of the litigation are given more weight in the predominance analysis over individualized questions which are of considerably less significance to the claims of the class." *Hyundai*, 926 F.3d at 557. Courts "focus on whether common questions present a significant aspect of the case, and they can be resolved for all members of the class in a single adjudication; if so, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Walker v. Life Ins. Co. of the S.W.*, 953 F.3d 624, 630 (9th Cir. 2020) (internal quotation marks omitted).

Here, the three "central claims" to be adjudicated are whether: FPI violated RCW 59.18.257 by failing to provide required disclosures to their prospective tenants prior to obtaining information on them; violated RCW 59.18.253 by charging its prospective tenants a holding fee for a dwelling unit, prior to unconditionally offering the dwelling unit to them; and were unjustly enriched by those alleged actions. All class members have one or all three claims in common. There are no individual questions associated with these claims, as the recovery for the class is identical. Accordingly, for purposes of the settlement, predominance is satisfied.

b. A Class Action Adjudication is a Superior Method to Resolve This Controversy

A class should be certified if the Court finds that a "class action is superior to other available methods for fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). The purpose of the superiority requirement is to ensure judicial economy and that a class action is the "most efficient and effective means of resolving the controversy." *Wolin v. Jaguar Land Rover N. Am.*, LLC, 617 F.3d 1168, 1175 (9th Cir. 2010) (citation omitted). The superiority inquiry "involves a comparative evaluation of alternative methods of dispute resolution." *Hanlon*, 150 F.3d at 1023. Courts consider four factors in evaluating the superiority requirement: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3). All four factors support class certification in this case for purposes of the settlement only.

Here, the proposed class members are a substantial number of Washington prospective tenants seeking to recover relatively small amounts – up to $100 in statutory damages for FPI's alleged violation of RCW 59.18.257, and the amount

of the holding fee charged, plus a potential discretionary doubling by the Court ($100 and $200 respectfully in the Plaintiff's case) for FPI's alleged violation of RCW 59.18.253. (ECF No. 1). Concentrating the multitude of identical and relatively small value claims of the class members in one action is a far superior method of adjudication than litigating a vast number of individual actions. *Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc*., 244 F.3d 1152, 1163 (9th Cir. 2001) (cases involving "multiple claims for relatively small individual sums" are particularly well suited to class treatment); *see also Terry*, 327 F.R.D. at 418 (finding superiority where proposed class was hundreds of tenants seeking damages of a few thousand dollars each).

Plaintiff is not aware of any other litigation concerning Defendant's alleged violations of RCW 59.18.257 and .253. (ECF No. 37, ¶ 7). Additionally, this is a desirable forum for this litigation as all potential class members are Washington residents.

As to the third factor given the small amount of damages, and novelty of the class claim, certifying this class is likely the only way that the class members will have their claims vindicated. Accordingly, this factor also favors certification for purposes of the settlement. *Hansen,* 213 F.R.D. at 416-417 (noting that the cumbersome nature of individual litigation and the comparatively minimal

damages recoverable under the FDCPA make it likely that class members will have little interest in bringing their own action).

Finally, there are no difficulties anticipated with the management of the class action. As class actions go, this one is extraordinarily simple. It contains three alleged violations with similar damages across the board. Not even one individualized question is anticipated for this Court to consider in this action. Accordingly, the final factor also favors certification of the class for purposes of the settlement.

In this case, as in many class actions, denial of class status would effectively deny any judicial remedy. *Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3rd Cir. 1985). Prosecution of this case as a class action will "achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." Advisory Comm. on Rule 23, Proposed Amends. to the Rules of Civ. Proc., 39 F.R.D. 69, 102-103 (1966). Here, predominance and superiority are met. Accordingly, this Court should certify the class for the purposes of settlement only.

B. The Parties' Class Settlement is Fair and Reasonable.

In order to settle a putative class action, the court must first approve a settlement class that meets the requirements of CR 23(a) and (b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 609–12 (1997). Next, the court must find that the

settlement is fair, adequate, and reasonable, and enter preliminary approval of the settlement agreement. *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2002) (analyzing FRCP 23(e)). Thereafter, notice and opportunity to object and opt-out must be given to all Class Members. Finally, the court must conduct a fairness hearing and, in order to approve the final settlement, make specific findings regarding the adequacy and fairness of the proposed settlement. *Id.*

1. Standard of Review for Class Action Settlements

A court's approval of a class-action settlement must be accompanied by a finding that the settlement is "fair, reasonable, and adequate." *Lane v. Facebook, Inc.*, 696 F.3d 811, 818 9th Cir. 2012). "[T]he district court [] must evaluate the fairness of a settlement as a whole, rather than assessing its individual components." *Id.* "[T]he question of whether a settlement is fundamentally fair within the meaning of Rule 23(e) is different from the question whether the settlement is perfect." *Id.* at 819. Although Fed. R. Civ. P. 23 imposes strict procedural requirements on the approval of a class settlement, a court's only role in reviewing the substance of that settlement is to ensure that it is "fair, adequate, and free from collusion." *Id.* The Court must determine the fundamental fairness, adequacy, and reasonableness of the settlement, taken as a whole. *Evans v. Jeff D.*, 475 U.S. 717, 726–27 (1986). "The trial court should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or

speculative measure of what concessions might [be] gained." *Access Now, Inc. v. Claire's Stores, Inc.*, 2002 WL 1162422, at 4 (S.D. Fla. May 7, 2002). Significant weight should be given "to the belief of experienced counsel that settlement is in the best interest of the class." *Austin v. Pennsylvania Dep't. of Corrections,* 876 F. Supp. 1437, 1472 (E.D. Pa. 1995). Generally, a proposed settlement will be preliminarily approved unless it is outside the range of reasonableness or appears to be the product of collusion, rather than arms-length negotiation. *See, e.g., Officers for Justice v. Civil Serv. Comm'n of San Francisco,* 688 F.2d 615, 625 (9th Cir. 1982).

The primary question raised by a request for preliminary approval is whether the proposed settlement is "within the range of possible approval." *See* MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.41, at 237; *accord, e.g., Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 273 (N.D. Cal. 1976). "[T]his determination is similar to a determination that there is 'probable cause' to think the settlement is fair and reasonable." *Alaniz,* 73 F.R.D. at 273.

To guide courts in assessing the fairness and reasonableness of a proposed settlement, the Ninth Circuit has identified several factors to employ, which may include, among others, some or all of the following: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in

settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the Class Members to the proposed settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d at 1026; *Smith v. Mulvaney*, 827 F.2d 558, 562 n.3 (9th Cir. 1987); *see also* Fed R. Civ. P. 23(e)(2) (listing similar factors).

2. The Settlement is the Result of Arm's Length, Non-Collusive Negotiations and is Presumptively Fair

Preliminary approval "establishes an initial presumption of fairness when the court finds that: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation." *In re General Motors Corp. Pick-Up Truck Prod. Liab. Litig.*, 55 F.3d 768, 785(3rd Cir. 1995). Further, "[a]rm's length negotiations conducted by competent counsel constitute prima facie evidence of fair settlements." *Ikuseghan v. Multicare Health Sys.*, No. 3:14-CV-05539-BHS, 2016 WL 3976569, *3 (W.D. Wash. July 25, 2016); *see also Ortiz v. Fiberboard Corp.*, 527 U.S. 815, 852 (1999) ("[O]ne may take a settlement amount as good evidence of the maximum available if one can assume that parties of equal knowledge and negotiating skill agreed upon the figure through arms-length bargaining.")

The proposed settlement was reached after extensive investigation, discovery, and negotiations over a period of two years. (ECF No. 37, ¶¶ 8, 9). The

parties' settlement negotiations were conducted with the assistance Honorable Sharon S. Armstrong (Ret.), a respected former member of the judiciary and experienced mediator with JAMS. (ECF No. 37, ¶ 9). Although settlement was not reached during the full-day session, the parties were able to continue negotiations thereafter with Judge Armstrong to reach an amicable resolution. (ECF No. 37, ¶ 9). Class Counsel negotiated the settlement with the benefit of many years of prior experience and a solid understanding of the facts and law of this case. (ECF No. 37, ¶¶ 2, 5). Class Counsel has extensive experience litigating and settling class actions. (ECF No. 37, ¶ 5). The recommendation of experienced counsel weighs in favor of granting approval and creates a presumption of reasonableness. *See Bellinghausen v. Tractor Supply Co*., 306 F.R.D. 245, 257 (N.D. Cal. 2015) ("The trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties." (citation omitted)). Accordingly, the Settlement Agreement reached here should be determined fair and reasonable.

3. The Relief Provided by the Settlement is Adequate Considering the Strength of Plaintiffs' Case, the Risk of Maintaining a Class Action Through Trial, and the Risk, Cost and Delay of Trial and Appeal

FPI's agreement to pay $1,600,000 to settle this case and ensure compliance with RCW 59.18.257 going forward is more than adequate given the risks and delay of continued litigation. *Berry v. School Dist. of Benton Harbor,* 184 F.R.D. 93, 98 (W.D. Mich. 1998). ("one of the most important factors in assessing the

fairness of a settlement agreement is the strength of the plaintiffs' case on the merits balanced against the relief offered in the settlement.").

The monetary benefits of the settlement alone, which will pay class members approximately 15.2%[1] of the assured damages available under RCW 59.18.257 and RCW 59.18.253 (does not account for discretion of this Court to award exemplary damages if a violation is found under those statutes after trial on the merits) is on par with similar settlements approved by other courts. *See Knapp Cavnar v. BounceBack, Inc*., No. 2:45-CV-235-RMP, ECF No. 154 (E.D. Wash. Sept. 15, 2015) (approving settlement providing 15.6% of alleged unlawful collection fees paid by class members alleging FDCPA and Consumer Protection Act violations); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming the district court's approval of a settlement estimated to be worth between 16.67% and 50% of class members' estimated loss).

Though Plaintiff is confident in the strength of her case, she is also pragmatic about the risks inherent in litigation and various defenses available to FPI. In Plaintiffs' view, liability was relatively clear based on a review of FPI's standard form tenant screening and holding fee disclosures. However, success is

[1] Total maximum damages, without the Court awarding discretionary damages, was $135 to the Plaintiff ($35 screening fee and $100 holding fee).

not guaranteed. FPI has consistently denied liability for Plaintiff's claims and asserted twelve (12) affirmative defenses, in addition to factual defenses, defenses to certification, and defenses to Plaintiff's damage allegations. (ECF No. 10). Absent this settlement, Plaintiff would still have several hurdles to clear before resolution, including additional discovery, dispositive motions likely to be filed by both parties, and ultimately trial and any appeal that followed. Additionally, class certification is never certain, as FPI may seek to decertify the class at any time through trial.

Litigating this case to trial and through any appeals would be expensive and time-consuming and would present risk to both parties. The settlement, by contrast, provides prompt and certain relief for class members. *See, Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009); *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("The Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." (citation omitted)).

Here, Plaintiff and Class Counsel's decision to settle was formed by extensive investigation, discovery, data analysis, and negotiations with FPI. The settlement negotiations were conducted with the valuable input and guidance of a highly-respected retired judge. Plaintiff's counsel carefully explained the above

risks as well as the proposed benefits and drawbacks of the settlement with the Plaintiff. After Plaintiff considered all of the above, while still remaining conscious of her duty to the putative class, determined this settlement is in the best interest of the Class.

4. Class Counsel will Request Approval of a Fair and Reasonable Fee

Class Counsel intends to request an award of not more than $400,000 to compensate them for the work performed on behalf of the Class and to reimburse them for out-of-pocket expenses they have incurred in prosecuting this action. They will do so by preparing and filing a comprehensive motion for an award of attorneys' fees supported by detailed entry records within thirty (30) days after this Court enters a preliminary approval order in this matter. This motion will be posted on the Settlement Website 30 days before the deadline for class members to opt-out or object to the settlement. (ECF No. 37, ¶ 16).

The attorneys' fees and costs class counsel seek are reasonable under the circumstances of this case. *See, In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (requiring that any attorneys' fee awarded be reasonable). District courts have discretion to use either the percentage-of-the-fund or the lodestar method to calculate a reasonable attorneys' fee from a common fund established by a class action settlement. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The Ninth Circuit uses 25% as the benchmark to

calculate any attorneys' fee award using the percentage of the fund method. *Online DVD-Rental*, 779 F.3d at 949. Here, the requested fees match the 25% benchmark and are presumptively reasonable.

5. Conclusion - The Court should Preliminarily Approve the Parties' Settlement Agreement

Based on the foregoing, Plaintiff respectfully submits that the proposed settlement of this action satisfies all of the relevant legal standards for preliminary approval under Fed. R. Civ. P. 23. The settlement is fair considering the amount of the recovery for the class and the cost and risks of further litigation in this matter. The settlement resulted from intensive, extended arm's-length negotiations over a period of multiple months, and reflects a reasonable compromise based on interests of the class and the risks and expense of further litigation. All attorneys' fees, class representative fees, and class administration costs are being paid from the fund established by FPI. (ECF No. 37, ¶¶ 11, 14-16).

C. The Court Should Appoint P&N as Class Administrator and Approve Class Notice.

The parties ask the Court to appoint P&N to act as the administrator of the Class. P&N has successfully acted as the class administrator in a number of other class actions filed in the state and federal throughout the United States. (ECF No. 37, ¶ 14). Its responsibilities will include: printing and disseminating the class notice; following up on undelivered notices; establishing and maintaining a

Settlement Website; establishing a toll-free number and responding to Settlement Class Member calls; processing, logging, and reviewing exclusion requests for deficiencies; addressing deficiencies with those requesting exclusion and providing them with an opportunity to cure; administering the Settlement Fund; disbursing the Settlement Fund to Settlement Class Members; all other duties set forth in the Settlement Agreement, and providing a report to this Court of the settlement's success. (ECF No. 37, ¶ 14). Filed contemporaneously with this Motion, attached as Exhibits B and C to the Settlement Agreement which is attached to the declaration of Class Counsel Kirk D. Miller, are the proposed class notices. The parties request that the Court approve the notices and the dissemination of the notice to the Class Members by postcard via first class mail. As part of the Settlement Agreement, FPI has agreed to pay all class administration fees and costs up to $100,000, to be drawn from the Settlement Fund, which P&N has estimated is more than sufficient to administer the class. (ECF No. 37, ¶ 14).

If any payments to class members are deemed undeliverable or remain unnegotiated 60 days after the check mailing date, the balance of all such payments shall be donated in equal amounts to Family Promise Spokane, a nonprofit corporation serving homeless families in the Spokane Area, nonprofit Consumer Education and Training Services (CENTS) and the Northwest Justice Project as cy pres. (ECF No. 37, ¶ 17). In addition, if the Court awards a lesser amount than

agreed for a Service Award and/or attorneys' fees and costs, the difference shall be added to and included in the amount to be disbursed as cy pres. None of the Settlement Fund shall revert to FPI. (ECF No. 37, ¶ 17).

D. The Court Should Schedule a Final Approval Hearing.

The next steps in the settlement approval process are to schedule a final approval hearing, notify class members of the settlement and hearing, and provide class members with the opportunity to exclude themselves from, or object to, the settlement. The parties propose the following schedule for final approval:

Action	Date
FPI providing class contact information to Class Administrator	Within 20 days after entry of Preliminary Approval Order
Class Counsel to provide Class Administration Costs and Class Member Payments to Class Administrator	Within 15 days after entry of Preliminary Approval Order
Deadline for Delivering Class Notice	Within 15 days after receipt of class contact information from FPI
Class Counsel's Fee and Costs Motion Submitted	Within 30 days after class notice is sent
Exclusions and Objections Deadline	60 days after class notice is sent
Final Settlement Hearing and Approval Order Entered	At the Court's discretion
Final Approval Motion Notice Deadline	Within 14 days of Final Approval Hearing Date
Distribution Date	Within 15 days following Final Approval
Class Adminstrator's Report to Court	Within 30 days following completion of Class Settlement Distribution

IV. CONCLUSION

The parties respectfully request that the Court enter an Order of preliminary approval of the settlement of this action as a class action and enter the administrative orders requested.

DATED this 1st day of October, 2021.

KIRK D. MILLER, P.S.

s/ *Kirk D. Miller*
Kirk D. Miller, WSBA #40025
Attorney for Plaintiff

CAMERON SUTHERLAND, PLLC

s/ *Shayne J. Sutherland*
Shayne J. Sutherland, WSBA #44593
Attorney for Plaintiff

CM/ECF Certificate of Service

I hereby certify that on the 1st day of October, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of filing to the following:

Jonathan Tebbs Attorney for Defendant	jtebbs@cairncross.com
Binah B. Yeung Attorney for Defendant	byeung@cairncross.com
Daniel L Baxter Attorney for Defendant	dbaxter@wilkefleury.com vgarner@wilkefleury.com
Kirk D. Miller Attorney for Plaintiff	kmiller@millerlawspokane.com
Brian G. Cameron Attorney for Plaintiff	bcameron@cameronsutherland.com
Shayne J. Sutherland Attorney for Plaintiff	ssutherland@cameronsutherland.com

.

s/ *Teri A. Brown*
Teri A. Brown, Paralegal