

1 Kirk D. Miller, WSBA #40025
KIRK D. MILLER, P.S.
2 421 W. Riverside Ave., Ste. 660
Spokane, WA 99201
3 (509) 413-1494 Telephone
kmiller@millerlawspokane.com
4 *Attorney for Plaintiff*

5 Shayne Sutherland, WSBA #44593
CAMERON SUTHERLAND, PLLC
6 421 W. Riverside Ave., Ste. 660
Spokane, WA 99201
7 (509) 315-4507 Telephone
ssutherland@cameronsutherland.com
8 *Attorney for Plaintiff*

9 **IN THE UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF WASHINGTON**

11 BRIANNA MORRIS, on behalf of)
herself and all others similarly situated,) Case No.: 2:19-CV-0128-TOR
12)
Plaintiff,)

13 vs.

14 FPI MANAGEMENT, INC., a)
California corporation,) **DECLARATION OF KIRK D.**
15) **MILLER IN SUPPORT OF**
Defendant.) **UNOPPOSED MOTION FOR**
16) **CLASS CERTIFICATION AND**
17) **PRELIMINARY APPROVAL OF**
) **CLASS SETTLEMENT**

) **Hearing Date: November 1, 2021**
) **No Oral Argument Requested**
)

18 Kirk D. Miller declares under penalty of perjury, as provided for by the laws
19 of the United States, 28 U.S.C. § 1746, the following:
20

1 1. I am the lead counsel of record for the Plaintiff in this matter. I am
2 admitted to practice before this Court and am a member in good standing of the bar
3 of the state of Washington. I respectfully submit this declaration in support of
4 Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action
5 Settlement. Except as otherwise noted, I have personal knowledge of the facts set
6 forth in this declaration and could testify competently to them if called upon to do
7 so.

8 2. I founded Kirk D. Miller, P.S. in 2008 and remain the principle of my
9 firm. Since 2008, I have actively litigated consumer rights and tenant rights claims,
10 including several class actions.

11 3. As class certification and settlement is now before the Court it is now
12 appropriate to address Plaintiff's motion as to that effect.

13 4. I carry malpractice insurance and my firm is able to carry the financial
14 burden of this class action case through to its resolution.

15 5. I have handled many consumer cases, including consumer and tenant
16 class actions. Some of the cases that I have been found to be acceptable class
17 counsel are: *Cavnar et al v. Bounceback, Inc. et al*, 2:14-cv-0235 RMP; *Fleming v.*
18 *Greystar Management Services*, 2:15-cv-0174 SMJ; *Adsit v. Dundrum LLC* 2:17-
19 *cv-0110 SMJ*; *Ryan Daley & Isaak Curry v. Greystar Real Estate Partners, LLC*

1 *et. al.*, 2:18-cv-00381-SMJ; and *Halvorsen v. Peterson Enterprises, Inc.* 17-2-
2 00123-1 (Spokane County Superior Court).

3 6. My firm has no interests that would prevent me from vigorously
4 litigating this claim. My firm has devoted considerable time and resources to the
5 prosecution of the claims at issue in this case and is committed to doing so as
6 necessary.

7 7. I am unaware of any other litigation involving claims against FPI for
8 violations of RCW 59.18.257 and RCW 59.18.253.

9 8. Since this case was filed in April of 2019, Plaintiff researched
10 publicly available information regarding the Defendant FPI's corporate structure,
11 investigated Defendant FPI's business practices, engaged in extensive discovery,
12 and reviewed and analyzed documents and data to ascertain a reasonable range of
13 damages.

14 9. On November 4, 2020, the parties engaged in a full-day mediation
15 with Honorable Sharon Armstrong (Ret.) of JAMS, a highly respected former
16 member of the judiciary with extensive experience in resolving large, complex
17 cases, including class actions. The parties did not reach a settlement during
18 mediation, but continued arm's length negotiations with Ms. Armstrong's
19 assistance. The parties agreed to the material terms of the settlement on November
20

1 11, 2020. The results of that settlement have been memorialized in the Parties'
2 Settlement Agreement attached hereto as **Exhibit 1**.

3 10. All of the parties' settlement negotiations have been non-collusive and
4 at arm's length. Plaintiff and Class Counsel believe the class-wide settlement
5 reached in this case is fair, adequate, reasonable, and in the best interests of the
6 Class.

7 11. There should be no more than 53,000 Class Members according to
8 Defendant FPI's records. If all class members participate in the settlement (class
9 members must affirmatively opt-out to not receive payment), Defendant FPI will
10 disburse a total of \$1,090,000, of the \$1,600,000 settlement, to the class members,
11 resulting in a distribution of approximately \$20.56 to each of the class members.

12 12. As part of the Settlement, Defendant FPI has agreed to fully comply
13 with RCW 59.18.257's and RCW 59.18.253's requirements.

14 13. I have reviewed FPI's policies concerning RCW 59.18.257 and RCW
15 59.18.253, attached hereto as **Exhibit 2** and **Exhibit 3**, respectively, and find them
16 to be consistent with the statutory requirements.

17 14. Postlethwaite & Netterville, APAC, ("P&N") estimates that it can
18 carry out the Notice Plan for \$100,000.00 or less, which Defendant FPI has agreed
19 to pay as part of the Settlement to be drawn from the Settlement Fund. P&N has
20 successfully acted as the class administrator in a number of other class actions filed

1 in the state and federal throughout the United States. P&N will be responsible for:
2 disseminating notice and mail; following up on undelivered notices; establishing
3 and maintaining a Settlement Website; establishing a toll-free number and
4 responding to Settlement Class Member calls; processing, logging, and reviewing
5 exclusion requests for deficiencies; addressing deficiencies with those requesting
6 exclusion and providing them with an opportunity to cure; administering the
7 Settlement Fund; disbursing the Settlement Fund to Settlement Class Members;
8 and providing a report to this Court of the Settlement's success. The proposed
9 class notices are attached to the Settlement Agreement as Exhibit B and C. The
10 Proposed Order for Class Certification and Preliminary Approval of Class
11 Settlement is attached to the Settlement Agreement as Exhibit A, and the Proposed
12 Final Settlement Order and Final Judgment is attached as Exhibit D.

13 15. Class Representative Brianna Morris claims are typical of the class's
14 claims, and she has no interests that are antagonistic to the class and has the class's
15 best interests in mind in reaching this settlement agreement. A combined statutory
16 damage and service award payment in the amount of \$10,000 will be requested for
17 Ms. Morris, which FPI has agreed to pay in accordance with the Settlement, and to
18 be drawn from the Settlement Fund.

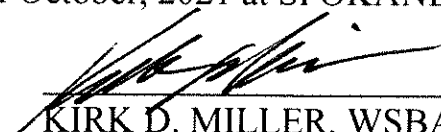
19 16. Class Counsel plans to request that the Court approve a combined
20 award of litigation expenses and reasonable attorneys' fees of \$400,000, which is

1 presumptively reasonable based on the 9th Circuit's 25% of the common fund
2 benchmark, which FPI has agreed to pay from the settlement of \$1,600,000 in
3 accordance with the Settlement. The motion and supporting documentation will be
4 available on the Settlement Website for review at least thirty (30) days prior to the
5 objection and opt-out deadline.

6 17. If any payments to class members are deemed undeliverable or remain
7 unnegotiated 60 days after the check mailing date, the balance of all such payments
8 shall be donated in equal amounts to Family Promise Spokane, a nonprofit
9 corporation serving homeless families in the Spokane Area, nonprofit Consumer
10 Education and Training Services (CENTS) and the Northwest Justice Project as cy
11 pres. In addition, if there are any remaining funds from the \$100,000 set aside for
12 Class Administration costs, and/or if the Court does not award the full attorneys'
13 fees and costs or service awards requested, these funds will be disbursed as part of
14 the cy pres. In no event will remaining funds revert to Defendant FPI.

15 18. The parties have been engaged in this litigation for over two years and
16 have sufficient information to make an informed decision with respect to the
17 settlement.

18 RESPECTFULLY SIGNED this 1st day of October, 2021 at SPOKANE, WA.

19 
20 KIRK D. MILLER, WSBA #40025
Attorney for Plaintiff

CM/ECF Certificate of Service

I hereby certify that on the 15 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 jtebbs@cairncross.com
Attorney for Defendant

Binah B. Yeung byeung@cairncross.com
Attorney for Defendant

Daniel L Baxter dbaxter@wilkefleury.com
Attorney for Defendant vgarner@wilkefleury.com

Kirk D. Miller kmiller@millerlawspokane.com
Attorney for Plaintiff

Brian G. Cameron bcameron@cameronsutherland.com
Attorney for Plaintiff

Shayne J. Sutherland ssutherland@cameronsutherland.com
Attorney for Plaintiff

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