

Exhibit 26

The Honorable Stanley J. Rumbaugh
Hearing Date: November 15, 2019
Hearing Time: 9:00 a.m.

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

MICHEAL W. GARWICK and
MATTHEW A. GRANSTROM,
individually and on behalf of all those
similarly situated,

Plaintiffs,

v.

VETERANS INDEPENDENT
ENTERPRISES OF WASHINGTON, a
Washington public benefit corporation,
DONALD HUTT, an individual, and GARY
PETERSON, an individual,

Defendants.

No. 18-2-09076-3

PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

I. RELIEF REQUESTED

Pursuant to CR 23, Michael W. Garwick and Matthew A. Granstrom ("Named Plaintiffs"), seek an order that (1) preliminarily approves the parties' class-wide settlement, (2) approves the proposed notice to be sent to certified class members ("Settlement Class"), and (3) schedules a final settlement approval hearing. This relief should be granted, because the proposed Settlement provides fair, reasonable, and adequate compensation for the Settlement Class. Defendants Veterans Independent Enterprises of Washington, Donald Hutt and Gary Peterson have reviewed this motion and do not oppose it.

1 **II. STATEMENT OF FACTS**

2 **2.1. Factual and Procedural Background.**

3 Defendant Veterans Independent Enterprises of Washington (“VIEW”) employs Veterans
4 and other disadvantaged individuals as general laborers and in other positions providing various
5 services to local companies such as Boeing.

6 Plaintiffs filed their First Amended Class Action Complaint for damages on November 2,
7 2018, alleging that VIEW had violated the Washington Minimum Wage Act (“MWA”), RCW
8 49.46, the Washington Wage Payment Act (“WPA”), RCW 49.48, and the Washington Wage
9 Rebate Act (“WRA”), RCW 49.52.

10 On May 10, 2019, the Court certified 3 Classes including Class 1, all individuals, other
11 than current officers or directors of VIEW, that are or were employed by Defendants and
12 received at least one paycheck at any time between February 1, 2018 and May 10, 2019; Class
13 1A - All individuals, other than current officers and/or directors of VIEW, that were suffered or
14 permitted to work as volunteers after being laid off between February 1, 2018 and May 10, 2019;
15 and Class 2 - All individuals, other than current officers and/or directors of VIEW, that are or
16 were employed by Defendants and had amounts deducted from their wages related to program
17 fees, housing fees, or rent between June 15, 2015 and present day.

18 As required by the Court’s May 10, 2019 order certifying the classes, notices were sent to
19 the 71 certified class members via first-class, regular U.S. mail on July 8, 2019. Pizl Decl. ¶7.
20 13 notices from the initial mailing were returned as undeliverable. Subsequently, notices were
21 re-mailed to 12 addresses obtained by skip tracing. Pizl Decl. ¶9. Two of the re-mailed notices
22 were subsequently returned as undeliverable. Pizl Decl. ¶10. No requests for exclusion have
23 been received. Pizl Decl. ¶11.

24 From early July 2019 through October, 2019, the Parties conducted good-faith and arm’s
25 length negotiations. As a result, Plaintiffs and their counsel have determined that the proposed
26 settlement is fair, reasonable, adequate, and in the best interests of the certified Settlement

1 Classes and that it is desirable that the litigation be settled in the manner and upon the terms and
2 conditions set forth therein. The Settlement will permit members of the Settlement Classes to
3 receive additional compensation and exemplary damages without the time, risk, and expense of
4 further litigation, and permits Defendants to avoid the risk, expense, and inconvenience of
5 further legal proceedings. Pizl Decl. ¶ 25

6 **2.2. The Proposed Settlement.**

7 A copy of the proposed Settlement Agreement is attached as Exhibit 2 to the
8 accompanying Pizl Declaration. The key terms of the Agreement are as follows:

9 (1) The Settlement Fund: Defendants will create a Settlement Fund of \$150,000 to
10 pay damages to Settlement Class Members, any reasonable attorney's fees and costs approved by
11 the Court, and any class representative fees approved by the Court. If any settlement
12 distribution checks remain uncashed after 120 days of issuance, 50% of those monies will go to
13 the Legal Foundation of Washington pursuant to CR 23(f)(2) and 50% to the Fair Work Center.

14 (2) Payments to Individual Settlement Class Members: The net Settlement Fund,
15 after any Court-approved fees and costs, will be distributed *pro rata* among Settlement Class
16 based on the amounts submitted to the Court in Plaintiffs' Motion for Partial Summary Judgment
17 heard on August 23, 2019. Pizl Decl. ¶ 20. Fifty Percent (50%) of each Settlement Award to
18 Class 1A members will be treated as wages and subject to normal payroll tax withholdings and
19 payments, and these amounts shall be reported to the taxing authorities by the Settlement
20 Administrator and the Settlement Class Members on IRS Forms W-2. Fifty Percent (50%) of
21 each Settlement Award to Class 1A members and each Settlement Award to Class 1 and Class 2
22 members will be treated non-wages (penalties, enhancements, and prejudgment interest) on
23 which there will be no tax withholding and for which IRS Forms 1099 (marked "Other Income")
24 shall be issued to the taxing authorities and Eligible Settlement Class Members.

25 (3) Attorney's Fees and Costs: Subject to approval by the Court, Class Counsel will
26 receive 30% of the gross Settlement Fund, or \$45,000, as attorney's fees, plus estimated

1 reasonable litigation costs of approximately \$4,250.

2 (4) Settlement Administration: JND Legal Administration shall be appointed as
3 “Settlement Administrator” responsible for establishing a Qualified Settlement Fund (“QSF”)
4 pursuant to IRC § 468B(g), mailing and/or emailing Class Notices and settlement awards to
5 Settlement Class Members, processing and filing all appropriate tax forms and documents
6 including but not limited to W2s, 1099s, 1120-SF, etc. Subject to approval by the Court, the
7 Settlement Administrator will receive up to \$7,500 from the Settlement Fund to compensate for
8 their services provided.

9 (5) Class Representative Payment: Subject to approval by the Court, the Named
10 Plaintiffs will receive an additional \$3,000 each from the Settlement Fund in recognition of their
11 services to the Settlement Class, their efforts in the litigation, and their general release of all
12 claims against Defendants.

13 (6) Notice to Settlement Class Members: A copy of a proposed Notice of Proposed
14 Class Action Settlement (“Notice”) is attached as Exhibit A of Exhibit 2 to the accompanying
15 Pizl Declaration. The Notice will be mailed by Settlement Class Counsel, via first-class mail, to
16 the last known addresses of all Settlement Class Members, as updated during the class notice
17 process and through use of a reputable tracing service, within twenty-one (21) calendar days of
18 the date of preliminary approval. Returned notices will be re-mailed where an updated or valid
19 address can be identified.

20 Settlement Class Members will be given forty-five (45) calendar days from the date on
21 the Notice to object to the Settlement. Settlement Class Members will have their individual
22 settlement awards distributed to them by the Settlement Administrator.

23 Plaintiff will file pleadings in support of final approval no later than seven (7) calendar
24 days before the final fairness hearing. At the final fairness hearing, the Court will be asked to
25 enter a final order approving the Settlement Agreement. If the Settlement Agreement is
26 approved, within 5 days of the effective date of the Court’s final approval, Defendants will

1 deposit the Settlement Fund into the QSF via wire transfer. The Settlement Administrator will
2 create and mail the individual settlement checks along with the Forms W-2 and 1099 to each
3 Settlement class member within fourteen (14) business days of the Effective Date of the Court's
4 final approval.

5 (7) Release of Claims: Under the Settlement Agreement, all Settlement Class
6 Members will be held to have released all state, federal, and contractual wage and hour claims or
7 any other claims that were or could have been asserted based on the facts and circumstances
8 alleged in this lawsuit. The Named Plaintiffs will release all claims against Defendants.

9 III. STATEMENT OF ISSUES

10 A. Whether the Court should preliminarily approve the Settlement pursuant to
11 CR 23(e).

12 B. Whether the Court should approve distribution of the Class Notice and schedule a
13 final fairness hearing.

14 IV. EVIDENCE RELIED UPON

15 Plaintiffs rely upon the pleadings on file in this case and the accompanying Declaration
16 of James B. Pizl and exhibits thereto.

17 V. DISCUSSION

18 5.1. The Proposed Settlement Is Fair, Adequate, And Reasonable.

19 Washington Civil Rule 23(e) states:

20 A class action shall not be dismissed or compromised without the approval of the
21 court, and notice of the proposed dismissal or compromise shall be given to all
members of the class in such manner as the court directs.

22 CR 23(e). "The requirements of CR 23(e) are for the most part procedural, requiring notice of a
23 proposed settlement be given to class members and that they be given an opportunity to object to
24 the settlement." *Pickett v. Holland America Line-Westours, Inc.*, 145 Wn.2d 178, 188 (2001).

25 The issue of final approval of the Settlement is not presently before the Court, but will
26 come before the Court at the final approval hearing. However, it is common for courts to satisfy

1 themselves that a proposed settlement is the result of arm's length negotiations and falls within
2 the range of possible approval before ordering notice to the class. *Adams v. Inter-Con Security*
3 *Systems, Inc.*, 2007 WL 322466, *3 (N.D. Cal. Oct. 30, 2007). As it bears on the question of
4 preliminary approval, therefore, Plaintiffs will address the standards for final approval now.

5 In *Pickett*, the Court explained:

6 Although CR 23 is silent in guiding trial courts in their review of class
7 settlements, it is universally stated that a proposed class settlement may be
8 approved by the trial court if it is determined to be "fair, adequate, and
9 reasonable." *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir.
10 1993)... The criteria generally utilized to make this determination include: the
11 likelihood of success by plaintiffs; the amount of discovery or evidence; the
12 settlement terms and conditions; recommendation and experience of counsel;
13 future expense and likely duration of litigation; recommendation of neutral
14 parties, if any; number of objectors and nature of objections; and the presence of
15 good faith and the absence of collusion.

16 145 Wn.2d at 188-89. Not all factors are relevant in all cases, and the importance of each factor
17 will depend on the facts of each case. *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615,
18 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983) (cited in *Pickett*, 145 Wn.2d at 189).
19 Review of a proposed settlement "is a delicate, albeit largely unintrusive, inquiry by the trial
20 court." *Pickett*, 145 Wn.2d at 189.

21 [T]he court's intrusion upon what is otherwise a private consensual agreement
22 negotiated between the parties to a lawsuit, must be limited to the extent
23 necessary to reach a reasoned judgment that the agreement is not the product of
24 fraud or overreaching by, or collusion between, the negotiating parties, and that
25 the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

26 *Officers for Justice*, 688 F.2d at 625. Indeed, the general principles favoring settlement of
disputed claims apply to class actions. "[I]t must not be overlooked that voluntary conciliation
and settlement are the preferred means of dispute resolution." *Id.* (quoted in *Pickett*, 145 Wn.2d
at 190).

In the present case, the settlement was arrived at by the parties through arm's length
negotiations that took place after significant exchange of information and analysis. Application
of the criteria enumerated in *Pickett* supports a preliminary determination that the settlement is

1 fair, reasonable, and adequate.

2 a. The Likelihood of Success by Plaintiff.

3 Plaintiff believes there is a strong likelihood of success in proving liability in this case.
4 However, there are risks of loss in any litigation. Pizl Dec. ¶¶ 22-24. There are also specific,
5 identifiable risks with respect to this case that could either defeat or limit the Settlement Class's
6 recovery, including:

- 7 • Defendants may prevail on their argument that they did not profit from providing
8 housing to the employees and therefore, the deductions were not unlawful.
- 9 • Defendants may prevail on their argument that although certain payrolls were late,
10 the number of days late was de minimis or within a grace period.
- 11 • The Court may determine that the exemption to the minimum wage act for
12 volunteer work for a nonprofit is broad and the labor volunteered may be exempt
13 from the minimum wage even if it only indirectly furthers a charitable purpose.
- 14 • The Court or jury could find more limited damages on Plaintiffs' claims than the
15 assumptions underlying the Settlement Agreement.
- 16 • Plaintiff could prevail on all claims after a prolonged litigation and trial but may
17 be unable to collect due to Defendants' insolvency.

18 The proposed settlement eliminates all of these risks while at the same time providing substantial
19 benefits to the Settlement Class Members. Pizl Decl. ¶ 25

20 b. The Settlement Terms and Conditions.

21 The settlement terms are fair, reasonable, and adequate, including the size of the
22 Settlement Fund, the settlement awards to be paid to individual Settlement Class Members, and
23 the distribution plan.

24 The common fund created by the Settlement is fair and adequate in light of the damages
25 alleged in the case and the significant risks. The Settlement Fund provides an amount equivalent
26 of approximately 43% of the calculated exemplary damages for the late payment of wages to

1 Class 1 members, recovery for Class 1A members of approximately 71% of wages for time
2 volunteered, and recovery for Class 2 members for approximately 59% of the deductions taken
3 from wages for housing fees, program fees and rent. Pizl Dec. ¶ 19. The discount off full
4 recovery represented by the Settlement is reasonable, given the multiple and significant litigation
5 risks present in the case and the benefits to Class Members of an early resolution.

6 The net Settlement Fund will be allocated among the Settlement Class Members based on
7 *pro rata* calculations based on numbers presented to the Court in Plaintiffs' Motion for Partial
8 Summary Judgment held on August 23, 2019. Pizl Decl. ¶ 20. Such an approach is fair,
9 reasonable, and designed to distribute the net Settlement Fund in proportion to the damages
10 suffered by each Class Member to the greatest degree practicable.

11 Finally, Settlement Class Members need not submit any claim form to receive payment
12 under the Settlement. The simplicity of the distribution process also argues in favor of the
13 fairness of the Settlement.

14 c. Future Expense and Likely Duration of Litigation.

15 The Settlement avoids a number of significant, identifiable risks that could preclude,
16 reduce, or delay recovery by all or a large portion of the Settlement Class, including disputes
17 over liability and risks of maintaining certification of a litigation class. In the absence of
18 settlement, Plaintiffs would incur significant costs in additional discovery and motions practice,
19 expert fees to further analyze Defendants' payroll and timekeeping data, and the costs of trial.
20 Finally, the Settlement avoids the potential for additional delays in the outcome of the case,
21 including delays from interlocutory or post-judgment appeals. Pizl Dec. ¶ 25.

22 d. The Amount of Discovery or Evidence.

23 Before entering into the proposed Settlement, Defendants provided Class Counsel with
24 all payroll data, bank statements and volunteer hours records for the Settlement Class. Pizl Dec.
25 ¶¶ 12.

26 Both Plaintiffs' and Defendants' counsel have significant experience in wage and hour

1 suits. Pizl Dec. ¶¶ 3-5. Counsel are therefore well-positioned to assess the strength of Plaintiffs'
2 claims and Defendants' factual and legal defenses. Pizl Dec. ¶ 21. Class Counsel negotiated this
3 Settlement with firm knowledge of the facts of this case and with the benefit of insights gained
4 from the course of similar litigation. Pizl Dec. ¶ 21

5 e. Recommendation and Experience of Counsel.

6 As noted above, counsel for both parties are experienced in wage and hour class
7 litigation. "When experienced and skilled class counsel support a settlement, their views are
8 given great weight." *See Pickett*, 145 Wn.2d at 200.

9 f. The Presence of Good Faith and Absence of Collusion.

10 The parties have maintained an adversarial, albeit professional, posture throughout this
11 case. This settlement was reached only after thoughtful negotiations. There is no evidence of
12 collusion or bad faith of any sort.

13 In sum, both parties and their counsel believe that the Settlement represents a fair,
14 reasonable, and adequate resolution of this matter for the Settlement Class. The Settlement falls
15 within the range of possible final approval, and preliminary approval is appropriate.

16 **5.2. Fees and Costs.**

17 a. Attorneys' Fees and Costs.

18 Class Counsel will ask the Court for approval of an attorney's fee and cost award of 30%
19 of the gross Settlement Fund, or \$45,000, plus estimated litigation costs of approximately
20 \$4,250.00. Pizl Dec. ¶ 19. This request is not opposed by Defendants.

21 The typical range of attorneys' fees in a common fund recovery in class action cases is
22 between 20% and 33%. *See Bowles v. Department of Retirement Systems*, 121 Wn.2d 52, 72-73
23 (1993)(citing *3 Newberg on Class Actions* § 14.03 for the proposition that 20 to 30 percent is the
24 usual range for fee awards in a common fund action); *4 Newberg on Class Actions* § 14:6 (4th
25 ed. online) ("common fee awards fall in the 20 to 33 per cent range" and "empirical studies show
26 that, regardless whether the percentage method or the lodestar method is used, fee awards in

1 class actions average around one-third of the recovery”). The 30% award that Class Counsel
2 seeks here is consistent with this range, and less than what counsel would ordinarily recover in
3 an individual case. *See Goodrich, F. & Silber, R., Common Fund and Common Fund Problems:
4 Fee Objections and Class Counsel's Response*, 17 Rev. Litig. 525, 548-49 (Summer 1998) (“The
5 percentage awarded should mimic the market. . . . In non-class litigation, one-third contingency
6 fees are typical.”) (quoted in 4 *Newberg on Class Actions* § 14:6 (4th ed. online)).

7 Given the significant recovery for Settlement Class Members in this case and the
8 importance of counsel’s skill and experience in this area to obtaining this result, the requested fee
9 award of 30% is appropriate. In any event, final approval of the fee award will occur at the final
10 fairness hearing. Thus, this fee request should be preliminarily approved at this time, and
11 described in the notice to the Settlement Class.

12 b. Class Representative Fee.

13 Subject to Court approval, the Named Plaintiffs will receive an additional \$3,000 each
14 from the Settlement Fund as an incentive award for their role in representing the Settlement
15 Class. Such treatment of class representatives is fair and reasonable and is frequently requested
16 and approved. *See Hughes v. Microsoft Corp.*, 2001 WL 34089697, *12 (W.D. Wash. March 26,
17 2001). These incentive payments recognize, among other things, the substantial benefits obtained
18 for the Settlement Class through Plaintiffs’ role in consulting with counsel about the facts of the
19 case, litigation strategy, and settlement negotiations. Pizl Decl. ¶ 28. The class representative fee
20 also recognizes the risk of adverse consequences in the workplace and the labor market faced by
21 workers who sue an employer. As with the attorney’s fee award, the Settlement is not contingent
22 on Court approval of any particular amount of class representative payment.

23 **5.3. The Proposed Notice Satisfies CR 23(e) and Due Process.**

24 a. Method of Giving Notice.

25 Generally, a settlement notice must in substance be reasonably calculated, under all of the
26 circumstances, to apprise Settlement Class Members of the terms of the settlement and the

1 opportunity to present objections. In the present case, notice will be sent by first-class mail to all
2 Settlement Class Members. The addresses used will be updated to the extent reasonably possible.
3 These steps are calculated to apprise Settlement Class Members of the litigation and the
4 Settlement to the greatest extent reasonable and satisfy the requirements of CR 23 and due
5 process.

6 b. Contents of the Notice.

7 A CR 23(e) notice should: (1) describe the nature of the pending action and the general
8 terms of the settlement; and (2) inform Settlement Class Members that complete and detailed
9 information is available from the court files and that any Settlement Class Member may appear
10 and be heard at the final fairness hearing. The settlement notice need not include a copy of the
11 Settlement Agreement. The federal Manual for Complex Litigation (Fourth) § 21.312 (Fed. Jud.
12 Ctr. 2004) provides the following guideline:

13 If the agreement itself is not distributed, however, the notice must contain a clear,
14 accurate description of the key terms of the settlement and inform class members
15 where they can examine or obtain a copy, such as from the Internet, the clerk's
office, class counsel, or another readily accessible source.

16 The proposed Notice meets these requirements. It is written in plain English, is clearly
17 and concisely written, and provides all necessary information regarding the Settlement, including
18 a statement of the gross recovery for the Settlement Class, allocation plan, proposed attorney's
19 fees, costs, and class representative awards, applicable deadlines for action, and how Settlement
20 Class Members may obtain further information or file objections or requests for exclusion from
21 the Settlement Class.

22 **5.4. Scheduling of Final Approval Hearing.**

23 As discussed above, CR 23(e) contemplates a final approval hearing after providing the
24 Class notice and an opportunity to comment. The Settlement Agreement provides that the
25 settlement administrator will mail the Class Notice within 21 calendar days of the Order granting
26 preliminary approval to the Settlement and that Settlement Class Members will have 45 days,

1 plus three days for mailing, to file objections. The Settlement Agreement further provides that
2 Class Counsel will provide a draft of the final approval motion and papers to defense counsel
3 seven days before filing. In light of these timelines, the final approval hearing should be
4 scheduled no sooner than 77 days (11 weeks) after entry of the Order granting preliminary
5 approval to the Settlement and as soon thereafter as the Court's calendar permits.

6 **VI. CONCLUSION**

7 For the foregoing reasons, Plaintiff requests that the Court enter the accompanying Order
8 preliminarily approving the Settlement Agreement, approving the proposed Notice, and setting a
9 date for a final fairness hearing that is no earlier than 77 days from the date of preliminary
10 approval and as soon thereafter as the Court's calendar permits.

11
12 DATED this 6th day of October, 2019.

13 ENTENTE LAW PLLC

14 

15 James B. Pizl, WSBA #28969

16 *Attorney for Plaintiff*