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THE HONORABLE SEAN O'DONNELL
JUDGE OF THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

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

ALEXANDER BARRY, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON,

Defendant.

No. 20-2-13924-6-SEA

**PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARD**

1 **I. INTRODUCTION**

2 Plaintiff Alexander Barry (“Plaintiff”) and Defendant University of Washington
3 (“Defendant” or “UW”) (collectively, the “Parties”) have reached an excellent settlement for this
4 case. The settlement results in a \$4 million cash fund for students affected by Defendant’s
5 transition to remote-only education at the end of the Winter 2020 quarter. Accordingly, Plaintiff
6 moves for approval of a \$7,500 service award for Mr. Barry, \$1,200,000 in attorneys’ fees,
7 \$355,015.69 in costs to Class Counsel, and \$104,490 in costs to the Settlement Administrator.

8 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

9 Plaintiff alleged that he and the Settlement Class paid or incurred tuition and fees for the
10 Winter and/or Spring 2020 Quarters when they enrolled in programs and courses specifically
11 designated by Defendant as in-person/on-campus programs and courses. Plaintiff alleges he
12 entered into a contract for specific services: an on-campus, in-person education experience at UW.
13 Plaintiff alleged he and the Settlement Class provided payment via tuition and UW, in exchange,
14 was to provide in-person educational services, experiences, opportunities, and other related
15 facilities to the Settlement Class. First Amended Class Action Complaint (“FAC”) ¶¶ 74-78.
16 Plaintiff also alleges he selected on-campus courses and paid for the in-class and educational
17 experiences that only an in-person program can deliver, such as the ability to access important
18 university facilities, services, and faculty in-person. *Id.* Plaintiff alleged, however, that starting
19 March 9, 2020, as a result of COVID-19, Plaintiff and other students did not receive the on-campus
20 experiences for which they paid. FAC ¶¶ 3, 66-67.

21 At all times, Defendant has denied and continues to deny any wrongdoing whatsoever and
22 has denied and continues to deny that it committed, or threatened, or attempted to commit any
23 wrongful act or violation of law or duty that was alleged or could have been alleged in this Action.
24 Defendant denies that it breached any contract with Plaintiff or the Settlement Class as a result of
25 its transition to online education during the Winter and/or Spring 2020 Quarters. Defendant has
26 maintained that it acted properly and reasonably in accord with all applicable laws, rules,
27 regulations, policies, and ordinances to protect the health and safety of its students, faculty, and

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1 staff, and that it did not violate any contractual obligation owed to the Plaintiff or the Settlement
2 Class, particularly given the unprecedented circumstances created by the COVID-19 pandemic.
3 Nevertheless, the Parties reached the Settlement to avoid the uncertainty and risks inherent in any
4 litigation and to avoid the expense of further legal fees and costs in litigation.

5 On September 16, 2020, Plaintiff filed his Class Action Complaint, and, on December 7,
6 2020, he filed his First Amended Complaint. In response, UW moved to dismiss. The Parties
7 briefed the motion, and Judge Judith Ramseyer conducted oral argument on March 17, 2021. That
8 same day Judge Ramseyer granted in part and denied in part UW's Motion to Dismiss and
9 permitted Plaintiff to pursue his Breach of Contract, Breach of Implied Contract, and Unjust
10 Enrichment claims. UW answered the First Amended Complaint on April 21, 2021. Thereafter,
11 the Parties conducted extensive discovery,

12 Plaintiff propounded multiple sets of written discovery upon Defendant, including requests
13 for admission, requests for production, and interrogatories. Decl. of Steve W. Berman ("Berman
14 Decl."), at ¶ 6; Decl. (Eddie) Jae K. Kim ("Kim Decl."), at ¶ 6. In response to the requests for
15 production, Defendant produced 47,305 documents totaling 180,167 pages. *Id.* Defendant's
16 production also included significant amounts of Class Members' data. *Id.* Plaintiff took the
17 deposition of ten (10) fact witnesses who were employees of Defendant, including high ranking
18 officials. *Id.* Additionally, Plaintiff took the depositions of Defendant's expert witnesses: Dr.
19 Turner and Mr. Hansen (twice). *Id.* On the other side, Defendant also propounded two (2) sets of
20 written discovery on Plaintiff, including requests for admission, requests for production, and
21 interrogatories. *Id.*, at ¶ 7. In response to Defendant's requests for production, Plaintiff produced
22 95 documents totaling 1,602 pages. *Id.* Additionally, Defendant took the depositions of Plaintiff
23 and his expert (twice). *Id.* Defendant's experts collectively produced three reports. *Id.*, at ¶ 6.
24 Throughout the discovery process, Plaintiff engaged Defendant in meet-and-confers to resolve
25 discovery disputes without the Court's intervention. *Id.*, at ¶ 8.

26 After a substantial amount of discovery was completed, Plaintiff moved for certification of
27 the Class on or about November 23, 2022. On June 28, 2023, once briefing was complete, the

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1 Court granted Plaintiff's motion. The Court appointed Plaintiff Barry as Class Representative and
2 Hagens Berman Sobol Shapiro LLP and Lynch Carpenter, LLP as Class Counsel. Notice issued to
3 the certified Class members under CR 23(d)(2). On January 31, 2024, Defendant filed an Amended
4 Answer to add an additional affirmative defense. Nearly a year later, on June 20, 2024, the Parties
5 filed cross-motions for summary judgment, and Defendant moved to exclude Plaintiff's expert.
6 Plaintiff aggressively defended against Defendant's motion to exclude Plaintiff's expert and
7 Defendant's motion for summary judgment. Ultimately, Plaintiff prevailed against Defendant's
8 efforts to exclude his expert. Plaintiff also prevailed on 4 out of 9 affirmative defenses for which
9 he sought summary judgment and was able to defeat Defendant's motion for summary judgment
10 on his breach of implied contract claim. Meanwhile, Defendant prevailed on the remaining
11 affirmative defenses and summary judgment was entered in favor of Defendant on Plaintiff's
12 claims for unjust enrichment and breach of an express contract, after Defendant moved for
13 reconsideration on the Court's summary judgment order.

14 The Parties then began preparing for trial, which was set for January 27, 2025. Plaintiff
15 conferred with Defendant on a pre-trial schedule, completed the Court's Pre-Trial Conference
16 Order, exchanged witness and exhibit lists with Defendant, submitted time estimates for trial, filed
17 a joint motion in limine, filed his own motions in limine, filed an ER 904 notice, prepared trial
18 subpoenas, began his proposed jury instructions, exchanged juror questionnaire questions with
19 Defendant, and began working with Defendant on stipulated facts. *Id.*, at ¶ 12.

20 Defendant filed a motion for reconsideration of the Court's order on summary judgment
21 while the Parties prepared for trial. Specifically, Defendant sought reconsideration of the Court's
22 order that Plaintiff's claims as to the Spring 2020 quarter were not barred by the Voluntary
23 Payment Doctrine. *Id.* at ¶ 13. The Court granted Defendant's motion for reconsideration and
24 dismissed Plaintiff's claims as to the Spring 2020 quarter. *Id.*

25 At various points, the Parties discussed settlement without success. The Parties initially
26 had an unsuccessful mediation on November 2, 2021. *Id.*, at ¶ 15. As the trial date approached
27 along with the Court's mediation/ADR deadline, the Parties negotiated for several weeks at arm's-

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1 length with the help of mediator Chris Anderson of Kubik Mediation Group. *Id.* On January 2,
2 2025, the Parties ultimately reached agreement on the pertinent key terms. *Id.* The Parties then
3 diligently collaborated to memorialize the Settlement and notice documents. *Id.*

4 **III. ARGUMENT**

5 **A. The Requested Class Representative Service Award is Reasonable.**

6 A service award of \$7,500 is requested for Mr. Barry and is fully supported by case law.
7 Class representative service awards are “fairly typical in class actions” and “are intended to
8 compensate class representatives for work done on behalf of the class, to make up for financial or
9 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness
10 to act as a private attorney general.” *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir.
11 2009).¹ “When considering a request for an incentive payment, the court must evaluate each
12 request individually, taking into account the following factors: (1) the actions the plaintiff has
13 taken to protect the interests of the class; (2) the degree to which the class has benefitted from
14 those actions; (3) the duration of the litigation and the amount of time and effort the plaintiff
15 expended in pursuing it; and (4) the risks to the plaintiff in commencing the litigation, including
16 reasonable fears of workplace retaliation, personal difficulties, and financial risks.” *Wren v. RGIS*
17 *Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at *32 (N.D. Cal. Apr. 1, 2011),
18 *supplemented*, No. C-06-05778 JCS, 2011 WL 1838562 (N.D. Cal. May 13, 2011).

19 Here, all relevant factors favor granting Plaintiff the requested service award. First,
20 Plaintiff has taken significant actions to protect the interest of the Class. For example, Plaintiff
21 reviewed and approved the Complaint; searched for and produced documents; provided
22 information to respond to discovery and verified the responses; sat for his deposition, which was
23 an entire day; provided input for class-wide settlement discussions; and was available to prepare
24 for and testify at trial. Decl. of Alexander Barry, at ¶ 4. Plaintiff dedicated significant time to
25

26 ¹ *Schwendeman v. USAA Cas. Ins. Co.*, 116 Wash. App. 9, 19, 65 P.3d 1, 6 (2003) (“Because
27 CR 23 is identical to its federal counterpart, Fed. R. Civ. P. 23, federal cases interpreting the
analogous federal provision are highly persuasive.”).

1 representing the Class and achieving this settlement. *Id.*, at ¶ 5.

2 Second, the Class has significantly benefited from Plaintiff’s actions. Plaintiff was able to
3 certify the Class’s claims, defeat various defenses asserted by UW, and ultimately achieved a
4 substantial settlement of \$4,000,000.00 in exchange for a release. Third, this action has involved
5 continuous litigation for five (5) years. Finally, Plaintiff accepted certain risks as part of bringing
6 this litigation. For instance, he risked unwanted public attention and the possibility of being
7 unfairly denied acceptance into other universities’ programs if he sought to further enhance his
8 educational experience.

9 Courts routinely approve service awards in the range of Plaintiff’s requested award. *See*
10 *e.g.*, *Brewer v. Molina Healthcare, Inc.*, No. 1:16-CV-09523, 2018 WL 2966956, at *3 (N.D. Ill.
11 June 12, 2018) (granting \$7,500 service award); *Brown v. Hain Celestial Grp., Inc.*, No. 3:11-CV-
12 03082-LB, 2016 WL 631880, at *11 (N.D. Cal. Feb. 17, 2016) (same); *George v. Acad. Mortg.*
13 *Corp. (UT)*, 369 F. Supp. 3d 1356, 1374 (N.D. Ga. 2019) (approving \$7,500 service award and
14 finding that the class representative “expended substantial time and effort in representing the
15 Settlement Class”); *Custom LED, LLC v. eBay, Inc.*, No. 12-CV-00350-JST, 2014 WL 2916871,
16 at *10 (N.D. Cal. June 24, 2014) (same); *Hatmaker v. PJ Ohio, LLC*, No. 3:17-CV-146, 2021 WL
17 8013824, at *6 (S.D. Ohio Nov. 18, 2021) (granting incentive award of \$10,000); *Austin v.*
18 *Foodliner, Inc.*, No. 16-CV-07185-HSG, 2019 WL 2077851, at *8 (N.D. Cal. May 10, 2019)
19 (same).

20 Therefore, Plaintiff respectfully requests that the Court approve the requested service
21 award of \$7,500.

22 **B. The Requested Attorneys’ Fees are Reasonable.**

23 Class Counsel seeks attorneys’ fees of \$1,200,000, which is 30% of the settlement fund.
24 This request is fully supported by case law.

25 The trial court is given broad discretion in determining whether a requested attorneys’ fee
26 award is reasonable. *Schmidt v. Cornerstone Invs., Inc.*, 115 Wash. 2d 148, 169, 795 P.2d 1143,
27 1153 (1990). “[T]he percentage of recovery approach is used in calculating fees under the common

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1 fund doctrine.” *Bowles v. Washington Dep’t of Ret. Sys.*, 121 Wash. 2d 52, 72, 847 P.2d 440, 450
2 (1993). As the Washington Supreme Court has recognized, “[i]n common fund cases, the size of
3 the recovery constitutes a suitable measure of the attorneys’ performance.” *Bowles*, 121 Wash..2d
4 at 72. Public policy supports this approach: “When attorney fees are available to prevailing class
5 action plaintiffs, plaintiffs will have less difficulty obtaining counsel and greater access to the
6 judicial system. Little good comes from a system where justice is available only to those who can
7 afford its price.” *Id.* at 71.

8 Under the percentage of recovery approach, “the size of the recovery constitutes a suitable
9 measure of the attorney’s performance. While 25 percent of the recovery obtained is the
10 ‘benchmark’ award in common fund cases, the range may be from 20 to 30 percent.” *Lyzanchuk*
11 *v. Yakima Ranches Owners Ass’n, Phase II, Inc.*, 73 Wash. App. 1, 9, 866 P.2d 695, 699–700
12 (1994) (internal citations omitted). Here, Class Counsel’s requested attorneys’ fee award of
13 \$1,200,000, which is 30% of the settlement fund is a reasonable request under the percentage-of-
14 recovery approach and is well in line with percentage fee awards in other class actions. *See, e.g.*,
15 *Storti v. University of Washington*, King County Superior Court No. 04-2-16973-9 SEA (May 12,
16 2006 Order at ¶ 14) (awarding 30% of common fund); *Mader v. Health Care Authority*, King
17 County Superior Court No. 98-2-30850-8 SEA (May 14, 2004 Order at ¶ 25) (awarding
18 approximately 32.7% of cash settlement).

19 In addition, “[t]he benchmark percentage should be adjusted, or replaced by a lodestar
20 calculation, when special circumstances indicate that the percentage recovery would be either too
21 small or too large in light of the hours devoted to the case or other relevant factors.” *Six (6) Mexican*
22 *Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *see Bowles*, 121 Wash.
23 2d at 73 *quoting Arizona Citrus Growers*, 904 F.2d at 1311 (“Under special circumstances, this
24 figure can be adjusted upward or downward, or can be replaced with a lodestar calculation.”).
25 “[T]he Ninth Circuit identified a number of other considerations in awarding attorney fees under
26 the common fund doctrine including the results achieved, risks taken, duration of the case, and the
27 degree to which the attorney had to forego other work.” *City of Seattle v. Okeson*, 137 Wash. App.

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1 1051 (2007); *see Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (The
2 relevant factors include: “(1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity,
3 and likely duration of further litigation; (3) the risk of maintaining class action status throughout
4 the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage
5 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
6 participant; and (8) the reaction of the class members to the proposed settlement.”). Finally, “a
7 court may cross-check its percentage-of-recovery figure against a lodestar calculation.” *In re*
8 *Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015).

9 Here, all relevant factors support approval of Class Counsel’s request for attorneys’ fees.
10 First, while Plaintiff firmly believed in his ability to prevail at trial, there were significant issues
11 affecting the strength of his case. For example, the Court struck down his claims as to the Spring
12 2020 quarter which limited the damage period to ten (10) days. Kim Decl., at ¶ 14. However,
13 Plaintiff did prevail, in part, on his motion for summary judgment against Defendant. Despite his
14 success on the motion for summary judgment, opposing Defendant’s motion to exclude his expert,
15 and motion for class certification, there was a real possibility that Defendant’s impossibility
16 affirmative defense would prevail at trial. Therefore, this factor favors granting the requested
17 attorneys’ fee award.

18 Second, Plaintiff’s and the Class’s claims involve the novel issue of *pro rata* refunds for
19 in-person educational services that were transitioned to remote-only services in response to a
20 global pandemic. To Class Counsel’s knowledge, no other matter involving similar claims has
21 been resolved by trial. *Id.*, at ¶ 26. This poses a significant risk were Plaintiff’s case to continue
22 through trial. Additionally, litigation costs were substantial to this point (*see infra*) and were only
23 poised to increase should settlement have not been reached as the Parties were on the eve of trial.

24 Third, while Plaintiff does not believe that the Class could have been decertified, Defendant
25 implied that it may seek decertification before trial on individualized issues of voluntary payment.

26 Fourth, Class Counsel completed significant discovery, including serving multiple sets of
27 written discovery, responding to multiple sets of written discovery, taking the deposition of ten

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1 (10) fact witnesses, taking three (3) expert depositions, defending Plaintiff's depositions,
2 defending Plaintiff's expert's deposition twice, and reviewing tens of thousands of documents, and
3 were on the eve of trial before reaching the settlement. *Id.*, at ¶¶ 6-7.

4 Fifth, on the eve of trial, the Parties were able to reach an exceptional settlement consisting
5 of a \$4 million cash fund in exchange for releasing Plaintiff's and the Class's claims relating to
6 this lawsuit.

7 Sixth, this litigation was particularly difficult given the significant resources of Defendant
8 as a government entity.

9 Accordingly, all factors favor awarding the requested attorneys' fees.

10 Further, a cross-check of the percentage-of-recovery figure shows that the appropriate
11 percentage is 30% of the settlement fund. "A trial court determines a reasonable attorney fee award
12 [using the lodestar method] by multiplying the hours reasonably expended in the litigation by a
13 reasonable rate of compensation." *Newport Yacht Basin Ass'n of Condo. Owners v. Supreme Nw.,*
14 *Inc.*, 168 Wash. App. 86, 103, 285 P.3d 70, 80 (2012). In this instance, Class Counsel's lodestar is
15 \$3,665,396. Berman Decl. at ¶ 18, Ex. A; Kim Decl., at ¶ 17, Ex. A; Ciolko Decl., at ¶ 18.
16 Therefore, Class Counsel's requested percentage-of-the-fund in attorneys' fees is actually far less
17 than their lodestar, such that a negative multiplier of 3.27 would need to be applied.

18 Therefore, Plaintiff's requested attorneys' fees are reasonable, and Plaintiff respectfully
19 requests that the Court approve the requested attorneys' fees of \$1,200,000.

20 **C. Class Counsel's Requested Costs are Reasonable and were Necessary.**

21 Class Counsel requests \$355,015.69 in costs. "Litigation costs are recoverable in a class
22 action settlement." *Schmitt v. Kaiser Found. Health Plan of Washington*, No. 2:17-CV-1611-RSL,
23 2024 WL 1676754, at *5 (W.D. Wash. Apr. 18, 2024). "An attorney is entitled to 'recover as part
24 of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a
25 fee paying client.'" *Zamora Jordan v. Nationstar Mortg., LLC*, No. 2:14-CV-0175-TOR, 2019 WL
26 1966112, at *6 (E.D. Wash. May 2, 2019) quoting *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.
27 1994).

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1 Here, Class Counsel incurred \$355,015.69 in costs. Berman Decl. at ¶ 19, Ex. B; Kim
2 Decl., at ¶ 29; Ciolko Decl., at ¶ 19. These costs are based on the following categories of expenses:
3 document review and storage costs; court costs; deposition and transcript costs; expert and
4 consultant fees; copy charges; and mediation costs. *Id.* Such costs are reasonable expenses under
5 Washington law. *See* Wash. Rev. Code Ann. § 4.84.010 (West) (litigation costs “shall be left to
6 the agreement, expressed or implied, of the parties”). Therefore, Plaintiff requests that the Court
7 award Class Counsel their litigation costs of \$355,015.69.

8 **D. The Requested Settlement Administrative Costs are Reasonable.**

9 Class Counsel requests \$104,490 in settlement administration costs be reimbursed to the
10 Settlement Administrator. The Parties agreed that “[a]ll settlement administration costs incurred
11 by the Settlement Administrator in performing its duties [...] shall be paid from the Settlement
12 Fund.” Agreement, at ¶ 5.5. Here, the Settlement Administrator (Epiq Global) incurred \$104,490
13 in settlement administration costs. Kim Decl., at ¶ 30. These costs are based on significant work
14 performed to further the settlement. For example, Epiq provided the Parties with weekly reports
15 concerning administration of the settlement and distribution of notice to the Class. *Id.* Epiq created
16 and maintained a website for the settlement, created and maintained a toll-free support number,
17 sent notices to the Class, responded to any questions that it received about the settlement, and
18 calculated payments for and ensured payments were made to Class Members. *Id.* Further, Epiq
19 validated the opt-outs. *Id.* Therefore, the requested settlement administrative costs are reasonable
20 given the substantial work Epiq performed to effectuate the settlement.

21 **IV. CONCLUSION**

22 For the foregoing reasons, Plaintiff respectfully requests that the Court grant his motion
23 and award a \$7,500 service award for Mr. Barry, \$1,200,000 in attorneys’ fees, \$355,015.69 in
24 costs to Class Counsel, and \$104,490 in costs to the Settlement Administrator.

1 Dated: May 16, 2025

Respectfully submitted,

2 By: /s/Steve W. Berman

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Additional Counsel for Plaintiff

Counsel certifies that this memorandum contains
3,179 words, in compliance with the Local Civil
Rules.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a true and correct copy of this document as well as its corresponding
3 documents was served on May 16, 2025 in the manner as indicated below:

<p>4 ORRICK, HERRINGTON & SUTCLIFFE LLP 5 Robert M. McKenna 6 rmckenna@orrick.com 7 Aaron P. Brecher 8 abrecher@orrick.com 9 401 Union Street, Suite 3300 10 Seattle, WA 98101-2668</p> <p>11 Karen G. Johnson-McKewan 12 Sarah K. Mullins 13 kjohnson-mckewan@orrick.com 14 sarahmullins@orrick.com 15 405 Howard Street 16 San Francisco, CA 94105-2669</p> <p>17 Marc R. Shapiro 18 mrshapiro@orrick.com 19 51 West 52nd Street 20 New York, NY 10019-6142</p> <p>21 Diana Szego Fassbender 22 dszego@orrick.com 23 Elizabeth Olien 24 eolien@orrick.com 25 2100 Pennsylvania Ave, NW 26 Washington, DC 20037</p> <p>27 Matthew D. LaBrie 28 mlabrie@orrick.com 29 222 Berkely Street, Suite 2000 30 Boston, MA 02116</p> <p>31 <i>Special Assistant Attorneys General</i> 32 <i>Attorneys for Defendant University of Washington</i> 33 <i>Attorneys for Defendants</i></p>	<p>X King County E-Service <input type="checkbox"/> Via Facsimile <input type="checkbox"/> E-mail <input type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Overnight Courier</p>
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34 Declared under penalty of perjury under the laws of the State of Washington.

35 */s/ Steve W. Berman*
36 _____
37 Steve W. Berman

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