

THE HONORABLE KEN SCHUBERT
Department 40
Noted for Hearing: September 24, 2021 at 11:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STEVE R. MARICAL; EMILY J. ANDERSON, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

BOEING EMPLOYEES' CREDIT UNION,

Defendant.

NO. 19-2-20417-6 KNT

**DECLARATION OF BETH E. TERRELL IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR AWARD
OF ATTORNEYS' FEES AND COSTS AND
CLASS REPRESENTATIVE SERVICE
AWARD**

I, Beth E. Terrell, declare as follows:

1. I am a member of the law firm of Terrell Marshall Law Group PLLC (Terrell Marshall), counsel of record for plaintiffs in this matter. I am admitted to practice before this Court and am a member in good standing of the bars of the states of Washington and California. I respectfully submit this declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement and Plaintiff's Motion for Award of Attorneys' Fees and Class Representative Service Award. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

DECLARATION OF BETH E. TERRELL IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR
AWARD OF ATTORNEYS' FEES AND COSTS AND CLASS REPRESENTATIVE
SERVICE AWARD - 1

Case No. 19-2-20417-6 KNT

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1 **A. The prosecution of this action.**

2 2. Plaintiffs Steve Marical and Emily Anderson filed their complaint on August 2,
3 2019, asserting a violation of the Washington Consumer Protection Act on behalf of a proposed
4 Sufficient Funds Class and claims for breach of contract and violation of the CPA on behalf of a
5 proposed Multiple NSF Class. Sub. Dkt. No. 1. Plaintiff Anderson subsequently withdrew her
6 request to represent the proposed class for personal reasons. Sub. Dkt. No. 74.

7 3. The Court granted BECU's motion to dismiss the contract claims asserted on
8 behalf of the Multiple NSF Class, but found that claims under the CPA stood independent of
9 BECU's contractual language and that those claims survived on behalf of both proposed classes.
10 Sub. Dkt. No. 27. The parties began discovery. Both parties propounded extensive
11 interrogatories and requests for production.

12 4. Following numerous conferences as to the scope of discovery, BECU moved for a
13 protective order. The Court denied in part and granted in part BECU's motion.

14 5. The parties negotiated a protocol to search for ESI using specified search terms
15 on the accounts of specified custodians. BECU produced over 51,000 pages of documents along
16 with nearly seven gigabytes of transaction data extracted from various computer databases.
17 Counsel conferred dozens of times about discovery issues and, in particular, about the scope of
18 the data productions Plaintiff needed to prove his case, and what data BECU could reasonably
19 produce.

20 6. Following document production, Plaintiff deposed four of BECU's employees and
21 executives. Both Plaintiffs Marical and Anderson were deposed. Mr. Marical's deposition lasted
22 nearly 7 ½ hours.

23 7. Plaintiff retained Arthur Olsen as an expert to analyze BECU's transactional data
24 both for Plaintiffs individually and for the proposed Classes. Mr. Olsen has extensive experience
25 dealing with computerized banking systems and, in particular, in identifying which overdraft
26 and NSF fees are being challenged under each theory a plaintiff is advancing. Working with Mr.

1 Olsen, Plaintiff's counsel analyzed BECU's transactional data systems to determine the data
2 fields that would allow analysis of its transactional data to identify which overdraft and NSF
3 fees were caused by various types of transactions, and which transactions and ensuing fees
4 resulted from the practices Plaintiff challenged.

5 8. On February 9, 2021 the parties participated in a mediation via Zoom that was
6 facilitated by experienced mediator Stewart Cogan. The parties reached an agreement shortly
7 before midnight and signed a CR-2A Agreement regarding the basic structure of the settlement.
8 Over the following months, the parties negotiated details of the settlement and of the non-
9 monetary relief the settlement includes. The parties then discussed confirmatory discovery,
10 drafted the formal settlement agreement and supporting documents, and sought bids for
11 settlement administration.

12 9. The parties finalized the Settlement Agreement on April 30, 2021. A true and
13 correct copy of the Settlement Agreement and Release is attached hereto as Exhibit 1.

14 10. Based on our collective experience, my colleagues and I believe the settlement is
15 fair, reasonable, adequate. Plaintiff and the Class face significant risk from continued litigation.
16 The Court has not yet ruled on class certification. In addition, BECU has denied liability and
17 maintains that its practices are not deceptive or unfair because BECU discloses its practices in
18 several documents it makes available to its members. Plaintiff believes that BECU's disclosures
19 were inadequate, that the account tracking tools BECU provides to its members obscure the
20 available balance and prominently feature the ledger balance, and that the mere disclosure of a
21 practice does not mean it is not unfair or deceptive under the CPA, but there is no guarantee he
22 will be able to prove his claims. Even if Plaintiff defeated a motion for summary judgment and
23 prevailed at trial, BECU would undoubtedly appeal. Given these considerations, we believe the
24 settlement is in the best interest of the Settlement Class as a whole.

25 11. Class Counsel is working with BECU's counsel and the Class Administrator to
26 determine the amounts of Settlement Class Member Payments. We expect to have more

1 information at or before the Final Approval Hearing. The amounts of the payments depend in
2 part on the Court's award of attorneys' fees and costs and approval of the requested service
3 award and Settlement Administration Costs. The \$6 million Settlement Fund represents 42% of
4 the approximately \$14 million in challenged fees.

5 **B. The sole objection to the settlement has been withdrawn.**

6 12. Settlement Class Member Jesse Lee Zesbaugh filed the only objection to the
7 Settlement. A copy of Mr. Zesbaugh's objection is attached as Exhibit 2. I spoke with Mr.
8 Zesbaugh on September 9 about his objection. I told him that he had been assessed three fees
9 during the Class Period that were all refunded. We also discussed that the Durbin Amendment
10 to Dodd Frank was not relevant to the claims in the lawsuit. Mr. Zesbaugh told me he wanted to
11 withdraw his objection since he had the information he needed. A copy of the email Mr.
12 Zesbaugh sent me after our call is attached as Exhibit 3.

13 **C.13 Terrell Marshall's lodestar**

14 13. Since the beginning of this case, Terrell Marshall has worked with no guarantee
15 of being compensated for its time and efforts. Payment of Terrell Marshall's fees has always
16 been contingent on successfully obtaining relief for the plaintiff and class members. As a result,
17 there was a substantial risk of non-payment, particularly in light of the challenges inherent in
18 this type of case. Work on this case has necessarily been to the exclusion of work on other
19 matters that likely would have generated fees. Terrell Marshall has also been denied use of the
20 fees it earned over the course of this case.

21 14. The work performed by paralegals and legal assistants was work that I or an
22 attorney would have had to otherwise perform. In the case of Jodi Nuss, the work required an
23 understanding of the facts and claims at issue in the case and was important to the
24 development of those facts and claims. Indeed, Ms. Nuss's work included extensive data
25 analysis that was instrumental to calculate damages.

1 15. The following table identifies the attorneys and staff members from Terrell
 2 Marshall who worked on this case and for whom the recovery of fees is sought. For each of the
 3 timekeepers below I have provided a description of their work on the case and stated the
 4 current hourly rate, the number of hours worked through August 17, 2021, and the total
 5 amount of fees. These time summaries are taken from contemporaneous, daily time reports
 6 prepared and maintained by Terrell Marshall attorneys and staff in the regular course of
 7 business. I have reviewed the firm’s time records and reduced and eliminated time where
 8 appropriate, including time that was administrative in nature, or where time arguably could
 9 have been more efficiently spent.

NAME AND POSITION	DESCRIPTION OF WORK PERFORMED	RATE	HOURS BILLED	TOTAL
ATTORNEYS				
Beth E. Terrell Founding Member J.D. from Univ. of California, Davis School of Law, 1995	Investigated potential claims; worked on complaint; assessed strategy and worked on multiple briefs regarding discovery, class certification, and dispositive issues; worked with experts; prepared for and attended full day mediation; negotiated settlement; worked on settlement agreement and class notices.	\$750	59.0	\$44,250.00
Toby J. Marshall Founding Member J.D. from Univ. of Wash. School of Law, 2002	Worked on initial case investigation and interviewed client; worked on complaint.	\$750	5.7	\$4,275.00
Amanda M. Steiner Member J.D. from UC Berkeley School of Law, 1997	Worked on motion for class certification and settlement approval briefing.	\$725	33.9	\$24,577.50

27 DECLARATION OF BETH E. TERRELL IN SUPPORT OF PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR AWARD OF ATTORNEYS’ FEES AND COSTS AND CLASS REPRESENTATIVE SERVICE AWARD - 5
 Case No. 19-2-20417-6 KNT

NAME AND POSITION	DESCRIPTION OF WORK PERFORMED	RATE	HOURS BILLED	TOTAL
Ari Brown Of Counsel J.D. from Seattle Univ. School of Law, 1999	Met with clients; investigated potential claims; worked on complaint; assessed strategy and worked on multiple briefs regarding discovery, class certification, and dispositive issues; argued motions; worked on discovery matters; participated in discovery conferences; worked with experts on damages model and jury survey; prepared for and attended full day mediation; worked on settlement agreement and class notices.	\$650	779.4	\$506,610.00
Blythe D. Chandler Member J.D. from Univ. of Washington School of Law, 2010	Worked on response to motion to dismiss and assisted with oral argument preparation.	\$550	10	\$5,500.00
Maria Hoisington-Bingham Former Associate J.D. from Univ. of Wash. School of Law, 2016	Worked on complaint; worked on discovery matters; briefed discovery and dispositive motions; worked on damages issues.	\$400	138.7	\$55,480.00
Ellicott Dandy Former Law Clerk J.D. from Univ. of Wash. School of Law, 2020	Conducted legal research regarding procedural and substantive issues for use in drafting complaint.	\$250	13.2	\$3,300.00
PARALEGALS/LEGAL ASSISTANTS				
Jodi Nuss Senior Paralegal 7 years legal	Managed and processed document productions; prepared exhibits and	\$295	46.7	\$13,776.50

DECLARATION OF BETH E. TERRELL IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND CLASS REPRESENTATIVE SERVICE AWARD - 6

Case No. 19-2-20417-6 KNT

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NAME AND POSITION	DESCRIPTION OF WORK PERFORMED	RATE	HOURS BILLED	TOTAL
experience	documents for filing; reviewed documents; worked on damages analysis in advance of mediation and for class notice purposes.			
Heather Brown Paralegal 18 years legal experience	Worked on document production and review.	\$225	6.6	\$1,485.00
Jessica Langsted Legal Assistant 4 years legal experience	Worked on document review.	\$225	42.1	\$9,472.50
Bradford Kinsey Former Legal Assistant 28 years legal experience	Prepared documents for filing and service; finalized and filed pleadings, discovery requests, briefs, and other documents.	\$225	42.8	\$9,630.00
Lauren Carter Legal Assistant 2 years legal experience	Worked on document review and data analysis.	\$200	12.3	\$2,460.00
TOTAL:			150.5	\$36,824.00

16. Terrell Marshall's lodestar calculations are based on reasonable hourly rates. Terrell Marshall sets its rates for attorneys and staff members based on a variety of factors, including the experience, skill and sophistication required for the types of legal services typically performed, the rates customarily charged in the markets where legal services are typically performed, and the experience, reputation and ability of the attorneys and staff members.

17. Courts around the country have approved fee requests based on Terrell Marshall's standard hourly rates at the time of the application. Some recent cases in which Terrell Marshall's rates have been approved as reasonable include:

- 1 • August 2021, in *Carrillo v. Wells Fargo Bank*, No. 2:18-cv-03095-PKC-JMW
2 (E.D.N.Y.).
- 3 • August 2021, in *Shaw v. Costco Wholesale Corp.*, No. 2:20-cv-01620-RAJ (W.D.
4 Wash.).
- 5 • July 2021, in *Burnett v. Pagliacci Pizza, Inc.*, No. 17-2-25978-1 SEA (King County).
- 6 • June 2021, in *Jammeh v. HNN Associates*, No. 2:19-cv-00620-JLR (W.D. Wash.).
- 7 • August 2020, in *Long v. First Resolution Investment Corp.*, No. 19-2-11281-6 SEA
8 (King County).

9 18. In recognition of the attorneys' fee awards that courts in this jurisdiction have
10 approved at lower hourly rates, we have also calculated Terrell Marshall's lodestar with hourly
11 rates of \$650 for Beth Terrell, Toby Marshall, and Amanda Steiner, \$600 for Ari Brown, \$550 for
12 Blythe Chandler, \$400 for Maria Hoisington-Bingham, \$250 for Ellicott Dandy, \$200 for Jodi
13 Nuss, \$175 for Heather Brown and Jessica Langstead, \$150 for Bradford Kinsey, and \$125 for
14 Lauren Carter. At those rates, Terrell Marshall's lodestar is \$621,830.

15 **D. Background and experience.**

16 19. Terrell Marshall is a law firm in Seattle, Washington, that focuses on complex
17 civil and commercial litigation with an emphasis on consumer protection, product defect, civil
18 rights, and wage and hour cases. Terrell Marshall has been appointed lead or co-lead counsel
19 representing multi-state and nationwide classes in state and federal court in Washington and
20 throughout the United States. Since its founding in 2008, the attorneys at Terrell Marshall have
21 represented scores of classes, tried class actions in state and federal court, and obtained
22 hundreds of millions of dollars in monetary relief to workers, consumers, and other individuals.

23 20. I am a founding member of Terrell Marshall. With over twenty years of
24 experience, I concentrate my practice in complex litigation, including the prosecution of
25 consumer protection, defective product, and wage and hour class actions. I have served as co-
26 lead counsel on multi-state, multi-district, and nationwide class actions, resulting in hundreds

1 of millions of dollars in settlements for consumers and workers. I also represent individual
2 employees with wage and hour, workplace exposure, and discrimination claims. I have tried
3 and won cases in state and federal courts and argued before the Washington State Court of
4 Appeals and the Washington State Supreme Court as well as several federal circuit level courts.
5 I served as the President of the Public Justice Foundation Board of Directors from July 2019 to
6 July 2020, serve on the Equal Justice Works' Board of Counselors, and am Chair of both the
7 Northwest Consumer Law Center and the Washington Employment Lawyers Association. A
8 member of the State Bar of California and the Washington State Bar Association, I Co-Chair PLI's
9 Consumer Financial Services Institute, and frequently present on a wide variety of topics,
10 including class actions, consumer protection, legal ethics, gender equity, and electronic
11 discovery.

12 21. Toby J. Marshall is a founding member of Terrell Marshall who represents clients
13 in a wide variety of class actions and other complex litigation, including wage and hour, product
14 defect, civil rights, and consumer protection cases. Mr. Marshall has served as co-lead counsel
15 in numerous class and collective actions and has tried and won individual and class cases in
16 state and federal court. He has also argued several times before the Washington Supreme
17 Court, the Washington Court of Appeals, and the Ninth Circuit Court of Appeals. In 2002, Mr.
18 Marshall received his J.D. from the University of Washington School of Law, where he served on
19 the Moot Court Honor Board and was selected to the Order of Barristers. Before forming Terrell
20 Marshall, Mr. Marshall was a member of Tousley Brain Stephens PLLC. He regularly speaks at
21 seminars on employment and class action issues. Mr. Marshall is a member of the Washington
22 Employment Lawyers Association and serves on WELA's amicus and legislative committees. He
23 also serves on the ACLU of Washington's legal committee. Mr. Marshall has been named
24 several times to the Washington Super Lawyers list.

25 22. Amanda M. Steiner became a member of Terrell Marshall in 2015. She practices
26 complex litigation, including the prosecution of consumer, defective product, wage and hour,

1 and civil rights class actions. Ms. Steiner received her J.D. from the UC Berkeley School of Law in
2 1997. Admitted in Washington, California, New York and Hawaii, she has authored briefs that
3 have resulted in numerous favorable decisions for plaintiffs in high-profile and complex
4 securities, antitrust, consumer and civil rights class action in federal and state courts
5 throughout the United States. Ms. Steiner was selected for inclusion in the annual Northern
6 California "Super Lawyers" list and was named to the Top 50 Women Lawyers of Northern
7 California. She is a Fellow of the American Bar Foundation.

8 23. Blythe H. Chandler joined Terrell Marshall in 2014 and became a member in
9 2018. She practices complex litigation with a focus on prosecution of consumer class actions.
10 Blythe has been appointed class counsel in cases challenging a wide range of unfair or
11 deceptive practices, including debt collection practices. In 2010, she received my J.D. from the
12 University of Washington School of Law with high honors, Order of the Coif. She was Chief
13 Articles Editor for the Washington Law Review. Prior to joining Terrell Marshall, Blythe served
14 as a law clerk to the Honorable Betty B. Fletcher, Senior United States Circuit Judge for the
15 Ninth Circuit Court of Appeals, and to the Honorable John C. Coughenour, Senior United States
16 District Judge for the Western District of Washington. Blythe also served as a judicial extern to
17 the Honorable Robert S. Lasnik, United States District Judge for the Western District of
18 Washington. Blythe co-authored chapters of the Consumer Protection Deskbook published by
19 the Washington State Association for Justice (WSAJ) and has spoken on topics including use of
20 experts and personal jurisdiction in class actions. She is a member of the Washington
21 Employment Lawyers Association (WELA) Amicus Committee and currently co-chairs WSJA's
22 Consumer Protection Section.

23 24. Ari Brown has been of counsel at Terrell Marshall since 2019. He graduated
24 magna cum laude from the Seattle University School of Law in 1999 and has been practicing law
25 in Washington since 1999. Before joining Terrell Marshall, Mr. Brown was a partner at the law
26 firm of Hagens Berman Sobol Shapiro, a nationally recognized firm in Seattle. He concentrates

1 his practice on civil litigation in the area of consumer protection, especially pertaining to
2 banking practices.

3 25. Maria Hoisington-Bingham was an associate with Terrell Marshall from 2016
4 through 2021. Ms. Hoisington-Bingham concentrates her practice on complex litigation,
5 including consumer and wage and hour class actions. In 2016, she received her J.D. from the
6 University of Washington School of Law, where she was the chief managing editor for the
7 Washington International Law Journal. During law school, Ms. Hoisington-Bingham served as an
8 extern to the Honorable John C. Coughenour, Senior United States District Judge for the
9 Western District of Washington, the Equal Employment Opportunity Commission, and Columbia
10 Legal Services. Before law school, Ms. Hoisington-Bingham was a Fulbright scholar in El
11 Salvador, where she researched issues of recidivism and barriers to reentry in the juvenile
12 justice system.

13 26. Examples of consumer protection class actions that Terrell Marshall is litigating
14 or has litigated to successful completion include:

- 15 a. *Diel v. Salal Credit Union*—Filed in 2019 on behalf of
16 Washington customers of a credit union that were charged
17 overdraft and NSF fees when their account balance should have
18 covered the transactions. The King County Superior Court
19 granted final approval of a \$650,000 settlement on August 28,
20 2020.
- 21 b. *Gold v. Lumber Liquidators, Inc.*—Filed in 2014 on behalf of a
22 class of consumers who purchased defective flooring. The
23 Northern District of California granted final approval of the
24 settlement, valued at up to \$30 million, on October 22, 2020.
- 25 c. *Van Fleet v. Trion Worlds, Inc.*—Filed in 2015 on behalf of a
26 nationwide class of online video game players deprived of a
27 promised discount on purchases of virtual goods and who
participated in an alleged illegal lottery. The San Mateo County
Superior Court granted final approval of a \$420,000 settlement
on June 1, 2020.

- d. *Wornicki v. BrokerPriceOpinion.com*—Filed in 2013 on behalf of a nationwide class of people who provided home valuations, known as broker price opinions, but who were not paid for the opinions as promised. The District of Colorado granted final approval of a settlement of more than \$1.5 million on September 20, 2018.
- e. *Jordan v. Nationstar Mortgage, LLC*—Filed in 2012 on behalf of Washington homeowners who were improperly locked out of their homes by their mortgage lender. The Eastern District of Washington granted final approval of a \$17 million settlement on May 2, 2019.
- f. *Lohr v. Nissan*— Filed in 2016 on behalf of Washington consumers who purchased or leased certain Nissan vehicles with a factory-installed panoramic sunroof that is allegedly defective. The case is currently pending in the Western District of Washington.
- g. *Carrillo v. Wells Fargo Bank, N.A.*—Filed in 2018 on behalf of borrowers who allege Wells Fargo charged them interest rates on residential loans that were higher than the rates disclosed in the bank’s buydown agreements and closing disclosures. The case is currently pending in the Eastern District of New York.

27. Additional information about class actions litigated by Terrell Marshall is available on our website www.terrellmarshall.com.

E. Class Counsel’s litigation expenses

28. Class Counsel have incurred out-of-pocket litigation expenses totaling \$103,375.30, primarily to cover expenses related to filing and service fees, database costs, expert fees, travel expenses, mediation fees, and transcript costs. These costs were reasonable and necessary to this litigation and the type of costs normally charged to a paying client. The following chart summarizes Class Counsel’s litigation costs:

Category of Expense	Total
PACER, similar records requests	\$12.41
Conference room rental for depositions	\$786.83

Category of Expense	Total
Courier/Process Service	\$514.47
Court Report Fee	\$200.00
Data Hosting	\$770.29
Electronic Document Production Costs	\$769.91
Expert Fees	\$78,722.50
Filing Fees	\$1,390.92
Mediation Fees	\$7,120.00
Postage	\$2,025.24
Transcripts	\$11,062.73
TOTAL	\$103,375.30

F. Service Award

29. We are requesting a service award of \$7,500 for Plaintiff Steve Marical. Mr. Marical responded to written discovery requests, produced documents, assisted in counsel’s investigation, was deposed, and participated in the mediation by telephone. I believe that a \$7,500 service award for his efforts and willingness to step forward and lead this class action is reasonable and appropriate.

G. Pleadings and orders from other cases

30. Attached as Exhibit 4 and 5 are copies of the Motion for Final Approval of Class Action Settlement and Order and Judgment Finally Approving Class Action Settlement from *Wodja v. Wash. State Emps. Credit Union*, No. 16-2-12148-4 (Pierce County Superior Court).

31. Attached as Exhibit 6 is a copy of the Order Granting Plaintiff’s Unopposed Motion for Final Approval of Class Action Settlement and Award of Attorneys’ Fees, Costs and Service Award in *Strong v. Numerica Credit Union*, No. 17-2-01406-39 (Yakima County Super. Ct. Feb. 14, 2020).

Exhibit 1

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SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

STEVE R. MARICAL, on behalf of himself and
all others similarly situated, and EMILY J.
ANDERSON, in her individual capacity

No. 19-2-20417-6 KNT

Plaintiffs,

v.

BOEING EMPLOYEES' CREDIT UNION,

Defendant.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”)¹ is made and entered into this 30th day of April, 2021, by and among (1) Plaintiff Steve R. Marical, individually and on behalf of the Settlement Class, (2) Boeing Employees’ Credit Union (collectively with Plaintiff Steve R. Marical, “Parties”), and (3) Plaintiff Emily J. Anderson, and, subject to approval as required by the Washington Civil Rules. As provided in this Agreement, Plaintiff Steve R. Marical, Class Counsel, and BECU stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Class against BECU in the action titled *Steve R. Marical et al. v. Boeing Employees’ Credit Union*, No. 19-2-20417-6 (“Action”) shall be settled and compromised on the terms and conditions contained herein.

¹ All capitalized terms have the same meanings as those given to them in Section II below.

1 **I. RECITALS**

2 1. On August 2, 2019, Plaintiffs filed a Complaint against BECU regarding its
3 practices for charging overdraft and insufficient funds (“NSF”) fees. Plaintiffs challenge BECU’s
4 practice of assessing overdraft and NSF fees based on the member’s available balance, rather than
5 the “ledger balance” which does not account for pending transactions or other holds. Second,
6 Plaintiffs challenge BECU’s practice of assessing NSF fees when a transaction is re-presented—
7 that is, presented to BECU for payment again after payment was previously declined and was the
8 basis for an NSF fee. The Complaint alleged claims for breach of contract, breach of the covenant
9 of good faith and fair dealing, violation of the Washington Consumer Protection Act (“CPA”),
10 and unjust enrichment.

11 2. On September 9, 2019, BECU moved to dismiss the Complaint. After briefing and
12 oral argument, the Court granted BECU’s motion in part by dismissing Plaintiffs’ contract related
13 claims and permitting Plaintiffs’ claims to proceed under the Washington CPA.

14 3. The Parties and Plaintiff Anderson engaged in discovery. On November 6, 2020,
15 Plaintiffs filed a motion for class certification, which BECU opposed in its response on December
16 7, 2020.

17 4. Between the filing of Plaintiffs’ motion for class certification and when BECU
18 filed its response, the Parties and Plaintiff Anderson stipulated to the withdrawal of Plaintiff
19 Anderson as a class representative. Plaintiff Anderson proceeds in this case only as a member of
20 the class.

21 5. After BECU filed its response to Plaintiffs’ motion for class certification, the
22 Parties’ counsel met and conferred about settlement. The Parties successfully mediated this case
23 on February 9, 2021, with the assistance of Mediator Stew Cogan. They agreed to the material
24 terms of settlement on that date, which they memorialized in a term sheet executed on February 9,
25 2021.

1 6. The Parties now agree to settle the Action in its entirety, without any admission of
2 liability, with respect to all Released Claims of the Releasing Parties. The Parties intend this
3 Agreement to bind the Plaintiffs, BECU, and all Settlement Class Members.

4 **NOW, THEREFORE**, in light of the foregoing, and for good and valuable consideration,
5 the receipt and sufficiency of which is mutually acknowledged, the Parties agree, subject to
6 approval by the Court, as follows:

7 **II. DEFINITIONS**

8 In addition to the terms defined at various points within this Agreement, the following
9 defined terms apply throughout this Agreement

10 7. “Account” means any checking account maintained with BECU.

11 8. “Account Holder” means any person who has or had any interest, whether legal or
12 equitable, in an Account during the Class Period.

13 9. “Action” means *Steve R. Marical et al. v. Boeing Employees’ Credit Union*, No.
14 19-2-20417-6 KNT.

15 10. “Available Balance NSF Fee” means an NSF fee charged by BECU based on
16 available balance when the account’s ledger balance met or exceeded the amount of the
17 transaction, or would have met or exceeded the amount of the transaction but for previously
18 assessed Available Balance NSF or Available Balance Overdraft Fees.

19 11. “Available Balance Overdraft Fee” means an overdraft fee charged by BECU
20 based on available balance when the account’s ledger balance met or exceeded the amount of the
21 transaction at any time between the time of the transaction and the time the transaction posted, or
22 would have met or exceeded the amount of the transaction but for previously assessed Available
23 Balance NSF, or Available Balance Overdraft Fees.

24 12. “BECU” means Boeing Employees’ Credit Union.

25 13. “Class Counsel” means

26 Beth E. Terrell
27 Ari Y. Brown

1 Toby J. Marshall
2 TERRELL MARSHALL LAW GROUP PLLC
3 936 North 34th Street, Suite 300
4 Seattle, Washington 98103

5 E. Michelle Drake
6 Joseph C. Hashmall
7 BERGER & MONTAGUE, P.C.
8 43 SE Main Street, Suite 505
9 Minneapolis, Minnesota 55414

10 Walter M. Smith
11 Steve E. Dietrich
12 SMITH & DIETRICH LAW OFFICES PLLC
13 3905 Martin Way East, Suite F
14 Olympia, Washington 98506

15 and other such counsel as are identified in Class Counsel's request for attorneys' fees and costs.

16 14. "Class Representative" means Steve R. Marical.

17 15. "Court" means the Superior Court for the State of Washington King County.

18 16. "Current Account Holder" means a Settlement Class Member who maintains his or
19 her Account as of the date that the Net Settlement Fund is distributed to Settlement Class
20 Members pursuant to this Agreement.

21 17. "Effective Date" means the 5th day after which all of the following events have
22 occurred:

23 a. The Court has entered without material change the Final Approval Order
24 and Final Judgment; and

25 b. The time for seeking rehearing or appellate or other review has expired, and
26 no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed
27 on appeal or review without material change, no other appeal or petition for rehearing or review is
pending, and the time period during which further petition for hearing, review, appeal, or
certiorari could be taken has finally expired and relief from a failure to file same is not available.

18. "Escrow Account" means the interest-bearing account to be established by the
Settlement Administrator consistent with the terms and conditions described in Section IV below.

1 19. “Final Approval” means the date that the Court enters an Order granting final
2 approval to the Settlement and determines the amount of attorneys’ fees, costs, and expenses
3 awarded to Class Counsel and the amount of any Service Award to the Class Representative. The
4 proposed Final Approval Order shall be in a form agreed upon by Class Counsel and BECU. In
5 the event that the Court issues separate orders addressing the foregoing matters, then Final
6 Approval means the date of the last of such orders.

7 20. “Final Approval Hearing” means the hearing set by the Court but no earlier than
8 60 days after the Initial Mailed Notice is sent, to determine the fairness of the Settlement and
9 whether to approve its terms.

10 21. “Final Approval Order” means the final order that the Court enters upon Final
11 Approval, which shall be substantially in the form attached as an exhibit to the Motion for Final
12 Approval. In the event that the Court issues separate Orders addressing the matters constituting
13 Final Approval, then the Final Approval Order includes all such Orders.

14 22. “Final Judgment” means the date after which entry of judgment by the Court in
15 connection with the Final Approval Order becomes final, after any appeals have ended without
16 reversal, ending the Action and resolving all claims.

17 23. “Former Account Holder” means a Settlement Class Member who no longer
18 maintains his or her Account as of the date that the Net Settlement Fund is distributed to
19 Settlement Class Members pursuant to this Agreement.

20 24. “Motion for Preliminary Approval” means the motion Class Representative Steve
21 R. Marical will file with the Court seeking an order preliminarily approving of the Settlement.

22 25. “Net Settlement Fund” means the Settlement Fund, minus Court-approved
23 attorneys’ fees, costs and expenses, any Court-approved Service Award to Class Representative,
24 and Settlement Administration Costs.

25 26. “Notice” means the notices of this class action lawsuit and proposed settlement
26 that the Class Representative will ask the Court to approve in connection with the Motion for
27 Preliminary Approval.

1 27. “Notice Program” means the methods provided for in this Agreement for giving
2 the Notice and consists of Postcard Notice, Email Notice and Long Form Notice (all defined
3 herein below), which shall be substantially in the forms as the exhibits attached to the Motion for
4 Preliminary Approval of the Settlement.

5 28. “Opt-Out Period” means the period that begins the day after the earliest date on
6 which the Notice is first mailed or emailed, and that ends 45 days later.

7 29. “Plaintiffs” means Steve R. Marical and Emily J. Anderson.

8 30. “Preliminary Approval” means the date that the Court enters, without material
9 change, an Order preliminarily approving the Settlement.

10 31. “Preliminary Approval Order” means the Court’s order on Plaintiffs’ Motion for
11 Preliminary Approval approving the Notice Program and authorizing Notice, which shall be
12 substantially in the form of the exhibits attached to the Motion for Preliminary Approval.

13 32. “Releases” means all of the releases contained in Section XIV hereof.

14 33. “Released Claims” means all claims to be released as specified in Section XIV
15 hereof.

16 34. “Released Parties” means those persons released as specified in Section XIV
17 hereof.

18 35. “Releasing Parties” means Plaintiffs and all Settlement Class Members, and each
19 of their respective heirs, assigns, beneficiaries and successors.

20 36. “Release Period” means the period from August 2, 2013, through July 1, 2020.

21 37. “Representment NSF Fees” means the second or subsequent NSF Fee charged due
22 to insufficient funds when there is a re-presented debit item, ACH, or check submitted to BECU
23 for payment.

24 38. “Service Award” means any Court ordered payment to Class Representative for
25 serving in that role, which is in addition to any payment due to him as a Settlement Class
26 Member.

1 39. “Settlement” means the settlement into which the Parties have entered to resolve
2 the Action. The terms of the Settlement are as set forth in this Agreement.

3 40. “Settlement Administration Costs” means all costs of the Settlement Administrator
4 regarding notice and settlement administration, including notices.

5 41. “Settlement Administrator” means JND Legal Administration.

6 42. “Settlement Class” means all current and former BECU consumer members who
7 are residents of the State of Washington and who, (a) between August 2, 2015, and July 1, 2020,
8 were charged one or more (1) Available Balance Overdraft or Available Balance NSF Fees, where
9 the member’s ledger balance would have been sufficient to cover the transaction, (2) Available
10 Balance Overdraft or Available Balance NSF fees, where the member’s ledger balance would
11 have been sufficient to cover the transaction but for previously incurred fees described in (1) on
12 the same day; or (b) between August 2, 2013, and July 1, 2020, were charged one or more
13 Representment NSF Fees. The start of the Settlement Class period regarding Representment NSF
14 Fees may be adjusted to August 2, 2015 based on the results of confirmatory discovery. Excluded
15 from the Settlement Class is BECU, its parents, subsidiaries, affiliates, officers and directors, all
16 Settlement Class members who make a timely election to be excluded, and all judges assigned to
17 this litigation and their immediate family members.

18 43. “Settlement Class Member” means any person included in the Settlement Class
19 who does not opt-out of the Settlement.

20 44. “Settlement Class member” means all members of the Settlement Class, regardless
21 of whether they have opted-out of the Settlement Class.

22 45. “Settlement Class Member Payment” means the cash distribution that will be made
23 from the Net Settlement Fund to each Settlement Class Member, pursuant to the allocation terms
24 of the Settlement.

25 46. “Settlement Fund” means the \$6,000,000 common cash fund for the benefit of the
26 Settlement Class that BECU is obligated to pay under the Settlement. The Settlement Fund will
27 be used to pay Settlement Class Member Payments, any award of attorneys’ fees, litigation costs

1 and expenses and Service Award to Mr. Marical ordered by the Court, and Settlement
2 Administration Costs. Except as specified in this paragraph, BECU is not required to place all or
3 any of Settlement Fund into a separate bank account and will not relinquish control of any funds
4 until payments are due, as required by the Settlement. BECU shall not be responsible for any
5 payments or obligations other than those specified in this Agreement. To the extent the Final
6 Approval Order and Final Judgment is not entered or Final Approval does not occur, BECU will
7 be entitled to a refund of any remaining amounts paid in trust to the Settlement including but not
8 limited to costs of providing Notice.

9 47. "Settlement Website" means the website that the Settlement Administrator will use
10 as a means for Settlement Class members to obtain notice of and information about the
11 Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice,
12 the Preliminary Approval Order approving this Settlement, and such other documents as the
13 Parties agree to post or that the Court orders posted on the website. These documents shall
14 remain on the Settlement Website at least until Final Approval. The URL of the Settlement
15 Website shall be www.NSFsettlement.com.

16 **III. CERTIFICATION OF THE SETTLEMENT CLASS**

17 48. For Settlement purposes only, Plaintiffs and BECU agree to ask the Court to
18 certify the Settlement Class under Civil Rule 23.

19 **IV. SETTLEMENT CONSIDERATION AND THE ESCROW ACCOUNT**

20 49. Subject to approval by the Court, under the Settlement, the total cash consideration
21 to be provided by BECU shall be \$6,000,000 inclusive of the amount paid to Settlement Class
22 Members, any and all attorneys' fees, costs and expenses awarded to Class Counsel, any Service
23 Award to the Class Representative, and all Settlement Administration Costs. Except as otherwise
24 specified in this Agreement, BECU shall not be responsible for any other payments under this
25 Agreement. If there are no objections to the Settlement, then within 15 days after Final Approval,
26 or if there are objections to the Settlement, then within 15 days of the Effective Date, BECU shall
27 deposit into the Escrow Account \$6,000,000, minus the amount of the Settlement Class Member

1 Payments to be credited to the Accounts of Settlement Class Members who are Current Account
2 Holders.

3 50. The funds in the Escrow Account shall be deemed a “qualified settlement fund”
4 within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the
5 Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating
6 to them) arising with respect to the income earned by the Escrow Account or otherwise, including
7 any taxes or tax detriments that may be imposed upon BECU, BECU’s Counsel, Class
8 Representative, and/or Class Counsel with respect to income earned by the Escrow Account for
9 any period during which the Escrow Account does not qualify as a “qualified settlement fund” for
10 the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out
11 of the Escrow Account. BECU and BECU’s Counsel and Plaintiff and Class Counsel shall have
12 no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold
13 BECU and BECU’s Counsel and Class Representative and Class Counsel harmless for all Taxes
14 (including, without limitation, Taxes payable by reason of any such indemnification).

15 **V. NONMONETARY CONSIDERATION**

16 51. BECU will publish prominently on its website a hyperlink to a statement of
17 BECU’s overdraft and NSF policies, including the fact that overdraft and NSF fees are calculated
18 based on Available Balance rather than Ledger Balance and the examples of how Available
19 Balance is calculated.

20 52. BECU agrees to create a formal policy governing refunds of NSF and Overdraft
21 fees, by which BECU will, upon request from a BECU member in good standing, refund one NSF
22 or Overdraft fee annually. BECU will create a notification to be sent to any member receiving a
23 NSF or Overdraft refund under this policy, informing the member of the basis for the fee, and
24 offering money management resources.

25 53. In connection with the Notice Program described herein, BECU will remind class
26 members of the options for opting in or out of overdraft coverage and the Courtesy Pay for
27 Overdraft opt-in program. The notice will describe the use of available balance to determine

1 overdraft and NSF fees and describe the factors that cause an available balance to differ from a
2 ledger balance, and inform class members that they may change their enrolment in the Courtesy
3 Pay for Overdraft program by contacting BECU to opt in or out.

4 54. BECU will provide Class Counsel proposed drafts of the proposed text to be
5 included in the policies, notices, and information addressed in paragraphs 51 - 53 above no later
6 than April 6, 2021. BECU and Class Counsel will confer to seek agreement on the text of each
7 document. The text will be included with the Motion for Preliminary Approval for the Court's
8 approval.

9 55. Within three years of Settlement, BECU will implement a checking account
10 product featuring no NSF or Overdraft fees. The parties acknowledge that the account is still in
11 development phase, but will presumptively have at least the following characteristics:

- 12 a. Full use of Debit Card, ATMs, Telephone, Mobile, In Person, and Online
13 banking services.
- 14 b. No NSF fees and no Overdraft Fees will be charged on the accounts.
- 15 c. There shall be no fees for the following services:
 - 16 • Mobile and Online Banking
 - 17 • Telephone Banking
 - 18 • In person banking
 - 19 • Zelle, BillPay access
 - 20 • Debit Card with ATM network access
- 21 d. Monthly maintenance fee shall be equal to or less than \$5.00.

22
23 56. BECU acknowledges that Plaintiff's lawsuit was a catalyst for the nonmonetary
24 relief described above, along with the changes to BECU's July 2020 account agreement.

25 57. Plaintiff Marical will use his best efforts to permanently end his membership at
26 BECU by closing his accounts by December 31, 2021.

1 **VI. SETTLEMENT APPROVAL**

2 58. Upon execution of this Agreement, Class Counsel shall promptly move the Court
3 for an Order granting Preliminary Approval of this Settlement. The proposed Preliminary
4 Approval Order that will be attached to the motion shall be in the form agreed upon by Class
5 Counsel and BECU attached as Exhibit A to this Agreement. The motion for Preliminary
6 Approval shall, among other things, request that the Court: (1) approve the terms of the
7 Settlement as within the range of fair, adequate and reasonable; (2) provisionally certify the
8 Settlement Class pursuant to Civil Rule 23 for settlement purposes only; (3) approve the Notice
9 Program set forth herein and approve the form and content of the Notices of the Settlement; (4)
10 approve the procedures set forth herein below for Settlement Class members to exclude
11 themselves from the Settlement Class or to object to the Settlement; (5) stay the Action pending
12 Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date
13 mutually convenient for the Court, Class Counsel, and counsel for BECU but no earlier than 60
14 days following the Initial Mailing Deadline, at which the Court will conduct an inquiry into the
15 fairness of the Settlement, determine whether it was made in good faith, and determine whether to
16 approve the Settlement and Class Counsel's application for attorneys' fees, costs, and expenses,
17 and for a Service Award to the Class Representative.

18 **VII. DISCOVERY AND SETTLEMENT DATA**

19 59. Class Counsel and BECU already have engaged in discovery related to liability
20 and damages. For purposes of effectuating this Settlement, BECU will use its best efforts to
21 provide to Class Counsel and its expert by April 6, 2021, (or as soon thereafter as is reasonably
22 possible) data for the entirety of the Release Period sufficient for Plaintiffs' expert to determine
23 Settlement Class membership and ultimately each Settlement Class Member Payment. Because
24 Plaintiffs' expert will not have access to Settlement Class member names or complete account
25 numbers, Plaintiffs' expert will provide results to BECU, who will then create a list of Settlement
26 Class members and their electronic mail or postal addresses and provide that list to the Settlement
27 Administrator to provide Notice to the Settlement Class of the terms of the Settlement. BECU will

1 bear the expense of extracting the necessary data to make available to Class Counsel's expert for
2 analysis, while Class Counsel shall be responsible for paying Class Counsel's expert, who will
3 analyze the data provided to determine Settlement Class membership as well as the amount of each
4 Settlement Class Member's damages using a methodology to be approved by the Court. Prior to
5 seeking final approval, the parties may agree that the start of the Settlement Class period regarding
6 Representment NSF Fees may be adjusted to August 2, 2015 based on the results of confirmatory
7 discovery.

8 **VIII. SETTLEMENT ADMINISTRATOR**

9 60. Class Counsel, in consultation with BECU, has selected the Settlement
10 Administrator. The Settlement Administrator shall administer various aspects of the Settlement as
11 described below and perform such other functions as are specified for the Settlement
12 Administrator elsewhere in this Agreement, including, but not limited to, providing Mailed and
13 Email Notice to Settlement Class members and distributing the Settlement Fund as provided
14 herein. The duties of the Settlement Administrator, in addition to other responsibilities that are
15 described in the preceding paragraph and elsewhere in this Agreement, are as follows:

- 16 a. Use the name and address information for Settlement Class members
17 provided by BECU in connection with the Notice process approved by the Court, for the
18 purpose of mailing the Mailed Notice and sending the Email Notice, and later mailing
19 distribution checks to Former Account Holder Settlement Class Members, and to Current
20 Account Holder Settlement Class Members where it is not feasible or reasonable for
21 BECU to make the payment by a credit to the Settlement Class Members' Accounts;
- 22 b. Establish and maintain a Post Office box for the receipt of opt-out requests
23 and objections;
- 24 c. Establish and maintain the Settlement Website;
- 25 d. Establish and maintain an automated toll-free telephone line for Settlement
26 Class members to call with Settlement-related inquiries, and answer the frequently asked
27

1 questions of Settlement Class members who call with or otherwise communicate such
2 inquiries;

3 e. Respond to any mailed Settlement Class member inquiries;

4 f. Process all requests for exclusion from the Settlement Class;

5 g. Provide weekly reports to Class Counsel and BECU that summarize the
6 number of requests for exclusion and/or objections received that week, the total number of
7 exclusion requests and/or objections received to date, and other pertinent information;

8 h. In advance of the Final Approval Hearing, prepare an affidavit to submit to
9 the Court confirming that the Notice Program was completed, that the Notice requirements
10 have been met, describing how the Notice Program was completed, providing the names
11 of each Settlement Class member who timely and properly opted-out from the Settlement
12 Class, as well as those Settlement Class Members that timely filed objections, and other
13 information as may be necessary to allow the Parties to seek and obtain Final Approval;

14 i. Identify to BECU the amount of the Net Settlement Fund required to make
15 Settlement Class Member Payments to Current Account Holders by a credit to those
16 Settlement Class Members' Accounts, as well as the amount that shall be paid into the
17 Escrow Account;

18 j. Perform all tax-related services for the Escrow Account as provided in the
19 Agreement;

20 k. Pay invoices, expenses and costs upon approval by Class Counsel and
21 BECU, as provided in this Agreement; and

22 l. Any other Settlement-administration-related function at the instruction of
23 Class Counsel and BECU, including, but not limited to, verifying that the Settlement Fund
24 has been distributed.

25 **IX. NOTICE TO SETTLEMENT CLASS MEMBERS**

26 61. Within 14 days after Preliminary Approval of the Settlement, at the direction of
27 Class Counsel and BECU's Counsel, the Settlement Administrator shall implement the Notice

1 Program provided herein, using the forms of Notice approved by the Court in the Preliminary
2 Approval Order. The Notice shall include, among other information: a description of the material
3 terms of the Settlement; a date by which Settlement Class members may exclude themselves from,
4 or “opt-out” of, the Settlement Class; a date by which Settlement Class Members may object to the
5 Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of
6 the Settlement Website at which Settlement Class members may access this Agreement and other
7 related documents and information. Class Counsel and BECU shall insert the correct dates and
8 deadlines in the Notice before the Notice Program commences, based upon those dates and
9 deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided
10 under or as part of the Notice Program shall not bear or include the BECU logo or trademarks or
11 the return address of BECU, or otherwise be styled to appear to originate from BECU.

12 62. The Notice also shall include a procedure for Settlement Class members to opt-out
13 of the Settlement Class. A Settlement Class member may opt-out of the Settlement Class at any
14 time during the Opt-Out Period, provided the opt-out notice is postmarked no later than the last
15 day of the Opt-Out Period. Any Settlement Class member who does not timely and validly
16 request to opt-out shall be bound by the terms of this Agreement.

17 63. The Notice also shall include a procedure for Settlement Class Members to object
18 to the Settlement and/or to Class Counsel’s application for attorneys’ fees, costs and expenses
19 and/or a Service Award to the Class Representative. Objections to the Settlement, to the
20 application for fees, costs, expenses, and/or to the Service Award must be mailed to the Clerk of
21 the Court, Class Counsel, BECU’s counsel, and the Settlement Administrator. For an objection to
22 be considered by the Court, the objection must be submitted no later than the last day of the
23 Opt-Out Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to
24 have been submitted when posted if received with a postmark date indicated on the envelope if
25 mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted
26 by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on
27 the shipping date reflected on the shipping label.

- 1 64. For an objection to be considered by the Court, the objection must also set forth:
- 2 a. the name of the Action;
- 3 b. the objector's full name, address and telephone number;
- 4 c. an explanation of the basis upon which the objector claims to be a Settlement Class
- 5 Member;
- 6 d. all grounds for the objection, accompanied by any legal support for the
- 7 objection known to the objector or objector's counsel;
- 8 e. the number of times in which the objector has objected to a class action
- 9 settlement within the five years preceding the date that the objector files the objection, the
- 10 caption of each case in which the objector has made such objection, and a copy of any orders
- 11 related to or ruling upon the objector's prior objections that we issued by the trial and appellate
- 12 courts in each listed case;
- 13 f. the identity of all counsel who represent the objector, including any former or
- 14 current counsel who may be entitled to compensation for any reason related to the objection
- 15 to the Settlement or fee application;
- 16 g. a copy of any orders related to or ruling upon counsel's or the counsel's law
- 17 firm's prior objections that were issued by the trial and appellate courts in each listed case in
- 18 which the objector's counsel and/or counsel's law firm have objected to a class action
- 19 settlement within the preceding 5 years;
- 20 h. the objector's signature (an attorney's signature is not sufficient).
- 21
- 22
- 23

24 Class Counsel and/or BECU may conduct limited discovery on any objector consistent with

25 Washington Civil Rules.

26 65. Notice shall be provided to Settlement Class members in three different ways:

27 email notice to Account Holders for whom BECU has email addresses ("Email Notice"); postcard

1 notice sent by U.S. mail to Account Holders for whom BECU does not have valid email addresses
2 or from whose email addresses the Email Notice bounces back (“Postcard Notice”); and long
3 form notice, which will be written in both English and Spanish, and shall be available on the
4 Settlement Website and/or via mail upon a Settlement Class member’s request (“Long Form
5 Notice”). Email Notice and Postcard Notice shall collectively be referred to as “Mailed Notice.”
6 Not all Settlement Class members will receive all forms of notice, as detailed herein.

7 66. As detailed above in Section VII, BECU will cooperate with Class Counsel and its
8 expert to make available the necessary data to Class Counsel’s expert to determine Settlement
9 Class membership and determine each Settlement Class Member Payment. The Settlement
10 Administrator shall send out Email Notice to all Settlement Class members receiving Notice by
11 that method. For any Settlement Class Members for whom BECU does not have a valid email
12 address or from whose email addresses the Email Notice bounces back, the Settlement
13 Administrator shall run the physical addresses through the National Change of Address Database
14 and shall mail to all such Settlement Class members Postcard Notice. The initial Mailed Postcard
15 and Email Notice shall be referred to as “Initial Mailed Notice.”

16 67. The Settlement Administrator shall perform reasonable address traces for all Initial
17 Mailed Notice postcards that are returned as undeliverable. A “reasonable” tracing procedure
18 would be to run addresses of returned postcards through the Lexis/Nexis database that can be
19 utilized for such purpose. The Settlement Administrator shall promptly re-mail Postcard Notice to
20 those Settlement Class members whose new addresses were identified as of that time through
21 address traces (“Notice Re-mailing Process”). The Settlement Administrator shall also send
22 Postcard Notice to all Settlement Class members whose emails were returned as undeliverable and
23 complete such Notice pursuant to the deadlines described herein as they relate to the Notice Re-
24 mailing Process.

25 68. All costs and expenses related to the Notice Program shall be paid to the Settlement
26 Administrator from the Settlement Fund.

1 69. Within the provisions set forth in this Section VIII, further specific details of the
2 Notice Program shall be subject to the agreement of Class Counsel and BECU.

3 **X. FINAL APPROVAL ORDER AND JUDGMENT**

4 70. The Motion for Preliminary Approval of the Settlement will include a request to
5 the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs shall
6 file the Motion for Final Approval of the Settlement, and application for attorneys' fees, costs,
7 and expenses and for Service Award for the Class Representative, no later than 45 days before the
8 Final Approval Hearing. Plaintiffs will file their response to any objections and any supplemental
9 materials in support of final approval no later than 10 days before the Final Approval Hearing. At
10 the Final Approval Hearing, the Court will hear argument on the Motion for Final Approval of the
11 Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses, and for
12 the Service Award for the Class Representative. In the Court's discretion, the Court also will hear
13 argument at the Final Approval Hearing from any Settlement Class Members (or their counsel)
14 who object to the Settlement or to Class Counsel's application for attorneys' fees, costs, expenses,
15 or the Service Award application, provided the objector(s) submitted timely objections that meet
16 all of the requirements listed in the Agreement.

17 71. At or following the Final Approval Hearing, the Court will determine whether to
18 enter the Final Approval Order granting Final Approval of the Settlement and entering final
19 judgment thereon, and whether to approve Class Counsel's request for attorneys' fees, costs,
20 expenses, and a Service Award. The proposed Final Approval Order shall be in a form agreed
21 upon by Class Counsel and BECU. Such proposed Final Approval Order shall, among other
22 things:

- 23 a. Determine that the Settlement is fair, adequate, and reasonable;
- 24 b. Finally certify the Settlement Class for settlement purposes only;
- 25 c. Determine that the Notice provided satisfies due process requirements;
- 26 d. Enter judgment dismissing the Action with prejudice;

1 e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims, bar
2 and enjoin all Releasing Parties from pursuing any Released Claims against BECU or its affiliates
3 at any time, including during any appeal from the Final Approval Order, and retain jurisdiction
4 over the enforcement of the Court's injunctions;

5 f. Release BECU and the Released Parties from the Released Claims; and

6 g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this
7 Agreement, including BECU, all Settlement Class Members, and all objectors, to administer,
8 supervise, construe, and enforce this Agreement in accordance with its terms.

9 **XI. DISTRIBUTION OF NET SETTLEMENT FUND**

10 72. Within 7 days after Final Approval, the Settlement Administrator shall identify to
11 BECU the full amount of Settlement Class Member Payments, along with the amount of each
12 Settlement Class Member's Payment to be credited to Current Account Holders' Accounts, as
13 well as the remaining amount of the \$6,000,000 Settlement Fund that shall be paid by BECU into
14 the Escrow Account.

15 73. Within 15 days after Final Approval if there are no objections to the Settlement or
16 15 days after the Effective Date if there are objections or an appeal, BECU shall wire to the
17 Escrow Account the remainder of the \$6,000,000 Settlement Fund.

18 74. Within 30 days after the Effective Date, BECU shall deposit the Settlement Class
19 Member Payments into Current Account Holders' Accounts. At BECU's option, the Settlement
20 Administrator may deposit the Settlement Class Member Payments into Current Account Holders'
21 Accounts, in which case, BECU shall pay the additional cost of the Settlement Administrator
22 effectuating the deposits into Current Account Holders' Accounts.

23 75. Within 30 days after the Effective Date, the Settlement Administrator shall pay
24 from the Escrow Account Former Account Holders their Settlement Class Member Payments by
25 check.

1 **XII. CALCULATION OF AUTOMATIC DISTRIBUTIONS FROM SETTLEMENT**
2 **FUND**

3 76. The calculation and implementation of allocations of the Settlement Fund
4 contemplated by this section shall be done by Class Counsel and its expert for the purpose of
5 compensating Settlement Class Members. BECU shall have the right but not the obligation to
6 review and challenge the accuracy of this calculation. The methodology provided for herein will
7 be applied to the data as consistently, sensibly, and conscientiously as reasonably possible,
8 recognizing and taking into consideration the nature and completeness of the data and the purpose
9 of the computations. Consistent with its contractual, statutory, and regulatory obligations to
10 maintain credit union security and protect its members' private financial information, BECU shall
11 make available such additional data and information as may reasonably be needed by Class
12 Counsel and its expert to confirm and/or effectuate the calculations and allocations contemplated
13 by this Agreement. Class Counsel shall confer with BECU's counsel concerning any such
14 additional data and information. All such data and information produced by BECU for the
15 purpose of confirming and/or effectuating the calculations and allocations contemplated by this
16 Agreement shall be returned to BECU's counsel or destroyed.

17 77. The amount of the Settlement Class Member Payment from the Settlement Fund to
18 which each Settlement Class Member is entitled for the Release Period (subject to the availability of
19 data) is to be determined using the following methodology or such other methodology as would
20 have an equivalent result:

21 a. All Accounts held by Settlement Class Members will be identified for
22 which BECU assessed Representment NSF Fees or Available Balance Overdraft or
23 Available Balance NSF Fees during the Release Period.

24 b. Representment NSF Fees and Available Balance Overdraft or Available
25 Balance NSF Fees will be totaled for each Account ("Relevant Fees").

26 c. Relevant Fees that were previously refunded or that remained uncollected
27 from each account will be subtracted from the total for each respective account ("Net

1 Relevant Fees”). Relevant Fees shall be considered uncollected only in cases in which the
2 fees had been assessed against the account thereby causing or increasing a negative
3 balance, the account was subsequently closed without any subsequent non-fraudulent
4 deposits that equaled or exceeded the amount of the fees being made to the account prior
5 to closure, and no successful efforts had been made to collect the negative balance that
6 existed at the time the account was closed.

7 d. The Net Settlement Fund will be allocated pro rata to the Settlement Class
8 Members based on their Net Relevant Fees.

9 78. The Settlement Administrator shall divide the total amount of the Net Settlement
10 Fund by the total amount of all Settlement Class Members’ Net Relevant Fees. This calculation
11 shall yield the “Pro Rata Percentage.”

12 79. Each Settlement Class Member’s Pro Rata Percentage will be multiplied by the
13 amount of the Net Settlement Fund, which yields a Pre-Adjustment Payment Amount for each
14 Settlement Class Member.

15 80. If any Settlement Class Member’s Pre-Adjustment Amount is less than \$5.00, the
16 Settlement Class Member’s Payment amount shall be adjusted to \$5.00. The remainder of the Net
17 Settlement Fund shall then be apportioned pro rata to all other Settlement Class Members by
18 multiplying those Settlement Class Members’ Pro Rata Percentage by the remaining amount of
19 the Net Settlement Fund.

20 81. The Parties agree the foregoing allocation formula is exclusively for purposes of
21 computing, in a reasonable and efficient fashion, the amount of any Settlement Class Member
22 Payment each Settlement Class Member should receive from the Net Settlement Fund. The fact
23 that this allocation formula will be used is not intended (and shall not be used) for any other
24 purpose or objective whatsoever.

25 82. Settlement Class Member Payments to Current Account Holders shall be made
26 first by depositing the Class Member’s Payment amount into those Account Holders’ Accounts,
27 or by mailing a standard size check if it is not feasible or reasonable to make the payment by a

1 direct deposit. BECU shall notify Current Account Holders of any such deposit on the Account
2 statement on which the credit is reflected by stating “Marical class settlement” or something
3 similar. BECU will bear any costs associated with implementing the Account deposits and
4 notification discussed in this paragraph.

5 83. Settlement Class Member Payments to Former Account Holders shall be made by
6 mailing a standard size check. Such mailing shall be accomplished by the Settlement
7 Administrator.

8 84. The amount of the Net Settlement Fund attributable to uncashed or returned checks
9 sent by the Settlement Administrator shall be held by the Settlement Administrator one year from
10 the date that the first distribution check is mailed by the Settlement Administrator. During this
11 time the Settlement Administrator shall make a reasonable effort to locate intended recipients of
12 settlement funds whose checks were returned (such as by running addresses of returned checks
13 through the Lexis/Nexis database that can be utilized for such purpose) to effectuate delivery of
14 such checks. The Settlement Administrator shall make up to three such additional attempt to
15 identify updated addresses and re-mail or re-issue a distribution check to those for whom an
16 updated address was obtained.

17 **XIII. DISPOSITION OF RESIDUAL FUNDS**

18 85. Any funds not claimed through the process of distribution of the Settlement Fund
19 shall be distributed 50% to Legal Foundation of Washington, and 50% to Financial Beginnings, a
20 501(c)(3) non-profit organization. No further distribution of residual funds or *cy pres* payment
21 will be made after the distribution as set forth in paragraph 83-85.

22 **XIV. RELEASE**

23 86. As of the Effective Date, Plaintiffs and each Settlement Class Member, each on
24 behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries and
25 successors (“Releasing Parties”), shall automatically be deemed to have fully and irrevocably
26 released and forever discharged BECU and each of its present and former parents, subsidiaries,
27 divisions, affiliates, predecessors, successors and assigns, and the present and former directors,

1 officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives,
2 partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers,
3 predecessors, successors and assigns of each of them (“Released Parties”), of and from any and all
4 liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses
5 and remedies, whether known or unknown, existing or potential, suspected or unsuspected,
6 liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory,
7 that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters
8 that were or could have been alleged in the Action (“Released Claims”) relating to the assessment
9 of Representment NSF Fees and Available Balance Overdraft or Available Balance NSF Fees prior
10 to July 1, 2020.

11 87. Each Settlement Class Member is barred and permanently enjoined from bringing
12 on behalf of themselves, or through any person purporting to act on their behalf or purporting to
13 assert a claim under or through them, any of the Released Claims against BECU in any forum,
14 action, or proceeding of any kind.

15 88. Plaintiffs or any Settlement Class Member may hereafter discover facts other than
16 or different from those that he/she knows or believes to be true with respect to the subject matter
17 of the claims released herein, or the law applicable to such claims may change. Nonetheless, each
18 of those individuals expressly agrees that, as of the Effective Date, he/she shall have
19 automatically and irrevocably waived and fully, finally, and forever settled and released any
20 known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated,
21 contingent or non-contingent claims with respect to all of the matters described in or subsumed by
22 herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by
23 this Agreement, including by the release herein and that all of their claims in the Action shall be
24 dismissed with prejudice and released, whether or not such claims are concealed or hidden;
25 without regard to subsequent discovery of different or additional facts and subsequent changes in
26 the law; and even if he/she never receives actual notice of the Settlement and/or never receives a
27 distribution of funds or credits from the Settlement.

1 89. Nothing in this Agreement shall operate or be construed to release any claims or
2 rights that BECU has to recover any past, present or future amounts that may be owed by
3 Plaintiffs or by any Settlement Class Member on his/her accounts, loans or any other debts with
4 BECU, pursuant to the terms and conditions of such accounts, loans, or any other debts.
5 Likewise, nothing in this Agreement shall operate or be construed to release any defenses or
6 rights of set-off that Plaintiffs or any Settlement Class Member has, other than with respect to the
7 claims expressly Released by this Agreement, in the event BECU and/or its assigns seeks to
8 recover any past, present or future amounts that may be owed by Plaintiffs or by any Settlement
9 Class Member on his/her accounts, loans or any other debts with BECU, pursuant to the terms and
10 conditions of such accounts, loans, or any other debts.

11 **XV. PAYMENT OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

12 90. Class Counsel shall apply to the Court for the Fee Award of up to 30% of the
13 Settlement Fund of \$6,000,000, plus out-of-pocket costs and expenses incurred by Class Counsel
14 in this litigation. Nothing in this Agreement requires BECU or its counsel to take any position
15 with respect to any motion or request made as contemplated by this Section. If the Fee Award
16 entered by the Court is less than that sought by Class Counsel, the difference will remain part of
17 the Settlement Fund. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be
18 payable solely out of the Settlement Fund. The Parties agree that the Court's failure to approve,
19 in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from
20 becoming effective, nor shall it be grounds for termination.

21 91. If there are no objections to the Settlement, all Court-approved attorneys' fees, cost
22 and expenses shall be payable from the Escrow Account by the Settlement Administrator to Class
23 Counsel within 15 days of entry of a Final Approval Order. If there are objections to the
24 Settlement, or any appeals as to the propriety of the Settlement, any Court-awarded attorneys'
25 fees, costs and expenses, shall be payable from the Escrow Account by the Settlement
26 Administrator within 30 days of the Effective Date.

1 92. The payment of attorneys' fees, costs, and expenses of Class Counsel shall be
2 made as designated by Class Counsel. After the fees, costs and expenses have been paid, Class
3 Counsel shall be solely responsible for distributing each Class Counsel's firm's allocated share of
4 such fees, costs, and expenses to that firm. BECU shall have no responsibility for any allocation,
5 and no liability whatsoever to any person or entity claiming any share of the funds to be
6 distributed for payment of attorneys' fees, costs, or expenses or any other payments from the
7 Settlement Fund not specifically described herein.

8 93. Class Counsel will also seek a service award of up to \$7,500 for Plaintiff Marical.
9 Nothing in this Agreement requires BECU or its counsel to take any position with respect to any
10 motion or request made as contemplated by this Section. If the Service Award entered by the
11 Court is less than that sought by Class Counsel, the difference will remain part of the Settlement
12 Fund. The Service Award is to be paid by the Settlement Administrator from the Escrow Account
13 within 30 days of the Effective Date. The Service Award shall be paid to the Class
14 Representative in addition to the Settlement Class Member Payment. The Parties agree that the
15 Court's failure to approve the Service Award, in whole or in part, shall not prevent the Settlement
16 Agreement from becoming effective, nor shall it be grounds for termination.

17 **XVI. TERMINATION OF SETTLEMENT**

18 94. This Settlement may be terminated by either Class Counsel or BECU by serving on
19 counsel for the opposing Party and filing with the Court a written notice of termination within 15
20 days (or such longer time as may be agreed in writing between Class Counsel and BECU) after
21 any of the following occurrences:

- 22 a. Class Counsel and BECU agree to termination;
- 23 b. the Court rejects, materially modifies, materially amends or changes, or
24 declines to preliminarily or finally approve the Settlement;
- 25 c. an appellate court vacates or reverses the Final Approval Order, and the
26 Settlement is not reinstated and finally approved without material change by the Court on
27 remand within 360 days after such reversal;

- 1 d. any court incorporates into, or deletes or strikes from, or modifies, amends,
2 or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement terms
3 relating to the class period, the claims released, or the consideration paid in a way that Class
4 Counsel or BECU seeking to terminate the Settlement reasonably considers material;
- 5 e. the Effective Date does not occur; or
- 6 f. any other ground for termination provided for elsewhere in this Agreement.

7 95. BECU also shall have the right to terminate the Settlement by serving on Class
8 Counsel and filing with the Court a notice of termination within 14 days after its receipt from the
9 Settlement Administrator of any report indicating that the number of Settlement Class Members
10 who timely request exclusion from the Settlement Class equals or exceeds 7%.

11 **XVII. EFFECT OF A TERMINATION**

12 96. The grounds upon which this Agreement may be terminated are set forth herein
13 above. In the event of a termination, this Agreement shall be considered null and void; all of
14 Plaintiffs', Class Counsel's, and BECU's obligations under the Settlement shall cease to be of any
15 force and effect; any amounts in the Escrow Account shall be returned to BECU; and the Parties
16 shall return to the status *quo ante* in the Action as if the Parties had not entered into this
17 Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-
18 Settlement rights, claims, and defenses will be retained and preserved.

19 97. In the event of termination, BECU shall have no right to seek reimbursement from
20 Plaintiffs, Class Counsel, or the Settlement Administrator for Settlement Administration Costs paid
21 by BECU.

22 98. The Settlement shall become effective on the Effective Date unless earlier
23 terminated in accordance with the provisions hereof.

24 99. Certification of the Settlement Class shall have no bearing in deciding whether the
25 claims asserted in the Action are or were appropriate for class treatment in the absence of
26 settlement. If this Agreement terminates or is nullified, the provisional class certification shall be
27 vacated by its terms, and the Action shall revert to the status that existed before execution of this

1 Settlement Agreement. Thereafter, Plaintiffs shall be free to pursue any claims available to them,
2 and BECU shall be free to assert any defenses available to it, including but not limited to, denying
3 the suitability of this case for class treatment. Nothing in this Agreement shall be argued or
4 deemed to estop any Party from the assertion of such claims and defenses.

5 100. In the event the Settlement is terminated in accordance with the provisions of this
6 Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be
7 discoverable or offered into evidence or used in the Action or any other action or proceeding for
8 any purpose. In such event, all Parties to the Action shall stand in the same position as if this
9 Agreement had not been negotiated, made, or filed with the Court.

10 **XVIII. NO ADMISSION OF LIABILITY**

11 101. BECU continues to dispute its liability for the claims alleged in the Action, and
12 maintains that its NSF Fee and overdraft fee assessment practices and representations concerning
13 those practices complied, at all times, with applicable laws and regulations and the terms of the
14 account agreements with its members. BECU does not admit any liability or wrongdoing of any
15 kind, by this Agreement or otherwise. BECU has determined that entering into this Agreement is
16 in the best interests of its membership and has agreed to enter into this Agreement to avoid the
17 further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be
18 completely free of any further claims that were asserted or could possibly have been asserted in
19 the Action.

20 102. Class Counsel believe that the claims asserted in the Action have merit, and they
21 have examined and considered the benefits to be obtained under the proposed Settlement set forth in
22 this Agreement, the risks associated with the continued prosecution of this complex, costly and
23 time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel
24 fully investigated the facts and law relevant to the merits of the claims, conducted significant
25 discovery, and conducted independent investigation of the challenged practices. Class Counsel
26 concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and
27 in the best interests of the Settlement Class members.

1 103. The Parties understand and acknowledge that this Agreement constitutes a
2 compromise and settlement of disputed claims. No action taken by the Parties either previously
3 or in connection with the negotiations or proceedings connected with this Agreement shall be
4 deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore
5 made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of
6 any kind whatsoever.

7 104. Neither the Settlement, nor any act performed or document executed pursuant to or in
8 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or
9 evidence of, the validity of any claim made by the Plaintiffs or Settlement Class members, or of any
10 wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as,
11 an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or
12 in any proceeding in any court, administrative agency, or other tribunal.

13 105. In addition to any other defenses BECU may have at law, in equity, or otherwise,
14 to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to,
15 and may be used as the basis for an injunction against, any action, suit or other proceeding that
16 may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained
17 herein.

18 **XIX. NO PRESS RELEASE OR PUBLICITY**

19 106. Neither Party shall issue any press release or shall otherwise initiate press coverage
20 of the Settlement with the exception of language consistent with that contained in the Notices,
21 which Class Counsel may use on their websites or on firm resumes or declarations filed with the
22 Court. Neither Party shall make statements of any kind regarding the Settlement to any third
23 party, other than parties required to administer the Settlement, prior to filing a motion for
24 Preliminary Approval with the Court. The Parties may make public statements as necessary to
25 obtain Preliminary or Final Approval of the Settlement and Class Counsel will not be prohibited
26 from communicating with any person in the Settlement Class regarding the Actions or the
27 Settlement. Each Party shall refrain from disparaging any other Party publicly or taking any

1 action designed or reasonably foreseeable to cause harm to the public perception of another Party
2 regarding any issue related to the Actions or the Settlement.

3 **XX. MISCELLANEOUS PROVISIONS**

4 107. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter
5 gender, and the singular or plural number, shall each be deemed to include the others whenever
6 the context so indicates.

7 108. Binding Effect. This Agreement shall be binding upon, and inure to the benefit
8 of, the successors and assigns of the Releasing Parties and the Released Parties

9 109. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good
10 faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do
11 all things reasonably necessary to complete and effectuate the Settlement described in this
12 Agreement.

13 110. Obligation To Meet And Confer. Before filing any motion in the Court raising a
14 dispute arising out of or related to this Agreement, the Parties shall consult with each other and
15 certify to the Court that they have consulted.

16 111. Integration. This Agreement constitutes a single, integrated written contract
17 expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants,
18 agreements, representations, or warranties of any kind whatsoever have been made by any Party
19 hereto, except as provided for herein.

20 112. No Conflict Intended. Any inconsistency between the headings used in this
21 Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

22 113. Governing Law. Except as otherwise provided herein, the Agreement shall be
23 construed in accordance with, and be governed by, the laws of the State of Washington, without
24 regard to the principles thereof regarding choice of law.

25 114. Counterparts. This Agreement may be executed in any number of counterparts,
26 each of which shall be deemed an original, but all of which together shall constitute one and the
27 same instrument, even though all Parties do not sign the same counterparts. Original signatures

1 are not required. Any signature or electronic signature submitted by facsimile or through email of
2 an Adobe PDF shall be deemed an original.

3 115. Jurisdiction. The Court shall retain jurisdiction over the implementation,
4 enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any
5 suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be
6 resolved by negotiation and agreement by counsel for the Parties. The Court shall retain
7 jurisdiction with respect to the administration, consummation, and enforcement of the Agreement.
8 The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice
9 Program and the Settlement Administrator. As part of the agreement to render services in
10 connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of
11 the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's
12 injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims
13 and from pursuing any Released Claims against BECU or its affiliates at any time, including
14 during any appeal from the Final Approval Order.

15 116. Notices. All notices to Class Counsel provided for herein, shall be sent by email
16 with a hard copy sent by overnight mail to:

17
18 Beth E. Terrell
19 Email: bterrell@terrellmarshall.com
20 Ari Y. Brown
21 Email: abrown@terrellmarshall.com
22 Toby J. Marshall
23 Email: tmarshall@terrellmarshall.com
24 TERRELL MARSHALL LAW GROUP PLLC
25 936 North 34th Street, Suite 300
26 Seattle, Washington 98103
27 Telephone: (206) 816-6603
Facsimile: (206) 319-5450
Class Counsel

E. Michelle Drake
Email: emdrake@bm.net
Joseph C. Hashmall
Email: jhashmall@bm.net

1 BERGER & MONTAGUE, P.C.
2 43 SE Main Street, Suite 505
3 Minneapolis, Minnesota 55414
4 Telephone: (612) 594-5999
5 Facsimile: (612) 584-4470
6 *Class Counsel*

7 Walter M. Smith
8 Email: walter@smithdietrich.com
9 Steve E. Dietrich
10 Email: steved@smithdietrich.com
11 SMITH & DIETRICH LAW OFFICES PLLC
12 3905 Martin Way East, Suite F
13 Olympia, Washington 98506
14 Telephone: (360) 915-6952
15 *Class Counsel*

16 Fred B. Burnside
17 Tim Cunningham
18 MaryAnn Almeida
19 DAVIS WRIGHT TREMAINE LLP
20 920 Fifth Avenue, Suite 3300 Seattle, WA 98104-1610
21 Telephone: 206-757-8016
22 Fax: 206-757-7016
23 E-mail: fredburnside@dwt.com
24 E-mail: timcunningham@dwt.com
25 E-mail: maryannalmeida@dwt.com
26 *Counsel for BECU*

27 117. The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

118. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for BECU and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

119. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

1 120. Authority. Class Counsel (for the Plaintiffs and the Settlement Class Members),
2 and counsel for BECU (for BECU), represent and warrant that the persons signing this Agreement
3 on their behalf have full power and authority to bind every person, partnership, corporation or
4 entity included within the definitions of Plaintiff and BECU to all terms of this Agreement. Any
5 person executing this Agreement in a representative capacity represents and warrants that he or
6 she is fully authorized to do so and to bind the Party on whose behalf he or she signs this
7 Agreement to all of the terms and provisions of this Agreement.

8 121. Acknowledgment and Statement of Present Intent. BECU represents it would not
9 enter into this Agreement without assurances that Class Counsel have no current intention to
10 bring, file, resume, or prosecute any arbitration, litigation, or other legal proceedings against
11 BECU over the same or similar issues as those released by Plaintiffs in this Agreement. Class
12 Counsel represent and warrant they do not currently intend to bring, file, resume, or prosecute any
13 claims against BECU the same as or similar to those released in this Agreement, and they are
14 aware of no entities or persons who have a currently expressed intent to assert, bring, file, or
15 prosecute any claims against BECU arising from or related to BECU's assessment of NSF or OD
16 fees, or any other theory related to BECU's Account Agreements and Consumer Account
17 Disclosure, or any other theory under Washington's Consumer Protection Act, or under any
18 federal or state statute or common law principle. Further, Class Counsel do not currently intend
19 to solicit or actively seek entities, persons, or clients, or advertise availability for representation of
20 any person or entity, to pursue relief against BECU with respect to any claims that are the same as
21 or similar to those that arise from or are related to facts or legal theories alleged in the Action.

22 122. Agreement Mutually Prepared. Neither BECU nor Plaintiff, nor any of them,
23 shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of
24 any statute, case law, or rule of interpretation or construction that would or might cause any
25 provision to be construed against the drafter of this Agreement.

26 123. Independent Investigation and Decision to Settle. The Parties understand and
27 acknowledge that they: (a) have performed an independent investigation of the allegations of fact

1 and law made in connection with this Action; and (b) that even if they may hereafter discover facts
2 in addition to, or different from, those that they now know or believe to be true with respect to the
3 subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit
4 the binding nature of this Agreement. BECU has provided and is providing information that
5 Plaintiffs reasonably requested to identify Settlement Class members and the alleged damages they
6 incurred. All Parties recognize and acknowledge that they and their experts reviewed and analyzed
7 data for a subset of the time at issue and that they and their experts used extrapolation to make
8 certain determinations, arguments, and settlement positions. The Parties agree that this Settlement
9 is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the
10 Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to
11 resolve their disputes in connection with this Action pursuant to the terms of this Agreement now
12 and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect
13 notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement
14 shall not be subject to rescission or modification by reason of any changes or differences in facts or
15 law, subsequently occurring or otherwise.

16 124. Settlement Purpose of Agreement. This Settlement Agreement is governed by the
17 terms of Washington Evidence Rule 408 and is for settlement purposes only, and neither the fact of,
18 nor any provision contained in this Settlement Agreement or any attachments, nor any action taken
19 hereunder shall constitute, be construed as, or be admissible in evidence as, any admission of the
20 validity of any claim, defense or any fact alleged by any of the Parties in the Action or in any other
21 pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any
22 kind on the part of any Party, or admission by any Party of any claim, defense or allegation made in
23 the Action or any other action, nor as an admission by any of BECU, Plaintiffs, or Settlement Class
24 Members of the validity of any fact or defense asserted against them in the Action or any other
25 action. If the Court should for any reason fail to approve this Agreement in the form agreed to by
26 the Parties, decline to enter the Settlement Order and Final Judgment in the form described in this
27 Settlement Agreement, or impose any condition to approval of the settlement to which the Parties

1 do not consent, or if the Final Approval Order or Final Judgment are reversed or rendered void, then
2 (a) this Settlement Agreement shall be considered null and void, (b) neither this Settlement
3 Agreement nor any of the related negotiations shall be of any force or effect, and (c) all Parties to
4 this Settlement Agreement shall stand in the same position, without prejudice, as if the Settlement
5 Agreement had been neither entered into nor filed with the Court. Invalidation of any portion of this
6 Settlement Agreement shall invalidate this Settlement Agreement in its entirety unless the Parties
7 agree in writing that the remaining provisions shall remain in full force and effect. This includes
8 that the provisional certification of the Settlement Class shall have no bearing in deciding whether
9 the claims asserted in the Action are or were appropriate for class treatment in the absence of
10 settlement. If this Agreement terminates or is nullified, the provisional class certification shall be
11 vacated by its terms, and the Action shall revert to the status that existed before the execution of this
12 Settlement Agreement. Upon nullification of this Settlement Agreement, Plaintiffs shall be free to
13 pursue any claims available to them, and BECU shall be free to assert any defenses available to it,
14 including, but not limited to, denying the suitability of this case for class treatment. Nothing in this
15 Agreement shall be argued or deemed to estop any Party from asserting such claims or defenses.
16 In the event the Court should for any reason fail to approve this Settlement Agreement in the form
17 agreed to by the Parties, decline to enter the Final Approval Order or Final Judgment in the form
18 described in this Settlement Agreement, or impose any condition to approval of the settlement to
19 which the Parties do not consent, or if the Final Approval Order or Final Judgment are reversed or
20 rendered void, the Parties will negotiate in good faith to address the issues raised by said events.

21 125. Assignment; Third Party Beneficiaries. None of the rights, commitments, or
22 obligations recognized under this Settlement Agreement may be assigned by any member of the
23 Settlement Class without the express written consent of the other Parties.

24 126. Communications. Any communications to the Parties relating to this Settlement
25 Agreement shall be sent to all counsel signing this Agreement on behalf of the Parties.

26 127. Calculation of Time. All time listed in this Agreement is in calendar days. Time is
27 calculated by (a) excluding the day of the event that triggers the period; (b) counting every day,

1 125. Assignment; Third Party Beneficiaries. None of the rights, commitments, or
2 obligations recognized under this Settlement Agreement may be assigned by any member of the
3 Settlement Class without the express written consent of the other Parties.

4 126. Communications. Any communications to the Parties relating to this Settlement
5 Agreement shall be sent to all counsel signing this Agreement on behalf of the Parties.

6 127. Calculation of Time. All time listed in this Agreement is in calendar days. Time is
7 calculated by (a) excluding the day of the event that triggers the period; (b) counting every day,
8 including intermediate Saturdays, Sundays, and legal holidays; and (c) including the last day of
9 the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run
10 until the end of the next day that is not a Saturday, Sunday, or legal holiday.

11 128. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically
12 warrants that he, she or it has fully read this Agreement and the Release contained herein,
13 received independent legal advice with respect to the advisability of entering into this Agreement
14 and the Release and the legal effects of this Agreement and the Release, and fully understands the
15 effect of this Agreement and the Release.

16
17 DATED this 30th day of April, 2021.

18
19 BOEING EMPLOYEES' CREDIT UNION

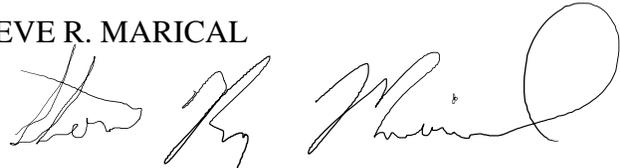
20 By MIR
21 Mike Ryan
22 Its SVP & General Counsel

23 Davis Wright Tremaine LLP
24 Attorneys for Defendant

25 By Tim Cunningham
26 Fred B. Burnside, WSBA # 32491
27 Tim Cunningham, WSBA # 50224
MaryAnn Almeida, WSBA # 49086

1 Fifth Avenue, Suite 3300
2 Seattle, WA 98104-1610
3 Telephone: 206-757-8016
4 Fax: 206-757-7016
5 E-mail: fredburnside@dwt.com
6 E-mail: timcunningham@dwt.com
7 E-mail: maryannalmeida@dwt.com

8 STEVE R. MARICAL

9 

10 EMILY J. ANDERSON

11
12
13
14 TERRELL MARSHALL LAW GROUP PLLC
15 *Attorneys for Plaintiffs*

16
17
18 By: 

19 Beth E. Terrell, WSBA #26759
20 Email: bterrell@terrellmarshall.com
21 Ari Y. Brown, WSBA #29570
22 Email: abrown@terrellmarshall.com
23 Toby J. Marshall, WSBA #32726
24 Email: tmarshall@terrellmarshall.com
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26 Seattle, Washington 98103
27 Telephone: (206) 816-6603
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Email: jhashmall@bm.net
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STEVE R. MARICAL

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Exhibit A

To: [Class Member Email Address]
From: info@nsfsettlement.com
Subject: Non-Sufficient Funds Settlement

If you had a checking account with Boeing Employees' Credit Union (BECU) and were charged an overdraft or NSF fee between August 2, 2015 and July 1, 2020, or a representation NSF fee between August 2, 2013 and July 1, 2020, a proposed class action settlement may affect your rights.

You received this email because you have the right to know about your rights and options in a proposed class action settlement that has been reached in the lawsuit known as *Marical v. BECU*, Case No. 19-2-20417-6-KNT.

What is this about? Plaintiff and the Class alleged that BECU violated the Washington Consumer Protection Act and Washington common law by imposing overdraft and NSF fees at times when BECU's members had a ledger balance—but not an available balance—sufficient to cover the transaction. The ledger balance reflects only settled transactions that have been debited from or credited to an account. The available balance includes transactions that were authorized but not yet settled, or deposits subject to account holds. The available balance may be lower than the ledger balance. Plaintiff also alleged that BECU violated Washington law by charging more than one NSF fee when a transaction is re-presented for payment, after previously being declined. BECU contends that its overdraft and NSF fees were authorized by its Member Account Agreements and denies the claims Plaintiffs alleged. Both sides have agreed to a Settlement to avoid the risk, cost, and time of further litigation.

Why am I being contacted? BECU's records indicate that you were charged one or more overdraft or NSF fees as described above during the Class Period. Accordingly, you are eligible to receive a payment from the settlement.

Who is affected? You are in the Settlement Class if you resided in Washington, were a BECU member, and at any point from August 2, 2015 through July 1, 2020 incurred an overdraft fee or an NSF fee for a transaction when the amount of the ledger balance shown in BECU's record of your account was equal to or greater than the amount of the transaction, or at any point from August 2, 2013 through July 1, 2020 were charged an NSF fee on a transaction for which you had already been charged an NSF fee.

What does the settlement provide? To settle this lawsuit, BECU has agreed to pay \$6,000,000 into a Settlement Fund which will provide individual payments to eligible Settlement Class Members, a service award payment to the Class Representative, attorneys' fees and reimbursement of out-of-pocket litigation costs, and the costs related to settlement administration.

Settlement Class Members who do not exclude themselves will receive a cash payment equal to their proportional share of the allegedly wrongful overdraft and NSF fees BECU charged.

What are my options?

Do Nothing. Stay in this lawsuit. Receive a payment. Give up certain rights.

By doing nothing, you will receive benefits from the Settlement if it is approved by the Court, including cash payments. You give up any rights to sue BECU on the claims alleged in this lawsuit or similar claims.

Ask to be Excluded. Get out of this lawsuit. Get no benefits from it. Keep rights. If you ask to be excluded from the lawsuit, you will not receive any benefits of the Settlement, including payment. You keep any rights to sue BECU separately about the same or similar legal claims. To be excluded, you must mail an Exclusion Request to the Settlement Administrator by **DATE**.

Object to the Settlement. Stay in the Class. File a written Objection to the Settlement.

If you disagree with any portion of the Settlement, you may file a written Objection with the Court, which will be considered at the Final Approval Hearing. You may also ask to speak at the hearing. If you exclude yourself from the Settlement, the Court will not consider an Objection from you. If the Settlement is approved, you will be bound by the Settlement Agreement and give up any rights to sue BECU separately about the same or similar legal claims in this lawsuit, but you will still be eligible to receive the benefits of the Settlement Fund. Your Objection must be postmarked no later than **DATE**.

What happens next? The Court is scheduled to hold a Final Approval Hearing on **DATE** to consider whether to approve the settlement, Class Counsel's request for attorneys' fees of up to thirty percent of the Settlement Fund, plus expenses, and a Service Award for the Class Representative of up to \$7,500. You can appear at the hearing, but you do not have to appear. You can hire your own attorney, at your own expense, to appear or speak for you at the hearing.

How do I get more information? This notice is only a summary. For more information about the lawsuit and to view the full notice and Settlement Agreement visit www.nsfsettlement.com or call 1-833-961-3961.

**PLEASE DO NOT CONTACT THE COURT, THE COURT CLERK'S OFFICE, OR
BECU WITH QUESTIONS ABOUT THE SETTLEMENT**

To unsubscribe from this list, please click on the following link: [Unsubscribe](#)

Exhibit B

This Notice Was Authorized by the Superior Court in and for King County. This is not a solicitation from a lawyer.

Notice of Proposed Class Action Settlement and Fairness Hearing

Marical v. Boeing Employees' Credit Union
King County Superior Court Case No. 19-2-20417-6-KNT

[FRONT]

If you had a checking account with Boeing Employees' Credit Union (BECU) and were charged an overdraft or NSF fee between August 2, 2015 and July 1, 2020, or a representment NSF fee between August 2, 2013 and July 1, 2020, a proposed class action settlement may affect your rights.

A settlement has been reached in a class action lawsuit against BECU. The lawsuit, *Marical v. Boeing Employees' Credit Union, King County Superior Court Case No. 19-2-20417-6-KNT*, involves allegations that BECU violated Washington law by imposing overdraft and NSF fees at times when a member had a ledger balance—but not an available balance—sufficient to cover the transaction. It also involves allegations that BECU violated Washington law by charging more than one NSF fee when a transaction is re-presented for payment, after previously being declined..

BECU contends that its Member Account Agreement and Account Disclosure accurately explain its overdraft and NSF fee practices. BECU denies the claims alleged in the lawsuit.

Why am I being contacted? Records indicate that you were charged one or more overdraft or NSF fees as described above during the Class Period. Accordingly, you are eligible to receive a payment from the settlement.

What does the Settlement provide? The proposed Settlement provides for a fund totaling \$6,000,000.00, which will be used to make payments to the class members after first making deductions for notice and administration costs, a Service Award to the Class Representative, and attorneys' fees for Class Counsel. If you are a Settlement Class Member, you do not need to submit a claim in order to get a Settlement payment. The individual Settlement payments will depend on how many overdraft fees covered by the Settlement you were charged and how much money remains in the Net Settlement Fund after payment of other expenses. **If you do not exclude yourself from this Settlement and the Settlement is approved by the court and becomes final, you will receive a check (or a direct deposit if you currently hold a BECU checking account) reflecting your share of the Settlement.** You can learn more about this settlement including its benefits and your options, by visiting www.nsfsettlement.com for more information.

Your Rights May Be Affected. If you do not want to be legally bound by the settlement, you must exclude yourself by **DATE**. If you do not exclude yourself, you will release your claims against BECU, as more fully described in the Settlement Agreement available for review at www.nsfsettlement.com. If you stay in the settlement, you may object to it by **DATE**. The Long Form Notice available at www.nsfsettlement.com explains how to exclude yourself or object. The

Court is scheduled to hold a hearing on **DATE** to consider whether to approve the settlement, Class Counsel's request for attorneys' fees of up to thirty percent of the Settlement Fund, plus expenses, and a Service Award for the Class Representative of up to \$7,500. You can appear at the hearing, but you do not have to appear. You can hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information, visit www.nsfsettlement.com or call 1-833-961-3961

[BACK]

Am I included in the settlement? Records indicate that you are entitled to compensation from this Settlement because you incurred certain overdraft or NSF fees during the Class Period, as defined in the Settlement Agreement with BECU in connection with your current or former BECU checking account.

Please see the detailed Notice at www.nsfsettlement.com or call 1-833-961-3961 for a more detailed explanation of who is entitled to compensation from the settlement.

Exhibit C

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

If you had a checking account with Boeing Employees' Credit Union (BECU) and were charged an overdraft or NSF fee between August 2, 2015 and July 1, 2020, or a representment NSF fee between August 2, 2013 and July 1, 2020, a proposed class action settlement may affect your rights.

THIS NOTICE RELATES TO A NEGOTIATED SETTLEMENT. NO COURT HAS RULED ON THE CLAIMS ASSERTED IN THIS LAWSUIT.

A court authorized sending you this notice. This is not a solicitation from a lawyer.

- Members of BECU sued BECU for alleged violations of the Washington Consumer Protection Act and Washington common law. BECU denies those allegations and any liability.
- The parties have entered into a proposed settlement on behalf of Washington residents who BECU charged an overdraft fee or a non-sufficient funds (NSF) fee from August 2, 2015 through July 1, 2020 for a transaction when the ledger balance shown in the account's record was equal to or greater than the amount of the transaction, or were charged more than one NSF fee when a transaction was re-presented for payment after previously being declined, between August 2, 2013 and July 1, 2020

Your Legal Rights and Options in This Lawsuit	
Do Nothing	Stay in this lawsuit. Receive a payment. Give up certain rights. By doing nothing, you will receive benefits from the settlement if it is approved by the Court, including cash payments. You give up any rights to sue BECU on the claims alleged in this lawsuit or similar claims.
Ask to be Excluded	Get out of this lawsuit. Get no benefits from it. Keep rights. If you ask to be excluded from the lawsuit, you will not receive any benefits of the settlement, including payment. You keep any rights to sue BECU separately about the same or similar legal claims. To be excluded, you must mail an Exclusion Request to the Settlement Administrator by DATE [mailing +45] .

TURN OVER

Questions? Call 1-833-961-3961 & www.nsfsettlement.com

Object to the Settlement	<p>Stay in the Class. File a written objection to the Settlement with the Court.</p> <p>If you disagree with any portion of the settlement, you may file a written Objection with the Court, which will be considered at the Final Approval Hearing. You may also ask to speak at the hearing. If you exclude yourself from the Settlement, the Court will not consider an objection from you. If the Settlement is approved, you will be bound by the Settlement Agreement and you give up any rights to sue BECU separately about the same or similar legal claims in this lawsuit, but you will still be eligible to receive the benefits of the Settlement Fund. Your Objection must be postmarked no later than DATE.</p>
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BASIC INFORMATION

1. Why did I receive this notice?

BECU's records show that between August 2, 2015 and July 1, 2020, you incurred one or more overdraft or non-sufficient funds (NSF) fees for a transaction when the ledger balance in your account was equal to or greater than the transaction amount, or that between August 2, 2013 and July 1, 2020 you incurred one or more NSF fees based on the re-presentation of a previously declined transaction for which you had already been charged an NSF fee. This notice explains that the parties have reached an agreement to settle a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court decides whether to approve the Settlement. A Judge of the Superior Court of the State of Washington for King County is overseeing this class action. The lawsuit is known as *Marical v. Boeing Employees' Credit Union*, Case No. 19-2-20417-6-KNT.

2. What is this lawsuit about?

Plaintiffs and the Class alleged that BECU violated the Washington Consumer Protection Act and Washington common law by imposing overdraft and NSF fees based on available balance at times when BECU's members had a ledger balance sufficient to cover the transaction. The ledger balance reflects only settled transactions that have been debited from or credited to an account. The available balance includes transactions that were authorized but not yet settled, or subject to account holds. The available balance may be lower than the ledger balance. Plaintiffs also alleged that BECU violated Washington law by charging a second or third NSF fee when a transaction that had already been declined and for which BECU had already charged an NSF fee was re-presented for payment.

BECU contends that its Member Account Agreement and Account Disclosure accurately explain its overdraft and NSF fee practices and that such fees are based on available balance (and not ledger balance). BECU denies the claims Plaintiffs alleged.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called Plaintiffs and "Class Representatives" (in this lawsuit Steven Marical) sue on behalf of other people who have similar alleged claims. The people

together are a “Class” or “Class Members.” The party they sued (in this case BECU) is called the Defendant. If the lawsuit proceeds as a class action, it resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

THE SETTLEMENT

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or BECU. Instead, both sides agreed to a settlement. This way, they avoid the cost and risks associated with a trial, and the people affected will receive compensation. The Class Representatives and their attorneys think the Settlement is best for the Settlement Class Members.

How do I know if I am a part of the Settlement?

You are in the Settlement Class if you resided in Washington, were a BECU member, and at any point from August 2, 2015 through July 1, 2020 incurred an overdraft fee or an NSF fee for a transaction when the amount of the ledger balance shown in BECU’s record of your account was equal to or greater than the amount of the transaction, or at any point from August 2, 2013 through July 1, 2020 were charged an NSF fee based on the re-resentation of a previously declined transaction for which you had already been charged an NSF fee.

The Settlement Class does not include any persons who validly request exclusion from the Settlement Class, as described under Question 12. A person who does not exclude him or herself is a “Settlement Class Member.”

If you have questions about whether you are part of the Class, you may call 1-833-961-3961 or visit www.nsfsettlement.com for more information.

THE SETTLEMENT BENEFITS

5. What does the Settlement Agreement provide?

To settle this lawsuit, BECU has agreed to pay \$6,000,000 into a Settlement Fund which will provide individual payments to eligible Settlement Class Members, a service award payment to the Class Representative, attorneys’ fees and reimbursement of out-of-pocket litigation costs, and the costs related to settlement administration.

Settlement Class Members will receive a cash payment equal to their proportional share of the allegedly wrongful overdraft and NSF fees BECU charged.

BECU has agreed to make additional changes as part of the settlement that include: (1) a refund policy that will allow each member in good standing to have one overdraft or NSF fee refunded each year; (2) providing information on its website that describes ways overdraft and NSF fees are assessed and describing the difference between available balance and ledger balance; (3) directions to the web page member can use to opt out of certain overdraft fee programs; (4) developing a checking account product with no overdraft or NSF fees ; and (5) additional efforts to educate members regarding its fee practices and ways to avoid having fees assessed.

BECU has and continues to contend its Member Account Agreement and Account Disclosure accurately explain its overdraft and NSF fee practices. BECU denies the claims Plaintiffs alleged and denies engaging in any unlawful acts.

6. Your Estimated Settlement Award

Your estimated settlement payment is between:

\$*****.** and \$*****.**

If you do not request to exclude yourself from the Settlement, the Settlement Administrator will direct a payment to you. You do not need to file a claim form. If you are a BECU member at the time the settlement payments are issued, you will receive the payment by direct deposit to your BECU checking account. If you are not a BECU member at the time the settlement payments are issued, you will receive a check by mail. If you have questions about how settlement payments will be made or need to update your mailing address before the settlement payment distribution, you should contact the Settlement Administrator at 1-833-961-3961.

7. What are the tax implications of accepting a settlement payment?

The tax implications may vary based on your income, the amount you receive and other factors, so you should consult a tax professional to assess the specific tax implications of any payment you may receive. Class Counsel, BECU, and the Settlement Administrator cannot advise you with respect to your tax obligations.

HOW TO BENEFIT FROM THE SETTLEMENT

8. How do I receive the benefits of the Settlement?

If you received a Notice and you do not request to exclude yourself from the Settlement, you will automatically receive the benefits of the Settlement and receive a payment. **You do not need to submit a claim to receive the benefits of the Settlement or to get a payment—it's automatic.** If your mailing address changes before the Settlement Award distribution, you should contact the Settlement Administrator at 1-833-961-3961 to update your information.

9. When will I get my payment?

If no appeals are timely filed after the Court enters the Final Approval Order, then the Order will become final and the Settlement will be effective. You will receive your settlement payment approximately 45 days from the Settlement's Effective Date (roughly 75 days after the Final Approval Hearing). If you are a BECU member when the Settlement becomes effective, the Settlement Administrator will cause your Settlement Award amount to be directly deposited into your BECU checking account. If you are not a BECU member when the Settlement becomes effective, the Settlement Administrator will mail you a Settlement Award check. The checks will only be valid for 90 days from the date of issuance, after which you will not be able to cash or deposit them. However, if an appeal is filed, Settlement Award payments will not be sent until after the appeal is finally resolved.

10. What am I giving up to stay in the Settlement Class?

Unless you request to exclude yourself, you are staying in the Settlement Class and you will be a Settlement Class Member. If the Court approves the Settlement, you and other Settlement Class Members can't sue, continue to sue, or be part of any other lawsuit against BECU regarding BECU's imposition of overdraft and NSF fees between August 2, 2013 and July 1, 2020.

The Settlement Agreement (available at www.nsfsettlement.com) describes the claims you are releasing (the "Released Claims") and against whom you are releasing claims, so read it carefully.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to receive the benefits of this Settlement or if you want to keep the right to sue or continue to sue BECU, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself – or is sometimes referred to as “opting out” of the Settlement Class.

11. How do I opt out of the Settlement?

To exclude yourself from the Settlement you must send the request in writing to the Settlement Administrator saying that you want to be excluded from the *Marical v. BECU* settlement. You must include your name, last four digits of your Social Security Number and address in the letter. You can mail your exclusion request letter, which must be postmarked no later than **DATE** to the following address:

Marical v. BECU
c/o JND Legal Administration
PO Box 91407
Seattle, WA 98111

Requests for exclusion mailed after **DATE**, 2021 will not be effective and will not result in your being excluded from the Settlement Class.

If you ask to be excluded, you will not get any Settlement Award payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit.

12. Why would I ask to be excluded?

If you already have, or want to bring, your own lawsuit against BECU regarding the imposition of overdraft and NSF fees and want to continue with the lawsuit, you need to ask to be excluded from the Class. If you exclude yourself from the Class—which also means to remove yourself from the Class and is sometimes called “opting-out”—you won't get any money or benefits from the settlement between BECU and Plaintiff. However, you may be able to sue or continue to sue BECU regarding its fee practices on your own. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

13. If I exclude myself, can I get anything from this Settlement?

No. You will not receive the benefits of the Settlement, including a payment, if you exclude yourself.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this lawsuit?

The Court decided that the law firms of Terrell Marshall Law Group PLLC of Seattle, WA, Smith & Dietrich Law Offices, PLLC of Olympia, WA, and Berger Montague, PC of Minneapolis, MN are qualified to represent you and all Class Members. These law firms are referred to as "Class Counsel." You will not receive a bill from these lawyers, who have asked the Court to be paid a percentage of the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense. The names and addresses of Class Counsel are:

Walter M. Smith
Steve E. Dietrich
Smith & Dietrich Law Offices PLLC
3905 Martin Way E., Suite F
Olympia, Washington 98506

Beth E. Terrell
Ari Y. Brown
Terrell Marshall Law Group PLLC
936 N 34th Street, Suite 300
Seattle, Washington 98103

E. Michelle Drake
Joseph C. Hashmall
Berger Montague, PC
43 SE Main Street, Suite 505
Minneapolis, Minnesota 55414

15. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel are working on your behalf. But, if you want to hire your own lawyer, you will have to pay that lawyer. For example, you can ask a lawyer to appear in Court for you if you want someone other than Class Counsel to speak for you.

16. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to 30 % of the \$6,000,000 Settlement Fund to them for attorneys' fees, plus their out-of-pocket expenses. This payment compensates Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement. Class Counsel will also request a service award of \$7,500 for the Class Representative, Steven Marical, payable out of the Settlement Fund to compensate him for his time and effort during the litigation. Class Counsel's complete request for fees, costs, and the service awards to the named Plaintiffs will be posted on the Settlement Website, www.nsfsettlement.com the business day after it is filed. The Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

17. How do I object to the Settlement?

If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't like any part of it.. Your written objection must provide your name, address, telephone number, the reason(s) for your objection, and other information fully described in Paragraph 64 of the Settlement Agreement. You must mail a copy of the objection to the following addresses postmarked no later than [REDACTED], 2021:

SETTLEMENT ADMINISTRATOR	CLASS COUNSEL	DEFENSE COUNSEL
Marical v. BECU c/o JND Legal Administration PO Box 91407 Seattle, WA 98111	Beth E. Terrell Ari Y. Brown Terrell Marshall Law Group PLLC 936 N 34th Street, Suite 300 Seattle, Washington 98103 Walter M. Smith Steve E. Dietrich Smith & Dietrich PLLC 3905 Martin Way E., Suite F Olympia, Washington 98506 E. Michelle Drake Joseph C. Hashmall Berger Montague, PC 43 SE Main Street, Suite 505 Minneapolis, Minnesota 55414	Fred B. Burnside Tim Cunningham MaryAnn Almeida Davis Wright Tremaine LLP 920 Fifth Avenue, Suite 3300 Seattle, WA 98104-1610

18. What is the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

19. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court will hold the Final Approval Hearing on [REDACTED], 2021 at [REDACTED] a.m., before the Honorable Ken Schubert of the Superior Court of the State of Washington for King County, 401 4th Ave. N, Kent, WA 98032, Courtroom 4H. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interest of the Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees

and expenses and the service award to the Class Representative. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement website, www.nsfsettlement.com.

20. Do I have to come the hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to come to the hearing at your own expense. If you send an objection you don't have to come to the Court to talk about it. As long as your written objection was filed or mailed on time, and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

21. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement Agreement. If you submit an objection (see Question 18 above) and intend to appear at the hearing, you must state your intention to do so in your objection. To speak, you must send a letter saying that it is your "Notice of Intention to Appear" in *Marical v. Boeing Employees' Credit Union*, Case No. 19-2-20417-6-KNT. Be sure to include your name, address, telephone number, that you are a Class Member, and your signature. Your Notice of Intention to Appear must be postmarked no later than then (10) days before the Final Approval Hearing and be sent to the Court, Class Counsel, and Defense Counsel at the addresses set forth below. You cannot speak at the hearing if you exclude yourself.

COURT	CLASS COUNSEL	DEFENSE COUNSEL
<p>Hon. Ken Schubert King County Superior Court 401 4th Ave. N. Kent, WA 98032</p>	<p>Beth E. Terrell Ari Y. Brown Terrell Marshall Law Group PLLC 936 N 34th Street, Suite 300 Seattle, Washington 98103</p> <p>Walter M. Smith Steve E. Dietrich Smith & Dietrich PLLC 3905 Martin Way E., Suite F Olympia, Washington 98506</p> <p>E. Michelle Drake Joseph C. Hashmall Berger Montague, PC 43 SE Main Street, Suite 505 Minneapolis, Minnesota 55414</p>	<p>Fred B. Burnside Tim Cunningham MaryAnn Almeida Davis Wright Tremaine LLP 920 Fifth Avenue, Suite 3300 Seattle, WA 98104-1610</p>

22. What happens if I do nothing at all?

If you do nothing, you will be a member of the Settlement Class and you will receive the benefits of the Settlement. You will also be bound by the terms of the Settlement, including the Release described in Section 10, above.

GETTING MORE INFORMATION

23. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may review and download or print a copy of the Settlement Agreement via the Settlement Website at www.nsfsettlement.com. You can also get a copy of the Settlement Agreement by writing to JND Legal Administration at Marical v. BECU, c/o JND Legal Administration, PO Box 91407, Seattle, WA 98111.

24. How do I get more information?

You can call 1-833-961-3961 toll free; write to JND Legal Administration at Marical v. BECU, c/o JND Legal Administration, PO Box 91407, Seattle, WA 98111; or visit the website at www.nsfsettlement.com where you will find answers to common questions about the Settlement, the Settlement Agreement, Plaintiffs' First Amended Complaint, Class Counsel's motion for an award of attorneys' fees and costs, and other information.

**PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR BECU WITH
QUESTIONS ABOUT THE SETTLEMENT.**

Exhibit D

Marical v. Boeing Employees' Credit Union **Phone Script and Call Tree**

Main Menu

You have reached the Boeing Employees' Credit Union Overdraft Settlement toll-free telephone line. Please select from one of the following options.

To learn about the Settlement, press 1.

To learn about who is included in the Settlement Class, press 2.

To learn about the Settlement benefits, press 3.

To learn about the rights and options of the Settlement Class, press 4.

To update your mailing address or contact the Settlement Administrator by mail, press 5.

To repeat this menu, press 6.

Learn about the Settlement

The Plaintiffs filed a class action lawsuit titled *Marical v. Boeing Employees' Credit Union* which alleged that Boeing Employees' Credit Union (or "BECU") violated the Washington Consumer Protection Act and Washington common law by imposing overdraft and non-sufficient funds (or "NSF") fees based on available balance, at times when BECU's members had a ledger balance (but not an available balance) in their account sufficient to cover the transaction, or by imposing an NSF fee when a transaction that had been previously declined and for which an NSF fee had been charged was re-presented for payment.

BECU contends that its overdraft and NSF fees were authorized by its Member Account Agreements and denies the claims Plaintiffs alleged. The Court did not decide in favor of the Plaintiffs or BECU. Instead, both sides agreed to a settlement to avoid the risks and costs associated with a trial, and the people affected will receive compensation.

If you received a notice of the Settlement by mail or email, BECU's records indicate that you are a potential Class Member and you may be eligible to receive a payment under the Settlement.

To repeat this message, press 1.

To return to the main menu, press 2.

Who is in the Settlement Class

You are in the Settlement Class if you resided in Washington, were a BECU member, and at any point from August 2, 2015 through July 1, 2020 incurred an overdraft fee or an NSF fee for a transaction when the amount of the ledger balance shown in BECU's record of your account was equal to or greater than the amount of the transaction, or at any point from August 2, 2013 through July 1, 2020

were charged an NSF fee on a transaction that had been previously declined and for which an NSF fee had been charged was re-presented for payment .

To repeat this message, press 1.

To return to the main menu, press 2.

Settlement Benefits

To settle this lawsuit, BECU has agreed to pay \$6,000,000 into the Settlement Fund, which provides individual payments to eligible Settlement Class Members, attorneys' fees and costs, and a service award payment to the Class Representative.

If you are a Settlement Class Member, you do not need to submit a claim in order to get a Settlement payment. The individual Settlement payment amounts will depend on how many overdraft or NSF fees covered by the Settlement you were charged and how much money remains in the Net Settlement Fund after payment of other expenses.

If you have an account with BECU when the Settlement payments are made, and you qualify, the Settlement Administrator will cause your Settlement payment to be directly deposited into your BECU Checking Account. If you do not have an account with BECU when the Settlement payments are made, the Settlement Administrator will send you a check.

To repeat this message, press 1.

To return to the main menu, press 2.

Legal Rights and Options

Settlement Class Members have the following options:

Do nothing. If you are a Settlement Class Member and received the notice by mail or email, you do not need to do anything to receive a settlement payment. Unless you exclude yourself from the Settlement, you will receive a settlement payment once the Settlement is finally approved.

Exclude yourself. If you don't want to receive a payment and want to keep the right to sue BECU, you must exclude yourself (or "opt out" of) the Settlement. To exclude yourself, you must submit an exclusion letter to the Settlement Administrator, postmarked no later than **DATE**.

Object to the Settlement. If you do not exclude yourself, you can object to the Settlement if you do not like it and have your objections heard at the **DATE** Final Approval Hearing. To object to the Settlement, you must mail a copy of the objection letter to the Settlement Administrator, Class Counsel, and Defense Counsel, postmarked no later than **DATE**.

For additional details and requirements regarding opting-out or objecting to the Settlement, please visit www.nsfsettlement.com.

To repeat this message, press 1.

To return to the main menu, press 2.

Contact Information and Address Updates

You may submit an address update to the Settlement Administrator by mail or through the form on the Contact Us page at www.nsfsettlement.com.

In your request, please include the case name, *Marical v. Boeing Employees' Credit Union*, your full name, current mailing address, and previous mailing address for verification purposes.

The mailing address for the Settlement Administrator is:

Marical v. Boeing Employees' Credit Union
c/o JND Legal Administration
PO Box 91407
Seattle, WA 98111

To repeat this message, press 1.

To return to the main menu, press 2.

STATEMENT OF OBJECTIONS
(FOR CLASS MEMBERS WHO DO NOT OPT OUT)

King County Superior Court

Marical v. Bowing Employees' Credit Union

Case No. 19-2-20417-6-KNT

I Jesse Lee Zesbaugh objecting on behalf of the class Pro Se reside at 15577 6th AVE NE Shoreline WA 98155, phone (206 478-3205). I have been identified by the system as Class ID DCYQG7ZLE4, as per the discovery language discussed in item 59 of the current settlement agreement

I object to the settlement in this lawsuit. My reasons for objecting are:

1. The proposed settlement does not address public statements BECU made regarding its status change under Dodd Frank, and public statements it made regarding fees, acknowledging the change. BECUs contention that is disclosed its NSF policy is false and misleading, as they may have deliberately made public statements about their fees, only to induce the public to join their bank (Item 1). BECU displayed specific knowledge of policy changes that could effect their fees, made a public statement to the effect it would not alter its fees. Then when the policy changes effected BECU they they altered their fees with no follow up public statement. The policy change under the Durbin Amendment of Dodd Frank took place for BECU in July of 2013, one month before the Settlement alleges the fees started Aug 3 of 2013. The settlement does not address the public deception or a means to amend it.
2. The proposed settlement appears to hide readily available factual information in the case, such as the amount BECU took, vs the amount they intend to repay. The amounts are NOT arbitrary, but static fees the BECU may have illegally taken from its members, who they may have induced to join via misleading public statements.(Item 1)
 - Item 59 in the settlement agreement suggests the the settling parties know and could have disclosed the amounts a given member would lose as a result of BECUs action in the settlement notification documents.
 - These items are possibly omitted strategically from the settlement agreement, denying class members the ability to make an informed and intelligent decision regarding their participation in the class.
 - In verbal conversations with involved council this information verbally or written would not be relayed to me despite conflicting responses about the ability to produce it, or identify instances of financial harm to class members, which in all cases would make reference to fixed non arbitrary fees. In short they did not want to seem to say how much was taken from each class member as a result of the fees, likely because such a comparison could be embarrassing.
3. Based on the outcome of the settlement it appears the lawyers who negotiated the settlement are not acting on the best interest of the class.
4. I did not opt out of the settlement because to assert individual calms due the size of BECU, and the economical feasibility of pursuing them . This is especially true as the settlement as stands does not provide information available (Item 59 Settlement) to the settling council that would be useful for class members to make an informed and intelligent decision regarding their participation.

As Per Item 64 requirements in the Settlement Agreement for Objections.

I am appearing Pro Se, objecting on behalf of the class, and have no objections to any class actions in the past 5 years.

Jesse Zesbaugh
15577 6th AVE NE
Shoreline WA 98155
(206)478-3205

A handwritten signature in black ink, appearing to be 'Jesse Zesbaugh', written in a cursive style. The signature is positioned to the right of the printed contact information.

BECU's Durbin Hit: \$45 Million

Debit card interchange cap will cost the \$11.5 billion BECU between \$35 and \$45 million in 2014.

by **id Morrison** | October 02, 2013 at 08:00 PM | The original version of this story was published on **Credit Union Times Magazine**

The debit card interchange cap will cost the \$11.5 billion BECU between \$35 and \$45 million in 2014.

Speaking as part of a panel at the 2013 American Credit Union Mortgage Association Conference in Las Vegas, BECU Vice President of Treasury Mike Quamma said the drop in interchange income is so significant, his 826,000-member institution must take it into consideration when pricing mortgages and other loan products. (Read more ACUMA onsite coverage on page 3.)

BECU became subjected to the cap in the third quarter of 2012 when it exceeded \$10 billion in assets. According to the Dodd-Frank Act's Durbin Amendment, which mandated the cap, debit card issuers with fewer than \$10 billion in assets are exempt.

That leaves just four credit unions subjected to the cap: the \$54 billion Navy Federal Credit Union of Vienna, Va.; the \$27 billion State Employees' Credit Union of Raleigh, N.C.; the \$16 billion Pentagon Federal Credit Union of Arlington, Va.; and BECU.

According to BECU's financial performance reports posted on the NCUA's website, the credit union experienced a dip in net income during the second half of 2012. After annualized net income gains of 16% and 8.5% in the first and second quarters of 2012, net income dropped 0.7% as of Sept. 30 and dropped another 1% as of Dec. 31.

Total non-interest income did not decrease on an annualized basis during the second half of the year, however. Non-interest income increased 2.6% as of Sept. 30 and another 3.5% as of Dec. 31, which was similar to increases during the third and fourth quarters of 2011.

Taking a closer look at BECU's 5300 call reports, the credit union reported increases in both fee income and other operating income during the first half of 2013 compared to 2012. As of June 30, 2013, BECU reported year-to-date fee income of a little more than \$60 million, and year-to-date other operating income of a little more than \$38 million. During the same period in 2012, fee income was just under \$55 million and other operating income was nearly \$34 million. By year-end, fee income was \$115.5 million and other operating income was \$73.4 million, according to BECU's Dec. 31, 2012 call report.

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Ad | Local

280% increase in new accounts for local credit union



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#ToddPietzch

BECU, formerly Boeing Employees Credit Union, is experiencing a 280% increase in new accounts due to new fees by Bank of America and other banks, and the Occupy Wall Street protests. BECU is the largest credit union in Washington, and fourth largest in the United States. It originally served Boeing employees, but dropped that requirement years ago and now serves the general public.

I spoke with Todd Pietzch of BECU earlier today. He told me that they acquired a record of 8700 new accounts in August, a record of 9400 in September, and as of yesterday, have hit a new record of 10,500 new accounts for October, through just two-thirds of the month.

The credit union will soon exceed \$10 billion in assets, subjecting it to the "Durbin Amendment", which slashes the debit card transaction fee cap roughly in half, to about 24¢. This will cost BECU, but they will not increase fees or add new ones as they expect to make up for the loss with growth in deposits.

BECU continues to write small business loans and home mortgages. They never did any sub-prime lending, and are not experiencing any problems with elevated levels of foreclosures. Their lending policies have not changed since the financial crisis, and they are committing additional resources to expand small business lending in the near future.

I have several accounts with BECU, including a credit card. Years ago I had a car loan with a rate of under 4%. They currently offer checking and savings deposit rates in excess of 6%. I highly recommend them. If you are still banking at one of the large national banks, what are you waiting for? Find a community bank or credit union and get with the program! "Bank Transfer Day" is November 5th. The free market enthusiasts are all about competition. Force the big banks to compete and stop their unfair and predatory practices.

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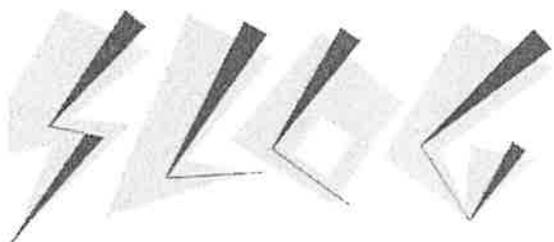
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MONEY • OCCUPY

Anti-Wall Street Backlash Pushes New Accounts Up 80 Percent at BECU

Goldy • Oct 21, 2011 at 9:50 am

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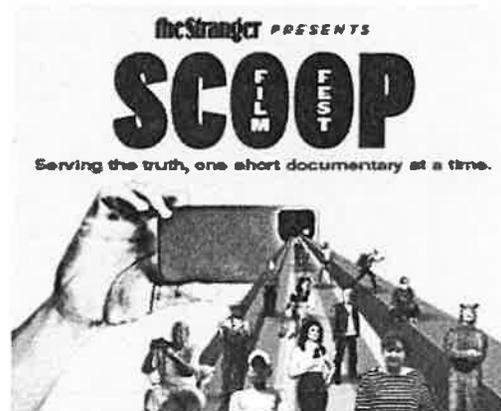
Optimists insist that the Occupy Wall Street protest and its spinoffs here in Washington state will have little impact on their intended targets, but don't tell that to the busy folks over at BECU, who have seen a **280 percent increase in new accounts** over the past few months. Writing in a diary on Daily Kos, local activist Robert Sargent reports on the once humble credit union's **impressive growth**:

I spoke with Todd Pietzch of BECU earlier today. He told me that they acquired a record of 8700 new accounts in August, a record of 9400 in September, and as of yesterday, have hit a new record of 10,500 new accounts for October, through just two-thirds of the month.

The credit union will soon exceed \$10 billion in assets, subjecting it to the "Durbin Amendment", which slashes the debit card transaction fee cap roughly in half, to about 24¢. This will cost BECU, but **they will not increase fees or add new ones** as they expect to make up for the loss with growth in deposits.

You can read my own account of switching to BECU **here**.

To get this delivered to your inbox, subscribe to *The Stranger's* Slog AM newsletter.



WASHINGTON'S SUMMER WINE FESTIVAL



Exhibit 3

From: [Jesse Zesbaugh](#)
To: [Beth Terrell](#)
Subject: Re: [External] Jesse Zesbaugh objection withdrawal
Date: Thursday, September 9, 2021 12:09:09 PM

Based my conversation with Beth I was provided with information I felt was being denied. Thus in the BECU matter I withdrawal my objection. As stated in my presettlement objection I was concerned about the classes ability to make an informed and intelligent decision about participation in the class and settlement. I was and presumably other class members were provided that information.

Thus I withdraw my objection.

Sent from my iPhone

> On Sep 9, 2021, at 12:05 PM, Jesse Zesbaugh <jzesbaugh@icloud.com> wrote:

>

> Based my conversation with Beth I was provided with information I felt was being denied. Thus in the BECU matter I withdrawal my objection. As stated in my concerns I was based on that able to make an informed and intelligent decision about my participation in the class.

>

> Sent from my iPhone

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May 11 2018 2:43 PM

The Honorable Kathryn Nelson
COUNTY CLERK
Noted for NO. 16-2-12148-4
June 22, 2018 at 9:00 a.m.

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

TODD WODJA, individually, and on behalf of
all others similarly situated

Plaintiff,

vs.

WASHINGTON STATE EMPLOYEES
CREDIT UNION, and DOES 1-10,

Defendants

Case No.: 16-2-12148-4

**PLAINTIFF TODD WODJA'S NOTICE
OF MOTION AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, AWARD OF ATTORNEY
FEES AND COSTS, AND APPROVAL OF
CLASS REPRESENTATIVE SERVICE
AWARD; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

TO THE COURT AND ALL INTERESTED PARTIES:

On June 22, 2018, at 9:00 a.m. Plaintiff Todd Wodja will and hereby does move the Court for an order granting final approval of the class action settlement in this matter. This motion is based on the Memorandum of Points and Authorities attached hereto, the Declaration of Taras Kick, the Declaration of Richard McCune, the Declaration of the Claims Administrator Garden City Group, the Declaration of Arthur Olsen, the Declaration of Robert Weissman, the Declaration of Todd Wodja filed in support of the Motion for Preliminary Approval, and all matters which this Court may allow or as to which this Court may take judicial notice.

1 Respectfully submitted,

2 FRIEDMAN | RUBIN

3 Dated: May 11, 2018

4 BY: /s/Richard H. Friedman, WSBA #30626

5 /s/Richard Dykstra, WSBA #5114

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*Attorneys for Plaintiff Todd Wodja
and the Putative Class*

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1 **MEMORANDUM**

2 **I. Introduction: This Settlement Meets All Criteria For Approval.**

3 This is a class action in which Plaintiff alleges that Defendant Washington State
4 Employees Credit Union (“WSECU”) assessed overdraft fees against its customers when they
5 had enough money in their accounts to pay for the transaction at issue, in breach of their
6 contracts, and in violation of the implied covenant of good faith and fair dealing. Plaintiff
7 alleges that Defendant charged fees based on the so-called “available balance”—a subset of the
8 full account balance from which funds earmarked for pending transactions and recently
9 deposited funds have been subtracted—rather than on the actual amount of money in the account
10 (sometimes referred to as the “ledger balance”), in alleged violation of the terms of the governing
11 contracts. WSECU contends that the overdraft privilege fees it charged were proper and in
12 accordance with the terms of its member account agreements with the Class Members and
13 applicable law, which allow WSECU to determine overdrafts based on the available balance in a
14 member’s account. WSECU maintains that this practice was properly disclosed to and agreed on
15 by its members and denies that the fees give rise to claims for damages by Mr. Wodja or any
16 class member.

17 After mediation with the Hon. Edward A. Infante (Ret.), the parties entered into a
18 proposed settlement in this matter, to which this Honorable Court granted preliminary approval.
19 This Court found, preliminarily, that the classes as defined in the Settlement Agreement meet all
20 of the requirements for certification of a settlement class found in Washington CR 23 and
21 applicable case law (Preliminary Approval Order, ¶¶ 2, 7), that the proposed settlement falls
22 within the range of reasonableness for potential final approval, and that the proposed settlement
23 is the product of arm’s length negotiations by experienced counsel after extensive litigation and
24 discovery. (*Id.*, ¶ 8.) This Court also found that the proposed notice plan to class members
25 satisfied due process, and ordered that notice of the proposed settlement be served pursuant to it.
26 (*Id.*, ¶ 9.)

27 The parties have complied with this Court’s Order regarding notice, and Plaintiff
28 therefore now presents the matter for final approval. As evidenced by the contemporaneously

1 filed declaration of Shandarese Garr of the claims administrator Garden City Group (“GCG”),
2 the direct notice program approved by this Court has been very successful. Specifically, it was
3 initiated on March 23, 2018, 34,029 of the 34,811 class members successfully received the notice
4 ordered by this Court, meaning a 97.75% of class members successfully received the notice
5 ordered by this Court. (Declaration of Shandarese Garr [hereafter “GCG Decl.”] ¶¶ 6, 7, 8, 9,
6 11, 16.) The deadline for class members to opt out of the settlement expired on May 6, 2018,
7 and only 6 members of the class elected to opt out of the proposed settlement being presented for
8 approval to this Court. (GCG Decl. ¶ 20.) This means that of the class members who
9 successfully received notice, 99.98% have elected to remain in the proposed settlement. Finally,
10 although the time to object does not expire until May 26, 2018, as of the date of this filing, there
11 has been only one objection to the proposed settlement, meaning 99.99% of the class members
12 who received notice of the proposed settlement have elected not to object to it.¹ (GCG Decl. ¶
13 21.)

14 In sum, the proposed settlement of this class action is a very good result for class
15 members, and class members’ reaction to it to date has been very favorable. Further, WSECU
16 supports the entry of an order granting final approval of the settlement.²

17 **II. BACKGROUND**

18 **A. The Settlement is a Very Good Result for the Class Members**

19 The settlement fund totals \$2,990,000. (SA ¶ 1(s).) As the settlement does not require
20 any claims to be made by the class members, class members need not take any action whatsoever
21 to receive payment. (SA ¶ 7(d)(vi).) The settlement fund will also be used to pay claims and
22 notice administration costs, litigation costs, attorney fees as approved by this Court, and a
23 proposed service award to the class representative. (SA ¶ 7(d).)

24 Under the settlement, no money will revert to the Defendant once the Effective Date
25

26
27 ¹ See a more detailed explanation of this in Section III.A.8., *infra*.

28 ² WSECU denies plaintiff’s claims and does not concede any of plaintiff’s contentions. Settlement Agreement at 3 (Recital I).

1 occurs. (Settlement Agreement, ¶ 7(d)(v).) Class members shall be sent a check by the claims
2 administrator to the address to which the class notice was sent, or at such other address as
3 designated by the Class Member. (SA ¶ 7(d)(vi).) The Class Member shall have one-hundred
4 eighty days (180) to negotiate the check, after which the payment will re-collect in the residue to
5 be distributed to a *cy pres* recipient and to the Legal Foundation of Washington, discussed *infra*.
6 (*Id.*)

7 The amount paid to each class member shall be calculated as follows: (Net Settlement
8 Fund / Total Improper Overdraft Charges) x Total Improper Overdraft Charge per Class Member
9 = Individual Payment. (SA ¶ 7(d)(vi).) This means each class member will be treated fairly by
10 receiving a proportionate share of his or her “sufficient fund” overdraft fees refunded as a result
11 of this settlement.

12 The \$2,990,000 settlement fund represents approximately 47% of the most likely non-
13 interest restitutionary amount that could have been obtained at trial had the case been successful
14 under Plaintiff's damage theory, while avoiding for the class members all of the risks and further
15 litigation costs appurtenant with continuing. (Declaration of Arthur Olsen [hereafter “Olsen
16 Decl.”] ¶¶ 8, 10; Declaration of Taras Kick [hereafter “Kick Decl.”] ¶ 23.) This is discussed in
17 more detail in Section III, *infra*.

18 **B. Pertinent Procedural History**

19 Plaintiff originally filed this action in federal court, on September 25, 2015. (Kick Decl.
20 ¶ 12.) On January 8, 2016, Defendant filed a motion to dismiss, which Plaintiff opposed on
21 April 18, 2016, and in support of which Defendant filed a reply on April 29, 2016. (Kick Decl. ¶
22 12.) The court granted in part and denied in part the motion to dismiss on June 9, 2016. (Kick
23 Decl. ¶ 12.) On August 17, 2016, Defendant filed a second motion to dismiss pursuant to Rule
24 12(b)(1) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1332(d)(4)(B), which Plaintiff
25 opposed on September 6, 2016, and in support of which Defendant filed a reply on September 9,
26 2016. (Kick Decl. ¶ 12.) On September 26, 2016, the Hon. Benjamin Settle issued an order
27 granting Defendant's motion to dismiss for lack of subject matter jurisdiction, finding no
28

1 question of federal law existing. (Kick Decl. ¶ 12.) Thereafter, Plaintiff filed this action on
2 October 21, 2016. (Kick Decl. ¶ 12.) On or about November 29, 2016, WSECU filed a motion
3 to dismiss this action in its entirety. (Kick Decl. ¶ 12.)

4 **C. Investigation and Discovery**

5 On May 18, 2016, Plaintiff propounded on Defendant his First Set of Requests for
6 Production, comprised of 11 Requests for Production, to which Defendant served responses on
7 June 20, 2016. (Kick Decl. ¶ 13.) On June 29, 2016, Plaintiff propounded on Defendant his
8 Second Set of Requests for Production, bringing the total to 86 requests, his first set of Requests
9 for Admission, comprised of 12 requests, and his first set of Special Interrogatories, comprised
10 of 23 interrogatories, to which Defendant served responses on August 8, 2016. (Kick Decl. ¶13.)

11 The parties' settlement negotiations were at all times arm's length and adversarial, and
12 devoid of any collusion. (Kick Decl. ¶ 14.) Pursuant to these negotiations, on February 28,
13 2017, the parties participated in mediation with the Hon. Edward Infante. Judge Infante has
14 developed an expertise in overdraft fee litigation, having mediated a significant number of such
15 cases. (*Id.*) The case did not settle on that date at the mediation. However, Judge Infante made a
16 mediator's recommendation which did result in a settlement in the amount of \$2,990,000. (Kick
17 Decl. ¶ 14.) As part of the due diligence, Plaintiff's database expert, Arthur Olsen, was granted
18 access to detailed transaction specific anonymous information from WSECU's customer
19 database, from which he was able to perform an analysis. (*See Olsen Decl. ¶¶ 6-7.*) Mr. Olsen is
20 considered to be one of the leading experts on overdraft fee database analysis, and has worked on
21 overdraft litigation database analysis in such matters as the multidistrict litigation which took
22 place in Florida (*In re Checking Account Overdraft Litigation MDL No. 2036 (S.D. Fla.)*), and in
23 such matters as *Gutierrez v. Wells Fargo*, 730 F.Supp.2d 1080 (N.D. Cal. 2010). (Olsen Decl. ¶¶
24 3-5.). Specifically, Mr. Olsen analyzed class data covering the class period of October 1, 2009
25 through December 31, 2016. (Olsen Decl. ¶ 6.) That data contained detailed information
26 regarding all overdraft fees assessed by WSECU on debit card, check, and ACH transactions
27 between October 1, 2009, and December 31, 2016, including the date of each overdraft fee, the
28 amount of each overdraft fee, the type of transaction which caused each overdraft fee, (either

1 debit card, check, or ACH), and the balance of the account at the time when each transaction
2 posted to the account. (Olsen Decl. ¶ 7.) Mr. Olsen determined that after refunds WSECU
3 charged approximately \$6,387,766 in overdraft fees when there was enough money in the
4 account to cover the transaction in question if “holds” on deposits or pending transactions were
5 not taken into account, which is what the Plaintiff’s “sufficient funds” theory of the case is.
6 (Olsen Decl. ¶ 10.) The total settlement value in this case of \$2,990,000 therefore represents
7 approximately 47% of the total “sufficient funds” damages in this case.

8 **D. Class Definition.**

9 The Washington Supreme Court has held that a class definition must be framed so that
10 disposition of the named plaintiff’s claims can fairly bind a cohesive class. *Mader v. Health Care*
11 *Authority*, 149 Wash. 2d 458, 468-69, 70 P.3d 931, 936 (2003). Here, the class definition does
12 just that. Specifically, the class is defined as any member of WSECU who, between October 1,
13 2009 and December 31, 2016, had opted in for overdraft privilege on non-recurring debit card or
14 ATM transactions and was charged an overdraft privilege fee when the member had sufficient
15 ledger balance in his or her checking account, but insufficient available balance to cover the
16 transaction in question. (SA ¶ 1(f).) This is a very cohesive specific class definition.

17 **III. LEGAL ANALYSIS.**

18 **A. The Settlement Should Be Finally Approved.**

19 Washington law “strongly encourages settlement.” *City of Seattle v. Blume*, 134 Wash.
20 2d 243, 258 947 P.2d 223, 230 (1997) (quoting *Kirk v. Moe*, 114 Wn.2d 550, 554-55, 789 P.2d
21 84 (1990) (“The settlement of a claimant’s entire claim should be strongly encouraged”). “CR
22 23 is identical to its federal counterpart, Fed. R. Civ. P. 23, and thus, federal cases interpreting
23 the analogous federal provision are highly persuasive.” *Pickett v. Holland Am. Line-Westours,*
24 *Inc.*, 145 Wash. 2d 178, 188, 35 P.3d 351, 356 (2001). “[I]t must not be overlooked that
25 voluntary conciliation and settlement are the preferred means of dispute resolution,” and this is
26 “especially true in complex class action litigation.” *Officers for Justice v. Civil Service Com.*,
27 688 F.2d 615, 625 (9th Cir. 1982). “Although Rule 23(e) is silent respecting the standard by
28 which a proposed settlement is to be evaluated, the universally applied standard is whether the

1 settlement is fundamentally fair, adequate and reasonable.” *Id.*; see also *Hanlon v. Chrysler*, 150
2 F.3d 1011, 1026 (9th Cir. 1997). “It is the settlement taken as a whole, rather than the individual
3 component parts, that must be examined for overall fairness.” *Hanlon*, 150 F.3d at 1026.

4 In *Officers for Justice*, the Ninth Circuit delineated the parameters of the district court’s
5 inquiry as follows:

6 [T]he court’s intrusion upon what is otherwise a private consensual agreement negotiated
7 between the parties to a lawsuit must be limited to the extent necessary to reach a
8 reasoned judgment that the agreement is not the product of fraud or overreaching by, or
9 collusion between, the negotiating parties, and that the settlement, taken as a whole, is
10 fair, reasonable and adequate to all concerned. Therefore, the settlement or fairness
11 hearing is not to be turned into a trial or rehearsal for trial on the merits. Neither the trial
12 court nor this court is to reach any ultimate conclusions on the contested issues of fact
13 and law which underlie the merits of the dispute, for it is the very uncertainty of outcome
14 in litigation and avoidance of wasteful and expensive litigation that induce consensual
15 settlements. The proposed settlement is not to be judged against a hypothetical or
16 speculative measure of what *might* have been achieved by the negotiators.

17 688 F.2d at 625.

18 In *Officers for Justice*, the Ninth Circuit also first stated the factors the court may
19 consider, among others, in making its determination. Those factors are: (1) the strength of
20 plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the
21 risk of maintaining class action status throughout the trial; (4) the amount offered in settlement;
22 (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and
23 views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
24 members to the proposed settlement. *Id.*; see also *Hanlon*, 150 F.3d at 1026; *Linney v. Cellular*
25 *Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). “The relative degree of importance to be
26 attached to any particular factor will depend upon and be dictated by the nature of the claims
27 advanced, the types of relief sought, and the unique facts and circumstances presented by each
28 individual case.” *Officers for Justice*, 688 F.2d at 625.

Plaintiff now reviews each of these eight factors in the order presented in *Officers*.

1. The Strengths of Plaintiff’s Case.

“An important consideration in judging the reasonableness of a settlement is the strength
of the plaintiffs’ case on the merits balanced against the amount offered in the settlement.” *Nat’l*
Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004) (quoting 5

1 Moore Federal Practice, § 23.85[2][b] (Matthew Bender 3d. ed.)). “However, in balancing, ‘a
2 proposed settlement is not to be judged against a speculative measure of what might have been
3 awarded in a judgment in favor of the class.” *Id.* “The likelihood of success by Plaintiffs must
4 be evaluated as it existed at the time of settlement.” *Pickett*, 145 Wash. 2d at 192. In
5 considering the strength of Plaintiff’s case, “[t]he Court shall consider the vagaries of litigation
6 and compare the significance of immediate recovery by way of the compromise to the mere
7 possibility of relief in the future, after protracted and expensive litigation. In this respect, [i]t has
8 been held proper to take the bird in hand instead of a prospective flock in the bush.” *Id.* (internal
9 quotation omitted). While Plaintiff was able to withstand a motion to dismiss on the merits of
10 this case, there are considerable risks to a continued litigation, as discussed in Class Counsel’s
11 declaration. (Kick Dec. ¶¶ 22, 23.) For example, if the settlement is not approved, Defendant’s
12 most recent motion to dismiss will come back on calendar. If Plaintiff successfully defends
13 against that motion, Plaintiff next will likely face a motion for summary judgment, as well as an
14 contested motion for certification battle, both of which would have uncertain outcomes. (Kick
15 Dec. ¶ 22.) If the case survived and went to trial, at trial Defendant would argue that the
16 contractual language does not require all that Plaintiff believes it to require. (Kick Dec. ¶ 22.)

17 Accordingly, this factor favors approval of the settlement.

18 **2. The Risk, Expense, Complexity, and Likely Duration of Further**
19 **Litigation.**

20 “In most situations, unless the settlement is clearly inadequate, its acceptance and
21 approval are preferable to lengthy and expensive litigation with uncertain results.” 4 A Conte &
22 H. Newberg, *Newberg on Class Actions*, § 11:50 at 155 (4th ed. 2002). Here, continued litigation
23 would be risky, complex, lengthy, and expensive. The risks of further litigation have been
24 outlined above. (Kick Dec. ¶¶ 22, 23.) With regard to expected duration, as noted, an otherwise
25 strong case could last for a very substantial time if the proposed settlement were not approved,
26 and be extremely expensive to both sides. (*Id.*) Plaintiff’s Counsel believes the likelihood for
27 certification is strong, but there is always some risk in getting consumer class actions certified,
28 even the ones which have the strongest merits for certification. If the settlement is not approved,

1 Defendant’s motion to dismiss would come back on calendar, after which, if successful, Plaintiff
2 would likely next face a motion for summary judgment. (Kick Dec. ¶ 22.) After an expensive
3 trial, regardless of which party prevailed, there likely would be appellate practice, further
4 delaying the receipt of actual funds by the class members.

5 Accordingly, this factor favors approval of the settlement.

6 **3. The Risk of Maintaining Class Action Status Throughout the Trial.**

7 Although the Court, in granting preliminary approval, provisionally certified the class in
8 this case, the class has not been finally certified, nor has it been certified in an adverse situation.
9 Defendant expressly stated it was agreeing to the provisional certification only for purposes of
10 settlement, and therefore if this proposed settlement is not approved, a contested motion for
11 certification would be necessary. (SA § 2.) Although Plaintiff believes this case to be a strong
12 one for certification, the outcome of an adverse motion for class certification would be uncertain,
13 as would the outcome of a motion to decertify the class later down the road, should Defendant
14 file one. (Kick Dec. ¶ 22.) Additionally, of course, the Court could exercise its discretion at any
15 time to reevaluate the appropriateness of class certification.

16 Accordingly, this factor favors approval of the settlement.

17 **4. The Amount Offered in Settlement.**

18 Although Plaintiff believes the proposed settlement amount in this matter is substantial,
19 “It is well-settled law that a cash settlement amounting to only a fraction of the potential
20 recovery does not per se render the settlement inadequate or unfair.” *Officers for Justice*, 688
21 F.2d at 628. “Undoubtedly, the amount of the individual shares will be less than what some class
22 members feel they deserve but, conversely, more than the defendants feel those individuals are
23 entitled to. This is precisely the stuff from which negotiated settlements are made.” *Id.* The
24 settlement fund of \$2,990,000 represents approximately 47% of the most likely expected
25 recovery, should the class have prevailed at trial, which is a good result for class members
26 considering the risks and expense of further litigation. (Kick Dec. ¶ 23.) Further, each class
27 member is treated equally under this settlement, receiving a *pro rata* distribution in accordance
28 with the number of wrongful overdraft fees he or she has incurred. (Settlement Agreement, ¶

1 8(d)(iii).)

2 As stated, courts have determined that settlements are, of course, reasonable where
3 plaintiffs recover only part of their actual losses. *Pickett*, 145 Wash. 2d at 199 (“[T]he fact that a
4 proposed settlement may only amount to a fraction of the potential recovery does not, in and of
5 itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”)
6 (quotation omitted); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015)
7 (“[I]t is well-settled law that a proposed settlement may be acceptable even though it amounts to
8 only a fraction of the potential recovery that might be available to the class members at trial.”)
9 (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal.
10 2004)); *see also City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1386 (S.D.N.Y. 1972) (a
11 recovery of 3.2 % to 3.7 % of the amount sought is “well within the ball park”), *aff’d in part*,
12 *rev’d on other grounds*, 495 F.2d 448 (2d Cir. 1974); *Martel v. Valderamma*, 2015 U.S. Dist.
13 LEXIS 49830 * 17 (C.D. Cal. 2015) (approving a settlement of \$75,000 when potential damages
14 were \$1.2 million, or about 6%); *In re Toys R US FACTA Litig.*, 295 F.R.D. 438, 453 (C.D. Cal.
15 2014) (approving settlement with *vouchers* (not cash) potentially worth a maximum of three
16 percent (3%) *if all possible claims were actually made*, or \$391.5 million aggregate voucher
17 potential where the class could have recovered \$13.05 billion).

18 In this case, as stated, there will not even be any claims process necessary for class
19 members to receive their money, and none of the settlement funds will revert to Defendant.
20 The proposed settlement is therefore well within the range of suitable.

21 **5. The Extent of Discovery Completed, and the Stage of the Proceedings.**

22 “[A] settlement following sufficient discovery and genuine arm’s-length negotiation is
23 presumed fair.” *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 528. Even though “in the context
24 of class action settlements, ‘formal discovery is not a necessary ticket to the bargaining table’
25 where the parties have sufficient information to make an informed decision about settlement”
26 (*Linney*, 151 F.3d at 1239 (citing *In re Chicken Antitrust Litig.*, 669 F.2d 228, 241 (5th Cir.
27 1982)), in this case substantial discovery was accomplished which has enabled the parties to
28 explore the merits of the case and come to an understanding of its likelihood of success.

1 Specifically, Plaintiff has propounded on WSECU, and obtained responses to 86 document
2 requests, 23 special interrogatories, and 12 requests for admission. (Kick Decl. ¶ 13.) Further,
3 WSECU has provided Plaintiff’s database expert, Arthur Olsen, with the class data, which Mr.
4 Olsen has been able to verify in determining the class and class damages. (Olsen Decl. ¶¶ 6-10.)
5 The facts of this case have been fully explored and uncovered.

6 As to the stage of the proceedings, Plaintiff has faced two major challenges to the merits
7 of her case which gave him the opportunity to examine WSECU’s arguments, craft his own, and
8 weigh the strengths and weaknesses of his case, and ultimately reach an informed judgment of
9 the likelihood of success on the merits. (Kick Decl. ¶ 12.)

10 **6. The Experience and Views of Counsel**

11 Courts have “long deferred to the private consensual decision of the parties.” *Rodriguez*
12 *v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Therefore, “[g]reat weight’ is accorded
13 to the recommendation of counsel, who are most closely acquainted with the facts of the
14 underlying litigation.” *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (quoting *In re Paine*
15 *Webber Ltd. P’ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997)); *see also Pickett*, 145 Wash.
16 2d 178, 200, 35 P.3d 351, 362 (2001) (“When experienced and skilled class counsel support a
17 settlement, their views are given great weight.”). Thus, “the trial judge, absent fraud, collusion,
18 or the like, should be hesitant to substitute its own judgment for that of counsel.” *Id.* (quoting
19 *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

20 Class counsel is extremely experienced in consumer class actions, and specifically in
21 overdraft fee class actions, and wholly support the settlement. (McCune Decl. ¶¶ 2-5, 20; Kick
22 Decl. ¶¶ 2-3, 23.) The experience of Class Counsel is set forth in the Declarations of Richard
23 McCune and Taras Kick, filed herewith. Together, Richard McCune and Taras Kick have over
24 fifty years of litigation and trial experience. (*Id.*) Each has been appointed class counsel in
25 numerous state and federal class actions, representing classes of consumers. (*Id.*) Together, they
26 also have been appointed class counsel in numerous cases like this one representing consumers
27 against financial institutions for wrongfully assessing overdraft fees, including: *Fry v.*

28 *MidFlorida Credit Union*, Case No. 8:15-CV-2743 (M.D. Fla. 2018); *Ketner v. State Employees*

1 *Credit Union of Maryland, Inc.*, Case No. 1:15-CV-03594 (D. Md. 2018); *Hernandez v. Point*
2 *Loma Credit Union*, San Diego County Superior Court, Case No. 37-2013-00053519 (appointed
3 co-lead counsel in California state consumer class action regarding alleged improper overdraft
4 fees by a credit union, final approval granted of \$1.5 million settlement in September 2017);
5 *Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037 (appointed co-lead counsel in
6 consumer class action in the Middle District of Louisiana regarding alleged improper overdraft
7 fees by a credit union, final approval granted in August 2017); *Gray v. Los Angeles Federal*
8 *Credit Union*, Los Angeles County Superior Court, Case No. BC625500 (appointed co-lead
9 counsel in California state consumer class action regarding alleged improper overdraft fees by a
10 credit union, final approval granted in June 2017); *Morales v. Kern Schools Federal Credit*
11 *Union*, Kern County Superior Court, Case No. BCV-15-100538 (appointed co-lead counsel in
12 California state consumer class action regarding alleged improper overdraft fees by a credit
13 union, final approval granted in June 2017); *Manwaring v. Golden 1 Credit Union*, Sacramento
14 County Superior Court, Case No. 34-2013-00142667 (appointed co-lead counsel in California
15 state consumer class action regarding alleged improper overdraft fees by a credit union, final
16 approval granted of \$5 million settlement by the court in December 2015); and *Casey v. Orange*
17 *County Credit Union*, Orange County Superior Court No. 30-2013-00658493-CJBT-CXC
18 (appointed co-lead counsel in California state consumer class action regarding alleged improper
19 overdraft fees by credit union, final approval granted by the court in May 2015). (*Id.*)

20 Class Counsel are in favor of the settlement, and believe it is a very good result for class
21 members. (McCune Decl. ¶ 20; Kick Decl. ¶ 23.)

22 Accordingly, this factor also weighs in favor of approval of the settlement.

23 **7. The Presence of a Government Participant.**

24 No government entity is involved in this case. Accordingly, this factor is likely neutral.

25 **8. The Reaction of the Class Members to the Proposed Settlement.**

26 “The reactions of the members of a class to a proposed settlement is a proper
27 consideration for the trial court.” *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (quoting 5
28 Moore’s Federal Practice, § 23.85[2][d] (Matthew Bender 3d ed.)); *Pickett*, 145 Wash. 2d at 200

1 (the reaction of the class members “is one factor” to be considered). “In this regard, ‘the
2 representatives' views may be important in shaping the agreement and will usually be presented
3 at the fairness hearing; they may be entitled to special weight because the representatives may
4 have a better understanding of the case than most members of the class.’” *Id.* (quoting Manual
5 for Complex Litigation, Third, § 30.44 (1995)).

6 The reaction of the class members to the settlement to date has been overwhelmingly
7 positive. As noted above, 34,029 of the 34,811 class members successfully received the notice
8 ordered by this Court, meaning a 97.75% of class members successfully received the notice
9 ordered by this Court. (GCG Decl. ¶¶ 6, 7, 8, 9, 11, 16.) Only 6 members of the class elected to
10 opt out of the proposed settlement being presented for approval to this Court. (GCG Decl. ¶ 20.)
11 This means that of the class members who successfully received notice, 99.98% have elected to
12 remain in the proposed settlement. Finally, although the time to object does not expire until May
13 26, 2018, as of the date of this filing, there has been only one possible objection to the proposed
14 settlement, meaning 99.99% of the class members who received notice of the proposed
15 settlement have elected not to object to it.³

16 Accordingly, the very positive response to the proposed settlement by class members to
17 date also supports approval.

18 **B. The Requested Fee Award and Litigation Costs Should Be Approved.**

19 Class Counsel apply to this Court for attorneys’ fees of one-third (33-1/3%) of the settlement
20

21 ³ As explained in the concurrently filed GCG Declaration, and attached to it, GCG received six
22 signed copies of the sample objection sent out with the notice as part of FAQ 23. Because they
23 were completely blank, GCG called each of the six class members who submitted the blank
24 forms. (GCG Decl. ¶ 21.) Every one of these six class members informed GCG they did not
25 intend to object, but rather thought that they needed to submit the form to make a claim. (*Id.*)
26 There was also a single objection form which did contain a statement, and is attached as Exhibit
27 D to the GCG Declaration. To Class Counsel it sounds as if it might be more that the class
28 member is complaining about the defendant than about the settlement, but Class Counsel will
address this further at the Court-ordered time for response to any objections. Further, GCG also
attempted to reach this class member to inquire whether he actually meant to object to the
proposed settlement, but did not hear back from the class member. (*Id.*)

1 fund, or \$966,666.67, plus reimbursement of reasonable litigation costs. (SA ¶ 7(d)(ii).) Under
2 both the percentage of the benefit methodology and the lodestar methodology, the requested fee
3 is very much well within the range for approval. (*see, e.g., Vizcaino v. Microsoft* (9th Cir. 2002)
4 290 F.3d 1043, 1050 (3.6x multiplier); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.* (2nd Cir. 2005)
5 396 F.3d 96, 123 (“multipliers of between 3 and 4.5 have become common”).) Based on Class
6 Counsel’s lodestar to date, the multiplier to be requested in the Motion for Final Approval would
7 be only 1.98, well within the range for approval in a case as such. (Kick Decl. ¶ 9.)⁴

8 **1. The Award Is Appropriate Under a Percentage of the Benefit**
9 **Analysis.**

10 In common fund cases, Washington courts often “apply the percentage of recovery
11 approach.” *Bowles v. Wash. Dep’t of Ret. Sys.*, 121 Wash. 2d 52, 73, 847 P.2d 440, 451 (1993).
12 The Ninth Circuit has also allowed the use of the percentage-of-the-recovery method to calculate
13 attorneys’ fees in common fund cases, where, as here “(1) the class of beneficiaries is
14 sufficiently identifiable, (2) the benefits can be accurately traced, and (3) the fee can be shifted
15 with some exactitude to those benefiting.” *Petition of Hill*, 775 F.2d 1037, 1041 (9th Cir. 1985).
16 Here Plaintiff has identified with precision the exact beneficiaries to the settlement and the
17 benefit that they will receive, and the fee is properly shifted to those beneficiaries. There is no
18 argument that here “each member of [the] certified class has an undisputed and mathematically
19 ascertainable claim to part of a lump-sum recovered on his [or her] behalf.” *Boeing Co. v. Van*
20 *Gemert*, 444 U.S. 472, 478 (1980).

21 Under this analysis, the \$966,666.67 being sought equals one-third of the overall value
22 settlement. Although some say that 25% is a “starting point” under Washington and federal law
23 for a percentage-of-benefit award, in reality, consumer class actions in this dollar range often
24 award a higher percentage than that, often one-third (33-1/3%) of the settlement amount or
25 higher. (*see, e.g., Chavez, at 66*: “[e]mpirical studies show that, regardless whether the

26
27 ⁴ Class Counsel will make available for this Court’s *in camera* review, should this Court request
28 to see it, a detailed declaration specifying on what work the time was spent, and will also make
available, should the Court wish to inspect them, timesheets documenting this.

1 percentage method or the lodestar method is used, fee awards in class actions average around
2 one-third of the recovery.”^[1]

3 In fact, in all of the following very similar overdraft fee class actions prosecuted by the
4 same Class Counsel, the following honorable courts and jurists have determined a one-third fee
5 award (or more) to Class Counsel was appropriate: *Lane v. Campus Federal Credit Union*, Case
6 No. 3:16-cv-00037 (final approval granted in August 2017, with fees awarded of one-third);
7 *Hernandez v. Point Loma Credit Union*, San Diego County Superior Court, Case No. 37-2013-
8 00053519 (49.7% fee award, final approval granted 2017); *Gray v. Los Angeles Federal Credit*
9 *Union*, Los Angeles County Superior Court, Case No. BC625500 (final approval granted in June
10 2017, with fees awarded of one-third); *Moralez v. Kern Schools Federal Credit Union*, Kern
11 County Superior Court, Case No. BCV-15-100538 (final approval granted in June 2017, with
12 fees awarded of one-third); *Manwaring v. Golden 1 Credit Union*, Sacramento County Superior
13 Court, Case No. 34-2013-00142667 (final approval granted in December 2015, with fees
14 awarded of one-third); *Casey v. Orange County Credit Union*, Orange County Superior Court
15 No. 30-2013-00658493-CJ-BT-CXC (final approval granted by the court in May 2015, with fees
16 awarded of one-third). (Kick Decl. ¶ 3.)

17 Courts have applied the following factors when determining whether a higher percentage
18 should be awarded: (1) the result obtained for the class; (2) the effort expended by counsel; (3)
19 counsel’s experience; (4) counsel’s skill; (5) the complexity of the issues; (6) the risks of non-
20 payment assumed by counsel; (7) the reaction of the class; and (8) comparison with counsel’s

21
22 ^[1] A non-exhaustive list of other cases awarding a percentage of benefit based on the common
23 fund of one-third or more include *Fry v. MidFlorida Credit Union*, Case No. 8:15-CV-2743
24 (M.D. Fla. 2018) (award of one-third); *Ketner v. State Employees Credit Union of Maryland,*
25 *Inc.*, Case No. 1:15-CV-03594 (D. Md. 2018) (award of one-third); *Castaneda v. Burger King*
26 *Corp.* (N.D. Cal. Jul. 12, 2010)2010 U.S.Dist.LEXIS 78299 [awarding 33%].); *In re California*
27 *Indirect Purchases* (Cal. Super. Ct. Oct. 22, 1998) No. 960886, 1998 WL 1031494, at *9 [setting
28 forth a survey of awards approved by trial courts in common fund cases, including *In re Milk*
Antitrust Litigation (L.A.Sup.Ct.1998) Civ. Case No. BC070061 (33½% award); ; *Carlson v.*
C.H. Robinson Worldwide (D. Minn. 2006) 2006 U.S.Dist.LEXIS 67108, *21-22 [35%];
Worthington v. CDW (S.D. Ohio 2006) 2006 U.S.Dist.LEXIS 32100, *22 [“Counsel’s requested
percentage of 38 and one-third of the total gross settlement”].)

1 lodestar. *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 U.S. Dist. LEXIS 13555 at *18
2 (C.D. Cal. June 10, 2005) (citing *In re Quintus Sec. Litig.*, 148 F.Supp.2d 967, 973-74 (N.D. Cal.
3 2001)).

4 Here, the factors all weigh in favor of a higher percentage. The result obtained for the
5 class is excellent: a \$2,990,000 fund from which class members will be paid directly without
6 having to make a claim, and none of which will revert to Defendant. This fund represents
7 approximately 47% of the amount that the class might have achieved at trial without all of the
8 risks and costs attendant with litigation. Counsel expended great effort in this case, battling very
9 sophisticated skilled counsel for defendant in two jurisdictions, overcoming a motion to dismiss
10 under Federal Rule 12(b)(6) and fighting tooth and nail a motion to dismiss for lack of subject
11 matter jurisdiction. Counsel expended over 744.7 hours in litigating this case, all without any
12 guarantee of payment. (Kick Decl. ¶ 9.) Counsel's skill has been previously noted. Both
13 Richard McCune and Taras Kick are experienced class action litigators, having served as lead
14 class counsel in numerous state and federal cases, each serving as co-lead counsel in well over
15 ten successfully settled overdraft fee class actions alone. The issues here were complex,
16 involving the analysis of two complex consumer contracts. Class Counsel accepted a
17 considerable degree of risk that it would not receive any payment for its services, as they worked
18 entirely on a contingent basis. The reaction of the class, as noted, has been overwhelmingly
19 favorable, with over 99.98% participating in the settlement. Finally, Class Counsel's lodestar is
20 over \$489,445.00, which requires only a modest multiplier of less than 1.98 to arrive at the same
21 result.

22 **2. The Award Is Appropriate Under a Lodestar Analysis.**

23 "Under the lodestar/multiplier method, the district court first calculates the 'lodestar' by
24 multiplying the reasonable hours expended by a reasonable hourly rate." *In re Wash. Pub.*
25 *Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 n.2 (9th Cir. 1994); *see also Staton*, 327 F.3d
26 at 965. Additionally, in certain cases, the court may adjust the lodestar upwards where
27 circumstances warrant the adjustment. *Staton*, 327 F.3d at 965 & n.17. The Ninth Circuit, and
28 other circuits have awarded multipliers in the range of 2 to 4, and even higher. (*Vizcaino v.*

1 *Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1050 (3.6x multiplier); *In re Veritas Software Corp.*
2 *Secs. Litig.* (N.D. Cal. 2005) 2005 U.S.Dist.LEXIS 30880, *43 (4x multiplier); *Wal-Mart*
3 *Stores, Inc. v. Visa U.S.A. Inc.* (2nd Cir. 2005) 396 F.3d 96, 123 (“multipliers of between 3 and
4 4.5 have become common”); *In re Linerboard Antitrust Litig.* (E.D. Pa. 2004) 2004
5 U.S.Dist.LEXIS 10532, *50 (noting that “during 2001-2003, the average multiplier approved in
6 common fund class actions was 4.35”); *In re Superior Beverage/Glass Container Consol.*
7 *Pretrial* (N.D. Ill. 1990) 133 F.R.D. 119, 131 (courts have characterized multipliers of 3 or
8 higher as average in many class actions).

9 Here, as counsel is seeking a modest multiplier at the lower end of the range, at 1.98, a
10 review of the factors set out by the Ninth Circuit in *Kerr v. Screen Guild Extras, Inc.*, 526 F.2d
11 67, 70 (9th Cir. 1976), is in order. Those factor are: (1) the time and labor required; (2) the
12 novelty and difficulty of the issues litigated; (3) the skill needed to perform properly the legal
13 service; (4) the preclusion of other employment due to the acceptance of work; (5) the customary
14 fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or
15 the circumstances; (8) the amount at issue and the results obtained; (9) the experience,
16 reputation, and ability of the attorney or attorneys; (10) the “undesirability” of the case; (11) the
17 length and nature of the professional relationship between the attorney and the client; and (12)
18 awards in similar cases.

19 Here, as to the first factor, the Declarations of Richard McCune and Taras Kick set forth
20 the work performed by class counsel on all aspects of this case. Class Counsel performed
21 considerable work, overcoming a motion to dismiss, and propounding written discovery. (Kick
22 Decl. ¶¶ 12, 13.) As to the second factor, the case involved several difficult legal issues,
23 including construction of the contractual language at issue. Accordingly, as to the third factor,
24 this case required a high level of skill. As to the fourth factor, both The Kick Law Firm, APC
25 and McCune Wright Arevalo, LLP, turned down work they could have taken in order to pursue
26 this case. (Kick Decl. ¶ 15.) As to the fifth factor, the customary fee in Washington in a
27 successful case would apply a positive multiplier to the lodestar of anywhere from 2 to 4 *Perry v.*
28 *Costco Wholesale, Inc.*, 123 Wn. App. 783, 98 P.3d 1264 (2004). Counsel is seeking the lower

1 end of that range. As to the sixth factor, the fee was contingent, and accordingly Class Counsel
2 took considerable risk in litigating this case. (Kick Decl. ¶ 15.) As to the seventh factor, no time
3 limitations were imposed by the client or other circumstances. As to the eighth factor, the total
4 amount of sufficient funds overdraft fees, minus refunds, and the amount that Plaintiff's counsel
5 believes it most likely would have received had it prevailed at trial, is \$6,387,766. The result
6 obtained—\$2,990,000—represents about 47% of the amount at issue. As to the ninth factor, the
7 experience, reputation, and ability of the attorneys which have represented the class in this case
8 are set forth in the Declarations of Richard McCune and Taras Kick. Both firms and both lead
9 attorneys have considerable experience in consumer class action litigation, and specifically in
10 overdraft fee class action cases. As to the tenth factor, this was not an undesirable case;
11 however, it did present the real risk of total loss for Class Counsel. As to the eleventh factor, Mr.
12 Wodja and Class Counsel have enjoyed a very productive working relationship, involving
13 substantial communication, with positive results. (Kick Decl. ¶ 20.) As to the twelfth factor, as
14 stated above with factor five, in a successful case as such a positive multiplier of anywhere from
15 2 to 4 would be expected, and here Class Counsel is seeking a multiplier which is actually
16 slightly below the lower end of that range.

17 Finally, with regard to reimbursable costs, as set forth in the accompanying declarations
18 of Richard McCune and Taras Kick, although the Notice disseminated to class members stated
19 that litigation costs may be reimbursed up to \$80,000, Class Counsel seek a total of only
20 \$54,622.72 for reimbursable litigation costs, and the costs constituting this amount are detailed in
21 the declarations. (McCune Decl. ¶ 17; Kick Decl. ¶ 18.) These amounts were spent in
22 furtherance of the litigation. For claims administrator's costs, as approved in this Court's March
23 20, 2018 Order, GCG seeks a cap of \$71,850. (GCG Decl. ¶ 22.)

24 **C. The Class Representative Service Award Is Reasonable.**

25 The proposed class representative, Mr. Todd Wodja, respectfully requests this Court
26 award a service award for his service in this case of \$5,000. Mr. Wodja was very helpful to the
27 case's success, including not only putting his name out in the public domain on behalf of helping
28 all of the other absent class members, but also taking time to find and to provide documents,

1 engaging in numerous discussions with counsel, both on the phone and by email, and meeting
2 with counsel in Washington in person, as well as other service. (Kick Decl. ¶ 20.) A service
3 award is of course appropriate under the law. *Probst v. Dep't of Ret. Sys.*, No. 38094-3-II, 2009
4 Wash. App. LEXIS 1613, at *17 (Ct. App. June 30, 2009)

5 **D. The Proposed Cy Pres Recipients Are Appropriate.**

6 Effective January 3, 2006, Washington adopted CR 23(f), which details how to disburse
7 residual funds, *i.e.*, funds that remain after the payment of all approved class member claims,
8 expenses, litigation costs, attorneys' fees, and other court-approved disbursements. *See* CR
9 23(f)(1). The rule requires that 25% of any residual funds be disbursed to the Legal Foundation
10 of Washington to support activities and programs that promote access to the civil justice system
11 for low income residents of Washington State. CR 23(f)(2). The remaining 75% may be
12 disbursed to "any other entity for purposes that have a direct or indirect relationship to the
13 objectives of the underlying litigation or otherwise promote the substantive or procedural
14 interests of members of the certified class." *Id.*

15 The terms of the proposed Settlement Agreement before this Court comply with this
16 requirement. Specifically, once the Effective Date occurs, none of the Settlement Fund will
17 revert to WSECU. (SA ¶ 7(d)(viii.) Rather, if there is any residue which remains in the Net
18 Settlement Fund after all class members have been paid the amount to which they are entitled,
19 the settlement provides for a *cy pres* distribution of such residue, if approved by this Court, to
20 Public Citizen, a non-profit organization devoted to protecting consumer rights. (SA ¶ 10.)
21 The Declaration of Robert Weissman, the President of Public Citizen, is filed concurrently with
22 this motion for the Court's review. As demonstrated in the declaration of Mr. Weissman, a
23 substantial portion of Public Citizen's work is in the Ninth Circuit, positively affecting
24 consumers of the State of Washington.

25 **E. The Proposed Settlement Class Should Be Certified.**

26 A court should certify a proposed class if it satisfies all four requirements of CR 23(a)
27 and one of the subsections of CR 23(b). *Washington Educ. Ass'n v. Shelton Sch. Dist.*, 93 Wash.
28 2d 783, 789, 613 P.2d 769, 773 (1980).

1 Class certification is proper if the proposed class, the proposed class representative, and
2 the proposed class counsel satisfy the numerosity, commonality, typicality, and adequacy of
3 representation requirements of CR 23(a). In addition to meeting those requirements, as stated, a
4 plaintiff seeking class certification must also meet at least one of the three provisions of CR
5 23(b). “As there are few Washington cases on point, and because the federal rule is identical,
6 much of [the Washington courts’] analysis [is] based upon federal cases.” *Brown v. Brown*, 6
7 Wash. App. 249, 252, 492 P.2d 581, 583 (1971). Washington courts “favor a liberal
8 interpretation of CR 23, rather than a restrictive one.” *Id.* at 586. “A trial court is entitled to
9 ‘noticeably more deference’ on a grant of class certification as opposed to a denial.” *Chavez v.*
10 *Our Lady of Lourdes Hospital at Pasco*, No. 94592-6 at p. 8 (Wash. Apr. 19, 2018) (quoting
11 *Wolin v. Jaguary Land Rover No. Am., LLC*, 617 F.3d 1168, 1171 (9th Cir. 2010)).

12 When a plaintiff seeks class certification under CR 23(b)(3), the representative must
13 demonstrate that common questions of law or fact predominate over individual issues and that a
14 class action is superior to other methods of adjudicating the claims. *Amchem*, 521 U.S. at 615-16.
15 Because Plaintiff meets all of the CR 23(a) and 23(b)(3) prerequisites, certification of the
16 proposed Class is proper.

17 1. The Requirement of Numerosity is Satisfied.

18 The first prerequisite of class certification is numerosity, which requires “the class [be] so
19 numerous that joinder of all members is impractical.” CR 23(a)(1).

20 As a general rule, classes of 40 or more suffice. 5-23 Moore’s Federal Practice - Civil §
21 23.22[1][b]. In this case, as 34,811 members have been identified who were assessed at least one
22 overdraft fee when the ledger balance was sufficient to cover the transaction at issue, it is beyond
23 question that the numerosity requirement is met. (Olsen Decl. ¶ 9.) *See, e.g., Wilson v. Future*
24 *Fin. Group, Inc.*, 2011 U.S. Dist. LEXIS 9691 at *5 (W.D. Wash. 2011) (“with over 200
25 proposed class members, the class is so numerous that joinder of each member is
26 impracticable”).

27 2. The Requirement of Commonality is Satisfied.

28 The second requirement for certification requires that “questions of law or fact common

1 to the class” exist. CR 23(a)(2). The commonality requirement does not demand that each class
2 member have precisely the same claim. “CR 23 does not require ‘that the shared questions of law
3 or fact be identical’ as to each individual class member.” *Pellino v. Brink’s Inc.*, 164 Wash. App.
4 668, 683, 267 P.3d 383, 392 (2011) (citing *Miller v. Farmer Bros. Co.*, 115 Wash. App. 815,
5 824, 64 P.3d 49, 55 (2003)); *see also*, *Brown v. Brown*, 6 Wash. App. 249, 255, 492 P.2d 581,
6 585 (1971).

7 Commonality is demonstrated when the claims of all class members “depend upon a
8 common contention . . . that is capable of classwide resolution.” *Wal-Mart Stores, Inc. v. Dukes*,
9 131 S. Ct. 2541, 2551 (2011). This requires that the determination of the common question “will
10 resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* “Even
11 a single common question will do.” *Dukes*, 131 S. Ct. at 2556. Commonality has been found to
12 exist where “all plaintiffs and potential class members suffer under the same allegedly arbitrary
13 and discriminatory conduct.” *Brown*, 6 Wash. App. at 255, 492 P.2d at 585.

14 The commonality preconditions of Rule 23(a)(2) are less rigorous than the companion
15 requirements of Rule 23(b)(3). Indeed, Rule 23(a)(2) has been construed permissively.
16 All questions of fact and law need not be common to satisfy the rule. The existence of
17 shared legal issues with divergent factual predicates is sufficient, as is a common core of
18 salient facts coupled with disparate legal remedies within the class.

19 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1997).

20 In other words, commonality exists where a question of law linking class members is
21 substantially related to resolution of the litigation even where the individuals may not be
22 identically situated. *Davis v. Astrue*, 250 F.R.D. 476, 486 (N.D. Cal. 2008) (“Rule 23(a)(2) does
23 not mandate that each member of the class be identically situated, only that there be substantial
24 questions of law or fact common to all.”) (citing *Harris v. Palm Springs Alpine Estates, Inc.*, 329
25 F.2d 909, 915 (9th Cir. 1964)). The Ninth Circuit has found that commonality is a “limited
26 burden” in that only one common question is required. *Mazza v. Am. Honda Motor Co.*, 666
27 F.3d 581, 589 (9th Cir. 2012). Courts look to whether the class members’ claims “stem from the
28 same source.” *Hanlon*, 150 F.3d at 1019-1020.

Here, not only do there exist common questions of law or fact, the common questions
predominate over any individual ones. The theories underlying the class claims involve a

1 uniform overdraft fee practice. It is undisputed that Defendant uniformly and systematically
2 used the “available balance” to determine whether to assess an overdraft fee on a transaction, as
3 opposed to utilizing the actual money in the account, i.e., the “ledger balance” or “actual
4 balance”. Therefore, answering whether Defendant breached its contract terms in doing that will
5 by definition predominate for all class members. Additionally, it is also undisputed that the
6 operative terms regarding the overdraft fee program, and specifically the balance calculation to
7 be used to determine the assessment of overdraft fees, as set forth in the Opt-In Contract (e.g.
8 enough money in the account to cover a transaction) were provided to all class members. (First
9 Amended Complaint “FAC” at ¶¶ 23, 24.)

10 As such, the commonality requirement is satisfied.

11 **3. The Requirement of Typicality is Satisfied.**

12 CR 23 next requires that the class representative’s claims be typical of those of the class
13 members. CR 23(a)(3). To Class Counsel’s knowledge, no reported Washington decision has
14 denied class certification based solely on a lack of typicality. *Hisle v. Todd Pac. Shipyards*
15 *Corp.*, 113 Wash. App. 401, 54 P.3d 687 (2002). “The requirements of commonality and
16 typicality tend to merge, and are often addressed as a single issue.” *Oda v. State*, 111 Wash. App.
17 79, 89, 44 P.3d 8, 13 (2002).

18 Like the commonality requirement, the typicality requirement is “permissive” and
19 requires only that the representative’s claims be “reasonably co-extensive with those of absent
20 class members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020. The
21 typicality requirement looks to whether “the claims of the class representative [are] typical of
22 those of the class, and [is] ‘satisfied when each class member’s claim arises from the same
23 course of events, and each class member makes similar legal arguments to prove the defendant’s
24 liability.’” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (quoting *Marisol A. v.*
25 *Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997). The Supreme Court of the United States agrees with
26 Washington’s state courts that commonality and typicality “tend to merge,” such that the factors
27 supporting a finding of commonality also support a finding of typicality. *See General Tel. Co. of*
28 *Southwest v. Falcon*, 457 U.S. 147, 157 (1982); *In re United Energy Corp. Solar Power Modules*

1 *Tax Shelter Investments Sec. Litig.*, 122 F.R.D. 251, 256 (C.D. Cal. 1988).

2 Plaintiff's claims are not only typical of those of the other putative class members, they
3 are virtually indistinguishable. There is no dispute that Plaintiff entered into the uniform and
4 standardized Opt-In Contract and that he was assessed overdraft fees when there was enough
5 money in the account (i.e., the ledger balance) to complete the requested transaction. At a
6 minimum, this occurred on June 18, 2015, when he was assessed a \$27 overdraft fee on a
7 transaction, despite the fact that his account contained sufficient funds to complete the
8 transaction. (Complaint ¶ 30.) Plaintiff also alleges the same legal theories as the rest of the
9 class of breach of contract/breach of the covenant of good faith. Therefore, typicality is satisfied.

10 **4. The Requirement of Adequate Representation is Satisfied.**

11 The final CR 23(a) prerequisite requires that the proposed class representative has
12 and will continue to “fairly and adequately protect the interests of the class.” This means at least
13 that the class representative and the members of the class must have claims against the same
14 defendants. *Doe v. Spokane and Inland Empire Blood Bank*, 55 Wash. App. 106, 118, 780 P.2d
15 853, 861. Courts apply a two-factor test to determine whether a plaintiff and his counsel will
16 adequately represent the interests of the class: “(1) do the representative plaintiffs and their
17 counsel have any conflicts of interest with other class members, and (2) will the representative
18 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Staton v.*
19 *Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003); *Crawford v. Honig*, 37 F.3d 485, 487 (9th Cir.
20 1995). As to the first factor, “Conflicting or antagonistic interests among members of the alleged
21 class in the subject matter of the litigation, necessitating a determination of priorities between
22 class members, may render a class action an improper vehicle for seeking vindication of a given
23 right.” *De Funis v. Odegaard*, 84 Wash. 2d 617, 622 529 P.2d 438, 441 (1974). Here, there are
24 no competing interests: each of the class members were charged improper overdraft fees under
25 the same conditions—when their accounts contained enough money to pay for the transaction at
26 issue—and are therefore subject to refunds under the same rubric. As to the second factor, as
27 with the typicality requirement, adequacy requires that the interests of the named plaintiffs are
28 aligned with the unnamed class members to ensure that the class representative has an incentive

1 to pursue and protect the claims of the absent class members. *See Amchem*, 521 U.S. at 626 n.
2 20, 117 S.Ct. 2231 (“The adequacy-of-representation requirement ‘tends to merge’ with the
3 commonality and typicality criteria of Rule 23(a), which ‘serve as guideposts for determining
4 whether . . . maintenance of a class action is economical and whether the named plaintiff’s claim
5 and the class claims are so interrelated that the interests of the class members will be fairly and
6 adequately protected in their absence.’”)

7 Proposed Class Counsel, Richard McCune of McCune Wright Arevalo, LLP, and Taras
8 Kick of The Kick Law Firm, APC, both have significant class action, litigation, and trial
9 experience, are competent, and have been competent in representing the Classes. Both law firms
10 representing the putative class have extensive experience in consumer class actions, and in
11 particular, expertise in overdraft fee litigation. (McCune Decl. at ¶¶ 2-5; Kick Decl. at ¶¶ 2-3.)
12 The interests of Plaintiff Todd Wodja are not antagonistic to those of the other Class members;
13 his interests are wholly aligned because he was charged overdraft fees when his account had a
14 positive ledger balance. Further, he understands that he is pursuing this case on behalf of all
15 class members similarly situated and understands he has a duty to protect the absent Class
16 members. (Kick Decl. ¶ 20.) He has actively participated in the litigation by frequently
17 conferring with class counsel about the case and its status, assisting class counsel by gathering
18 documents and other information, and being prepared and willing to testify at deposition and trial
19 on behalf of the class if necessary. (Kick Decl. ¶ 20.)

20 **5. The (Former) Implied Requirement of Ascertainability is Satisfied.**

21 In *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121---, 2017 WL 24618 (9th Cir. 2017),
22 the Ninth Circuit rejected the notion of a separate ascertainability requirement for certification in
23 a class action. As such, none probably exists in Washington. Regardless, that recent holding
24 would not really affect this case, since the actual class members were actually already identified
25 by Defendant’s own records. (Olsen Decl. ¶ 9.)

26 **6. The Proposed Settlement Class Also Meets the Requirements of Rule**
27 **23(b)(3).**

28 Once the prerequisites of CR 23(a) have been met, a plaintiff must also demonstrate

1 that he satisfies the requirements of CR 23(b), which requires that “the questions of law or fact
2 common to class member predominate over any questions affecting only individual members,
3 and that a class action is superior to other available methods for fairly and efficiently
4 adjudicating the controversy.” Mr. Wodja clearly satisfies both of these requirements.

5 **a. Common Questions of Law and Fact Predominate.**

6 “To determine whether common issues predominate over individual ones, a trial court
7 pragmatically examines whether there is a common nucleus of operative facts in each class
8 member’s claim.” *Chavez v. Our Lady of Lourdes Hospital at Pasco*, No. 94592-6 at p. 8
9 (Wash. Apr. 19, 2018) (citing *Moeller v. Farmers Ins. Co. of Wash.*, 155 Wn. App. 133, 148, 229
10 P.3d 857 (2010), *aff’d* 173 Wn.2d 264, 267 P.3d 998 (2011)). “[C]omplete unanimity of position
11 and purpose is not required among members of a class.” *King v. Riveland*, 125 Wash. 2d 500,
12 519, 886 P.2d 160, 171 (1994). “The relevant inquiry is whether the issue shared by class
13 members is the dominant, central, or overriding issue in the litigation.” *Chavez*, No. 94592-6 at
14 p. 8) (citing *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 825, 64 P.3d 49 (2003)).

15 “[T]he predominance requirement is not defeated merely because individual factual or
16 legal issues exist; . . . [a] single common issue may be the overriding one in the litigation,
17 despite the fact that the suit also entails numerous remaining individual questions.” *Id.* at p. 12
18 (quoting *Miller*, 115 Wn. App. at 825). The predominance requirement questions whether the
19 proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem*,
20 521 U.S. at 623. “If common questions ‘present a significant aspect of the case and they can be
21 resolved for all members of the class in a single adjudication,’ then ‘there is clear justification for
22 handling the dispute on a representative rather than on an individual basis,’ and the
23 predominance test is satisfied.” *Keegan v. Am. Honda Motor Co.*, 284 F.R.D. 504, 526 (C.D.
24 Cal. 2012) (quoting *Hanlon*, 150 F.3d at 1022). But “common issues need only predominate, not
25 outnumber individual issues.” *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir.
26 2013), cert. denied, 134 S. Ct. 1277 (2014).

27 As the Supreme Court most recently confirmed:

28 When one or more of the central issues in the action are common to the class and can be

1 said to predominate, the action may be considered proper under Rule 23(b)(3) even
2 though other important matters will have to be tried separately, such as damages or some
affirmative defenses peculiar to some individual class members.

3 *Tyson Foods, Inc. v. Bouaphakeo*, 136 S.Ct. 1036, 1045 (2016). The claims here are subject to
4 common proof, and would be subject to the same common proof if additional plaintiffs were
5 added, and thus it would be more efficient to decide those common issues via the class action
6 mechanism.

7 As WSECU does not dispute its practice of charging fees based on the available balance
8 while the ledger balance contains enough money to pay for the transaction, Plaintiff contends
9 that the only issue is whether the contract permitted it to do so. The common question of
10 whether WSECU’s contract language allowed it to charge overdraft fees when there was enough
11 money in the account predominates over any potential individualized question.

12 **b. This Class Action is the Superior Method of Adjudication.**

13 CR 23(b)(3) also requires that a certifying court find that “a class action is
14 superior to other available methods for fairly and efficiently adjudicating the controversy.”
15 “The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of
16 the particular class action procedure will be achieved in the particular case.” *Delarosa v. Boiron,*
17 *Inc.*, 275 F.R.D. 582, 594 (C.D. Cal. Aug. 24, 2011) (quoting *Hanlon*, 150 F.3d at 1023.) “This
18 determination necessarily involves a comparative evaluation of alternative mechanisms of
19 dispute resolution.” *Id.* (quoting *Hanlon*, 150 F.3d at 1023.); *see also Chavez*, No. 94592-6 at p.
20 12 (“The superiority requirement focuses on a comparison of available alternatives and a
21 determination that a class action is superior to, not just as good as, other available methods.”).
22 Where each class member, pursuing an individual case, would burden the judiciary, this factor
23 weighs in favor of certification. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946
24 (9th Cir. 2009) (“The overarching focus remains whether trial by class representation would
25 further the goals of efficiency and judicial economy.”). This factor also weighs in favor of
26 certification where litigation costs would likely “dwarf potential recovery” if each class member
27 litigated individually. *Hanlon*, 150 F.3d at 1023; *see also Haley v. Medtronic, Inc.*, 169 F.R.D.
28 643, 652 (C.D. Cal. 1996)) (“[W]here the damages each plaintiff suffered are not that great, this

1 factor weighs in favor of certifying a class action.”).

2 As the Supreme Court stressed in *Amchem*, 521 U.S. at 617:

3 The policy at the very core of the class action mechanism is to overcome the problem
4 that small recoveries do not provide the incentive for any individual to bring a solo
5 action prosecuting his or her rights. A class action solves this problem by
6 aggregating the relatively paltry potential recoveries into something worth someone’s
7 (usually an attorney’s) labor.

8 As Judge Posner has stated, “[t]he realistic alternative to a class action is not 17 million
9 individual suits, but zero individual suits, as only a lunatic or a fanatic sues for \$30.” *Carnegie*
10 *v. Household Int’l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004). The Ninth Circuit has held similarly
11 that the proposed class action is “paradigmatic” where “litigation costs would dwarf potential
12 recovery.” *Hanlon*, 150 F.3d 1011 at 1023; *see also Chavez*, No. 94592-6 at p. 13 (“Because this
13 lawsuit involves well over 40 plaintiffs, we hold that a class action is superior to joinder for the
14 resolution of these claims.”).

15 The desirability of concentrating the litigation in the present forum is illustrated by the
16 fact that the amount of an individual damage instance is at most a \$27 overdraft fee. There is no
17 question that a large number of class members have suffered damages in an amount that could
18 not justify or sustain individual lawsuits, and the only choice is between a class action and no
19 action. Plaintiff is not aware of any additional suits instituted by or against the class members
20 concerning the subject matter of the settlement. Superiority is met.

21 Accordingly, all factors weigh in favor of class certification.

22 **IV. CONCLUSION**

23 Plaintiff respectfully requests that the Court grant final approval of the settlement, the
24 request for attorney’s fees and costs, the request for approval of class administrator expenses,
25 and the request for a service award to the class representative, in the entirety.

26 Respectfully submitted,

27 FRIEDMAN | RUBIN

28 DATED: May 11, 2018

BY: /s/ Richard H. Friedman, WSBA #30626
/s/ Richard Dykstra, WSBA #5114
Richard H. Friedman, WSBA #30626
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*Attorneys for Plaintiff Todd Wodja
and the Putative Class*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via email on May 11, 2018, on the following individuals:

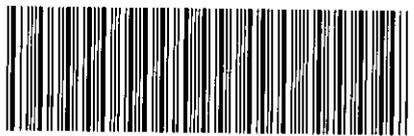
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Attorneys for Defendant

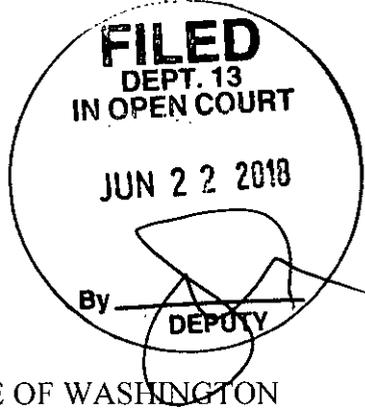


Nori Skretta

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The Honorable Kathryn J. Nelson
Noted for Hearing: 6/22/2018 at 9:00 am



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

TODD WODJA, individually, and on behalf of all
others similarly situated

Plaintiff,

vs.

WASHINGTON STATE EMPLOYEES CREDIT
UNION, and DOES 1-10,

Defendants

Case No.: 16-2-12148-4

**[PROPOSED] ORDER AND JUDGMENT
FINALLY APPROVING CLASS ACTION
SETTLEMENT**

[PROPOSED] ORDER ON MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Case No. 16-2-12148-4

FRIEDMAN | RUBIN
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FINAL APPROVAL ORDER AND JUDGMENT

This Court granted preliminary approval of the Settlement Agreement and Release (“Settlement”) and certified a provisional settlement class on February 2, 2018 (the “Class”). Due and adequate notice having been given to the Class Members, and the Court having considered the Settlement, all papers filed and proceedings had herein and all oral and written comments received regarding the Settlement, and having reviewed the record in this litigation, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Unless otherwise provided, all terms used herein shall have the same meaning as provided in the Settlement.

2. The Court has jurisdiction over the subject matter of this litigation and over the Parties to this litigation, including all Class Members.

3. This Court finds that the Class meets all of the requirements for certification of a settlement class under the Washington Civil Rules and applicable case law. For settlement purposes only, and without prejudice to WSECU’s ongoing reservation of the right to contest class certification if the Effective Date does not occur or the Settlement is otherwise terminated for any reason, the Court now finally certifies the Class which is defined as follows:

“Class Member” shall mean any member of Defendant who, between October 1, 2009 and December 31, 2016, had opted in for overdraft protection on non-recurring debit card or ATM transactions and was charged an overdraft privilege fee when the member had a sufficient ledger balance in his or her checking account, but insufficient available balance to cover the transaction in question.

4. The Court appoints Named Plaintiff Todd Wodja as the Class Representative.

5. The Court approves The Kick Law Firm, APC and McCune Wright Arevalo LLP as Class Counsel.

6. The Court appoints Garden City Group, LLC as the Claims Administrator. The Claims Administrator shall be subject to the jurisdiction of the Court with respect to the administration of the Settlement and shall comply with the terms of the Settlement.

7. The Court finds that the distribution of notice of the Settlement has been completed

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in conformity with the Court’s preliminary approval order. The Court finds that the notice was the best practicable under the circumstances and provided the Class with due and adequate notice of the proceedings and of the terms of the Settlement. The Court finds that the notice fully satisfied the requirements of due process and the notice requirements under CR 23(c)(2) and CR 23(e). The Court also finds that all Class Members were given a full and fair opportunity to object to the proposed Settlement, Class Counsel’s application for an award of attorney fees and litigation costs, the payment of a Class Representative Service Award and the payment of the Claims Administrator’s fees and to participate in the Final Approval Hearing. All Class Members wishing to be heard regarding the Settlement have been heard, and all Class Members have had a full and fair opportunity to exclude themselves from the Class.

8. The Court finds that only seven members of the Class requested exclusion from the class and that one member objected to the Settlement. The seven class members who opted out of the proposed settlement are identified in Exhibit A to the June 4, 2018, Declaration of Shandarese Garr of Garden City Group and are excluded from this settlement. The single objection is attached as Exhibit D to the May 11, 2018 Declaration of Shandarese Garr of Garden City Group. The objection, submitted by David E. Carpenter, fails to identify any defect in the settlement, and is overruled.

9. The Court finds that the reaction of the Class to the Settlement was overwhelmingly favorable.

10. The Court hereby grants final approval of the terms set forth in the Settlement Agreement and finds that the Settlement is, in all respects, fair, adequate, and reasonable with respect to the Class Members, and directs the parties to effectuate the Settlement according to its terms. The Court finds that the Settlement has been reached as a result of informed and non-collusive arms-length negotiations among counsel for the Class and counsel for WSECU, with the aid of a well-respected mediator with experience in this type of case. The Court further finds that the parties have conducted extensive investigation and research, and their attorneys were able to reasonably evaluate their respective positions.

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11. The Court finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks. The amount offered in settlement is reasonable in light of the expense, complexity, risk, and likely duration of further litigation.

12. The Settlement is not an admission by Defendant, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

13. The Court finds the award of attorneys' fees requested by counsel for the Class of \$966,666.67 to be reasonable, both as a percentage of the common fund (one-third) and under the lodestar method, and therefore awards fees in this amount to be paid to Class Counsel solely from the Settlement Fund by the deadline specified in the Settlement Agreement. The requested amount is one-third of the common Settlement Fund, which is appropriate for a case such as this, and is in line with market rates for contingency fees in a case such as this. Therefore, the requested fee is reasonable and approved under the percentage-of-the-benefit methodology. The lodestar of counsel is over \$489,445.00, requiring only a positive multiplier of 1.98. The hourly rates of the attorneys are reasonable and in line with prevailing market rates, and the hours worked are also reasonable. Based on the contingent risk that counsel undertook in prosecuting this action with no guarantee of payment as well as the novelty and complexity of the action and quality of the work, the Court finds that the requested fees are reasonable. Therefore, the requested fees amount is also separately and independently approved under a lodestar analysis.

14. The Court further finds that the fee-sharing arrangement among Class Counsel was disclosed to and approved by the Named Plaintiff.

15. The Court further finds that the request for reimbursement of litigation costs in the amount of \$54,622.72 is reasonable based on the work necessary to achieve this favorable class settlement, and is to be paid to Class Counsel solely from the Settlement Fund by the deadline specified in the Settlement Agreement.

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16. The Court finds that Named Plaintiff Todd Wodja assisted with the prosecution of the case, including searching for and providing documents, consulting with Class Counsel, reviewing pleadings, and having been willing to testify at trial. The Court therefore awards a service award in the amount of \$5,000 to be paid to Named Plaintiff Todd Wodja solely from the Settlement Fund by the deadline specified in the Settlement Agreement.

17. The Court approves Public Citizen as the *cy pres* recipient of 75% of any residue in the Settlement Fund, and payment of the other 25% of any residue in the Settlement Fund is ordered to be made in accordance with CR 23(f), which requires that this percentage be disbursed to the Legal Foundation of Washington to support activities and programs that promote access to the civil justice system for low income residents of Washington State.

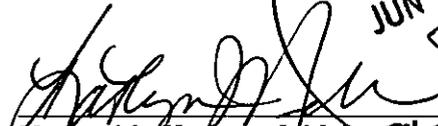
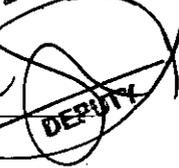
18. The Court approves payment of the Claims Administrator's fees and costs of up to \$71,850 to be paid to the Claims Administrator solely from the Settlement Fund by the deadline specified in the Settlement Agreement.

19. Within 10 days after the Effective Date [*See* Settlement Agreement Section 7(d)(iii)], Defendant shall distribute to the Claims Administrator the portion of the Settlement Fund that remains after making payment of the Named Plaintiff's reasonable attorney fees and costs awarded by this Final Approval Order.

20. The Court retains jurisdiction over the Parties, Class Counsel, and the case to enforce the Settlement and the terms of this Judgment.

IT IS SO ORDERED ADJUDGED AND DECREED.

Dated: June 22, 2018.


HONORABLE KATHRYN J. NELSON BY 
Superior Court Judge

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PRESENTED BY:

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Attorneys for Plaintiff Todd Wodja and the Putative Class

FILED
HARVEY M. SLAGLE, CLERK

7 Pages

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SUPERIOR COURT
YAKIMA CO. WA

SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF YAKIMA

THEODORE STRONG,

Plaintiff,

v.

NUMERICA CREDIT UNION,

Defendant.

NO. 17-2-01406-39

**AMENDED [PROPOSED] ORDER
GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND AWARD OF
ATTORNEYS' FEES, COSTS AND
SERVICE AWARD**

The Court, having considered Plaintiff's Motion for Final Approval of Class Action Settlement and Award of Attorneys' Fees, Costs and Service Award in the above-captioned matter (the "Action"), the Settlement Agreement and Release entered into between Plaintiff Theodore Strong ("Plaintiff") and Numerica Credit Union ("Defendant"), the lack of objections to and requests for exclusion from the proposed Settlement, the record in this the Action, the submissions and arguments presented by counsel, and having held a Final Approval Hearing on February 14, 2020, finds that:

1. All capitalized terms in this Final Approval Order shall have the same meanings as set forth in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter of the Action and over the settling parties, including the members of the Settlement Class.

AMENDED [PROPOSED] ORDER GRANTING
PLAINTIFF'S UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT AND
AWARD OF ATTORNEYS' FEES, COSTS AND SERVICE
AWARD - 1
CASE NO. 17-2-01406-39

TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
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www.terrellmarshall.com

1 3. On October 8, 2019, the Court preliminarily approved the Settlement and
2 certified, for settlement purposes, the Class as defined in the Settlement Agreement.

3 4. Pursuant to the Court's Preliminary Approval Order, notice of the Settlement
4 was distributed to the Class by certified mail, US Mail, and email. The Court hereby finds and
5 concludes that the notice was disseminated to members of the Class in accordance with the
6 terms set forth in the Settlement and in compliance with the Court's Preliminary Approval
7 Order. The Court further finds and concludes that the notice, and the distribution procedures set
8 forth in the Settlement fully satisfy CR 23(c)(2) and (e) and the requirements of due process,
9 were the best notice practicable under the circumstances, provided individual notice to all
10 members of the Class who could be identified through reasonable effort, provided an
11 opportunity for the Class Members to object or exclude themselves from the Settlement, and
12 support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the
13 Settlement Agreement and this Final Approval Order.

14 5. The Class Members were given an opportunity to object to the Settlement. No
15 Class Members objected to the Settlement and no Class Members requested exclusion from the
16 Settlement.

17 6. The Settlement was arrived at as a result of arms' length negotiations conducted
18 in good faith by experienced attorneys familiar with the legal and factual issues of this case.

19 7. The Settlement is fair, reasonable, adequate, and in the best interests of the
20 Settlement Class in light of the complexity, expense, and duration of litigation, as well as the
21 risk involved in establishing liability and damages and in maintaining the class action through
22 trial and appeal.

23 8. The consideration provided by the Settlement constitutes fair value given in
24 exchange for the release of the Released Claims against the Released Parties by Settlement
25 Class Members. The Court finds that the consideration provided to members of the Settlement
26 Class is reasonable, considering that facts and circumstances of the claims and affirmative

1 defenses asserted in the action, and the potential risks and likelihood of success of alternatively
2 pursuing trial on the merits.

3 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

4 9. The Settlement is finally approved as fair, reasonable, adequate, just, and in
5 compliance with all applicable requirements of the applicable laws, and in the best interest of
6 the Settlement Class. The Settlement Agreement, which shall be deemed incorporated herein,
7 and all terms of the Settlement are finally approved and shall be consummated in accordance
8 with the terms and provisions thereof, except as amended by any subsequent order issued by
9 the Court.

10 10. Pursuant to CR 23(c)(3), the Action is hereby certified, for settlement purposes
11 only, as a class action on behalf of the following Settlement Class Members: All persons who:

- 12 (a) resided in Washington state when they purchased or otherwise financed a vehicle
13 primarily for personal, family, or household use;
14 (b) whose contract was assigned to Defendant or financing was provided by Defendant;
15 and
16 (c) to whom Defendant issued or failed to issue a Notice of Intent to Sell, pursuant to
17 RCW 62A.9A-614 during the period April 14, 2015 through May 17, 2017 and/or to
18 whom Defendant issued or failed to issue a Notice of Deficiency, pursuant to RCW
19 62A.9A- 616, during the period April 14, 2015 through July 31, 2018.

20 Excluded from the class are all persons who (a) filed for bankruptcy protection as to their
21 Numerica auto loan and whose bankruptcy case was not dismissed or otherwise closed as of the
22 date of this Settlement Agreement; or (b) against whom Defendant's assignee obtained a
23 judgment to collect on their Deficiency Balance before May 20, 2019, which judgments are
24 held by unrelated third party debt collectors.

25 11. The Plaintiff and each Settlement Class Member, their respective heirs,
26 executors, administrators, representatives, agents, attorneys, partners, affiliates, successors,
27 predecessors-in-interest, and assigns are deemed to have released, waive, acquitted, and
discharged forever each of the Released Parties from each of the Released Claims, as defined in
the Settlement Agreement. The Released Claims are compromised, settled, released,

1 discharged, and dismissed with prejudice by virtue of these proceedings and this Final
2 Approval Order, provided, however, that the Released Claims shall not be construed to limit
3 the right of Defendant or any member of the Settlement Class to enforce the terms of the
4 Settlement.

5 12. This Final Approval Order is binding on all Settlement Class Members.

6 13. To the extent permitted by law and without affecting the other provisions of this
7 Final Approval Order, this Final Approval Order is intended by the parties and the Court to be
8 *res judicata* and to prohibit and preclude any prior, concurrent, or subsequent litigation brought
9 individually, or in the name of, and/or otherwise on behalf of, Plaintiff or any Settlement Class
10 Member with respect to the Released Claims based upon the same alleged facts.

11 14. The Court retains continuing and exclusive jurisdiction over the parties and all
12 matters relating to the Action and Settlement, including the administration, interpretation,
13 construction, effectuation, enforcement, and consummation of the Settlement, including its
14 injunctive provisions, and this Final Approval Order..

15 15. This Final Approval Order is not, and shall not be construed as, an admission by
16 Defendant of any liability or wrongdoing in this or in any other proceeding.

17 16. The Court approves Class Counsel's application for \$348,540.51 in attorneys'
18 fees and \$18,126.16 in costs, which, together, represents one-third of the Settlement Fund.

19 17. The Settlement created a common fund for the benefit of Settlement Class
20 Members. Accordingly, the Court finds that the percentage of the fund method is the
21 appropriate method to use in determining the appropriate fee award in this case. *Bowles v.*
22 *Wash. Dep't of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993).

23 18. Class Counsel obtained an excellent result for the Settlement Class. Class
24 Counsel's work lead to the creation of a \$1.1 million common fund from which Settlement
25 Class Members whose statutory damages under the UCC are greater than their remaining
26 Deficiency Balance will receive cash payments. The Settlement benefits also include

1 Numerica’s agreement to request permanent deletion of the “tradeline” for Settlement Class
2 Members’ Numerica auto loans their credit reports and Numerica’s dismissal all pending legal
3 actions to collect those Deficiency Balances. Numerica also agrees to permanently cease
4 collection of all remaining Deficiency Balances of the Settlement Class Members whose
5 statutory damages are less than their Deficiency Balance or who do not have statutory
6 damages—which amounts to approximately \$8,330,822.93 in debt waiver. However, if a
7 Settlement Class Member brings any claim against Numerica that is not subject to the Release,
8 Numerica may assert that the Settlement Class Member’s Deficiency Balance is an offset to
9 that claim.

10 19. An attorneys’ fee and cost award equal to one-third of a common fund is
11 appropriate in this case and is in line with cases litigated under the UCC and attorneys’ fees and
12 costs awarded by Washington courts. *See* Final Judgment Approving Settlement and Certifying
13 Settlement Class at 6, *Gales v. Capital One*, Case No. 8:13-cv-01624-WGC (D. Md. August 5,
14 2015), ECF No. 78 (approving fee award of one-third in UCC class action); Final Judgment,
15 *Smith v. Toyota Motor Credit Corporation*, Case No. 12-02029-WDQ (D. Md. Oct. 2, 2014),
16 ECF No. 53 (approving fee award of 49% in UCC class action); *see also A.M. v. Moda Health*
17 *Plan, Inc.*, C 14-1191 TSZ, 2015 WL 9839771, at *3 (W.D. Wash. Nov. 3, 2015) (awarding fee
18 of 35% of settlement fund); Order Approving Award of Attorneys’ Fees and Costs, *Terrell v.*
19 *Costco Wholesale Corp.*, No. 16-2-10140-1 SEA, (King Cty. Sup. Ct. June 19, 2018) (awarding
20 one-third of fund in class action under the Fair Credit Reporting Act).

21 20. The Court approves a service award to the Named Plaintiff in the amount of
22 \$10,000, to be paid from the Settlement Fund. This amount is reasonable in light of Plaintiff’s
23 efforts in this case, which included assisting his counsel with the investigation of his claims,
24 responding to written discovery, being deposed, and assisting with settlement negotiations.

25 21. The Court further approves and authorizes the deduction of an amount not to
26 exceed \$29,500 from the Settlement Fund to cover the Class Administrator’s costs.

1 22. The attorneys' fees and costs, service award, and settlement administration costs
2 are to be deducted from the Settlement Fund as set forth in the Settlement Agreement. Except
3 as expressly set forth to the contrary in this Final Approval Order, Plaintiff and Class Counsel
4 shall take nothing by their claims and each party shall bear his or its own fees, costs, and
5 expenses in connection with this Action. Except for the award to Class Counsel specified
6 above, no fees or funds shall be paid to any other counsel representing any Settlement Class
7 Members.

8 23. The Court dismisses the Action against Defendant, including all claims against
9 Defendant, with prejudice, without costs to any party, except as expressly provided for in the
10 Settlement.

11 24. Finding that there is no just reason for delay, the Court orders that this Final
12 Approval Order shall constitute a final judgment pursuant to CR 58 that is binding on the
13 settling parties and the Settlement Class.

14 IT IS HEREBY ORDERED.

15 DATED this 14 day of FEB, 2020.

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19 _____
SUPERIOR COURT JUDGE

20 Blaine G. Gibson

21 Judge

1 Presented by:

2 TERRELL MARSHALL LAW GROUP PLLC

3
4 

5 By: _____

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21 *Attorneys for Plaintiff*

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27 AMENDED [PROPOSED] ORDER GRANTING
PLAINTIFF'S UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT AND
AWARD OF ATTORNEYS' FEES, COSTS AND SERVICE
AWARD - 7
CASE No. 17-2-01406-39

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THE HONORABLE DAVID E. GREGERSON
Department 2

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SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF CLARK

Scott G. Weber, Clerk, Clark Co

11:26

AMANDA DOUGHERTY, individually and as
a representative of the class,

Plaintiff,

v.

BARRETT BUSINESS SERVICES, INC.,

Defendant.

NO. 17-2-05619-1

**| FINAL APPROVAL
ORDER AND ENTRY OF
JUDGMENT**

The Court, having considered Plaintiff's Motion for Final Approval of Class Action Settlement between Plaintiff Amanda Dougherty ("Plaintiff") and Barrett Business Services, Inc. ("Defendant") in the above-captioned matter (the "Action"), the Class Action Settlement Agreement and Release entered into between Plaintiff and Defendant ("Settlement"), Plaintiff's Motion for an Award of Attorneys' Fees, Costs, and Class Representative Service Award, and the lack of objections received regarding the proposed Settlement, the record in this the Action, the submissions and arguments presented by counsel, and, having held a Final Approval Hearing on November 8, 2019, finds that:

1. Unless defined herein, for purposes of this Final Approval Order, all capitalized terms in this Final Approval Order shall have the same meanings as set forth in the Settlement.
2. The Court has jurisdiction over the subject matter of the Action and over the settling parties, including the members of the Settlement Class.

1 3. On June 28, 2018, the Court preliminarily approved the Settlement and certified,
2 for settlement purposes, the Settlement Class as defined in the Settlement.

3 4. Pursuant to the Court's Preliminary Approval Order, the Notice was distributed
4 to the Class by email and US Mail. The Court hereby finds and concludes that the Notice was
5 disseminated to members of the Settlement Class in accordance with the terms set forth in the
6 Settlement and in compliance with the Court's Preliminary Approval Order. The Court further
7 finds and concludes that the Notice, and the distribution procedures set forth in the Settlement
8 fully satisfy CR 23(c)(2) and the requirements of due process, were the best notice practicable
9 under the circumstances, provided individual notice to all members of the Settlement Class who
10 could be identified through reasonable effort, provided an opportunity for the Settlement Class
11 Members to object or exclude themselves from the Settlement, and support the Court's exercise
12 of jurisdiction over the Settlement Class as contemplated in the Settlement and this Final
13 Approval Order.

14 5. The Settlement Class Members were given an opportunity to object to the
15 Settlement. No Settlement Class Members objected to the Settlement. The Settlement Class
16 Members who made valid and timely requests for exclusion are excluded from the Settlement
17 and are not bound by this Final Approval Order. Three Settlement Class Members requested
18 exclusion. The identities of such persons are set forth in the Declaration of Jennifer M. Keogh
19 that was filed in support of Plaintiffs' Motion for Final Approval.

20 6. The Settlement was arrived at as a result of arms' length negotiations conducted
21 in good faith by experienced attorneys familiar with the legal and factual issues of this case.

22 7. The Settlement is fair, reasonable, adequate, and in the best interests of the
23 Settlement Class in light of the complexity, expense, and duration of litigation, as well as the
24 risk involved in establishing liability and damages and in maintaining the class action through
25 trial and appeal.
26

1 8. The consideration provided by the Settlement constitutes fair value given in
2 exchange for the release of the Settlement Class Member Released Claims against the Released
3 Parties. The Court finds that the consideration provided to members of the Settlement Class is
4 reasonable, considering that facts and circumstances of the claims and affirmative defenses
5 asserted in the action, and the potential risks and likelihood of success of alternatively pursuing
6 trial on the merits.

7 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

8 9. The Settlement is finally approved as fair, reasonable, adequate, just, and in
9 compliance with all applicable requirements of the applicable laws, and in the best interest of
10 the Settlement Class. The Settlement Agreement, which shall be deemed incorporated herein,
11 and all terms the Settlement are finally approved and shall be consummated in accordance with
12 the terms and provisions thereof, except as amended by any subsequent order issued by the
13 Court.

14 10. Pursuant to CR 23(c)(3), the Action is hereby certified, for settlement purposes
15 only, as a class action on behalf of the following Settlement Class Members: all individuals on
16 whom Defendant obtained a consumer report for employment purposes containing a liability
17 release or an overbroad authorization from August 26, 2013 to June 28, 2019.

18 11. Pursuant to CR 23, the Court certifies Plaintiff Amanda Dougherty as the Class
19 Representative and appoints Terrell Marshall Law Group, PLLC and Berger Montague PC as
20 Class Counsel.

21 12. For settlement purposes only, the Court finds that the Action satisfies the
22 applicable prerequisites for class action treatment under CR 23(a) and (b)(3), namely:

- 23 • The Settlement Class is so numerous that joinder of all members is
- 24 impracticable;
- 25 • There are questions of law and fact common to the Settlement Class
- 26 Members;

- 1 • The claims of the Class Representative are typical of the claims of the
- 2 Settlement Class Members;
- 3 • The Class Representative and Class Counsel have fairly and adequately
- 4 represented and protected the interests of all of the Settlement Class
- 5 Members;
- 6 • Common issues predominate over any individualized issues; and
- 7 • A class action is superior to thousands of individual actions.

8 13. The Plaintiff, Settlement Class Members, and their successors and assigns are
9 permanently barred and enjoined from instituting or prosecuting, either individually or as a
10 class, or in any other capacity, any of the Settlement Class Member Released Claims against
11 any of the Released Parties, as set forth in the Settlement. Pursuant to the release contained in
12 the Settlement, the Released Claims are compromised, settled, released, discharged, and
13 dismissed with prejudice by virtue of these proceedings and this Final Approval Order,
14 provided, however, that the Settlement Class Member Released Claims shall not be construed
15 to limit the right of Defendant or any member of the Settlement Class to enforce the terms of
16 the Settlement.

17 14. This Final Approval Order is binding on all Settlement Class Members, except
18 those individuals who validly and timely excluded themselves from the Settlement. The identities
19 of such persons are set forth in the Supplemental Declaration of Jennifer M. Keogh that was filed
20 in support of Plaintiffs' Motion for Final Approval.

21 15. To the extent permitted by law and without affecting the other provisions of this
22 Final Approval Order, this Final Approval Order is intended by the parties and the Court to be
23 *res judicata* and to prohibit and preclude any prior, concurrent, or subsequent litigation brought
24 individually, or in the name of, and/or otherwise on behalf of, Plaintiff or any Settlement Class
25 Member with respect to the Settlement Class Member Released Claims based upon the same
26 alleged facts.

1 16. The Court hereby retains continuing and exclusive jurisdiction over the parties
2 and all matters relating to the Action and/or Settlement, including the administration,
3 interpretation, construction, effectuation, enforcement, and consummation of the Settlement,
4 including its injunctive provisions, and this Final Approval Order. This Final Approval Order
5 finally disposes of all claims and is appealable.

6 17. This Final Approval Order is not, and shall not be construed as, an admission by
7 Defendant of any liability or wrongdoing in this or in any other proceeding.

8 18. The Court approves Class Counsel's application for \$528,752.51 in attorneys'
9 fees and costs. This amount reflected actual costs incurred and an attorneys' fee award of one-
10 third of the Settlement Fund.

11 19. The Settlement created a common fund for the benefit of class members.
12 Accordingly, the Court finds that the percentage of the fund method is the appropriate method
13 to use in determining the appropriate fee award in this case. *Bowles v. Wash. Dep't of Ret. Sys.*,
14 121 Wn.2d 52, 72, 847 P.2d 440 (1993).

15 20. Class Counsel obtained an excellent result for the Settlement Class. Class
16 Counsel's work lead to the creation of a \$1.5 million common fund. More than 10% of the
17 Class submitted claims, and each class member who submitted a claim will be paid an
18 estimated \$129. These results exceed those achieved in similar cases.

19 21. An attorneys' fee award equal to one-third of a common fund is appropriate in
20 cases litigated under the Fair Credit Reporting Act. *King v. Gen. Info. Serv., Inc.*, No. 10-cv-
21 6850, ECF No. 126 (E.D. Penn. Nov. 4, 2014) (awarding counsel one-third of fund in FCRA
22 class action); *Ford v. CEC Entm't Inc.*, No. 14CV677 JLS (JLB), 2015 WL 11439033, at *1
23 (S.D. Cal. Dec. 14, 2015) (awarding fee of one-third in FCRA class action); *Razilov v.*
24 *Nationwide Mut. Ins. Co.*, No. 01-CV-1466-BR, 2006 WL 3312024, at *1 (D. Or. Nov. 13,
25 2006).

1 22. The Court has considered the factors set forth in Washington Rule of
2 Professional Conduct 1.5(a) in concluding that the requested fee is reasonable. Specifically:

- 3 a. The case raised novel and difficult questions of law, which demanded litigators
4 with the skill and experience of Class Counsel.
- 5 b. Class Counsel's work on this matter precluded work on other matters.
- 6 c. A one-third fee in contingency cases is customary in this county.
- 7 d. The excellent results obtained and the amount of time involved support the
8 award.

9 23. The Court approves a service award to the Named Plaintiff in the amount of
10 \$3,500, to be paid from the Settlement Fund.

11 24. The Court further approves and authorizes the deduction of an amount not to
12 exceed \$82,040.94 from the Settlement Fund to cover the Settlement Administrator's costs.

13 25. The attorneys' fees and costs, service award, and settlement administration costs
14 are to be deducted from the Settlement Fund as set forth in the Settlement. Save and except as
15 expressly set forth to the contrary in this Final Approval Order, Plaintiff and Class Counsel
16 shall take nothing by their claims and each party shall bear his or its own fees, costs, and
17 expenses in connection with this Action. Except for the award to Class Counsel specified
18 above, no fees or funds shall be paid to any other counsel representing any Settlement Class
19 Members.

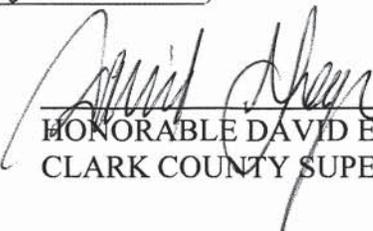
20 26. The Court hereby dismisses the Action against Defendant, including all claims
21 against said Defendant, with prejudice, without costs to any party, except as expressly provided
22 for in the Settlement.

23 27. Finding that there is no just reason for delay, the Court orders that this Final
24 Approval Order shall constitute a final judgment pursuant to CR 58 that is binding on the
25 settling parties and the Settlement Class.

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1 **IT IS HEREBY ORDERED.**

2 DATED this 7 day of Nov., 2019.

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6 HONORABLE DAVID E. GREGERSON
7 CLARK COUNTY SUPERIOR COURT JUDGE
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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JULIUS TERRELL, as an individual and as a
representative of the class,

Plaintiff,

v.

COSTCO WHOLESALE CORP.,

Defendant.

NO. 16-2-19140-1 SEA

~~[PROPOSED]~~ ORDER APPROVING
AWARD OF ATTORNEYS' FEES AND
COSTS

THIS MATTER came before the Court on June 15, 2018, on Plaintiff's Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Service Award. On June 15, 2018, the Court entered an order granting final approval of the Class Settlement, approving payment of the requested attorney's fees, costs and costs of settlement administration, and awarding a class representative service award. The Court makes the following additional findings regarding its award of attorneys' fees, costs and service award.

The Court heard oral argument on June 15, 2018, and has considered the following submissions:

- 1 1. Plaintiff's Motion for Attorneys' Fees, Costs, and Class Representative Service
- 2 Award;
- 3 2. The Declaration of E. Michelle Drake in support of Plaintiff's Motion for
- 4 Attorneys' Fees, Costs, and Class Representative Service Award;
- 5 3. The Declaration of Jennifer M. Keough Regarding Notice Administration and
- 6 Administration Costs; and
- 7 4. Plaintiff's Motion for Final Approval of Class Action Settlement and supporting
- 8 documentation.

9 Based on the foregoing, the Court makes the following FINDINGS AND
10 CONCLUSIONS:

- 11 1. Class Counsel is highly qualified. Berger & Montague, P.C. and Terrell
12 Marshall Law Group, are class action litigators with nationally known reputations, and
13 extensive experience litigating Fair Credit Reporting Act cases.
- 14 2. Throughout the litigation, Class Counsel provided high quality representation in
15 a case that turned out to be quite complex.
- 16 3. Class Counsel obtained an excellent result for the Settlement Class. Class
17 Counsel's work lead to the creation of a \$2.49 million common fund. Nearly 20% of the Class
18 submitted claims, and each class member who submitted a claim will be paid an estimated \$63.
19 These results exceed those achieved in similar cases.
- 20 4. The Settlement created a common fund for the benefit of class members.
21 Accordingly, the Court finds that the percentage of the fund method is the appropriate method
22 to use in determining the appropriate fee award in this case. *Bowles v. Wash. Dep't of Ret. Sys.*,
23 121 Wn.2d 52, 72, 847 P.2d 440 (1993).
- 24 5. An attorneys' fee award equal to one-third of a common fund is appropriate in
25 cases litigated under the Fair Credit Reporting Act. *King v. Gen. Info. Serv., Inc.*, No. 10-cv-
26 6850, ECF No. 126 (E.D. Penn. Nov. 4, 2014) (awarding counsel one-third of fund in FCRA

1 class action); *Ford v. CEC Entm't Inc.*, No. 14CV677 JLS (JLB), 2015 WL 11439033, at *1
2 (S.D. Cal. Dec. 14, 2015) (awarding fee of one-third in FCRA class action); *Razilov v.*
3 *Nationwide Mut. Ins. Co.*, No. 01-CV-1466-BR, 2006 WL 3312024, at *1 (D. Or. Nov. 13,
4 2006).

5 6. The Court has considered the factors set forth in Washington Rule of
6 Professional Conduct 1.5(a) in concluding that the requested fee is reasonable. Specifically:

- 7 a. The case raised novel and difficult questions of law, which demanded
8 litigators with the skill and experience of Class Counsel.
9 b. Class Counsel's work on this matter precluded work on other matters.
10 c. A one-third fee in contingency cases is customary in this county.
11 d. The excellent results obtained and the amount of time involved support
12 the award.

13 7. While the Court concludes that the percentage-of-the-fund method is appropriate
14 here, the Court concludes that the lodestar method confirms that the requested fee is reasonable.
15 Class Counsel devoted over 513 hours to the investigation, development, litigation and
16 resolution of this case, incurring over \$222,400.30 in lodestar. The Court has reviewed Class
17 Counsel's contemporaneous billing records documenting the hours worked and finds the hours
18 expended reasonable.

19 8. Class Counsel calculated their lodestar using reasonable hourly rates.

- 20 a. The following hourly rates billed by Berger and Montague are
21 reasonable given the experience and skill of counsel:

Timekeeper	Experience	Rate
E. Michelle Drake	Partner with 17 years of experience	\$700
Joseph Hashmall	Associate with 7 years of experience	\$515
John Albanese	Associate with 6 years of experience	\$430
Jean Hibray, Jean Ebersperger and Mai Xiong	Paralegals	\$230-\$280

1 b. The following hourly rates billed by Terrell Marshall Law Group are
2 reasonable given the experience and skill of counsel:

Timekeeper	Experience	Rate
Beth E. Terrell	Partner with 23 years of experience.	\$500
Amanda M. Steiner	Partner with 21 years of experience.	\$495
Jennifer R. Murray	Partner with 13 years of experience.	\$450
Maria C. Hoisington	Associate with 2 years of experience.	\$225
Bradford Kinsey, Holly Rota, Hannelore Ohaus, Samuel Levy	Paralegals and legal assistants.	\$75-\$100

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10 9. Similar rates have been approved numerous times in class action cases brought
11 in both the Western District of Washington and King County Superior Court. See, *e.g.*, *Carideo*
12 *v. Dell, Inc.*, No. 06-cv-01772, ECF No. 162 (W.D. Wash. Dec. 17, 2010) (Judge Robart
13 approving as reasonable a fee petition which included rates ranging from \$175 to \$600);
14 *Barnett v. Wal-Mart Stores, Inc.*, No. 01-2-24553-8 (King Co., July 20, 2009) (Judge Spector
15 approving fee request based on rates ranging from \$100 to \$760); *Splater v. Thermal Ease*
16 *Hydronic Systems, Inc.*, No. 03-2-33553-3 (King Co., July 31, 2009) (Judge Washington
17 approving fee request based on rates ranging from \$100 to \$760); *Hartman v. Comcast*
18 *Business Communications, LLC*, No. 10-0413, ECF No. 106 (W.D. Wash Dec. 8, 2011) (Judge
19 Lasnik approving Plaintiff's counsel's fee request based on rates ranging from \$180 to \$650).
20 Class Counsel are experienced, highly regarded members of the bar with extensive expertise in
21 the area of class actions and complex litigation involving Fair Credit Reporting Act claims like
22 those at issue here. Their requested hourly rates are reasonable in light of their qualifications
23 and experience.

24 10. Class Counsel's requested fee of \$830,000 represents a 3.73 multiplier on their
25 total lodestar to date. This requested multiplier is reasonable considering that counsel is seeking
26 one-third of the common fund created through the Settlement. See *Bowles*, 121 Wn.2d at 72-73
(approving multiplier of three where plaintiff's fee request was found reasonable using

1 percentage-of-the-fund method); see *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051, n. 6
2 (9th Cir. 2002) (finding that in approximately 83% of cases surveyed by the court, the
3 multiplier was between 1.0 and 4.0 and affirming a multiplier of 3.65); *McIntosh v. McAfee,*
4 *Inc.*, No. 06-cv-7694, 2009 WL 673976, at *2 (N.D. Cal. 2009) (recognizing a range from “2 to
5 4 or even higher”); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal.
6 1995) (“[m]ultipliers in the 3-4 range are common”).

7 11. Class Counsel assumed significant risk in this case, a factor which further
8 justifies the requested multiplier. Class Counsel took this case on a contingency basis and have
9 devoted nearly two years to prosecuting it with no guarantee they would ever be paid for their
10 efforts. A review of the motions pending before this Court prior to settlement more illustrates
11 the risk Counsel took in taking on this case. Both the delay in payment and the risk involved in
12 this kind of case justify the multiplier requested here.

13 12. Class Counsel’s requested costs are also reasonable. Counsel submitted detailed
14 and itemized cost records to the Court, which the Court has reviewed, and approved.

15 13. The Settlement Administrator’s fee request is also reasonable. The
16 Administrator submitted a declaration describing the services performed in providing notice to
17 Class Members, processing claims, and answering Class Member inquires, among other tasks.
18 The fee charged for these services was reasonable, and is approved.

19 14. The Class Representative’s requested service payment is also reasonable.
20 Plaintiff assisted in the investigation, litigation and settlement of this case, and a \$3500 service
21 payment for his assistance to the Class is reasonable and appropriate.

22 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

23 The following payments in connection with the Settlement may be deducted from the
24 settlement fund in accordance with the Court’s Final Approval Order and the Settlement
25 Agreement:

1 (1) attorneys' fees to Class Counsel in the amount of \$830,000, which is one-third
2 of the settlement fund;

3 (2) reimbursement of Class Counsel's out-of-pocket costs in the amount of
4 \$17,780.12;

5 (3) reimbursement of the Settlement Administrator's expenses in an amount not to
6 exceed \$179,822 to JND Administration; and

7 (4) a Class Representative Service Award of \$3,500 to Plaintiff Julius Terrell.

8 IT IS HEREBY ORDERED.

9 DATED this 19th day of June, 2018.

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11 

12 HONORABLE MARY E. ROBERTS
13 KING COUNTY SUPERIOR COURT JUDGE

14 *Presented by:*

15 TERRELL MARSHALL LAW GROUP PLLC

16 By: /s/ Beth E. Terrell, WSBA #26759

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