

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

**ORDER GRANTING PLAINTIFFS' MOTION  
FOR PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

THIS MATTER came before the Court on Plaintiffs' unopposed Motion for Preliminary Approval of Class Action Settlement. Prior to ruling, the Court considered the following documents and evidence:

1. Plaintiffs' Motion for Preliminary Approval of Class Action Settlement;
2. Declaration of Beth E. Terrell in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and attached exhibits;
3. Declaration of E. Michelle Drake in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and attached exhibits; and
4. Declaration of Walter E. Smith.

1 NOW, THEREFORE, IT IS HEREBY ORDERED:

2 1. The Court preliminarily approves the Settlement Agreement and Release  
3 between Plaintiffs and BECU.

4 2. The proposed Settlement appears to be the product of serious, informed, non-  
5 collusive negotiations, including a mediation before a mediator with substantial experience  
6 with consumer class action cases. The proposed Settlement has no obvious deficiencies, does  
7 not improperly grant preferential treatment to any class members, and falls within the range  
8 of possible judicial approval. These factors weigh in favor of granting preliminary approval.  
9 *See William B. Rubenstein, Newberg on Class Actions* § 13:10 (5th ed. June 2019 update 5th).

10 3. For purposes of settlement only, the Court finds that the Settlement Class  
11 satisfies the requirements of CR 23(a) and (b)(3) and grants conditional and preliminary  
12 certification of the following Settlement Class: All current and former BECU consumer  
13 members who are residents of the State of Washington and who, (a) between August 2, 2015,  
14 and July 1, 2020, were charged one or more (1) Available Balance Overdraft or Available  
15 Balance NSF Fees, where the member's ledger balance would have been sufficient to cover  
16 the transaction, (2) Available Balance Overdraft or Available Balance NSF fees, where the  
17 member's ledger balance would have been sufficient to cover the transaction but for  
18 previously incurred fees described in (1) on the same day; or (b) between August 2, 2013, and  
19 July 1, 2020, were charged one or more Representment NSF Fees. The start of the Settlement  
20 Class period regarding Representment NSF Fees may be adjusted to August 2, 2015 based on  
21 the results of confirmatory discovery. Excluded from the Settlement Class is BECU, its parents,  
22 subsidiaries, affiliates, officers and directors, all Settlement Class members who make a timely  
23 election to be excluded, and all judges assigned to this litigation and their immediate family  
24 members.

1           4.       The numerosity requirement is satisfied because the Class consists of  
2 approximately 137,000 individuals. *See* CR 23(a)(1); *Miller v. Farmer Bros. Co.*, 115 Wn. App.  
3 815, 821, 64 P.3d 49 (2003).

4           5.       The commonality requirement is satisfied because there are overarching  
5 questions of law and fact common to the class, including the contested issues of whether  
6 BECU's (a) imposition of overdraft and NSF fees based on a member's "available balance"  
7 rather than the member's "ledger balance," and (b) practice of charging more than one NSF  
8 fee when a transaction was re-presented for payment, after previously being declined, are  
9 unfair or deceptive under the Washington Consumer Protection Act. *See* CR 23(a)(2); *Smith v.*  
10 *Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d 665 (2002).

11           6.       The typicality requirement is satisfied because Plaintiffs' claim arises from the  
12 same course of conduct that gives rise to the claims of other Class Members and is based on  
13 the same legal theory. *See* CR 23(a)(3); *Pellino v. Brink's Inc.*, 164 Wn. App. 668, 267 P.3d 383,  
14 392 (2011).

15           7.       The adequacy requirement is satisfied because Plaintiffs have no interests  
16 antagonistic to the other Class Members and are represented by qualified counsel. *See*  
17 *Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003).

18           8.       The predominance requirement is satisfied because there is a "common  
19 nucleus of operative facts" to each Class Member's claim, and all Class Members were subject  
20 to the same conduct by BECU. *See* CR 23(b)(3); *Chavez v. Our Lady of Lourdes Hosp. at Pasco*,  
21 190 Wash. 2d 507, 516, 415 P.3d 224 (2018).

22           9.       The superiority requirement is satisfied because the resolution of  
23 approximately 137,000 claims in one action is far superior to individual lawsuits and promotes  
24 consistency and efficiency of adjudication, particularly in a case like this one with modest  
25 statutory damages. *See* CR 23(b)(3); *Chavez*, 190 Wn.2d at 518-23.

1           10.     For the purposes of settlement, the Court appoints Steve R. Marical as the class  
2 representative.

3           11.     The Court appoints Walter M. Smith and Steve E. Dietrich of Smith & Dietrich  
4 Law Offices PLLC, Toby J. Marshall, Beth E. Terrell, and Ari Y. Brown of the Terrell Marshall Law  
5 Group PLLC and E. Michelle Drake and Joseph C. Hashmall of Berger Montague P.C. as  
6 Settlement Class Counsel.

7           12.     The Court appoints and has jurisdiction over JND Legal Administration as the  
8 Class Administrator. As provided for in the Settlement Agreement, the Class Administrator  
9 shall disseminate notice to Class Members, by mail and email, track responses, mail  
10 Settlement Awards and arrange for the filing of tax forms and payments (if any) relating to the  
11 Settlement Fund and such other duties as are called for by the Settlement Agreement or  
12 ordered by the Court.

13           13.     The Court approves, as to form and content, the Postcard Notice, Email Notice,  
14 and Long Form Notice attached as exhibits to the Settlement Agreement that the Parties have  
15 prepared (collectively the “notices”). The notices provide all of the information Class  
16 Members need to evaluate and respond to the Settlement, including: the nature of the  
17 litigation; the general terms of the proposed Settlement; their rights under the Settlement; an  
18 explanation of how they can object to or exclude themselves from the Settlement; the  
19 identity of Class Counsel and that Class Counsel will request attorneys’ fees and expenses  
20 from the Settlement Fund; and the date and time of the Final Approval Hearing. The notices  
21 also direct Class Members to a website established by the Class Administrator that will  
22 provide additional information about the Settlement, as well as a toll-free number for the  
23 Class Administrator that Class Members can call with questions about the Settlement.

24           14.     The Court also approves the parties’ plan for disseminating notice, which will  
25 ensure that Class Members receive “the best notice practicable under the circumstances.” See  
26 CR 23(c)(2). Issuance of notice substantially in the manner set forth in Part VII of the  
27

1 Settlement Agreement satisfies the requirements of due process and applicable state and  
2 federal law and constitutes due and sufficient notice to all members of the Settlement Class.

3 15. Within 5 calendar days of this order, BECU will provide the Class Administrator  
4 with the following information for each Class Member: (1) full name, (2) last known mailing  
5 address, (3) email address (if available), (4) social security number, and (5) estimated  
6 Settlement Award.

7 16. Within 15 days of this order, the Class Administrator shall distribute notice to  
8 all Class Members as provided in the Settlement Agreement. The date the Class Administrator  
9 distributes notice is the "Settlement Notice Date."

10 17. Any Class Member may exclude himself or herself from the Settlement by  
11 submitting a written request to the Class Administrator no later than 45 days after the  
12 Settlement Notice Date. Following final approval of the Settlement and the occurrence of the  
13 Effective Date, each Class Member who does not submit a timely, valid request for exclusion  
14 shall be bound by the releases in the Settlement Agreement.

15 18. Any Class Member may object to the Settlement by submitting a written  
16 statement to the Class Administrator by 45 days after the Settlement Notice Date. The  
17 statement of objection must include the information stated in Paragraph 64 of the Settlement  
18 Agreement. Any objector or their attorney may appear at the Final Approval Hearing. In order  
19 to do so, such objectors or their attorneys must file a notice of appearance with the Court no  
20 later than 10 days before the Final Approval Hearing and send a copy of the notice of  
21 appearance to Class Counsel and Defendant's Counsel.

22 19. Responses from the Parties to any objections from Class Members shall be filed  
23 no later than 14 days prior to the Final Approval Hearing.

24 20. Class Counsel shall file their motion for entry of the Final Approval Order, final  
25 approval of the Settlement, and their motion for attorneys' fees and reimbursement of costs  
26  
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1 and for service awards to the class representatives no later than 14 days prior to the Final  
2 Approval Hearing.

3 21. The Final Approval Hearing shall be held before this Court on September 24,  
4 2021 at 11:00 a.m. in the courtroom of the Honorable Ken Schubert, King County Superior  
5 Court, 401 4th Ave. N., Kent, Washington, 98032. The parties and the public may attend the  
6 hearing remotely using the Zoom platform: <https://kingcounty.zoom.us/j/99709315720>  
7 Meeting ID: 997 0931 5720 Passcode: 917579.

8 22. At the hearing, the Court will consider whether the prerequisites for class  
9 certification and treatment under CR 23(a) and (b)(3) are satisfied and whether the  
10 Settlement is fair, reasonable, and adequate, and should be approved by the Court. The Court  
11 will also consider Class Counsel's motion for attorneys' fees and costs and for service awards  
12 to the class representatives, and rule on any other matters that the Court deems appropriate.

13 23. The Court retains jurisdiction over the Action and all matters arising out of or  
14 connected with the proposed Settlement. All deadlines in the current Case Scheduling Order  
15 are hereby stricken, including the trial date, and all proceedings in the Action are hereby  
16 stayed other than proceedings relating to the consideration of whether the Settlement should  
17 be approved. The Court reserves the right to adjourn or continue the date of the Final  
18 Approval Hearing without further notice to Class Members and retains jurisdiction to consider  
19 all further applications arising out of or connected with the Settlement. After the Final  
20 Approval Hearing, the Court may approve the Settlement without further notice to Class  
21 Members.

22 24. If the Court does not enter the Final Approval Order, or if the Effective Date  
23 does not occur for any reason, then the Action shall proceed as if the Settlement Agreement  
24 had not been executed. In that event, the Parties shall meet and confer and present the court  
25 with a proposed revised case scheduling order.

1 IT IS SO ORDERED.

2 DATED this 9th day of June, 2021.

3 E-signature on last page.

4 \_\_\_\_\_  
5 SUPERIOR COURT JUDGE KEN SCHUBERT

6  
7 Presented by:

8 TERRELL MARSHALL LAW GROUP PLLC

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King County Superior Court  
Judicial Electronic Signature Page

Case Number: 19-2-20417-6  
Case Title: MARICAL ET ANO VS BOEING EMPLOYEES CREDIT UNION  
Document Title: ORDER RE GRANTING MTN FOR PRELIM APPROVAL  
Signed By: Kenneth Schubert  
Date: June 09, 2021



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Judge: Kenneth Schubert

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 20DA9CAD30E9A356B2B090778A254A4188865BEC  
Certificate effective date: 11/13/2018 11:21:11 AM  
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Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,  
O=KCDJA, CN="Ken Schubert:  
EPj/VAvS5hGqrSf3AFk6yQ=="