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**NO: 20-2-04853-0**

THE HONORABLE GRETCHEN LEANDERSON  
Department 15  
Noted for Consideration: June 3, 2022  
Without Oral Argument

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

DEBRA FEALY, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

SOUND CREDIT UNION,

Defendant.

NO. 20-2-04853-0

**PLAINTIFF'S MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

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1 **I. RELIEF REQUESTED**

2 Plaintiff Debra Fealy moves for approval of the class action settlement she reached with  
3 Sound Credit Union (“Sound”). If approved, the Settlement will finally resolve Plaintiff’s and  
4 Settlement Class Members’ challenges to several aspects of Sound’s collateral protection  
5 insurance (“CPI”) program. Plaintiff alleges that Sound employed several practices that are  
6 unfair and deceptive under Washington’s Consumer Protection Act (“CPA”), unjustly enriched  
7 Sound at Settlement Class Members’ expense, and resulted in conversion of Settlement Class  
8 Members’ premium refunds. Sound denies these claims. Sound maintains that its CPI Program  
9 complied with RCW 48.22.110 through 48.22.130 (the “CPI Statute”).

10 Under the Settlement, Sound will pay a total of \$750,000 into a common fund from  
11 which Settlement Class Members will receive an estimated cash payment between \$10 and  
12 \$2,541.14. There is no claims process. The Settlement Administrator, American Legal Claims  
13 Services (ALCS), will send every Settlement Class Member a check. None of the settlement  
14 funds will revert to Sound. The Settlement is fair, reasonable, and in the best interests of the  
15 Settlement Class.

16 Accordingly, Plaintiff requests that the Court take the following initial steps in the  
17 settlement approval process: (1) grant preliminary approval of the Settlement; (2) certify the  
18 Settlement Class for settlement purposes; (3) appoint Plaintiff Debra Fealy to serve as  
19 representative of the Settlement Class; (4) appoint Terrell Marshall Law Group and Smith &  
20 Dietrich Law Offices to serve as Class Counsel; (5) approve the proposed Notice Program; (6)  
21 appoint ACLS as the Settlement Administrator; and (7) schedule the Final Approval Hearing.

1 **II. STATEMENT OF FACTS**

2 **A. Plaintiff's claims.**

3 Sound offers motor vehicle loans to consumers across Washington. Declaration of  
4 Adrienne D. McEntee (“McEntee Decl.”) ¶ 2. When a consumer finances a motor vehicle  
5 purchase from a dealership, the dealer and consumer (the borrower) execute a form retail  
6 installment sale contract and agreement to furnish insurance, which the dealer then assigns to  
7 Sound. *Id.* The dealer reviews the borrower’s existing insurance before allowing them to drive  
8 off the lot. *Id.* As a condition of financing, however, Sound requires borrowers to maintain  
9 insurance that meets certain requirements. *Id.* ¶ 3. If a borrower fails to maintain insurance  
10 meeting the requirements, Sound purchases a collateral protection insurance policy (known as  
11 CPI) and the premiums are added to the borrower’s loan balance. *Id.* CPI policies are  
12 substantially more expensive than individual policies and insure only the lender’s interest in the  
13 collateral. *Id.*

14 Plaintiff challenged several aspects of Sound’s CPI program. First, Plaintiff alleged that  
15 Sound drove up earned CPI premiums for new borrowers by delaying the statutory notice  
16 process before backdating CPI policies to the date of purchase under RCW 48.22.120(6). *See*  
17 RCW 48.22.115, .120 (requiring lenders to provide specific, advanced notice of insufficient  
18 insurance prior to imposing CPI). *Id.* ¶ 5. Second, Plaintiff alleged that Sound received a  
19 quarterly reimbursement of earned CPI premiums—funded at borrower expense—as a kickback  
20 from its collateral protection insurance administrator. *Id.* Third, Plaintiff alleged that Sound  
21 used a formula to calculate CPI premiums that treated certain unearned premiums as earned,  
22 significantly reducing borrowers’ premium refunds. *Id.* Fourth, Plaintiff alleged that Sound  
23



1 charged borrowers an administrative CPI fee that it was not entitled to collect. *Id.* Finally,  
2 Plaintiff alleged that Sound collected interest and late fees on the amounts it improperly  
3 charged borrowers. *Id.*

4 Sound denies that it engaged in any wrongful conduct and maintains that its CPI  
5 program complied with the CPI Statute at all times.

6 **B. The parties engaged in substantial discovery and motion practice.**

7 The parties have litigated this matter vigorously for more than two years. After Plaintiff  
8 filed the Complaint, Sound moved to dismiss. The Court held oral argument and on June 10,  
9 2020, denied Sound’s motion. The parties then began extensive discovery. Declaration of  
10 McEntee Decl. ¶ 4. Sound propounded requests for production and requests for admission, and  
11 Plaintiff responded and produced numerous documents. *Id.* ¶ 6. Plaintiff propounded two sets  
12 of interrogatories, three sets of requests for production, and two sets of requests for admission  
13 to Sound. *Id.* ¶ 7. The parties engaged in hours of discovery conferences regarding the scope of  
14 discovery, culminating in a negotiated protocol to search for Electronically Stored information  
15 (“ESI”) on the accounts of specified custodians. *Id.* When progress on those searches stalled,  
16 Plaintiff filed and briefed a motion to compel compliance with the ESI protocol, which the Court  
17 granted. *Id.* Using carefully tested and negotiated search terms, Sound ultimately produced  
18 more than 15,000 of pages of documents, and loan data for thousands of proposed class  
19 members. Plaintiff served Sound with a detailed Civil Rule 30(b)(6) notice, and was prepared to  
20 depose Sound, when the parties began discussions regarding potential resolution. *Id.*

21 Both parties also engaged in third-party discovery. Sound issued a subpoena to  
22 Plaintiff’s insurer for documents related to her insurance policy. *Id.* ¶ 8. And Plaintiff

1 subpoenaed one of Sound’s third-party collateral protection insurance administrators, Allied,  
2 which produced tens of thousands of rows of data regarding proposed class members’  
3 insurance status. *Id.* Sound agreed to work with its current third-party administrator, SWBC, to  
4 produce the same universe of documents, without the need for a subpoena. *Id.* Plaintiff spent  
5 dozens of hours reviewing documents and analyzing data to assess liability and calculate  
6 potential damages before the parties agreed to mediate the case. *Id.*

7 **C. The settlement negotiations.**

8 The parties attended a full-day mediation with an experienced mediator, Teresa  
9 Wakeen, on February 28, 2022, via Zoom. *Id.* ¶ 9. While the mediation was productive, the  
10 parties were unable to resolve the case. *Id.* Over the following month, the parties continued to  
11 engage in settlement negotiations facilitated by Ms. Wakeen, and on March 25, 2022, Ms.  
12 Wakeen made a mediator’s proposal that both parties accepted. *Id.* The parties executed a  
13 term sheet memorializing material settlement terms on March 31, 2022. *Id.* Since then, the  
14 parties have diligently worked to draft the full Settlement Agreement and supporting  
15 documents, negotiate the final details of the settlement, and select a settlement administrator.  
16 *Id.* All of these efforts led to the Settlement Agreement the parties now present to the Court for  
17 approval.

18 **D. The Settlement.**

19 The proposed settlement resolves all of Plaintiff’s claims. The full terms are set forth in  
20 the parties’ Settlement Agreement. McEntee Decl., Ex. 1. Capitalized terms used in this motion  
21 are defined in the Settlement Agreement.

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1                   1.       The Settlement Class.

2                   The proposed Class for settlement purposes is defined as follows:

3                   all Washington residents who financed a motor vehicle through Sound Credit  
4                   Union and who, from February 11, 2016, and up through the date of final  
5                   judgement, were charged more for, or as a result of, collateral protection  
6                   insurance than they would otherwise have been charged if Sound Credit Union  
7                   had: (i) notified them earlier or differently of alleged deficiencies in insurance  
                    coverage, (ii) used a pro rata refund method, (iii) not charged an administrative  
                    fee, or (iv) not received an administrative reimbursement from the collateral  
                    protection insurance carrier or third-party collateral protection insurance  
                    administrator.

8                   Settlement Agreement § II, ¶ 23. The Settlement Class will include all individuals who fall within  
9                   the Settlement Class definition who have not opted out of the Settlement. Sound's records  
10                  show that the proposed Settlement Class includes 2,569 loans. McEntee Decl. ¶ 10.

11                   2.       Settlement relief.

12                  Sound will pay \$750,000 into a Qualified Settlement Fund. Settlement Agreement § III,  
13                  ¶ 1. The Settlement Fund will be used to pay (1) Settlement Awards to Settlement Class  
14                  Members, (2) any Court-approved service award to Plaintiff Debra Fealy, (3) Court-approved  
15                  attorneys' fees and costs, and (4) Court-approved settlement administration costs. *Id.* After  
16                  deducting items (2)-(4) above, the Net Settlement Fund will be distributed to Settlement Class  
17                  Members *pro rata*, in proportion to their total potential damages. *Id.* § III, ¶ 3. All Settlement  
18                  Class Members will receive a *pro rata* share of the Settlement in proportion to their total  
19                  potential damages. There is no requirement that Settlement Class Members submit a claim  
20                  form or take affirmative action in order to recover. Any remaining funds from uncashed  
21                  settlement checks will be distributed 50% to the Legal Foundation of Washington and 50% to

1 Northwest Justice Project, a publicly funded legal aid organization dedicated to providing low-  
2 income persons with access to the civil justice system. *Id.* § III, ¶ 4.

3 *a. Settlement administration.*

4 Plaintiff retained American Legal Claims Services (ALCS) to serve as the Settlement  
5 Administrator. McEntee Decl. ¶ 11; Settlement Agreement § II, ¶ 21. Among other tasks, ALCS  
6 will send notice to Settlement Class Members by U.S. mail, maintain the settlement website  
7 and IVR call center, update the addresses of Settlement Class Members whose notices are  
8 returned as undeliverable, track responses including opt-outs and objections, and mail  
9 Settlement Awards to Settlement Class Members. Settlement Agreement § VII, ¶ 1. ALCS  
10 estimates it will cost \$16,877 to administer the Settlement, which may increase depending on  
11 the cost to issue form 1099s to Settlement Class Members who receive more than \$600.  
12 McEntee Decl. ¶ 11.

13 *b. Service award to Plaintiff Debra Fealy.*

14 Plaintiff's counsel will request Court approval of a service award of \$5,000 for Plaintiff to  
15 compensate her for the time she dedicated to this litigation and the risk she undertook in  
16 stepping forward as representative of the Class. Settlement Agreement § IV, ¶ 1; McEntee Decl.  
17 ¶ 21. The Settlement is not in any way contingent on the approval of this award. Settlement  
18 Agreement § IV, ¶ 3; McEntee Decl. ¶ 21.

19 *c. Attorneys' fees and litigation costs.*

20 Plaintiff's counsel will file a motion for an award of attorneys' fees and out-of-pocket  
21 costs of no more than one-third of the Settlement Fund, to be paid from the Settlement Fund.  
22 Settlement Agreement § IV, ¶ 2. Plaintiff's counsel will make that request based on their  
23

1 lodestar in a motion that will be posted to the Settlement Website. The Settlement is not in any  
2 way contingent on the approval of fees, or any particular amount of fees. *Id.* § IV, ¶ 3.

3 3. The Settlement Class Notice Program.

4 The Settlement includes a comprehensive notice plan to the Settlement Class that  
5 requires the Settlement Administrator to directly notify—by U.S. Mail—all members of the  
6 Settlement Class. *Id.* § VII, ¶¶ 1, 6.a. Settlement Class Members will have 45 days from the date  
7 notice is mailed to the class to opt-out of the Settlement Class or object to the Settlement. *Id.*  
8 § II, ¶¶ 12—13; *see also id.* §§ VIII, IX.

9 In addition to the direct notice program, a long-form notice will be posted and available  
10 to the public on a Settlement Website created and maintained by the Settlement  
11 Administrator. *Id.* § VII, ¶ 6.b. The website will also include important dates, deadlines, and  
12 documents, including the Settlement Agreement and Class counsel’s motion for attorneys’ fees,  
13 costs, and a service award. *Id.*

14 4. Settlement Class Members’ release.

15 In exchange for the Settlement benefits, Settlement Class Members will release all  
16 claims “that were or could have been alleged in [this case] relating to or arising out of the  
17 placement of collateral protection insurance” prior to the effective date of the Settlement.  
18 Settlement Agreement § II, ¶ 16.

19 **III. STATEMENT OF ISSUES**

20 Whether the Court should grant preliminary approval of the proposed Settlement,  
21 preliminarily certify the Settlement Class for settlement purposes, appoint Plaintiff Debra Fealy  
22 to serve as representative of the Settlement Class, appoint Terrell Marshall Law Group and  
23

1 Smith & Dietrich Law Offices to serve as Class Counsel, direct notice to the Settlement Class  
2 Members, and schedule a Final Approval Hearing.

3 **IV. EVIDENCE RELIED UPON**

4 Plaintiff relies on the Declarations of Adrienne D. McEntee and Walter Smith in support  
5 of this motion and the attached exhibits, and the pleadings and records on file with the Court.

6 **V. ARGUMENT AND AUTHORITY**

7 **A. Class action settlement approval process.**

8 As a matter of “express public policy,” Washington courts strongly favor and encourage  
9 settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258, 947 P.2d 223 (1997); *see also Pickett*  
10 *v. Holland Am. Line Westours, Inc.*, 145 Wn.2d 178, 190, 35 P.3d 351 (2001) (“[V]oluntary  
11 conciliation and settlement are the preferred means of dispute resolution.”). This is particularly  
12 true in class actions and other complex matters where the costs, delays, and risks of continued  
13 litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See*  
14 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

15 The Manual for Complex Litigation describes a three-step process to approve class  
16 action settlements: (1) preliminary approval of the proposed settlement; (2) dissemination of  
17 notice of the settlement to all affected class members; and (3) a “fairness hearing” at which  
18 class members may be heard and evidence and argument concerning the fairness, adequacy,  
19 and reasonableness of the settlement may be presented. Manual for Complex Litigation  
20 (Fourth) §§ 21.632–21.634 (2004) (Ann. ed. May 2019 update). This procedure safeguards class  
21 members’ due process rights and enables the court to fulfill its role as the guardian of class  
22  
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1 interests. See William B. Rubenstein, Newberg on Class Actions § 13:1 (5th ed. Dec. 2019  
2 update).

3 Plaintiff requests that the Court take the first step in the settlement approval process by  
4 granting preliminary approval of the proposed Settlement. The approval of a class settlement is  
5 within the Court’s sound discretion. See *Pickett*, 145 Wn.2d at 190. Because no class has been  
6 certified, “the judge should make a preliminary determination that the proposed class satisfies  
7 the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b).” Manual for  
8 Complex Litigation § 21.632.

9 **B. The Settlement satisfies the criteria for preliminary approval.**

10 Proposed class action settlements are not effective unless approved by the Court. CR  
11 23(e). At the preliminary approval stage, courts typically consider whether “the proposed  
12 settlement appears to be the product of serious, informed, non-collusive negotiations, has no  
13 obvious deficiencies, does not improperly grant preferential treatment to class representatives  
14 or segments of the class, and falls within the range of possible [judicial] approval.” Newberg  
15 § 13.10 (citation omitted). The proposed Settlement satisfies these requirements.

16 1. The Settlement is the product of serious, informed, and arm’s-length  
17 negotiations.

18 This Settlement is the result of hard-fought litigation and arm’s-length negotiations  
19 between attorneys experienced in this type of litigation. *Pickett*, 145 Wn.2d at 200 (“When  
20 experienced and skilled class counsel support a settlement, their views are given great weight.”  
(citation omitted)).

21 Plaintiff’s counsel negotiated the Settlement with the benefit of many years of prior  
22 experience and a solid understanding of the facts and law of this case. McEntee Decl. ¶¶ 5–8,  
23

1 12–18, 19. Plaintiff’s counsel have extensive experience litigating and settling class actions, and  
2 consumer class actions challenging banking practices in particular. *Id.* ¶¶ 12–18; Smith Decl.  
3 ¶¶ 3-10. They believe the settlement is fair, reasonable, adequate, and in the best interest of  
4 the Settlement Class as a whole. McEntee Decl. ¶ 19. The parties also negotiated the  
5 Settlement with the assistance of mediator Teresa Wakeen, who has substantial experience  
6 settling complex cases. McEntee Decl. ¶ 9. Courts recognize that “the assistance of an  
7 experienced mediator in the settlement process confirms that the settlement is non-collusive.”  
8 *Betorina v. Randstad US, L.P.*, No. 15-cv-03646-EMC, 2017 WL 1278758, at \*7 (N.D. Cal. Apr. 6,  
9 2017).

10 2. The Settlement has no obvious deficiencies and does not grant preferential  
11 treatment to any Class Member.

12 The Settlement treats all Class Members fairly and equally. Each Settlement Class  
13 Member is entitled to a Settlement Award. The Settlement Awards will be calculated *pro rata*  
14 based on the amount of each Settlement Class Member’s potential damages, with a minimum  
15 Settlement Award of \$10. Settlement § III, ¶ 3.

16 The Settlement Fund is non-reversionary. Plaintiff requests that the Court approve, as  
17 required by CR 23(f)(2), distributions in *cy pres* of 50% of any residual funds to the Legal  
18 Foundation of Washington and 50% to Northwest Justice Project, a publicly funded legal aid  
19 program providing critical civil legal assistance and representation to low-income individuals. *Id.*  
20 § III, ¶ 4. The *cy pres* award to Northwest Justice Project will benefit the interest of the  
21 Settlement Class because Northwest Justice Project provides thousands of people with access  
22 to the civil legal system to defend their rights against alleged predatory practices.



1 Plaintiff's counsel will request a service award for Plaintiff in recognition of her efforts  
2 on behalf of the Class, which included assisting counsel with the investigation and ongoing  
3 litigation, producing documents, and answering written discovery. Settlement § IV, ¶ 1;  
4 McEntee Decl. ¶ 21. Service awards "are intended to compensate class representatives for  
5 work undertaken on behalf of a class" and "are fairly typical in class action cases." *In re Online*  
6 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted); *see also Pelletz*  
7 *v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329-30 & n.9 (W.D. Wash. 2009) (collecting cases  
8 approving service awards ranging from \$5,000 to \$40,000); *Probst v. Wash. Dept. of Ret. Sys.*,  
9 150 Wn. App. 1062, 2009 WL 1863993, at \*5-6 (Wash. Ct. App. June 30, 2009) (unpublished  
10 opinion) (affirming service award of \$7,500 to named plaintiff). Plaintiff's support of the  
11 Settlement is not conditioned on the Court awarding a certain amount or any service award at  
12 all.

13 The Settlement Fund will also be used to pay attorneys' fees and costs in an amount  
14 approved by the Court. Plaintiff's counsel will file a motion for court approval of a reasonable  
15 attorneys' fee award and reimbursement of litigation costs of up to one-third of the Settlement  
16 Fund. Settlement § IV, ¶ 2; McEntee Decl. ¶ 22. The requested award is within the range of  
17 typical fee awards in class action cases. *See Bowles v. Dep't of Ret. Sys.*, 121 Wn.2d 52, 72, 847  
18 P.2d 440 (1993) (noting fee awards for common fund cases are often in the range of 20 to 30  
19 percent); *Newberg on Class Actions* § 14:6 (4th ed. online) (explaining that "common fee  
20 awards fall in the 20 to 33 per cent range" and "empirical studies show that, regardless  
21 whether the percentage method or the lodestar method is used, fee awards in class actions  
22  
23

1 average around one-third of the recovery”). The Settlement Agreement is not contingent on  
2 the amount of attorneys’ fees or costs awarded. McEntee Decl. ¶ 22.

3 3. The Settlement falls within the range of possible judicial approval.

4 Sound’s agreement to pay \$750,000 is an excellent result for the Settlement Class in  
5 light of the obstacles to continued litigation and recovery after trial and appeal.

6 Plaintiff is confident in the strength of her case but also recognizes the significant risks  
7 to recovery. Sound intended to move for summary judgment and argue that Plaintiff’s claims  
8 should be dismissed because it is shielded from liability by the “safe harbor” provision of RCW  
9 48.22.120(5). McEntee Decl. ¶ 19. Plaintiff maintains that the safe harbor does not apply, both  
10 because Sound did not substantially comply with the statute, and because Plaintiff’s claims fall  
11 outside the narrow scope of the safe-harbor provision. Plaintiff strongly believes she would  
12 prevail if the issue were before the Court. *Id.* But if Sound convinced the Court that RCW  
13 48.22.120(5) applied, Plaintiff and the Settlement Class might not receive any relief. *Id.*

14 Plaintiff also faced challenges at class certification. Sound maintained that individualized  
15 issues in this action predominate over common ones. *Id.* Plaintiff maintains that class  
16 certification is warranted here because Plaintiff’s claims challenge standardized practices, and  
17 are based on form financing agreements and template notice letters. *Id.*; *see also Miller v.*  
18 *P.S.C.*, No. 3:17-cv-05864-RBL, 2018 WL 6249841, at \*4 (W.D. Wash. Nov. 29, 2018) (certifying  
19 class where the plaintiff’s claims turned on the content of common debt collection forms and  
20 standardized practices related to those forms). If the Court agreed with Sound that  
21 individualized issues regarding proposed class members’ loans and insurance history  
22 predominate, however, the Court could deny certification, leaving the Settlement Class with no  
23

1 relief. McEntee Decl. ¶ 19; *see also Harvey v. Centene Mgmt. Co., LLC*, No. 2:18-cv-00012-SMJ,  
2 2020 WL 2411510, at \*5–6 (E.D. Wash. May 12, 2020) (concluding that proving liability and  
3 damages would require a claim-by-claim review and thus, that individualized issues  
4 predominated). The parties are also cognizant of the risks inherent in any trial. McEntee Decl.  
5 ¶ 19. And if Plaintiff won, Sound would likely appeal, delaying any benefit to the Settlement  
6 Class. *Id.*

7 The Settlement, by contrast, will provide a guaranteed recovery for all Settlement Class  
8 Members. After Court-approved deductions, the Net Settlement Fund will be distributed *pro*  
9 *rata* to all Settlement Class Members in proportion to their total potential damages. McEntee  
10 Decl. ¶ 10. Each Settlement Class Member will recover approximately 60% of their potential  
11 damages during the class period. *Id.* The Settlement is an excellent result for the Settlement  
12 Class, and compares favorably with Settlements in other class action cases. *Id.* ¶ 19; *see also*,  
13 *e.g., Wodja v. Wash. State Emps. Credit Union*, Pierce County Superior Court, Case No. 16-2-  
14 12148-4 (May 11, 2018) (after payment of fees and costs, class members recovered 29.6% of  
15 overdraft fees imposed at a time when the member’s ledger balance was sufficient to cover the  
16 transaction); *see also* Order and Judgment Finally Approving Class Action Settlement *Wodja v.*  
17 *Wash. State Emps. Credit Union*, Pierce County Superior Court, Case No. 16-2-12148-4 (June 22,  
18 2018); *McPhail v. First Command Fin. Planning, Inc.*, No. 05cv179-IEG-JMA, 2009 WL 839841, at  
19 \*5 (S.D. Cal. Mar. 30, 2009) (approving settlement for 6% of potential damages in action  
20 challenging forced-placed insurance practices); *Smith v. Legal Helpers Debt Resol., LLC*, No. 11-  
21 5054 RJB, 2012 WL 12863173, at \*3 (W.D. Wash. Aug. 30, 2012) (preliminary approval of  
22 settlement in which consumers recovered between 30% and 70% of damages).

1 **C. Preliminary certification of the Settlement Class is appropriate.**

2 Preliminary certification of the Settlement Class for settlement purposes is appropriate  
3 under CR 23(a) and (b)(3).

4 1. The Settlement Class satisfies the requirements of CR 23(a).

5 To be certified, a class must satisfy the requirements of CR 23(a): numerosity,  
6 commonality, typicality, and adequacy of representation. Numerosity is satisfied because the  
7 Settlement Class consists of approximately 2,569 individuals. *See* CR 23(a)(1); *Miller v. Farmer*  
8 *Bros. Co.*, 115 Wn. App. 815, 821, 64 P.3d 49 (2003) (numerosity is generally satisfied when a  
9 class has at least 40 members).

10 Commonality is satisfied when there is “a single issue common to all members of the  
11 class.” *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d 665 (2002). “[T]here is a low  
12 threshold to satisfy this test.” *Id.* Sound’s alleged practices of delaying notice of deficient  
13 insurance to new borrowers, failing to fully refund unearned CPI premiums, charging  
14 unauthorized fees and interest, and taking a percentage of earned CPI premiums as an  
15 “administrative reimbursement” were each applied to Settlement Class Members in the same  
16 way. Thus, whether those practices are unfair or deceptive under the CPA, constitute  
17 conversion, or result in unjust enrichment are questions common to the Class. *See* CR 23(a)(2);  
18 *Ellsworth v. U.S. Bank, N.A.*, No. C 12-02506 LB, 2014 WL 2734953, at \*19 (N.D. Cal. Jun. 13,  
19 2014) (granting certification of claims that the lender engaged in “a common scheme to force-  
20 place insurance on borrowers and pass on inflated charges that include kickbacks” and  
21 collecting similar cases).

1 The typicality requirement is satisfied because Plaintiff's claims arise from the same  
2 course of conduct that gives rise to the claims of other Class Members and is based on the  
3 same legal theory. *See* CR 23(a)(3); *Pellino v. Brink's Inc.*, 164 Wn. App. 668, 684, 267 P.3d 383  
4 (2011). Plaintiff's and Settlement Class Members' claims all arise from the same practices, and  
5 the same legal theories support both Plaintiff's claims and those of Settlement Class Members:  
6 these common practices are unfair and deceptive under the CPA, constitute conversion, and  
7 unjustly enrich Sound.

8 The adequacy of representation requirement is satisfied because Plaintiff's interests are  
9 not antagonistic to the interests of the Settlement Class and the Settlement Class is  
10 represented by qualified counsel. *See Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D.  
11 Wash. 2003); McEntee Decl. ¶¶ 12–19, 21; Smith Decl. ¶¶ 3-10. Plaintiff and her counsel  
12 vigorously advocated on behalf of the Class throughout this litigation, including the arm's-  
13 length negotiations that resulted in this settlement.

14 2. The Class satisfies the requirements of CR 23(b)(3).

15 Civil Rule 23(b)(3) requires that common questions predominate over any questions  
16 affecting only individual class members, and that a class action is superior to other available  
17 methods for the fair and efficient adjudication of the controversy. *Chavez v. Our Lady of*  
18 *Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 514, 415 P.3d 224 (2018). Predominance is satisfied  
19 when “there is a common nucleus of operative facts in each class member's claim.” *Id.* at 516.  
20 “The relevant inquiry is whether the issue shared by class members is the dominant, central, or  
21 overriding issue in the litigation.” *Id.* The issues common to Plaintiff and Settlement Class  
22 Members are dominant, central, and overriding in this litigation. The questions of whether  
23

1 Sound's CPI program was unfair or deceptive and whether it complied with the CPI statute are  
2 common to Plaintiff and Settlement Class Members, and are dominant issues central to  
3 resolution of this case.

4 The superiority requirement is satisfied when a class action is superior to other methods  
5 of adjudication for resolution of the claims at issue. *Chavez*, 190 Wn.2d at 511. Factors relevant  
6 to superiority include: (A) the interest of members of the class in individually controlling the  
7 prosecution or defense of separate actions; (B) the extent and nature of any litigation  
8 concerning the controversy already commenced by or against members of the class; (C) the  
9 desirability or undesirability of concentrating the litigation of the claims in the particular forum;  
10 (D) the difficulties likely to be encountered in the management of a class action. CR 23(b)(3).

11 Resolution of all of Settlement Class Members' claims at once is far superior to  
12 individual lawsuits and promotes consistency and efficiency of adjudication. *See* CR 23(b)(3);  
13 *Chavez*, 190 Wn.2d at 518-23. This is especially true since Settlement Class Members have  
14 relatively small claims for potential damages and are unlikely to be able to afford an attorney.  
15 *Chavez*, 190 Wn.2d at 523 ("[S]mall claims cases somewhat automatically meet the test that a  
16 class suit is superior to other forms of adjudication.").

17 Plaintiff is not aware of any individual litigation filed by any Settlement Class Members.  
18 *See Chavez*, 190 Wn.2d at 524 (the fact that defendant is not involved in other litigation over  
19 the same issue raised by plaintiffs supports superiority). And concentrating claims against  
20 Sound in this forum is likely the only way Settlement Class Members' rights will be vindicated  
21 because many Settlement Class Members may not even be aware of their claims. *See id.*

1 Finally, the manageability of litigation is not relevant to certification for settlement  
2 purposes. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a  
3 request for settlement-only class certification, a district court need not inquire whether the  
4 case, if tried, would present intractable management problems.”). The Settlement will be easily  
5 and fairly managed, as described above.

6 **D. The proposed Notice Program should be approved.**

7 Notice of a class action settlement must “be given to all members of the class in such  
8 manner as the court directs.” CR 23(e). To protect class members’ rights, the Court should  
9 ensure that they receive “the best notice practicable under the circumstances.” CR 23(c)(2). The  
10 best practicable notice is that which is “reasonably calculated, under all the circumstances, to  
11 apprise interested parties of the pendency of the action and afford them an opportunity to  
12 present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

13 The parties propose that Notice be provided to Settlement Class members in two  
14 different ways: postcard notice sent by U.S. mail and long form notice, which shall be available  
15 on the Settlement Website and/or via mail upon a Settlement Class member’s request.

16 Settlement Agreement § VII, ¶ 6. This approach will ensure that notice reaches as many  
17 Settlement Class Members as possible.

18 The language of the proposed notice is straightforward and easily understood. Each  
19 Settlement Class Member will receive a notice that provides all the information needed to  
20 evaluate and respond to the Settlement. The notice will inform Settlement Class Members of:  
21 (1) the nature of this litigation; (2) the general terms of the proposed Settlement; (3) a  
22 statement of each Settlement Class Member’s rights under the Settlement, (4) an explanation  
23

1 of how Settlement Class Members can object to or exclude themselves from the Settlement; (5)  
2 the identity of Class Counsel and that Class Counsel will move for approval of payment of their  
3 attorneys' fees and costs and service award for Plaintiff from the Settlement Fund; (6) the  
4 settlement website they can visit for additional information; (7) a telephone number they can  
5 call with questions; and (8) the date and time of the Final Approval Hearing. *See* McEntee Decl.,  
6 Ex. 1 (Settlement Agreement, Exhibits B and C); *see also* Newberg § 8:17.

7 **E. Schedule for final approval.**

8 The last step in the settlement approval process is a fairness hearing at which the Court  
9 will make its final evaluation. Plaintiff proposes the following schedule:

EVENT	DEADLINE
Settlement Administrator to implement Notice Program ("Settlement Notice Date")	Within 30 days of Preliminary Approval Order
Deadline for Class Counsel to move for an award of attorneys' fees, costs, and service award	14 days after the Settlement Notice Date
Opt-Out and Objection Deadlines	45 days after the Settlement Notice Date
Deadline for Plaintiff to move for Final Approval	14 days before Final Approval Hearing
Deadline for the parties to respond to any objections to the Settlement	14 days before Final Approval Hearing
Final Approval Hearing	To be set by the Court, but no earlier than 75 days after the Settlement Notice Date is sent

21 **VI. CONCLUSION**

22 For all the forgoing reasons, Plaintiff requests preliminary approval of the Settlement.



1 RESPECTFULLY SUBMITTED AND DATED this 23rd day of May, 2022.

2  
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