

September 02 2022 2:45 PM

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

THE HONORABLE GRETCHEN LEANDERSON

Department 15

Noted for Consideration: September 16, 2022, 9:00 a.m.

With 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 FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

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1 **I. INTRODUCTION**

2 Plaintiff and Class Counsel respectfully move for final approval of the class action  
3 Settlement reached with Sound Credit Union (Sound). The parties’ extensive negotiations  
4 resulted in an outstanding Settlement for the Settlement Class. Under the Settlement, Sound  
5 will pay a total of \$750,000 into a common fund from which all Settlement Class Members will  
6 receive a Settlement Award. There is no claims process. The Settlement Administrator,  
7 American Legal Claims Services (ALCS), will send a check to each of the 2,475 Settlement Class  
8 Members with a deliverable address.

9 The Notice Plan was highly effective and Settlement Class Members have responded  
10 positively to the Settlement. The postcard notice reached more than 97% of the 2,538-member  
11 Settlement Class—all but 63 Settlement Class Members. No Settlement Class Member has  
12 objected to or excluded themselves from the Settlement. Settlement Class Members’  
13 overwhelmingly positive reaction to the Settlement confirms that it is fair, reasonable, and  
14 adequate. Accordingly, Plaintiff respectfully requests that the Court grant Class Counsel’s  
15 Motion for Attorneys’ Fees, Costs, and a Service Award to Plaintiff, approve payment in the  
16 amount of \$16,877 to cover the Settlement Administrator’s costs, and grant final approval of  
17 the Settlement.

18 **II. STATEMENT OF FACTS**

19 Class Counsel litigated this case extensively, but efficiently, for nearly two years before  
20 the parties settled. Plaintiff defeated Sound’s motion to dismiss and the parties conducted  
21 extensive discovery. July 28, 2022 Declaration of Adrienne McEntee in Support of Class  
22 Counsel’s Motion for Attorneys’ Fees, Costs, and Service Award to Plaintiff (McEntee Decl.) ¶ 2.  
23

1 Sound propounded requests for production and requests for admission, and Plaintiff responded  
2 and produced numerous documents. *Id.* ¶ 3.

3 Plaintiff propounded two sets of interrogatories, three sets of requests for production,  
4 and two sets of requests for admission to Sound. *Id.* ¶ 4. The parties engaged in hours of  
5 discovery conferences regarding the scope of discovery, culminating in a negotiated protocol to  
6 search for Electronically Stored information (“ESI”) on the accounts of specified custodians. *Id.*  
7 When progress on those searches stalled, Plaintiff filed, briefed, and argued a motion to compel  
8 compliance with the ESI protocol, which the Court granted. *Id.* Using carefully tested and  
9 negotiated search terms, Sound ultimately produced more than 15,000 of pages of documents,  
10 and loan data for thousands of proposed class members. Plaintiff served Sound with a detailed  
11 Civil Rule 30(b)(6) notice, and was prepared to depose Sound when the parties began  
12 discussions regarding potential resolution. *Id.*

13 Both parties also engaged in third-party discovery. Sound issued a subpoena to  
14 Plaintiff’s insurer for documents related to her insurance policy. *Id.* ¶ 5. Plaintiff subpoenaed  
15 one of Sound’s third-party collateral protection insurance administrators, Allied Solutions,  
16 which produced tens of thousands of rows of data regarding proposed class members’  
17 insurance status. *Id.* And Sound agreed to work with its current third-party administrator,  
18 SWBC, to produce the same universe of documents, without the need for a subpoena. *Id.*  
19 Plaintiff spent hundreds of hours reviewing documents and analyzing data to assess liability and  
20 calculate potential damages before the parties agreed to mediate the case. *Id.*

1 **A. Settlement negotiations.**

2 The parties mediated on February 28, 2022, with the assistance of Teresa Wakeen, an  
3 experienced mediator. McEntee Decl. ¶ 7. After a month of additional negotiations, the parties  
4 agreed to material terms, and then continued their adversarial, arm’s-length negotiations until  
5 May 23, 2022, when they finalized the Settlement Agreement. *Id.* ¶ 7–8.

6 **B. Class Counsel litigated the case with no guarantee of payment.**

7 Class Counsel are experienced class action litigators with expertise litigating complex  
8 claims on behalf of consumers. McEntee Decl. ¶¶ 11–17; July 28, 2022 Declaration of Walter  
9 Smith (Smith Decl.) ¶ 2–5, 10.

10 Class Counsel took this case on a contingent basis with no guarantee of recovery. *Id.*  
11 ¶ 22; Smith Decl. ¶ 7. Class Counsel also agreed to advance all costs of this litigation and  
12 worked on this matter for over two years without compensation or reimbursement for their  
13 time or out-of-pocket expenses. McEntee Decl. ¶ 22; Smith Decl. ¶ 7. If Class Counsel were  
14 unable to successfully resolve this matter (and as described below, this case was risky), Class  
15 Counsel would have been paid nothing.

16 Class Counsel have invested over 1,300 hours and \$7,591.05 in out-of-pocket costs  
17 investigating and litigating this case. McEntee Decl. ¶¶ 26, 30; Smith Decl. ¶¶ 5–6. Tasks  
18 performed by Class Counsel include: (1) investigating the claims; (2) researching and drafting  
19 the complaint; (3) briefing and arguing Sound’s motion to dismiss; (4) propounding discovery  
20 requests, reviewing Defendants’ responses, and drafting deficiency letters; (5) negotiating  
21 search terms and a comprehensive ESI protocol; (6) briefing and arguing Plaintiff’s motion to  
22 compel compliance with the ESI protocol; (7) analyzing the documents and data produced to  
23

1 identify class members with potential damages; (8) preparing a robust mediation statement,  
2 attending an all-day mediation session, and continuing to negotiate until a Settlement was  
3 reached; and (9) preparing the settlement documents and the motion for preliminary approval.  
4 McEntee Decl. ¶¶ 2–9, 28–29; Smith Decl. ¶ 5.

5 **C. The Class Representative was actively involved in the case.**

6 Plaintiff Debra Fealy was essential in bringing this litigation to a successful conclusion.  
7 Ms. Fealy assisted with Class Counsel’s investigation of the facts; provided documents to Class  
8 Counsel; responded to written discovery; communicated regularly with Class Counsel and  
9 provided input and answered questions whenever needed; stayed apprised of and involved in  
10 the litigation; and was prepared to sit for deposition and testify at trial. McEntee Decl. ¶ 6.

11 **D. The notice plan was highly effective.**

12 The Settlement Administrator fully implemented the robust Notice Plan approved by the  
13 Court. Declaration of American Legal Claim Services, LLC (Indra Decl.) ¶¶ 3–4, Exs. A & B.  
14 Settlement Administration costs total \$16,877.

15 The Notice Plan was extremely effective. Of the 2,538 initial Postcard Notices mailed by  
16 ALCS, 282 were returned as undeliverable. *Id.* ¶ 5–6. ALCS was able to identify updated  
17 addresses and re-mail Postcard Notices to 266 Settlement Class Members whose initial notices  
18 were returned. *Id.* ¶ 5. In total, Postcard Notice reached 2,475 of the 2,538 Settlement Class  
19 Members—97.52% of the Settlement Class. *Id.* ¶ 6. In addition to direct postcard notice, the  
20 Settlement Website has also been available to Settlement Class Members since July 15, 2022.  
21 *Id.* ¶ 7.



1 The Settlement Website has received 657 page views from 550 unique visitors. *Id.* ¶ 7.  
2 Settlement Class Members placed 29 calls to the toll-free number established by the  
3 Settlement Administrator for the case. *Id.* ¶ 8. And one Settlement Class Member contacted  
4 ALCS directly by mail. *Id.* These response levels demonstrate that the notice program was  
5 effective.

6 **E. Settlement Class Members responded favorably to the Settlement.**

7 Direct notice reached nearly all of the Settlement Class and no Settlement Class  
8 Member has opted out of or objected to the Settlement. Indra Decl. ¶¶ 9–10. The absence of  
9 any opt-outs or objections reflects the Settlement Class’s positive reaction to the Settlement.

10 **III. ARGUMENT AND AUTHORITY**

11 When considering a motion for final approval of a class action settlement under  
12 Washington Civil Rule 23, the Court’s inquiry is whether the settlement is “fair, adequate, and  
13 reasonable.” *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 188, 35 P.3d 351  
14 (2001) (“it is universally stated that a proposed class settlement may be approved by the trial  
15 court if it is determined to be ‘fair, adequate, and reasonable’” (citing *Torrisi v. Tucson Elec.*  
16 *Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993))).

17 In evaluating whether a class settlement is “fair, adequate, and reasonable,” courts  
18 generally refer to eight criteria, with differing degrees of emphasis: the likelihood of success by  
19 plaintiff; the amount of discovery or evidence; the settlement terms and conditions;  
20 recommendation and experience of counsel; future expense and likely duration of litigation;  
21 recommendation of neutral parties, if any; number of objectors and nature of objections; and  
22 the presence of good faith and the absence of collusion. *Pickett*, 145 Wn.2d at 192 (citing 2  
23

1 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11.43 “General Criteria for  
2 Settlement Approval” (3d ed. 1992)). This list is “not exhaustive, nor will each factor be relevant  
3 in every case . . . . The relative degree of importance to be attached to any particular factor will  
4 depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief  
5 sought, and the unique facts and circumstances presented by each individual case.” *Pickett*,  
6 145 Wn.2d at 189 (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.  
7 1982)).<sup>1</sup>

8 The approval of a settlement agreement “is a delicate, albeit largely unintrusive inquiry  
9 by the trial court.” *Pickett*, 145 Wn.2d at 189. Although the Court has discretion to determine  
10 whether a proposed class action settlement should be approved,

11 the court’s intrusion upon what is otherwise a private consensual  
12 agreement negotiated between the parties to a lawsuit must be  
13 limited to the extent necessary to reach a reasoned judgment that  
14 the agreement is not the product of fraud or overreaching by, or  
15 collusion between, the negotiating parties, and that the  
16 settlement, taken as a whole, is fair, reasonable and adequate to  
17 all concerned.

18 *Id.* (quoting *Officers for Justice*, 688 F.2d at 625). Moreover, as the court in *Pickett* observed, “it  
19 must not be overlooked that voluntary conciliation and settlement are the preferred means of  
20 dispute resolution.” *Id.* at 190 (quoting *Officers for Justice*, 688 F.2d at 625). In the end,  
21 “[s]ettlement is the offspring of compromise; the question we address is not whether the final  
22 product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from  
23 collusion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also Pelletz v.*  
*Weyerhaeuser Co.*, 255 F.R.D. 537, 544 (W.D. Wash. 2009).

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<sup>1</sup> CR 23 is similar to its federal counterpart, Fed. R. Civ. P. 23; thus, federal cases interpreting the analogous federal provision are persuasive. *Pickett*, 145 Wn. 2d at 188.

1 **A. The Settlement is fair, reasonable, and adequate.**

2 1. The Settlement offers substantial relief to Settlement Class Members.

3 The Settlement terms and conditions provide significant relief for the Settlement Class.  
4 Sound will pay \$750,000 into a Qualified Settlement Fund. Settlement Agreement § III.1. After  
5 deducting Court-approved settlement administration expenses, attorney’s fees and costs, and a  
6 service award to Plaintiff, the Settlement Fund will be distributed to Settlement Class Members  
7 *pro rata* in proportion to their total potential damages. *Id.* § III.3. There is no requirement that  
8 Settlement Class Members submit a claim or take affirmative action in order to recover. All  
9 Settlement Class Members with a deliverable address will be sent a check. Any funds remaining  
10 in the Settlement Fund from uncashed Settlement Award checks will be distributed *cy pres*,  
11 50% to the Legal Foundation of Washington and 50% to Northwest Justice Project, a publicly  
12 funded legal aid organization dedicated to providing low-income persons with access to the civil  
13 justice system. *Id.* § III.4. None of the Settlement Fund will revert to Sound. *Id.* § III.1

14 2. The Settlement is an excellent result given the risks Plaintiff faced in continuing  
15 to litigate.

16 The existence of risk and uncertainty to the plaintiff at the time of mediation “weighs  
17 heavily in favor of finding that the settlement was fair, adequate, and reasonable.” *See Pickett*,  
18 145 Wn.2d at 192. In the absence of a settlement, there are several substantial hurdles Plaintiff  
19 would have to clear to prevail. Sound intended to move for summary judgment and argue that  
20 Plaintiff’s claims should be dismissed because Sound is shielded from liability by the “safe  
21 harbor” provision of RCW 48.22.120(5). McEntee Decl. ¶ 10. Although Plaintiff strongly believes  
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1 she would prevail if the issue were before the Court, if the Court agreed with Sound, Plaintiff  
2 and the Settlement Class might not receive any relief. *Id.*

3 Class certification also presented barriers to recovery for the Settlement Class. Plaintiff  
4 maintains that class certification is warranted because Plaintiff's claims challenge standardized  
5 practices, and are based on form financing agreements and template notice letters. *Id.*; *see also*  
6 *Miller v. P.S.C.*, No. 3:17-cv-05864-RBL, 2018 WL 6249841, at \*4 (W.D. Wash. Nov. 29, 2018)  
7 (certifying class where the plaintiff's claims turned on the content of common debt collection  
8 forms and standardized practices related to those forms). But if the Court disagreed, it could  
9 deny certification, leaving the Settlement Class with no relief. McEntee Decl. ¶ 10; *see also*  
10 *Harvey v. Centene Mgmt. Co., LLC*, No. 2:18-cv-00012-SMJ, 2020 WL 2411510, at \*5–6 (E.D.  
11 Wash. May 12, 2020) (concluding that proving liability and damages would require a claim-by-  
12 claim review and thus, that individualized issues predominated).

13 The parties are also cognizant of the risks inherent in any trial. Even if Plaintiff defeated  
14 summary judgment and prevailed at trial, Sound would likely appeal, creating additional risk  
15 and delay. Continued litigation would also be expensive and time-consuming. McEntee Decl.  
16 ¶ 10; *see also Nat'l Rural Telecommc'ns Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal.  
17 2004) ("The Court shall consider the vagaries of litigation and compare the significance of  
18 immediate recovery by way of the compromise to the mere possibility of relief in the future,  
19 after protracted and expensive litigation." (citation omitted)).

20 The Settlement, by contrast, provides a guaranteed recovery for the Class. All  
21 Settlement Class Members with a deliverable address will receive a check equal to more than  
22 60% of their total potential damages, an excellent result for Settlement Class Members.

1           3.       The substantial discovery completed supports final approval of the Settlement.

2           Courts also consider the amount and nature of discovery and evidence developed at the  
3 time of settlement in determining whether the settlement is fair, adequate, and reasonable.  
4 *Pickett*, 145 Wn.2d at 199. Class Counsel litigated this case extensively, but efficiently, for  
5 nearly two years before the parties settled. The parties exchanged substantial discovery and  
6 conducted extensive third-party discovery. Class Counsel reviewed thousands of pages of  
7 documents and exhaustively analyzed tens of thousands of rows of loan and insurance data to  
8 evaluate Plaintiff's claims and potential damages prior to mediation. Class Counsel have  
9 invested more than 1,300 hours litigating this case and preparing the Settlement. *See* McEntee  
10 Decl. ¶ 26; Smith Decl. ¶¶ 5–6. At the time of mediation, Plaintiff and Class Counsel had all the  
11 information needed to fairly assess the risks of the case and the prospects of a litigated  
12 recovery if the case were to proceed toward trial. In short, Class Counsel are in an excellent  
13 position to conclude that the Settlement provides an excellent result for the Settlement Class  
14 and should be granted final approval.

15           4.       The Settlement Is the result of arm's length negotiation and supported by  
16               experienced counsel.

17           In determining the fairness of a settlement, courts should consider the parties' good  
18 faith and the absence of collusion between them. *Pickett*, 145 Wn.2d at 201. Courts recognize  
19 that arm's-length negotiations conducted by competent counsel with the assistance of a third-  
20 party mediator are *prima facie* evidence of fair settlements. As the United States Supreme  
21 Court has held, "[o]ne may take a settlement amount as good evidence of the maximum  
22 available if one can assume that parties of equal knowledge and negotiating skill agreed upon  
23 the figure through arms-length bargaining . . . ." *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 852

1 (1999); *see also Hughes v. Microsoft Corp.*, No. C98-1646C, 2001 WL 34089697, at \*7 (W.D.  
2 Wash. Mar. 26, 2001) (“A presumption of correctness is said to attach to a class settlement  
3 reached in arms-length negotiations between experienced capable counsel after meaningful  
4 discovery.”); *In re PPA Prods. Liab. Litig.*, 227 F.R.D. at 567 (approving settlement entered into  
5 in good faith, following arm’s-length and non-collusive negotiations).

6 The Settlement is the result of extensive, arm’s-length negotiations between  
7 experienced attorneys who are highly familiar with class action litigation. Class Counsel have  
8 extensive experience and expertise in litigating claims on behalf of consumers. McEntee Decl.  
9 ¶¶ 11–17; Smith Decl. ¶ 2–5, 10. The parties participated in a full-day mediation with the  
10 assistance of an experienced mediator, Teresa Wakeen, and engaged in a month of additional  
11 negotiations before the parties agreed to material terms. The parties then spent weeks  
12 negotiating the final details of the Settlement and the scope of the Settlement Class, and  
13 drafting and revising the Settlement Agreement.

14 “When experienced and skilled class counsel support a settlement, their views are given  
15 great weight.” *Pickett*, 145 Wn.2d at 200 (citing *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 175  
16 (5th Cir. 1983)). Class Counsel have extensive knowledge and experience in litigating class  
17 actions. Based on their thorough evaluation of the strengths and weaknesses of this case  
18 gained through extensive discovery, Class Counsel believe the Settlement to be an excellent  
19 result.

20 5. The reaction of the Settlement Class supports final approval of the Settlement.

21 A court may appropriately infer that a class action settlement is fair, adequate, and  
22 reasonable when few class members object to it. *See, e.g., Pickett*, 145 Wn.2d at 200–01;

1 *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977); *Nat’l Rural Telecomms.*,  
2 221 F.R.D. at 529 (“It is established that the absence of a large number of objections to a  
3 proposed class action settlement raises a strong presumption that the terms of a proposed  
4 class settlement action are favorable to the class members.”). A court can approve a class  
5 action settlement as fair, adequate, and reasonable even over the objections of a large number  
6 of class members. *See, e.g., Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291–96 (9th Cir.  
7 1992).

8 The Settlement Class’s response indicates strong support for the Settlement. None of  
9 the 2,538 Settlement Class Members objected or asked to be excluded from the Settlement.  
10 Indra Decl. ¶ 9–10; *see In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 227 F.R.D. 553, 564  
11 (W.D. Wash. 2004) (“[T]he Class Members themselves have effectively voted heavily in favor of  
12 the Settlement, by not opting out. In fact, 95% of Class Members have chosen to take part in  
13 the Settlement.”); *Torres v. North Pacific Seafoods, Inc.*, No. 2:20-cv-01545-JLR, 2021 WL  
14 7366175, at \*2 (W.D. Wash. Dec. 9, 2021) (lack of opt-outs and objections supported the  
15 conclusion that the Settlement relief was adequate).

16 **B. Settlement Class Members received the best notice practicable.**

17 The Court has already determined that the Notice Plan in this case meets the  
18 requirements of due process and applicable law, provides the best notice practicable under the  
19 circumstances, and constitutes due and sufficient notice to all individuals entitled to notice. The  
20 approved Notice Plan was fully implemented by independent Settlement Administrator, ALCS.  
21 On July 15, 2022, ALCS sent Postcard Notice to all Settlement Class Members. Indra Decl. ¶ 4.  
22 Of the 2,538 Postcard Notices, 282 were returned as undeliverable. *Id.* ¶ 5. ALCS sent  
23

1 supplemental mailings to 266 Settlement Class Members whose initial Postcard Notices were  
2 undeliverable, but for whom it was able to obtain an alternative mailing address. *Id.* In total,  
3 direct notice reached 2,475 Settlement Class Members, which represents a 97.52% success  
4 rate. *Id.* ¶ 6.

5 **C. The requested attorneys' fees and service award should be approved.**

6 Plaintiff filed her fully documented motion for approval of attorneys' fees and a class  
7 representative service award on July 28, 2022. The motion and supporting declaration were  
8 posted to the Settlement Website the following business day. Indra Decl. ¶ 7; McEntee Decl.  
9 ¶ 9. No Settlement Class Member has made any objection to Class Counsel's request for an  
10 award of one-third of the Settlement Fund, or to Ms. Fealy's request for a modest service  
11 award of \$5,000. For the reasons set forth in Class Counsel's motion for attorneys' fees, costs,  
12 and a service award, these amounts should be approved.

13 **IV. CONCLUSION**

14 Plaintiff and Class Counsel request that the Court grant final approval of the Settlement.

15 RESPECTFULLY SUBMITTED AND DATED this day 2nd day of September, 2022.

16 TERRELL MARSHALL LAW GROUP PLLC

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