The Honorable Kathryn Nelson
Note for Hearing: 2/2/18 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 **PLAINTIFFS NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

On February 2, 2018, at 9:00 AM Plaintiff Todd Wodja will and hereby does move the Court for an Order granting Preliminary 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 Todd Wodja, the Declaration of Arthur Olsen, and all matters as to which this Court may take judicial notice.

Respectfully submitted,

FRIEDMAN | RUBIN

Dated: January 25, 2018

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MEMORANDUM

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

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

After mediation with the Hon. Edward A. Infante (Ret.), the parties entered into a settlement in this matter, subject to this Honorable Court's review and approval. If the settlement becomes effective, Defendant has agreed to pay $2,990,000 into a settlement fund, without any residue reverted to WSECU, and to be disbursed to the class members without any need for the class members to make a claim. (*See* Exhibit 1 to the Declaration of Taras Kick ("Kick Decl."), "Settlement Agreement," ["SA"] ¶¶ 1(s), 7(d)(viii).) This settlement fund represents 45.6% of the most likely award class counsel believes that the Plaintiff class could expect to recover at trial, and, as demonstrated below, is the result of thorough arm's length negotiations, as well as the aforementioned mediation session. The settlement payment will be used for settlement payments to the class members, pay the litigation costs, costs of notice and claims administration, attorney fees in the amount of one-third (subject to this Court's approval), and a service award to the class representative for his work on behalf of the class.

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The manner of distribution of this proposed settlement is especially consumer friendly, as it does not require any claims whatsoever to be made by the class members at all. Specifically, payment to the class members will be calculated according to a formula which divides the net settlement fund by the total improper overdraft charges for the relevant period and multiplies the resulting figure by an individual class member's total improper overdraft charge. (SA ¶ 7(d)(vi).) The settlement compensation will be distributed by check to the class members, without the need for any claim to be made by the class member. (SA ¶ 7(d)(v).) Finally, any money that remains after the funds have been distributed will, rather than revert to Defendant, be transferred to a 501(c)(3) non-profit, Public Citizen, an organization actively involved in protecting consumer rights (if approved by this Court). (SA ¶ 12.)

In sum, the proposed settlement fulfills all criteria for preliminary approval. Plaintiff therefore respectfully requests that the Court preliminarily approve the settlement so that notice of a final approval hearing may be disseminated to the class at this time. WSECU supports this request.[1]

II. RELEVANT FACTS

Plaintiff originally filed this action in federal court, on September 25, 2015. (Kick Decl. ¶ 5.) On January 8, 2016, Defendant filed a motion to dismiss, which Plaintiff opposed on April 18, 2016, and in support of which Defendant filed a reply on April 29, 2016. (Kick Decl. ¶ 5.) The court granted in part and denied in part the motion to dismiss on June 9, 2016. (Kick Decl. ¶ 5.) On August 17, 2016, Defendant filed a second motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1332(d)(4)(B), which Plaintiff opposed on September 6, 2016, and in support of which Defendant filed a reply on September 9, 2016.

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[1] WSECU denies plaintiff's claims and does not concede any of plaintiff's contentions. Settlement Agreement at 3 (Recital I). WSECU is supporting certification of a class solely for settlement purposes. Settlement Agreement at 4 (Section 2). If the Settlement Agreement is not approved or the Effective Date does not otherwise occur, WSECU has reserved the right to oppose class certification on all applicable grounds. *Id.*

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(Kick Decl. ¶ 5.) On September 26, 2016, the Hon. Benjamin Settle issued an order granting Defendant's motion to dismiss for lack of subject matter jurisdiction, finding no question of federal law existing. (Kick Decl. ¶ 5.) Thereafter, Plaintiff filed this action on October 21, 2016. (Kick Decl. ¶ 5.) On or about November 29, 2016, WSECU filed a motion to dismiss this action in its entirety. (Kick Decl. ¶ 5.)

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

The parties' settlement negotiations were at all times arm's length and adversarial, and devoid of any collusion. (Kick Decl. ¶ 6.) Pursuant to these negotiations, on February 28, 2017, the parties participated in mediation with the Hon. Edward Infante. Judge Infante has developed an expertise in overdraft fee litigation, having mediated a significant number of such cases. (*Id*.) On September 13, 2017, the parties came to an agreement to settle the claims alleged in the Complaint through acceptance by both sides of a mediator's proposal made by Judge Infante. (Kick Decl. ¶ 6.) As part of the due diligence related to the settlement, Plaintiff's database expert, Arthur Olsen, was granted access to anonymous information from WSECU's customer database, from which he was able to perform an analysis. (*See* Declaration of Arthur Olsen ("Olsen Decl.") ¶¶ 6-10.) Mr. Olsen has been able to preliminarily estimate that after refunds WSECU charged $6,363,771 in overdraft fees when there was enough money in the account to cover the transaction in question if "holds" on deposits or pending transactions were not taken into account, which is what the Plaintiff's "sufficient funds" theory of the case is. (Olsen Decl. ¶ 8.) The total settlement value in this case of $2,990,000 therefore represents approximately 47% of the total "sufficient funds" damages that have been identified.

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III. TERMS OF THE SETTLEMENT.

A. Class Definition.

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

B. Monetary Payment.

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

C. Payments to Claimants.

No class member will need to make a claim of any sort. Rather, if a class member does not opt out of the class, the class member will receive the money automatically without having to do anything. Specifically, class members shall be sent a check by the claims administrator to the address to which the class notice was sent, discussed *infra*, or at such other address as designated by the Class Member. (SA ¶ 7(d)(vi).) The Class Member shall have one-hundred eighty days (180) to negotiate the check, after which the payment will re-collect in the residue to be distributed to a *cy pres* recipient. (*Id.*)

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

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of this settlement.

D. *Cy Pres* Distribution.

Effective January 3, 2006, Washington adopted CR 23(f), which details how to disburse residual funds, *i.e.,* funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements. *See* CR 23(f)(1). The rule requires that 25% of any residual funds 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. CR 23(f)(2). The remaining 75% may be disbursed to "any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class." *Id*.

The terms of the proposed Settlement Agreement before this Court comply with this requirement. Specifically, once the Effective Date occurs, none of the Settlement Fund will revert to WSECU. (SA ¶ 7(d)(viii.) Rather, if there is any residue which remains in the Net Settlement Fund after all class members have been paid the amount to which they are entitled, the settlement provides for a *cy pres* distribution of such residue, if approved by this Court, to Public Citizen, a non-profit organization devoted to protecting consumer rights. (SA ¶ 10.)

E. How Class Notice Will Be Disseminated.

The Settlement Administrator is proposed to be Garden City Group LLC ("GCG") as it is a very well-known claims administrator frequently used in class actions, and has provided the lower of two bids in this matter. (Kick Decl. ¶ 9.) The Declaration of GCG regarding the services it proposes to provide is filed concurrently with this motion. GCG will provide all of the services set forth in the Settlement Agreement for the claims administrator.

The Settlement Agreement provides that, for class members who are current members of WSECU and who have agreed to receive notices regarding their accounts from Defendant by email, WSECU will provide the claims administrator with the most recent email addresses it has for those class members, to which the claims administrator will email the notice in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to

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block mass email. (SA ¶ 4(c).) For any emails that are returned undeliverable, the claims administrator will use the best available databases to obtain current email address information for those members, update its database with those addresses, and resend the notice to them. (*Id*.)

For those class members who are not currently members of WSECU or who did not agree to receive notices regarding their accounts by email, the claims administrator will mail those members the notice by first class United States mail to their best available mailing addresses. (SA ¶ 4(d).) The claims administrator will run the names and addresses provided by WSECU through the National Change of Address Registry and update them as appropriate. (*Id*.) If a mailed notice is returned with forwarding address information, the claims administrator shall re-mail the notice to the forwarding address. (*Id*.) For all mailed notices that are returned as undeliverable, the claims administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the claims administrator shall re-mail the notice to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail. (*Id*.) The notice shall also be posted on a settlement website created by the claims administrator. (SA ¶ 4(e).) WSECU will also use Court-approved Frequently Asked Questions/Answers to respond to inquiries from its members about the settlement. (SA ¶4 (f).)

F. Opt Out Procedure.

Any class member who wishes to opt out can do so by mailing an exclusion letter by the Bar Date. (SA ¶ 11.)

G. Opportunity to Object.

Under the proposed schedule for the approval process of this proposed settlement, it is estimated that class members will have about sixty days to object if they want, that being based on having 45 days to opt-out and then another 15 days after that to object after the Motion for Final Approval is filed, which is scheduled to happen after the deadline to opt-out has expired. (SA ¶¶ 1(b)(c).)

H. Attorneys' Fees and Expenses

Attorneys' fees and costs are to be paid out of the settlement fund. Class counsel will

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apply to this Court for attorneys' fees of one-third (33-1/3%) of the settlement fund, or $966,666.67, plus reimbursement of reasonable litigation costs. (SA ¶ 7(d)(ii).) Defendant has agreed not to oppose a fee request of up to that amount. (*Id*.) Class counsel will apply for the fee alternatively pursuant to the percentage of benefit methodology and the lodestar methodology. Under either methodology, the requested fee is very much well within the range for approval. (*see, e.g*., *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1050 (3.6x multiplier); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.* (2nd Cir. 2005) 396 F.3d 96, 123 ("`multipliers of between 3 and 4.5 have become common'".) Based on class counsel's lodestar to date, the multiplier to be requested in the Motion for Final Approval would be only approximately 2x, well within the range for approval in a case as such. (Kick Decl. ¶ 10.)[2]

Class counsel to date also have incurred litigation costs of in excess of $30,000 and expect further costs of about $50,000, and have committed to the litigation costs in this matter, exclusive of the claims administrator, not to exceed $80,000. (Kick Decl. ¶ 10.)[3]

I. Release.

In consideration for the settlement, class members are releasing all claims they made or could have made which in any way arise out of any allegations concerning alleged wrongdoing during the class period (consistent with the class definition) in the Action. (SA ¶ 13.)

IV. ARGUMENT

A. The Settlement Should Be Preliminarily Approved.

1. Class Action Settlement Procedure.

Washington law "strongly encourages settlement." *City of Seattle v. Blume*, 134 Wash.

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[2] Class counsel will make available for this Court's *in camera* review, should this Court request 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.

[3] Additionally, the firms of McCune Wright Arevalo and The Kick Law Firm, APC, the two proposed lead counsel in this matter, have agreed to share equally in the attorneys' fees, and this was disclosed to and approved by the proposed class representative Mr. Wodja.

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2d 243, 258 947 P.2d 223, 230 (1997) (quoting *Kirk v. Moe*, 114 Wn.2d 550, 554-55, 789 P.2d 84 (1990) ("'The settlement of a claimant's entire claim should be strongly encouraged").

"CR 23 is identical to its federal counterpart, Fed. R. Civ. P. 23, and thus, federal cases interpreting the analogous federal provision are highly persuasive." *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wash. 2d 178, 188, 35 P.3d 351, 356 (2001). The requirements to satisfy Rule 23(e) are "for the most part procedural, requiring a notice of proposed settlement be given to class members and that they be given an opportunity to object to the settlement." *Id*. The trial court's review "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Pickett*, 145 Wash. 2d at 189, 35 P.3d at 356.

Under federal law, which Washington courts follow with regard to CR 23, class action settlements are subject to a three-step approval process. First, the Court makes a preliminary evaluation of the fairness of the settlement. If the Court determines that the settlement appears be fair, adequate and reasonable, then it should order the second step, that notice be given to the class members of a formal final settlement hearing. At that formal hearing, the third step, evidence may be presented in support of and in opposition to the settlement. The federal Manual for Complex Litigation, Second ("MCL 2d"), summarizes the preliminary approval criteria as follows:

> If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

(MCL 2d § 30.44.)

In addition to provisional certification of the proposed settlement class (*see* Section IV.B., *infra*), the Rule 23(e) settlement approval procedure describes this three-step process for approval of a class action settlement as follows:

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1) Preliminary approval of the proposed settlement;
2) Dissemination of notice of the settlement to all affected class members; and
3) A formal fairness hearing, i.e. the final approval hearing, at which class members may be heard regarding the settlement, and at which counsel may introduce evidence and present argument concerning the fairness, adequacy, and reasonableness of the settlement.

By this motion for preliminary approval, Plaintiff seeks to accomplish the first two of these three steps. It is well-settled that, "[T]here is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Pilkington v. Cardinal Health, Inc. (In re Syncor ERISA Litig.)*, 516 F.3d 1095, 1101 (9th Cir. 2008); *see also Officers for Justice v. Civil Serv. Com.*, 688 F.2d 615, 625 (9th Cir. 1982) ("Finally, it must not be overlooked that voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation…"); *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). In exercising discretion on whether to approve a proposed class action settlement, a court should give "proper deference to the private consensual decision of the parties…[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also* Fed. R. Civ. P. 23(e)(2).

2. The Standard for Granting Preliminary Approval.

"Some district courts . . . have stated that the relevant inquiry [on preliminary approval] is whether the settlement 'falls within the range of possible approval' or 'within the range of reasonableness.'" *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (quoting *In re High-Tech Emp. Antitrust Litig.*, 2014 U.S. Dist. LEXIS 110064, 2014 WL 3917126, at *3 (N.D. Cal. 2014)). "At this stage, the court may grant preliminary approval of a settlement and direct notice to the class if the settlement: '(1) appears to be the product of serious, informed, non-

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collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval.'" *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016) (quoting *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 U.S. Dist. LEXIS 48878, at *23 (N.D. Cal. Apr. 29, 2011)).

In this case, the proposed settlement easily falls within the range of possible approval, and is fair to the entire class. All settlement negotiations between the parties not only were conducted at arms-length, and through experienced counsel, but also were conducted by highly experienced mediator Honorable Edward A. Infante (Ret.). (Kick Decl ¶ 6.) Courts have held that there is typically an initial presumption that a proposed settlement is fair and reasonable when it is the result of arms-length negotiations, particularly those conducted by an experienced mediator. *Harris*, 2011 U.S. Dist. LEXIS 48878 at *24 ("An initial presumption of fairness is usually involved if the settlement is recommended by class counsel after arm's-length bargaining."); *Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 U.S. Dist. LEXIS 99066, at *17 (N.D. Cal. Apr. 13, 2007) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."); *see also* Newberg on Class Actions §11.41 at 11-88 (3d ed. 1992). Moreover, if the terms of the settlement agreement seem to be fair, courts generally assume that negotiations were proper. *See In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 212 (5th Cir. 1981); *see also* 4 Newberg § 11.41.

The proposed settlement meets the standards for preliminary approval because: (1) it is the product of serious informed non-collusive negotiations arrived at after civil motion practice, including discovery, by counsel very experienced in this sort of litigation pertaining to overdraft fees; (2) it has no obvious deficiencies because it provides relief that is appropriately tailored to the alleged harm and that is fair, reasonable and adequate given the risks of litigation; (3) it treats all class members equally; and, (4) it was negotiated by and recommended by experienced counsel, in the course of a mediation conducted by a highly regarded mediator.

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3. The Settlement is Reasonable, Fair and Adequate Given the Strength of the Case and the Risks of Litigation.

As stated, the settlement provides for a $2,990,000 payment into the settlement fund. Plaintiff's counsel believes that the most likely restitutionary number the class would have received in aggregate, had it prevailed at trial, is $6,363,771. (Olsen Decl. ¶ 8; Kick Decl. ¶ 13.) That represents the dollar amount of overdraft fees after refunds charged by Defendant when a class member had sufficient funds in the account to cover the transaction in question. Accordingly, the proposed settlement represents approximately 47% of that number. (*Id*.) Washington courts have held that settlements are reasonable, and should be approved, where the plaintiff class recovers only a percentage of their losses. *Pickett*, 145 Wash. 2d at 199, 35 P.3d at 361 ("[T]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (quotation omitted). Courts across the country are in accord. *See, e.g.*, *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) ("[I]t is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial.") (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004)); *see also City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1386 (S.D.N.Y. 1972) (a recovery of 3.2 % to 3.7 % of the amount sought is "well within the ball park"), aff'd in part, rev'd on other grounds, 495 F.2d 448 (2d Cir. 1974); *Martel v. Valderamma*, 2015 U.S. Dist. LEXIS 49830 * 17 (C.D. Cal. 2015) (approving a settlement of $75,000 when potential damages were $1.2 million, or about 6%); *In re Toys R US FACTA Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014) (approving settlement with *vouchers* (not cash) potentially worth a maximum of three percent (3%) *if all possible claims were actually made*.). In this case, not only is the percentage *far* higher, but, as stated, there will not even be any claims process necessary for class members to receive their money, and none of the settlement funds will revert to Defendant once the Effective Date occurs.

Regarding liability, although Plaintiff does believe the liability in this case is strong, to continue with the case also would nonetheless be very expensive for both sides. (Kick Decl. ¶¶

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11, 12.) With regard to expected duration, an otherwise strong case could last for a very substantial time if the proposed settlement were not approved, and be extremely expensive to both sides. Plaintiff's Counsel believes the likelihood for certification is strong, but there is always some risk in getting consumer class actions certified, even the ones which have the strongest merits for certification. (*Id.*) Plaintiff, if successful in an adverse certification motion, would likely next face a motion for summary judgment. If Plaintiff defeated that motion, there would be an expensive trial, and regardless of which party prevailed, there likely would be appellate practice, further delaying any possible actual receipt of money by the class members. (*Id.*) The cost of attorneys' fees to both sides from all of this additional activity would be substantial, likely at least hundreds of thousands of dollars in additional attorney time and costs if the matter went all the way to verdict. (*Id.*)

Finally, this settlement in substance and structure is more favorable than the vast majority of class action settlements. The relief is in cash, not coupons. There will be no claims necessary to be made by class members. And, none of the money will revert to the Defendant after the Effective Date occurs.

4. The Settlement Treats Class Members Equally.

Class settlement distribution receives the same scrutiny as the settlement itself—it must be fair, reasonable, and adequate. *See In re Firestorm 1991*, 106 Wash. App. 217, 223, 22 P.3d 849, 851 (2001). The trial court's distribution plan will be reversed only upon a showing of an abuse of discretion. *See id.*

Under this proposed settlement, all class members are treated equally. All class members for whom an improper overdraft fee has been identified will receive their *pro rata* share based on their "sufficient funds" overdraft fees from the settlement fund. (SA ¶ 7(d)(vi).)

5. The Recommendation of Experienced Counsel Supports Approval.

The judgment of competent counsel regarding the Settlement should be given significant weight. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation."); *Ellis v. Naval Air Rework Facility*, 87

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F.R.D. 15, 18 (N.D. Cal. 1980); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979) ("The recommendations of plaintiffs' counsel should be given a presumption of reasonableness.").

Class Counsel are very experienced in litigating and settling consumer class actions and other complex matters. (McCune Decl. ¶¶ 2-4; Kick Decl. ¶¶ 2-3.) They have investigated the factual and legal issues raised in this action, and are in favor of the settlement. (McCune Decl. ¶ 7; Kick Decl. ¶ 12.)

6. The Proposed Forms of Notice and Notice Programs are Appropriate and Should Be Approved.

"Initial notices to class members need not contain all information and details of class membership or terms of settlement. A notice is sufficient if it provides general notice of the action, class membership requirements, and provides information by which interested persons can obtain a copy of the settlement." *Nobl Park, L.L.C. of Vancouver*, 122 Wash. App. 383, 847, 95 P.3d 1265, 1270 (2004).

Despite this very reasonable standard, as evident from the Declaration of GCG, the proposed notice far exceeds it, and is quite comprehensive and informative, more than required by *Nobl Park*. Specifically, the Settlement Agreement is attached as Exhibit 1 to the Declaration of Taras Kick. As can be seen, the proposed form of notice and notice program here fully comply with due process and CR 23. CR 23(c)(2), which pertains to notice for settlements of class actions maintained under CR 23(b)(3), provides that "the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." CR 23(b)(3). "The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel." CR 23(b)(3).

The content of the notice to class members "is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate

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and to come forward and be heard.'" *Rodriguez v. West Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009). In the context of a class settlement, the notice must also include a general description of the proposed settlement. *See Churchill Village*, (9th Cir. 1999) 361 F.3d at 575; *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993). The notice should "fairly, accurately, and neutrally" "apprise [] prospective [class] members of the terms of the Proposed Settlement, the identity of persons entitled to participate in it and the options that are open to the [class] members in connection with the proceedings." *In re Drexel Burnham Lambert Group, Inc.*, 130 B.R. 910, 924 (S.D.N.Y. 1991), aff'd, 960 F.2d 285 (2d Cir. 1992). *See also Ruiz v. McKaskle*, 724 F.2d 1149, 1153 (5th Cir. 1984) (approving district court's notice plan that "fairly recited the [settlement] agreement's terms and did not employ unnecessary legalisms.").

The proposed notice more than meets this standard, as it fairly states the terms of the settlement without resort to legalisms and provides the class members a clear avenue to object to the settlement, absent themselves from it, or to participate in the settlement by undertaking no action whatsoever. (SA Ex. 1). Further, the form of notice proposed to be used here is almost identical, with changes only specific to the specifics of the present case, as used successfully in other overdraft fee class actions involving credit unions. (Kick Decl. ¶ 10.)

7. The Class Representative Service Award.

As a part of the Motion for Final Approval, the proposed class representative will apply to this Court for a service award for her service in this case, and at that time she will detail further her work and involvement in the matter. It is, of course, uncontroversial for a class representative to receive a service award, subject to Court approval. The class representative in this case was very helpful to the case's success, including taking time to prepare for an adverse deposition, to prepare in advance for it, and to provide documents, and engage in numerous discussions with counsel, as well as other service. (Kick Decl. ¶ 7.)

B. The Proposed Settlement Class Should Be Certified.

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

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settlement, the Court must determine that the proposed settlement class is appropriate for certification. MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2004); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Class certification is proper if the proposed class, the proposed class representative, and the proposed class counsel satisfy the numerosity, commonality, typicality, and adequacy of representation requirements of CR 23(a). In addition to meeting those requirements, as stated, a plaintiff seeking class certification must also meet at least one of the three provisions of CR 23(b). "As there are few Washington cases on point, and because the federal rule is identical, much of [the Washington courts'] analysis [is] based upon federal cases." *Brown v. Brown*, 6 Wash. App. 249, 252, 492 P.2d 581, 583 (1971). Washington courts "favor a liberal interpretation of CR 23, rather than a restrictive one." *Id*. at 586.

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

1. The Requirement of Numerosity is Satisfied.

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

As a general rule, classes of 40 or more suffice. 5-23 Moore's Federal Practice - Civil § 23.22[1][b]. In this case, as the total estimated damages are $6,363,771, and are composed individually of $27 overdraft fees, it is beyond question that the numerosity requirement is met. (Olsen Decl. ¶ 8.) *See, e.g., Wilson v. Fenture Fin. Group, Inc.*, 2011 U.S. Dist. LEXIS 9691 at *5 (W.D. Wash. 2011) ("with over 200 proposed class members, the class is so numerous that joinder of each member is impracticable").

2. The Requirement of Commonality is Satisfied.

The second requirement for certification requires that "questions of law or fact common to the class" exist. CR 23(a)(2). The commonality requirement does not demand that each class

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

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

> The commonality preconditions of Rule 23(a)(2) are less rigorous than the companion requirements of Rule 23(b)(3). Indeed, Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.
>
> *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1997).

In other words, commonality exists where a question of law linking class members is substantially related to resolution of the litigation even where the individuals may not be identically situated. *Davis v. Astrue*, 250 F.R.D. 476, 486 (N.D. Cal. 2008) ("Rule 23(a)(2) does not mandate that each member of the class be identically situated, only that there be substantial questions of law or fact common to all.") (citing *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 915 (9th Cir. 1964)). The Ninth Circuit has found that commonality is a "limited burden" in that only one common question is required. *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012). Courts look to whether the class members' claims "stem from the 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 uniform overdraft fee practice. It is undisputed that Defendant uniformly and systematically

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

As such, the commonality requirement is satisfied.

3. The Requirement of Typicality is Satisfied.

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

Like the commonality requirement, the typicality requirement is "permissive" and requires only that the representative's claims be "reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. The typicality requirement looks to whether "the claims of the class representative [are] typical of those of the class, and [is] 'satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (quoting *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997). The Supreme Court of the United States agrees with Washington's state courts that commonality and typicality "tend to merge," such that the factors supporting a finding of commonality also support a finding of typicality. *See General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 (1982); *In re United Energy Corp. Solar Power Modules Tax Shelter Investments Sec. Litig.*, 122 F.R.D. 251, 256 (C.D. Cal. 1988).

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

4. The Requirement of Adequate Representation is Satisfied.

The final CR 23(a) prerequisite requires that the proposed class representative has and will continue to "fairly and adequately protect the interests of the class." This means at least that the class representative and the members of the class must have claims against the same defendants. *Doe v. Spokane and Inland Empire Blood Bank*, 55 Wash. App. 106, 118, 780 P.2d 853, 861. Courts apply a two-factor test to determine whether a plaintiff and his counsel will adequately represent the interests of the class: "(1) do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003); *Crawford v. Honig*, 37 F.3d 485, 487 (9th Cir. 1995). As to the first factor, "Conflicting or antagonistic interests among members of the alleged class in the subject matter of the litigation, necessitating a determination of priorities between class members, may render a class action an improper vehicle for seeking vindication of a given right." *De Funis v. Odegaard*, 84 Wash. 2d 617, 622 529 P.2d 438, 441 (1974). Here, there are no competing interests: each of the class members were charged improper overdraft fees under the same conditions—when their accounts contained enough money to pay for the transaction at issue—and are therefore subject to refunds under the same rubric. As to the second factor, with the typicality requirement, adequacy requires that the interests of the named plaintiffs are aligned with the unnamed class members to ensure that the class representative has an incentive to pursue and protect the claims of the absent class members. *See Amchem*, 521 U.S. at 626 n. 20,

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117 S.Ct. 2231 ("The adequacy-of-representation requirement 'tends to merge' with the commonality and typicality criteria of Rule 23(a), which 'serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'")

Proposed Class counsel, Richard McCune of McCune Wright Arevalo, LLP, and Taras Kick of The Kick Law Firm, APC, both have significant class action, litigation, and trial experience, are competent, and have been competent in representing the Classes. Both law firms representing the putative class have extensive experience in consumer class actions, and in particular, expertise in overdraft fee litigation. (McCune Decl. at ¶¶ 2-4; Kick Decl. at ¶¶ 2-3.) The interests of Plaintiff Todd Wodja are not antagonistic to those of the other Class members; his interests are wholly aligned because he was charged overdraft fees when his account had a positive ledger balance. Further, he understands that he is pursuing this case on behalf of all class members similarly situated and understands he has a duty to protect the absent Class members. (Kick Decl. ¶ 7.) He has actively participated in the litigation by frequently conferring with class counsel about the case and its status, assisting class counsel by gathering documents and other information, and being prepared and willing to testify at deposition and trial on behalf of the class if necessary. (Kick Decl. ¶ 7.)

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

In *Briseno v. ConAgra Foods, Inc.*, --- F.3d ---, 2017 WL 24618 (9th Cir. Jan. 3, 2017), the Ninth Circuit rejected the notion of a separate ascertainability requirement for certification in a class action. As such, none probably exists in Washington. Regardless, that recent holding would not really affect this case, since the actual class members are identifiable by Defendant's own records. (Olsen Decl. ¶¶ 6-10.)

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

Once the prerequisites of CR 23(a) have been met, a plaintiff must also demonstrate that she satisfies the requirements of CR 23(b), which requires that "the questions of law or fact

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common to class member predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Mr. Wodja clearly satisfies both of these requirements.

a. Common Questions of Law and Fact Predominate.

To determine whether predominance exists, "the court engages in a pragmatic inquiry into whether there is a common nucleus of operative facts to each class member's claim." *Schwendeman v. USAA Cas. Ins. Co.*, 116 Wash. App. 9, 20, 65 P.3d 1, 6 (2003). "[C]omplete unanimity of position and purpose is not required among members of a class." *King v. Riveland*, 125 Wash. 2d 500, 519, 886 P.2d 160, 171 (1994).

The predominance requirement questions whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. "If common questions 'present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication,' then 'there is clear justification for handling the dispute on a representative rather than on an individual basis,' and the predominance test is satisfied." *Keegan v. Am. Honda Motor Co.*, 284 F.R.D. 504, 526 (C.D. Cal. 2012) (quoting *Hanlon*, 150 F.3d at 1022). But "common issues need only predominate, not outnumber individual issues." *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013), cert. denied, 134 S. Ct. 1277 (2014).

As the Supreme Court most recently confirmed:

> When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.

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

As WSECU does not dispute its practice of charging fees based on the available balance while the ledger balance contains enough money to pay for the transaction, Plaintiff contends that the only issue is whether the contract permitted it to do so. The common question of

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whether WSECU's contract language allowed it to charge overdraft fees when there was enough money in the account predominates over any potential individualized question.

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

CR 23(b)(3) also requires that a certifying court find that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." "The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case." *Delarosa v. Boiron, Inc.*, 275 F.R.D. 582, 594 (C.D. Cal. Aug. 24, 2011) (quoting *Hanlon*, 150 F.3d at 1023.) "This determination necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." *Id*. (quoting *Hanlon*, 150 F.3d at 1023.) Where each class member, pursuing an individual case, would burden the judiciary, this factor weighs in favor of certification. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009) ("The overarching focus remains whether trial by class representation would further the goals of efficiency and judicial economy."). This factor also weighs in favor of certification where litigation costs would likely "dwarf potential recovery" if each class member litigated individually. *Hanlon*, 150 F.3d at 1023; *see also Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 652 (C.D. Cal. 1996)) ("[W]here the damages each plaintiff suffered are not that great, this factor weighs in favor of certifying a class action.").

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

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

As Judge Posner has stated, "[t]he realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for $30." *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004). The Ninth Circuit has held similarly that the proposed class action is "paradigmatic" where "litigation costs would dwarf potential recovery." *Hanlon*, 150 F.3d 1011 at 1023.

The desirability of concentrating the litigation in the present forum is illustrated by the

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fact that the amount of an individual damage instance is at most a $27 overdraft fee. There is no question that a large number of class members have suffered damages in an amount that could not justify or sustain individual lawsuits, and the only choice is between a class action and no action. Plaintiff is not aware of any additional suits instituted by or against the class members concerning the subject matter of the settlement. Superiority is met.

Accordingly, all factors weigh in favor of class certification.

C. SCHEDULE OF SETTLEMENT DATES.

The next steps in the settlement approval process are to notify the Class of the proposed Settlement, allow an opportunity for opt-outs and objections, and to hold a fairness hearing. Plaintiff proposes the following dates, and assuming such dates are acceptable to the docket of this Honorable Court:

Claims Administrator Sends Notice and Website Goes Live	**30 Days After Preliminary Approval**
Last day to Opt Out	**45 Days After Claims Administrator Sends Notice**
Motion for Final Approval and Attorneys' Fees Filed with Court	**50 Days After Claims Administrator Sends Notice**
Last day to Object	**15 Days After Motion For Final Approval and Attorneys' Fees is Filed With the Court**
Last day to file responses to objections and Class Counsel's and Defendants' Replies in Support of Motion for Final Approval and Attorneys' Fees	**7 Days After Last Day to Object**
Final Approval Hearing	**14 Days After Last Day to Object**
Filing by Claims Administrator of Final Report	**Thirty Days After Time to Cash Checks has Expired**

V. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court: (1) preliminarily approve the Settlement; (2) approve the proposed plan of notice to the Class; (3) appoint Garden City Group as the Notice Administrator; (4) set a schedule of dates as set forth above for further action on this Settlement Agreement, including a hearing to determine whether the proposed Settlement is fair, reasonable, and adequate and should be finally approved.

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Respectfully submitted,

FRIEDMAN | RUBIN

Dated: January 25, 2018

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via email on January 25, 2018, on the following individuals:

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The Honorable Kathryn J. Nelson
Note for Hearing: 2/2/2018 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

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PROVISIONALLY CERTIFYING A SETTLEMENT CLASS, AND SETTING DATES FOR NOTICE AND HEARING FOR APPROVAL OF CLASS ACTION SETTLEMENT

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The Court, having considered Plaintiff's Motion for Preliminary Approval of Class Action Settlement, and all supporting documents thereto (collectively the "Motion"), the Settlement Agreement and Release dated as of September 13, 2017 (the "Settlement Agreement"), and the arguments of counsel, rules as follows:

1. Defined terms in this Order shall have the same meaning given such terms in the Settlement Agreement.

2. This Court finds on a preliminary basis that the class as defined in the Settlement Agreement ("Settlement Class") meets all of the requirements for certification of a settlement class under the Washington Civil Rules and applicable case law. Accordingly, the Court provisionally certifies the Settlement Class, which is composed of the following individuals:

> "Class Member" shall mean any member of Defendant who, between September 1, 2011 and April 16, 2016, was assessed an overdraft fee when the member had sufficient money in his or her ledger balance, but insufficient money in his or her available balance to complete the transaction that caused the fee."

3. The Court provisionally appoints Todd Wodja as the Class Representative of the Settlement Class.

4. The Court appoints Garden City Group, LLC as the Claims Administrator under the terms of the Settlement Agreement.

5. For purposes of the Settlement Agreement, the Court further provisionally finds that counsel for the Settlement class, Richard McCune of McCune Wright Arevalo, LLO, and Taras Kick of The Kick Law Firm, APC, are qualified, experienced, and skilled attorneys capable of adequately representing the Settlement Class, and they are provisionally approved as Class Counsel.

6. The certification of a preliminary Settlement Class under this Order is for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of the Defendant in this Action that any other proposed or certified class action is appropriate for class treatment pursuant to the Washington Civil Rules or any similar statute, rule or common law. Entry of this Order is without prejudice to the rights of Defendant to oppose class certification in this action should the settlement not be approved or not be implemented for any reason or to terminate the Settlement Agreement as provided in the Settlement Agreement.

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7. The Court provisionally, and solely for purposes of this settlement, finds that the members of the Settlement Class are so numerous that joinder of all members would be impracticable, that the litigation and proposed settlement raise issues of law and fact common to the claims of the Class Members and these common issues predominate over any issues affecting only individual members of the Settlement Class, that the claims of Todd Wodja (the "Named Plaintiff") are typical of the claims of the Settlement Class, that in prosecuting this Action and negotiating and entering into the Settlement Agreement, the Named Plaintiff and her counsel have fairly and adequately protected the interests of the Settlement Class and will adequately represent the Settlement Class in connection with the settlement, and that a class action is superior to other methods available for adjudicating the controversy.

8. The Court has reviewed the Settlement Agreement and the attached Notice of Pending Class Action and Proposed Settlement ("Notice") (Exhibit 1 to the Settlement Agreement) and finds that the settlement memorialized therein falls within the range of reasonableness and potential for final approval, thereby meeting the requirements for preliminary approval, and that the Notice should go out to the Settlement Class in the manner described in the Settlement Agreement. The Court also approves the Frequently Asked Questions/Answers proposed by the parties. The settlement appears to be reasonable in light of the risk inherent in continuing with litigation. The Court also notes that the settlement is a non-reversionary one where no money will be returned to the Defendant once the Effective Date occurs. The Court also notes that the settlement was arrived at after an arm's length negotiation involving experienced counsel and with the assistance of an experienced mediator.

9. The Court finds that the methods of giving notice prescribed in the Settlement Agreement meet the requirements of the Civil Rules of the State of Washington and due process, are the best notice practicable under the circumstances, shall constitute due and sufficient notice to all persons entitled thereto, and comply with the requirements of the Constitution of the United States, and all other applicable laws.

10. For the purposes stated and defined in the Settlement Agreement, the Court hereby sets the following dates and deadlines:

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a. 30 days after issuance of this Order – Deadline for claims administrator to send notice;

b. 45 days after notice is sent – Deadline for class members to opt out;

c. 50 days after notice is sent – Deadline for motion for final approval and attorneys' fees;

d. 15 days after Motion for Final Approval is filed – Deadline for class members to object;

e. 7 days after deadline to object – Deadline for class counsel or defendant's counsel to file responses to any objections and to provide list of opt outs;

f. 14 days after deadline for class or defendant's counsel to file response to any objections or the first date available on the Court's calendar thereafter – Hearing on final approval;

g. 30 days after time to cash checks has expired – Preliminary deadline for filing of Final Accounting.

11. The Court hereby approves and adopts the procedures, deadlines, and manner governing all requests to be excluded from the Class, or for objecting to the proposed settlement, as provided for in the Settlement Agreement

12. All costs incurred in connection with providing notice and settlement administration services to the Class Members shall be paid from the Settlement Fund.

13. If the settlement is not approved or consummated for any reason whatsoever, the Settlement Agreement and all proceedings in connection therewith shall terminate without prejudice to the status quo ante and rights of the parties to the action as they existed prior to the date of the execution of the Settlement Agreement, except as otherwise provided in the Settlement Agreement.

Good cause appearing therefore, IT IS SO ORDERED.

Dated: _____, 2018.

_____
Honorable Kathryn J. Nelson

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via email on January 25, 2018, on the following individuals:

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