

THE HONORABLE LEROY McCULLOUGH
Department 32
Noted for Hearing: July 14, 2023 at 9 a.m.
With Oral Argument

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

PCA ACQUISITIONS V, LLC,

Plaintiff,

v.

TERI R KIMMONSSTRUCK, AND DOES 1-10,

Defendant.

and

TERI R. KIMMONS-STRUCK,

Counter-Plaintiff,

v.

PCA ACQUISITIONS V, LLC,

Counter-Defendant,

and

LIPPMAN RECUPERO, LLC,

Third-Party Defendant.

NO. 22-2-08801-0 SEA

**DEFENDANT/COUNTER-PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

1 **I. INTRODUCTION & RELIEF REQUESTED**

2 Defendant and Counter-Plaintiff Teri Kimmons-Struck respectfully moves for final
3 approval of the class action settlement reached with Plaintiff and Counter-Defendant PCA
4 Acquisitions V, LLC (“PCA”) and Third-Party Defendant Lippman Recupero, LLC (“Lippman”). The
5 parties’ negotiations resulted in an excellent settlement for Settlement Class Members. The
6 Court granted preliminary approval of the proposed Settlement. Sub. No. 17. The Settlement
7 establishes a \$15,000 fund that will pay cash awards to the Settlement Class Members, pay the
8 costs of administering the settlement, and pay a service and statutory damages award to Ms.
9 Kimmons-Struck. Lippman has already obtained a collection agency license, precluding
10 violations of the kind alleged here in the future. The Settlement provides that the Counter-
11 Defendants will separately pay Ms. Kimmons-Struck’s Class Counsel reasonable attorneys’ fees
12 that are less than the fees actually incurred.

13 The Settlement Class Members have responded positively to the Settlement. After a
14 successful notice program that reached 98.9% of the 92 Settlement Class Members, no one
15 requested exclusion from the Class and no one objected. If the Settlement is approved as
16 requested, Class Counsel estimate that most Settlement Payments to Settlement Class
17 Members will be \$130. Settlement Class Members who paid fees or other collection costs to
18 Lippman will also receive a full refund of the amount paid. The Settlement Class Members’
19 overwhelmingly positive reaction to the Settlement confirms that it is fair, reasonable, and
20 adequate and should be approved.

21 **II. STATEMENT OF FACTS**

22 **A. Ms. Kimmons-Struck’s counterclaims on behalf of class.**

23 This case began when Lippman, a debt collection law firm, filed suit in King County
24 District Court against Ms. Kimmons-Struck to collect on a consumer debt allegedly owed to PCA,
25 a debt buyer. Ms. Kimmons-Struck filed counterclaims on behalf of herself and two proposed
26 classes, alleging that Lippman was not licensed as a collection agency as required by
27 Washington law when it filed suit against her. Chandler Decl., Ex. 1 (Complaint ¶¶ 3.19–3.21).

1 Shortly after Ms. Kimmons-Struck removed the case to Superior Court, Lippman and PCA
2 (collectively the “Counter-Defendants”), made an offer of judgment. Chandler Decl. ¶ 12. After
3 investigation through informal discovery into the size of the potential classes and the amount
4 of damages, the parties reached a classwide Settlement on substantially the same terms as the
5 offer of judgment.

6 **B. The parties negotiated this settlement with a solid understanding of the strengths and**
7 **weaknesses of their positions.**

8 In addition to a pre-filing investigation, Ms. Kimmons-Struck took informal discovery
9 from the Counter-Defendants. Ms. Kimmons-Struck served interrogatories and requests for
10 production. Chandler Decl. ¶ 13. After the Counter-Defendants served their offer of judgment,
11 the parties agreed that the Counter-Defendants could respond informally to the requests with
12 information about the number of members of the proposed class and alleged damages. *Id.*
13 Those efforts showed that Lippman sent collection letters to 92 consumers at a Washington
14 address regarding accounts owned by PCA at that time, that Lippman filed 42 lawsuits in a
15 Washington state court regarding accounts owned by PCA at that time, and that of the amounts
16 paid by consumers against whom Lippman filed a lawsuit in a Washington state court regarding
17 an account owned by PCA at that time, Lippman applied \$1,117.07 to amounts other than
18 principal, before Lippman obtained a license (although Lippman maintains that it did not collect
19 or retain more than the principal amount due on any account owned by PCA). Chandler Decl. ¶
20 13. Discovery also showed that Lippman’s net worth for purposes of calculating statutory
21 damages under the Fair Debt Collection Practices Act was minimal. *See* 15 U.S.C.
22 § 1692k(a)(2)(B) (limiting statutory damages to 1% of the debt collector’s net worth).
23 Particularly in light of the relatively small size of the proposed class, all parties agreed that early
24 resolution made sense to avoid further waste of resources on litigation expenses. Chandler
25 Decl. ¶ 13.

1 **C. Class Counsel litigated the case with no guarantee of payment.**

2 Class Counsel are experienced class action litigators with expertise litigating complex
3 claims on behalf of consumers. Sub. No. 15 ¶¶ 2-5. Class Counsel took this case on a contingent
4 basis with no guarantee of recovery. Chandler Decl. ¶ 20. Class Counsel also advanced all costs
5 of this litigation. *Id.* Class Counsel have worked on this matter for over a year without
6 compensation or reimbursement for their time or out-of-pocket expenses. *Id.* If Class Counsel
7 were unable to successfully resolve this matter, Class Counsel would have been paid nothing.

8 Although the parties settled this case in the pre-trial stage, Class Counsel have invested
9 time and resources investigating and litigating this action, including \$242.29 out-of-pocket
10 costs. *Id.* ¶¶ 210-21; Sub. No. 14, Ex. A; Sub. No. 15, Ex. 3. Tasks performed by Class Counsel
11 thus far include: (1) investigating the claims; (2) researching and drafting the complaint; (3)
12 conducting informal discovery and reviewing Lippman's responses; (4) preparing the settlement
13 agreement and class notices; and (5) administering the settlement. *Id.*

14 But for these extensive efforts by Class Counsel, Class Members would have received no
15 recovery in this case.

16 **D. The Class Representative was actively involved in the litigation**

17 Ms. Kimmons-Struck supported this litigation including by providing to Class Counsel
18 factual information included in the complaint and documents attached to the complaint. *Id.* ¶
19 19. Ms. Kimmons-Struck also discussed settlement proposals with Class Counsel and approved
20 the Settlement Agreement. *Id.*

21 **E. The notice program was highly effective.**

22 Class Counsel provided notice in the methods approved by this Court. *Id.* ¶¶ 3-8. Of the
23 92 Class Members, 91 received a postcard notice. *Id.* ¶ 8. Class Members whose postcard
24 notices were returned undeliverable were sent a second postcard notice at an address
25 identified by Class Counsel through skip tracing, where possible. *Id.* ¶¶ 3-8. The notice program
26 was extremely effective, reaching 91 of 92 Class Members, representing a 98.9% success rate.

1 *Id.* ¶ 8. In addition to the direct postcard notice, the Settlement Website has been available to
2 Settlement Class Members since April 11, 2023. *Id.* ¶ 10.

3 **F. Settlement class members responded favorably to the Settlement.**

4 The Settlement Class’s response indicates strong support for the Settlement. None of
5 the 92 Settlement Class members requested exclusion from the Settlement. *Id.* ¶ 9; *see In re*
6 *Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 227 F.R.D. 553, 564 (W.D. Wash. 2004) (“[T]he
7 Class Members themselves have effectively voted heavily in favor of the Settlement, by not
8 opting out. In fact, 95% of Class Members have chosen to take part in the Settlement.”). No one
9 objected to the settlement. Chandler Decl. ¶ 9.

10 **III. STATEMENT OF ISSUES**

11 Whether the Court should grant final approval of the Settlement, find that Settlement
12 Class Members received adequate notice, approve payment of a service award to the named
13 Plaintiff, and award attorneys’ fees and costs to Class Counsel.

14 **IV. EVIDENCE RELIED UPON**

15 Ms. Kimmons-Struck relies upon the Declaration of Blythe H. Chandler supporting this
16 motion, the papers filed in support of the preliminary approval of the Settlement (Sub. Nos. 12,
17 14, 15), and the balance of pleadings filed in this action.

18 **V. ARGUMENT AND AUTHORITY**

19 When considering a motion for final approval of a class action settlement under
20 Washington Civil Rule 23, the Court’s inquiry is whether the settlement is “fair, adequate, and
21 reasonable.” *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 188, 35 P.3d 351
22 (2001) (“it is universally stated that a proposed class settlement may be approved by the trial
23 court if it is determined to be ‘fair, adequate, and reasonable’” (citing *Torrisi v. Tucson Elec.*
24 *Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993))).

25 In evaluating whether a class settlement is “fair, adequate, and reasonable,” courts
26 generally refer to eight criteria, with differing degrees of emphasis: the likelihood of success by
27 plaintiff; the amount of discovery or evidence; the settlement terms and conditions;

1 recommendation and experience of counsel; future expense and likely duration of litigation;
2 recommendation of neutral parties, if any; number of objectors and nature of objections; and
3 the presence of good faith and the absence of collusion. *Pickett*, 145 Wn.2d at 192 (citing 2
4 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11.43 “General Criteria for
5 Settlement Approval” (3d ed. 1992)). This list is “not exhaustive, nor will each factor be relevant
6 in every case The relative degree of importance to be attached to any particular factor will
7 depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief
8 sought, and the unique facts and circumstances presented by each individual case.” *Pickett*,
9 145 Wn.2d at 189 (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.
10 1982)).¹

11 The approval of a settlement agreement “is a delicate, albeit largely unintrusive inquiry
12 by the trial court.” *Pickett*, 145 Wn.2d at 189; *Deien v. Seattle City Light*, 527 P.3d 102, 108 (Wn.
13 App. 2023). Although the Court has discretion to determine whether a proposed class action
14 settlement should be approved,

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

22 *Pickett*, 145 Wn.2d at 189 (quoting *Officers for Justice*, 688 F.2d at 625). Moreover, as the court
23 in *Pickett* observed, “it must not be overlooked that voluntary conciliation and settlement are
24 the preferred means of dispute resolution.” *Id.* at 190 (quoting *Officers for Justice*, 688 F.2d
25 at 625). In the end, “[s]ettlement is the offspring of compromise; the question we address is not
26 whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate

27 ¹ 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 and free from collusion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also*
2 *Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 544 (W.D. Wash. 2009).

3 **A. The Settlement is Fair, Adequate, and Reasonable.**

4 1. The Settlement Provides Substantial Financial Relief to Settlement Class
5 Members.

6 The Settlement terms and conditions provide comprehensive relief for the Class. The
7 Settlement establishes a \$15,000 fund that will pay cash awards to the Settlement Class
8 Members. Chandler Decl. ¶¶ 16, Ex. 2. After deducting Court-approved settlement
9 administration expenses, and a service and statutory damages award to Ms. Kimmons-Struck,
10 the Settlement Fund will be distributed to all Settlement Class Members with a deliverable
11 address. Class Counsel estimate that most Settlement Payments to Settlement Class Members
12 will be \$130 if the settlement is approved as requested in addition to any amount Settlement
13 Class Members paid that were not applied to the principal. *Id.* ¶ 18. Lippman has already
14 obtained a collection agency license, precluding violations of the kind alleged here in the future.
15 *Id.*, Ex. 2.

16 2. The Settlement Is an Excellent Result Given the Risks Plaintiff Faced in Continuing
17 to Litigate.

18 The existence of risk and uncertainty to the plaintiff at the time of settlement “weighs
19 heavily in favor of finding that the settlement was fair, adequate, and reasonable.” *Pickett*, 145
20 Wn.2d at 192. In the absence of a settlement, there are several substantial hurdles Ms.
21 Kimmons-Struck would have had to clear to prevail. She is confident in the strength of her case
22 but also aware of the risk created by the Counter-Defendant’s defenses and the economic
23 realities of the case. Chandler Decl. ¶ 17. Counter-Defendants would likely have challenged
24 class certification on a variety of grounds, including the small size of the class.

25 Continued litigation would also be expensive and time-consuming. The parties would
26 have had to complete briefing on class certification and motions for summary judgment and
27 Plaintiffs would have had to prevail on those motions, at trial, and in any appeal before they or

1 the other class members would have recovered anything. The costs of continued litigation
2 would have quickly swamped any amount that could be recovered for Class Members. *Id.* ¶ 19.

3 3. The Settlement is the Result of Arms-length Negotiation and Supported by
4 Experienced Counsel.

5 The Settlement is the result of adversarial litigation and arms-length negotiation
6 between attorneys experienced in this type of litigation. In determining the fairness of a
7 settlement, courts should consider the parties' good faith and the absence of collusion between
8 them. *Pickett*, 145 Wn.2d at 201. The parties negotiated at arms-length after the Counter-
9 Defendants served Ms. Kimmons-Struck with an offer of judgement and produced information
10 about the size of the proposed class and the amount of alleged damages. Chandler Decl. ¶¶ 13-
11 16.

12 "When experienced and skilled class counsel support a settlement, their views are given
13 great weight. *Pickett*, 145 Wn.2d at 200 (citing *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 175
14 (5th Cir. 1983)). Class Counsel have extensive knowledge and experience in litigating class
15 actions. *See Deien*, 527 P.3d at 109 (affirming trial court finding that Terrell Marshall Law
16 Group's attorneys have "significant experience litigating class action lawsuits" and agreeing that
17 their support of a settlement is entitled to great weight). Based on their thorough evaluation of
18 the strengths and weaknesses of this case gained through informal discovery, Class Counsel
19 believe the Settlement to be an excellent result.

20 4. The Reaction of the 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;
23 *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977); *Nat'l Rural Telecomms. Co-*
24 *op. v. Directv, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a
25 large number of objections to a proposed class action settlement raises a strong presumption
26 that the terms of a proposed class settlement action are favorable to the class members."). A
27 court can approve a class action settlement as fair, adequate, and reasonable even over the

1 objections of a large number of class members. *See Class Plaintiffs v. City of Seattle*, 955 F.2d
2 1268, 1291–96 (9th Cir. 1992).

3 The Settlement Class’s response indicates strong support for the Settlement. No class
4 members objected to the Settlement or requested exclusion from it. Chandler Decl. ¶ 9; *see In*
5 *re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 227 F.R.D. 553, 564 (W.D. Wash. 2004) (“[T]he
6 Class Members themselves have effectively voted heavily in favor of the Settlement, by not
7 opting out. In fact, 95% of Class Members have chosen to take part in the Settlement.”).

8 **B. Class Members Received the Best Notice Practicable.**

9 The Court has already determined that the Notice Plan in this case meets the
10 requirements of due process and applicable law, provides the best notice practicable under the
11 circumstances, and constitutes due and sufficient notice to all individuals entitled to notice.
12 Sub. No. 17 ¶¶ 13-14. The approved Notice Plan was fully implemented by Class Counsel.

13 Class Counsel provided notice in the methods approved by this Court. Chandler Decl. ¶
14 3-9. Of the 92 Class Members, 91 received the postcard notice. *Id.* ¶ 8. Class Members whose
15 postcard notices were returned undeliverable were sent a second postcard notice at an address
16 identified by Class Counsel through skip tracing, where possible. *Id.* ¶¶ 4-7. The notice program
17 was extremely effective, reaching 91 of 92 Class Members, representing a 98.9% success rate.
18 *Id.* ¶ 8.

19 In addition to the postcard notice, the Settlement Website has been available to
20 Settlement Class Members since April 11, 2023. *Id.* ¶ 10. Class Counsel established an email
21 address to provide an additional option for Settlement Class Members to address specific
22 questions and requests to Class Counsel for support. *Id.* Class members were also able to
23 contact Class Counsel directly by toll-free phone number. *Id.* As of June 27, 2023, Class Counsel
24 received no emails to the email address established for the settlement and no calls from Class
25 Members. *Id.* ¶ 11.

1 **C. The Requested Attorneys' Fees and Service Award should be Approved.**

2 Ms. Kimmons-Struck included in her motion for preliminary approval of class settlement
3 the detailed time records supporting Class Counsel's requested attorney's fees. Ms. Kimmons-
4 Struck's request for a class representative service award is also detailed in her motion for
5 preliminary approval. Sub No. 12. The motion and supporting declarations were posted on the
6 Settlement Website on April 12, 2023, more than two months before the deadline for Class
7 Members to exclude themselves or object to the Settlement. Chandler Decl. ¶ 10. No
8 Settlement Class Member has made any objection to Class Counsel's request for attorney's fees
9 and costs of \$26,000, or to Ms. Kimmons-Struck's request for service awards of \$1,000, in
10 recognition of work performed on behalf of the Class. *Id.* ¶¶ 9, 11. Additional attorneys' fees
11 and costs have been incurred since preliminary approval of class settlement was filed. Class
12 Counsel's request \$26,000 in attorneys' fees and costs, which is less than the fees actually
13 incurred. Sub. No. 14, Ex. A; Sub. No. 15, Ex. 3. These amounts should be approved.

14 **VI. CONCLUSION**

15 Ms. Kimmons-Struck and Class Counsel request that the Court grant final approval of the
16 settlement.

17 RESPECTFULLY SUBMITTED AND DATED this 30th day of June, 2023.

18 TERRELL MARSHALL LAW GROUP PLLC

19 *I certify that this memorandum contains 2,870*
20 *words, in compliance with the Local Civil Rules.*

21 By: /s/ Blythe H. Chandler, WSBA #43387

22 Beth E. Terrell, WSBA #26759

23 Email: bterrell@terrellmarshall.com

24 Blythe H. Chandler, WSBA #43387

25 Email: bchandler@terrellmarshall.com

26 Eden B. Nordby, WSBA #58654

27 Email: enordby@terrellmarshall.com

936 North 34th Street, Suite 300

Seattle, Washington 98103-8869

Telephone: (206) 816-6603

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Amanda N. Martin, WSBA #49581
Email: Amanda@nwclc.org
NORTHWEST CONSUMER LAW CENTER
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 805-0989

Attorneys for Defendant/Counter-Plaintiff