THE HONORABLE LEROY MCCULLOUGH
Department 32
Noted for Consideration: March 31, 2023
Without 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.

NO. 22-2-08801-0-SEA

COUNTER-PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL

---

and

TERI R. KIMMONS-STRUCK,

Counter-Plaintiff,

v.

PCA ACQUISITIONS V, LLC,

Counter-Defendant,

and

LIPPMAN RECUPERO, LLC,

Third-Party Defendant.

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I. INTRODUCTION

This case began when Lippman Recupero, LLC ("Lippman Recupero"), a debt collection law firm, filed suit in King County District Court against Teri Kimmons-Struck to collect on a consumer debt allegedly owed to PCA Acquisitions V, LLC ("PCA"), a debt buyer. Ms. Kimmons-Stuck filed counterclaims on behalf of herself and two proposed classes, alleging that Lippman Recupero was not licensed as a collection agency as required by Washington law when it filed suit against her. Shortly after Ms. Kimmons-Struck removed the case to Superior Court, Lippman Recupero and PCA (collectively the "Counter Defendants"), made an offer of judgment. After investigation through informal discovery into the size of the potential classes and the amount of damages, the parties reached a classwide Settlement on substantially the same terms as the offer of judgment.

The Settlement provides that the Counter Defendants will pay $15,000 into a settlement fund that will be used to pay cash awards to the Settlement Class Members, pay the costs of administering the settlement, and pay a service and statutory damages award to Ms. Kimmons-Struck. The Settlement provides that the Counter Defendants will separately pay Ms. Kimmons-Struck's counsel reasonable attorneys' fees that are less than the fees actually incurred. Lippman Recupero has already obtained a collection agency license, precluding violations of the kind alleged here in the future. The settlement is an excellent result for Settlement Class Members. Class Counsel estimate that most Settlement Payments to Settlement Class Members will be approximately $125 if the settlement is approved as requested. Settlement Class Members who paid fees or other collection costs to Lippman Recupero will also receive a full refund of the amount paid.

II. RELIEF REQUESTED

Ms. Kimmons-Struck requests that the Court grant preliminary approval of the settlement, preliminarily certify the class for settlement purposes, appoint Ms. Kimmons-Struck and her counsel to represent the class, approve the proposed notice plan, and schedule a final approval hearing.

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III. STATEMENT OF FACTS

A. Ms. Kimmons-Struck's counter claims on behalf of the proposed class.

Washington's Collection Agency Act (CAA) requires collection agencies to obtain a license, follow certain internal procedures, and adhere to a code of conduct. RCW 19.16.110; RCW 19.16.250; *Gray v. Suttell & Assocs.*, 181 Wn.2d 329, 334, 334 P.3d 14 (2014). Under the CAA, no collection agency or out-of-state collection agency may bring or maintain an action in any court of this state involving the collection of its own claim or a claim of any third party without alleging and, except where judgment is to be entered by default, proving that the agency is duly licensed. RCW 19.16.260(1)(a). Ms. Kimmons-Struck alleges that Lippman Recupero acted as a collection agency in Washington, including by filing collection lawsuits against consumers and mailing collection letters to consumers, before it obtained a license on March 3, 2022. Chandler Decl., Ex. 1 (Complaint ¶¶ 3.19–3.21). She alleges that PCA is liable for Lippman Recupero's unlicensed collection activity on accounts owned by PCA under the CAA, which prohibits a licensed collection agency from aiding or abetting unlicensed collection activity. Complaint ¶¶ 3.11, 3.22.

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

In addition to a pre-filing investigation, Ms. Kimmons-Struck took informal discovery from the Counter Defendants. Ms. Kimmons-Struck served interrogatories and requests for production. Chandler Decl. ¶ 8. After the Counter Defendants served their offer of judgment, the parties agreed that the Counter Defendants could respond informally to the requests with information about the number of members of the proposed class and alleged damages. *Id.* Those efforts showed that Lippman Recupero sent collection letters to approximately 94 consumers at a Washington address regarding accounts owned by PCA at that time, that Lippman Recupero filed approximately 42 lawsuits in a Washington state court regarding accounts owned by PCA at that time, and that of the amounts paid by consumers against whom Lippman Recupero filed a lawsuit in a Washington state court regarding an account owned by

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PCA at that time, Lippman Recupero applied $1,117.07 to amounts other than principal, before Lippman Recupero obtained a license (although Lippman Recupero maintains that it did not collect or retain more than the principal amount due on any account owned by PCA). Discovery also showed that Lippman Recupero's net worth for purposes of calculating statutory damages under the Fair Debt Collection Practices Act was minimal. *See* 15 U.S.C. § 1692k(a)(2)(B) (limiting statutory damages to 1% of the debt collector's net worth). Particularly in light of the relatively small size of the proposed class, all parties agreed that early resolution made sense to avoid further waste of resources on litigation expenses. Chandler Decl. ¶ 10.

C. The Settlement terms.

The details of the settlement are found in the parties' Settlement Agreement and Release, attached as Exhibit 2 to the Chandler Declaration.

1. <u>The Proposed Class.</u>

All persons (1) from whom Lippman Recupero on behalf of PCA collected or attempted to collect, directly or indirectly, at any time since May 20, 2018 on a claim underlying a lawsuit initiated in a Washington state court prior to March 3, 2022, or (2) to whom Lippman Recupero sent a letter at a Washington address at any time from May 20, 2021 to March 3, 2022 attempting to collect, directly or indirectly, on an alleged claim on behalf of PCA.

2. <u>The Settlement Relief.</u>

The Counter Defendants agree to pay $15,000 into a non-reversionary settlement fund that will be used to make payments to Settlement Class Members and to pay a service and statutory damages award, and administrative expenses. SA § III.1. The Settlement Payments to Settlement Class Members will be calculated as follows: (1) each Settlement Class Member who made payments to the Counter Defendants that were allocated to amounts other than principal ("interest payments") shall receive the amount they paid; (2) all Settlement Class Members shall receive an equal share of the amount remaining in the Settlement Fund after interest payments, any service award, and administration costs are deducted. SA § III.2. As additional

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consideration, Counter-Defendants shall not collect or attempt to collect on Settlement Class Members' Accounts any amounts above principal. Counter-Defendants shall convey this restriction to any person or entity who may purchase or obtain Settlement Class Members' Accounts in the future. SA § III.4.

Class Counsel's office will manage the settlement administration and deduct costs from the Settlement Fund before issuing Settlement Payments. SA § III.2. This amount will not exceed $940. Ms. Kimmons-Struck also requests that the Court approve a service award of $1,000 to be paid from the Settlement Fund in recognition of her efforts on behalf of the Class. SA § IV.1.

Any amounts remaining in the Settlement Fund after the period for cashing the Settlement Payment checks has closed will be distributed in cy pres to the Legal Foundation of Washington. SA § IV.4.

The Counter Defendants will separately pay Class Counsel $26,000 for their attorneys' fees and expenses. SA § IV.2.

3. Release.

In exchange for the Settlement benefits, the Settlement Class Members will release the Counter Defendants and related entities from all claims based on the identical factual predicate in Counter-Plaintiff's Second Amended Answer and Counterclaims, including claims for violation of Washington's Collection Agency Act or Consumer Protection Act. SA § IX.

4. Class Members' Rights.

Class Members will have 45 days from the date notice is mailed to exclude themselves from the class and the settlement by advising Class Counsel by mail of their desire to opt out. Any opt-out request must include the individual's name and address, and be postmarked no later than the Opt-Out Deadline. Individuals who exclude themselves will not be Settlement Class Members and will not be bound by the Settlement Agreement, its release, or the judgments of the Court. SA § VI.

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Settlement Class Members who do not exclude themselves may file a written objection and may appear at the Final Approval Hearing at their own expense. SA § VII.

IV. STATEMENT OF ISSUES

Whether the Court should grant preliminary approval of the proposed settlement, preliminarily certify the class for settlement purposes, direct notice to Class Members, and schedule a Final Approval Hearing.

V. EVIDENCE RELIED UPON

Ms. Kimmons-Struck relies on the pleadings on file in this case and the accompanying Declarations of Blythe H. Chandler and Amanda Martin and the exhibits thereto.

VI. ARGUMENT AND AUTHORITY

A. The class settlement approval process.

As a matter of "express public policy," Washington courts strongly favor and encourage settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258 (1997); *see also Pickett v. Holland Am. Line Westours, Inc.*, 145 Wn.2d 178, 190 (2001). This is particularly true in class actions where the costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

Courts use a three-step process to approve class action settlements: (1) preliminary approval of the proposed settlement; (2) notice of the settlement to all affected class members; and (3) a final approval hearing at which class members may be heard and evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. William B. Rubenstein, Newberg on Class Actions § 13:1 (5th ed. Dec. 2021 update). This procedure safeguards class members' due process rights and enables the court to fulfill its role as the guardian of class interests.

Ms. Kimmons-Struck requests the Court take the first step in the settlement approval process by granting preliminary approval of the proposed Settlement. The approval of a class settlement is within the Court's sound discretion. *Pickett*, 145 Wn.2d at 190. Because no class

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has been certified, the court should also make a preliminary determination that the proposed class may be certified for settlement purposes. Newberg § 13:16.

B. The settlement satisfies the criteria for preliminary approval.

Review of a proposed settlement "is a delicate, albeit largely unintrusive, inquiry by the trial court." *Pickett*, 145 Wn.2d at 189. At the preliminary approval stage, courts typically consider whether the proposed settlement appears to be the product of non-collusive 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 judicial approval. Newberg § 13.10. The proposed settlement satisfies these requirements.

1. The settlement is the product of serious, informed, arms'-length negotiations.

This settlement is the result of adversarial litigation and arms'-length negotiations between attorneys experienced in this type of litigation. *Pickett*, 145 Wn.2d at 200 ("When experienced and skilled class counsel support a settlement, their views are given great weight." (citation omitted)). Ms. Kimmons-Struck's counsel negotiated the settlement with the benefit of many years of prior experience and a solid understanding of the facts and law of this case. Chandler Decl. ¶¶ 3-5, 7-9, 18. They believe the settlement is fair, reasonable, adequate, and in the best interest of the proposed class as a whole. *Id*. ¶ 13. Ms. Kimmons-Struck's counsel have extensive experience litigating and settling class actions, and consumer class actions in particular. *Id*. ¶¶ 3-5, 18. The parties also negotiated the settlement at arm's length after the Counter Defendants served Ms. Kimmons-Struck with an offer of judgment and produced information about the size of the proposed class and the amount of alleged damages.

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

The settlement treats all Class Members fairly. Class Members who paid the Counter Defendants amounts that were allocated to interest or collection costs (the alleged actual damages), will receive those amounts back. SA § III.2. All Settlement Class Members will receive an equal share of the remaining Settlement Fund, which reflects statutory damages under the

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Fair Debt Collection Practices Act. *Id.* In addition, Settlement Class Members will benefit from the Counter Defendants ceasing to collect amounts above principal on the relevant accounts. SA § III.4.

Ms. Kimmons-Struck requests a service award of $1,000 in recognition of her efforts on behalf of the Settlement Class Members, which included assisting counsel with the investigation and ongoing litigation. SA § IV.1; Chandler Decl. ¶ 14. The FDCPA also provides for a $1,000 statutory damages award to a successful class representative. 15 U.S.C. § 1692k. Service awards "are intended to compensate class representatives for work undertaken on behalf of a class" and "are fairly typical in class action cases." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted); *see also Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329-30 & n.9 (W.D. Wash. 2009) (collecting cases approving awards from $5,000 to $40,000); *Probst v. Wash. Dept. of Ret. Sys.*, 150 Wn. App. 1062, 2009 WL 1863993, at *5-6 (Wash. Ct. App. June 30, 2009) (unpublished opinion) (affirming service award of $7,500). Ms. Kimmons-Struck's support of the settlement is not conditioned on the modest service award.

3. <u>The settlement falls within the range of possible judicial approval.</u>

This is an excellent settlement in light of the economic realities of the case, which are that the costs of continued litigation would quickly have swamped any amount that could be recovered for the Class Members. In addition, the Counter Defendants would likely have challenged class certification on a variety of grounds, including the small size of the class and causation.

Ms. Kimmons-Struck and the Counter Defendants are each confident in the strength of their respective cases, but recognize the significant costs associated with seeing this lawsuit through class certification, summary judgment motions, and trial. If the Court denied Ms. Kimmons-Struck's motion for class certification, the other Settlement Class Members would be left without relief. If Ms. Kimmons-Struck is also cognizant of the risks inherent in any trial. The Counter Defendants would have the option to appeal if Ms. Kimmons-Struck won at trial, which

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creates additional delay and risk. The settlement, by contrast, will provide a guaranteed recovery for all Settlement Class Members.

C. Preliminary certification of the class is appropriate.

Preliminary certification of the proposed class for settlement purposes is appropriate and will allow the Class Members to receive notice of the proposed settlement.

1. The class satisfies the CR 23(a) requirements.

To be certified, a class must satisfy the requirements of CR 23(a): numerosity, commonality, typicality, and adequacy of representation. Numerosity is satisfied because the class consists of more than 90 individuals. *See* CR 23(a)(1); *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821 (2003) (numerosity is generally satisfied when a class has at least 40 members); Chandler Decl. ¶ 9.

Commonality is satisfied when there is "a single issue common to all members of the class." *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320 (2002). "[T]here is a low threshold to satisfy this test." *Id*. Overarching common questions include whether Lippman Recupero violated the CAA by collecting or attempting to collect from Washington consumers, by sending them form letters and filing lawsuits against them, without obtaining a license. Whether PCA can be held liable for Lippman Recupero's conduct is a second common question.

Typicality is satisfied because Ms. Kimmons-Struck's claims arise from the same alleged course of conduct and are based on the same legal theory as other Class Members' claims. *See Pellino v. Brink's Inc.*, 164 Wn. App. 668, 684 (2011). Ms. Kimmons-Struck's and Class Members' claims all arise from Counter Defendants' same alleged practices and are supported by the same legal theories.

The adequacy of representation requirement is satisfied because Ms. Kimmons-Struck's interests are not antagonistic to those of the class and she is represented by qualified counsel. *See Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003); Chandler Decl. ¶¶ 2-8.

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Ms. Kimmons-Struck and her counsel vigorously advocated on behalf of the class throughout this litigation, including the arms'-length negotiations that resulted in this settlement.

2. The class satisfies the CR 23(b)(3) requirements.

CR 23(b)(3) requires that common questions predominate over any questions affecting only individual class members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. *Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 514 (2018). Predominance is satisfied when "there is a common nucleus of operative facts in each class member's claim." *Id.* at 516. "The relevant inquiry is whether the issue shared by class members is the dominant, central, or overriding issue in the litigation." *Id.* The issues common to Ms. Kimmons-Struck and Class Members are dominant, central, and overriding in this litigation. The questions of whether the Counter Defendants' alleged practices violated the CAA and the Consumer Protection Act, are common to the class and central to resolution of this case.

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

These factors support certification. Resolution of all of Class Members' claims at once is far superior to individual lawsuits and promotes consistency and efficiency of adjudication. *Id.* at 518-23. This is especially true since Class Members have small claims for damages and are unlikely to pursue individual litigation. *Chavez*, 190 Wn.2d at 523 ("[S]mall claims cases somewhat automatically meet the test that a class suit is superior to other forms of adjudication.").

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There is no individual litigation regarding the Counter Defendants' practices. *See id.* at 524 (the fact that defendant is not involved in other litigation over the same issue raised by plaintiffs supports superiority). Concentrating claims against the Counter Defendants in this forum is likely the only way Class Members' rights will be vindicated because many may not be aware of their claims. *See id.*

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

D. The attorneys' fees will be paid separately from the settlement fund and should be approved.

Washington follows the "lodestar method" for calculating fee awards. *Chuong Van Pham v. City of Seattle, Seattle City Light*, 159 Wn.2d 527, 538, 151 P.3d 976 (2007); *Mahler v. Szucs*, 135 Wn.2d 398, 433, 957 P.2d 632 (1998) (*implied overruling on other grounds recognized* in *Matsyuk v. State Farm Fire & Cas. Co.*, 173 Wn.2d 643, 659, 272 P.3d 802 (2012)). A fee award is not unreasonable merely because it exceeds the damages recovered. *Keyes v. Bollinger*, 31 Wn. App. 286, 297, 640 P.2d 1077 (1982). Rather, the lodestar amount is the product of a reasonable hourly rate times the number of hours reasonably expended. *Pham*, 159 Wn.2d at 538. In deciding whether a fee award is appropriate, an "hour-by-hour analysis" of time sheets is unnecessary "as long as the award is made with a consideration of the relevant factors. *Absher Constr. Co. v. Kent Sch. Dist. No. 415*, 79 Wn. App. 841, 848, 917 P.2d 1086 (1995). In judging whether a fee is reasonable, courts often use the factors set forth in RPC 1.5 as a guideline. *Id*. 79 Wn. App. at 847 (citing *Allard v. First Interstate Bank of Wash., N.A.*, 112 Wn.2d 145, 149, 768 P.3d 998 (1989)).

RPC 1.5 includes the following factors: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

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(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; (8) whether the fee is fixed or contingent; and (9) the terms of the fee agreement between the lawyer and the client.

These factors support Ms. Kimmons-Struck's request that the Court approve the parties' agreement that the Counter Defendants pay her counsel $26,000 in reasonable attorneys' fees and litigation costs. The amount of Class Counsel's requested fee award was negotiated *after* the parties reached agreement on relief to the Class Members and will be paid separately from the settlement fund, maximizing Settlement Class Members' recovery. The amount requested is less than the $28,985 in fees Ms. Kimmons-Struck's counsel incurred investigating this action, taking informal discovery, and negotiating the settlement. Chandler Decl., Ex. 3 (Terrell Marshall Law Group's fee report), Martin Decl., Ex. A (Northwest Consumer Law Center's fee report). And although Ms. Kimmons-Struck's counsel incurred $242.92 in litigation expenses, they are not seeking a separate award of costs. Chandler Decl. ¶ 21. The request award does not account for the additional fees Ms. Kimmons-Struck's counsel have incurred and will incur seeking and obtaining preliminary and final approval of the settlement.

Class Counsel are experienced class action attorneys with extensive experience litigating and settling claims against unlicensed debt collectors. *See* Chandler Decl. ¶¶ 3-5, 18; *see also Long v. First Resolution Investment Corp.*, King County Superior Court No. 19-2-11281-6 SEA, Final Approval Order and Judgment, Sub No. 172 (Filed August 28, 2020) (granting final approval of the settlement in a multi-defendant class action challenging unlicensed debt collection) (Chandler Decl., Ex. 4). The hourly rates charged by counsel are reasonable and appropriate considering the skill, experience, and reputation of the attorneys involved and the quality of the work performed. Chandler Decl. ¶ 19. The time counsel spent bringing this case

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to settlement was reasonably expended, particularly given the meaningful benefits the settlement provides to the class. Settlement Class Members will receive an estimated $125 *in addition* to a refund of interest payments made to Lippman Recupero and applied to amounts other than principal. Chandler Decl. ¶ 12. An award of $26,000 in attorneys' fees and costs is reasonable and should be approved.

E. The proposed notice plan should be approved.

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

The parties propose that notice be provided in two ways: a summary postcard notice by U.S. mail to the most recent address for each Class Member in the debt collectors' records, and more detailed information on a settlement website. SA § V.2 & Ex. A (postcard and website content). This approach will ensure that notice reaches as many Class Members as possible.

The language of the proposed notice is straightforward and easily understood. Each Class Member will receive a personalized notice that provides all information needed to evaluate and respond to the settlement. The notice will inform Class Members of the nature of this litigation, the general terms of the proposed settlement, their rights under the settlement, including how to object to the settlement or exclude themselves, the identity of Class Counsel and that amount they ask the court to approve in a separate payment of attorneys' fees and costs, and Ms. Kimmons-Struck's requested service award from the Settlement Fund. SA, Exs. A, B; *see also* Newberg § 8:17.

F. Proposed schedule for final approval.

The last step in the settlement approval process is a fairness hearing at which the Court will make its final evaluation. The schedule for final approval is as follows:

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Event	Deadline
Settlement Notice Date (deadline for class counsel to mail class notice) (SA § V.2)	Within 30 days after issuance of the preliminary approval order
Opt-Out and Objection Deadline (SA §§ II.8, II.9)	45 days after the Settlement Notice Date
Deadline for motion for final approval (SA § VIII.1)	No later than 14 days before the Final Approval Hearing
Final Approval Hearing	To be set by the Court on the earliest available date that is at least 90 days from entry of the preliminary approval order.

VII. CONCLUSION

Ms. Kimmons-Struck respectfully requests that the Court grant preliminary approval of the parties' settlement of this proposed class action by entering the preliminary approval order filed herewith.

VIII. LCR 7(5)(b)(5)(vi) CERTIFICATION

I certify that this memorandum contains 4,178 words in compliance with the Local Civil Rules.

RESPECTFULLY SUBMITTED AND DATED this 28th day of March, 2023.

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