

THE HONORABLE LEROY MCCULLOUGH
Department 32
Noted for Hearing: July 14, 2023
With Oral Argument

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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

~~[PROPOSED]~~ ORDER GRANTING FINAL
APPROVAL OF SETTLEMENT AND
JUDGMENT

ORIGINAL

1 The Court, having considered Counter-Plaintiffs' Motion for Final Approval of Class
2 Action Settlement between Defendant and Counter-Plaintiff Terri Kimmons-Struck and
3 Counter-Defendant PCA Acquisitions V, LLC ("PCA") and Third-Party Defendant Lippman
4 Recupero, LLC ("Lippman"), in the above-captioned matter (the "Action"), the Class Action
5 Settlement Agreement and Release entered into between Plaintiffs and Defendant
6 ("Settlement"), and the lack of objections received regarding the proposed Settlement, the
7 record in this Action, the submissions and arguments presented by counsel, and, having held a
8 Final Approval Hearing on Friday, July 14, 2023, finds that:

9 1. Unless defined herein, all capitalized terms in this Final Approval Order shall
10 have the same meanings as set forth in the Settlement.

11 2. The Court has jurisdiction over the subject matter of the Action and over the
12 settling parties, including the Settlement Class Members.

13 3. On April 4, 2023, the Court preliminarily approved the Settlement and granted
14 preliminary certification of the Class as defined in the Settlement (Sub. No. 17).

15 4. Pursuant to the Court's preliminary approval order, Class Counsel distributed
16 Notice to the Class by First Class mail. Class Counsel also established a Settlement Website
17 providing information about the Settlement and important case documents. The Court hereby
18 finds and concludes that the Notice was disseminated to members of the Class Members in
19 accordance with the terms set forth in the Settlement Agreement and in compliance with the
20 Court's preliminary approval order. The Court further finds and concludes that the Notice Plan
21 fully satisfied CR 23(c)(2) and the requirements of due process, was the best notice practicable
22 under the circumstances, provided individual notice to all Class Members who could be
23 identified through reasonable effort, provided an opportunity for the Class Members to object
24 or exclude themselves from the Settlement, and supports the Court's exercise of jurisdiction
25 over the Class Members as contemplated in the Settlement and this Final Approval Order.

26 5. The Settlement Class Members were given an opportunity to object to the
27 Settlement. No Settlement Class Members objected to the Settlement.

1 6. Class Members were given the opportunity to exclude themselves from the
2 Settlement. No Class Members requested exclusion from the Settlement.

3 7. The Settlement was the result of arms-length negotiations conducted in good
4 faith by experienced attorneys familiar with the legal and factual issues of this case.

5 8. The consideration provided by the Settlement constitutes fair value given in
6 exchange for the release of the Settlement Class Members' Released Claims against the
7 Released Parties. The Court finds that the consideration provided to the Settlement Class
8 Members is reasonable, considering the facts and circumstances of the claims and defenses
9 asserted in the action, and the potential risks and likelihood of success of pursuing trial on the
10 merits.

11 **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

12 9. The Settlement is finally approved as fair, reasonable, adequate, just, and in
13 compliance with all requirements of the applicable laws, and in the best interest of the
14 Settlement Class Members. The Settlement Agreement, which shall be deemed incorporated
15 herein, and all terms the Settlement are finally approved and shall be consummated in
16 accordance with the terms and provisions thereof, except as amended by any subsequent order
17 issued by the Court.

18 10. Pursuant to CR 23(b)(3), the Action is hereby certified, for settlement purposes
19 only, as a class action on behalf of the following Class:

20 All persons (1) from whom Lippman on behalf of PCA collected or
21 attempted to collect, directly or indirectly, at any time since May
22 20, 2018 on a claim underlying a lawsuit initiated in a Washington
23 state court prior to March 3, 2022, or (2) to whom Lippman sent a
24 letter at a Washington address at any time from May 20, 2021 to
25 March 3, 2022 attempting to collect, directly or indirectly, on an
26 alleged claim on behalf of PCA.

27 11. For settlement purposes only, the Court finds that the Action satisfies the
applicable prerequisites for class action treatment under CR 23(a) and (b)(3).

1 12. The numerosity requirement is satisfied because there are 92 Class Members.
2 *See* CR 23(a)(1); *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821, 64 P.3d 49 (2003).

3 13. The commonality requirement is satisfied because there are overarching
4 questions of law and fact common to the Class, including whether PCA and Lippman Recupero's
5 collection practices were unfair or deceptive under the CPA. *See Smith v. Behr Process Corp.*,
6 113 Wn. App. 306, 320, 54 P.3d 665 (2002).

7 14. The typicality requirement is satisfied because Ms. Kimmons-Struck's claims arise
8 from the same course of conduct that gives rise to the claims of other Class Members, and are
9 based on the same legal theories. *See* CR 23(a)(3); *Pellino v. Brink's Inc.*, 164 Wn. App. 668, 267
10 P.3d 383, 392 (2011).

11 15. The adequacy requirement is satisfied because Ms. Kimmons-Struck has no
12 interests antagonistic to the other Class Members and is represented by qualified counsel. *See*
13 *Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003).

14 16. The predominance requirement is satisfied because there is a "common nucleus
15 of operative facts" to each Class Member's claim, and all Class Members were subject to the
16 same conduct by Lippman Recupero and PCA. *See* CR 23(b)(3); *Chavez v. Our Lady of Lourdes*
17 *Hosp. at Pasco*, 190 Wn.2d 507, 516, 415 P.3d 224 (2018).

18 17. The superiority requirement is satisfied because the resolution of numerous
19 claims in one action is far superior to individual lawsuits and promotes consistency and
20 efficiency of adjudication, particularly in a case like this one with modest damages. *See* CR
21 23(b)(3); *Chavez*, 190 Wn.2d at 518-23.

22 18. Pursuant to CR 23, the Court appoints Teri Kimmons-Struck as class
23 representative.

24 19. Pursuant to CR 23, the Court appoints the Terrell Marshall Law Group PLLC, and
25 the Northwest Consumer Law Center as Class Counsel.

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1 20. Class Counsel shall distribute the Settlement Fund to Settlement Class Members,
2 Class Counsel, and the class representatives as required under sections III and IV of the
3 Settlement Agreement.

4 21. The Counter-Plaintiff and each Settlement Class Member and their respective
5 heirs, estates, trusts, agents, and successors, resolve, relinquish, and discharge forever Counter-
6 Defendants from all claims based on the identical factual predicate in Counter-Plaintiff's Second
7 Amended Answer and Counterclaims, including claims for violation of Washington's Collection
8 Agency Act or Consumer Protection Act. Counter-Plaintiff Kimmons-Struck and her respective
9 heirs, estates, trusts, agents, and successors, additionally resolve, relinquish, and discharge
10 forever all claims existing as of the date this agreement is fully executed, whether known or
11 unknown, against Counter-Defendants and any person(s) acting on behalf of or through
12 Counter-Defendants. Counter-Defendants release resolve, relinquish, and discharge forever all
13 claims against Counter-Plaintiff Kimmons-Struck relating to the Capital One account ending in
14 8739. The claims released pursuant to this paragraph are compromised, settled, released,
15 discharged, and dismissed with prejudice by virtue of these proceedings and this Final Approval
16 Order.

17 22. To the extent permitted by law and without affecting the other provisions of this
18 Final Approval Order, this Final Approval Order is intended by the parties and the Court to be
19 *res judicata* and to prohibit and preclude any prior, concurrent, or subsequent litigation
20 brought individually, or in the name of, or otherwise on behalf of, Plaintiff or any Settlement
21 Class Member with respect to the Released Claims.

22 23. Each Settlement Class Member shall be bound by the Settlement Agreement and
23 this order, including by the release set out in Section IX of the Settlement Agreement and in
24 Paragraph 21 of this Order.

25 24. The Court retains jurisdiction over the parties and all matters relating to the
26 Action or Settlement, including the administration, interpretation, construction, effectuation,
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1 enforcement, and consummation of the Settlement, and this Final Approval Order. This Final
2 Approval Order finally disposes of all claims and is appealable.

3 25. This Final Approval Order is not, and shall not be construed as, an admission by
4 Counter-Defendants of any liability or wrongdoing in this or in any other proceeding. Counter-
5 Defendants deny all claims asserted in the Action, all allegations of wrongdoing and liability in
6 this Action, and maintains that it has class defenses. The existence and terms of the Settlement
7 Agreement shall be inadmissible as evidence in any proceeding, except as necessary to
8 approve, interpret, or enforce the Settlement Agreement.

9 26. The Court approves Class Counsel's application for \$26,000 in attorneys' fees
10 and costs. This amount reflected less than the actual costs incurred and shall be paid separately
11 from the Settlement Fund by Counter-Defendants. Counter-Defendants shall pay Court-
12 approved attorneys' fees and costs to Class Counsel as required under sections III and IV of the
13 Settlement Agreement.

14 27. Class Counsel obtained an excellent result for the Settlement Class. Class
15 Counsel's work led to the creation of a \$15,000 Settlement Fund.

16 28. The Court has considered the factors set forth in Washington Rule of
17 Professional Conduct 1.5(a) in concluding that the requested fee is reasonable. Specifically:

- 18 a. The case raised novel and difficult questions of law, which demanded
19 litigators with the skill and experience of Class Counsel.
20 b. Class Counsel's work on this matter precluded work on other matters.
21 c. The excellent results obtained, and the amount of time involved support
22 the award.

23 29. The Court approves a service award to Ms. Kimmons-Struck in the amount of
24 \$1,000, to be paid from the Settlement Fund.

25 30. Any uncashed check funds remaining after the 120-day period for cashing
26 settlement checks shall be distributed to the Legal Foundation of Washington.
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1 31. The Court hereby dismisses all claims in the Action with prejudice and without
2 costs to any party, except as expressly provided for in the Settlement and this Order.

3 32. Finding that there is no just reason for delay, the Court orders that this Final
4 Approval Order shall constitute a final judgment pursuant to CR 58 that is binding on the
5 settling parties and the Settlement Class.

6 IT IS SO ORDERED.

7 DATED this 20th day of July, 2023.

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10 THE HONORABLE LEROY MCCULLOUGH

11 Presented by:

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