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6 CASE #: 23-2-10294-1 SEA Department 46
7 Noted for Consideration: March 17, 2026
8 Without Oral Argument

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

11 EPIC HOMEOWNERS ASSOCIATION, a
12 Washington limited liability company;
13 BAYVIEW ON THE LAKE CONDOMINIUM
14 OWNERS ASSOCIATION, a Washington
15 nonprofit corporation; ARBORETUM AT VISTA
16 PARK CONDOMINIUM ASSOCIATION, a
17 Washington nonprofit corporation; THE VINE
18 BUILDING OWNERS ASSOCIATION, a
19 Washington nonprofit corporation; and THE
20 COSMOPOLITAN CONDOMINIUM OWNERS'
21 ASSOCIATION, a Washington nonprofit
22 corporation, all individually and on behalf of
23 similarly situated entities,

24 Plaintiffs,

25 v.

26 MARK HOLMES and J. DOE HOLMES, and the
27 marital community comprised thereof;
KAPPES MILLER MANAGEMENT, LLC, a
Washington limited liability company; YATES,
WOOD & MCDONALD, INC., a Washington
corporation; ECONDOSERVICES.COM, LLC, a
Washington limited liability company;
ASSOCIATION UNDERWRITERS OF
WASHINGTON, LLC, a Washington limited
liability company; DOE ENTITIES 1–20; and
KELLY SZETO and J. DOE SZETO, and the
marital community comprised thereof,

Defendants.

NO. 23-2-10294-1 SEA

**PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

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5 Newberg and Rubenstein on Class Actions § 15:8310

1 Plaintiffs filed this lawsuit on June 6, 2023, on behalf of a proposed class of HOAs that
2 paid similar fees to Defendants without a separate written disclosure. Plaintiffs asserted claims
3 for violation of the Washington Consumer Protection Act, breach of fiduciary duty, intentional
4 or negligent nondisclosure or misrepresentation, and constructive fraud. They sought to
5 recover the fees they paid. Sub.#1.

6 Discovery was contentious. The parties were unable to agree to the terms of a
7 protective order, requiring motion practice. Sub.# 20-29. Defendants produced thousands of
8 pages of documents but balked at producing all information and documents related to the
9 proposed class members before a class had been certified. Plaintiffs obtained a court order
10 requiring Defendants to respond to additional discovery. Sub.# 84-85. The Court denied
11 Defendants' motion for reconsideration. Sub.#131. The Court also denied Defendants' motion
12 to compel Plaintiffs to produce additional Electronically Stored Information (ESI). Sub.#92.

13 Plaintiffs moved for class certification on August 1, 2025. Sub.# 137-147. Defendants
14 moved for a continuance instead of responding, arguing for entry of a case schedule and
15 additional discovery, including over 20 depositions, ESI, and expert materials, before
16 responding to the motion. Sub.# 165-66. Plaintiffs opposed. Sub.# 170-71. The parties agreed
17 to stay the case pending mediation and, if necessary, adopt a new case schedule.

18 **B. The settlement was negotiated with the assistance of an experienced mediator.**

19 With Plaintiffs' class certification motion and Defendants' motion for more discovery
20 pending, the parties agreed to mediate with Matt Turetsky, an experienced mediator of
21 consumer disputes. The December 12, 2024, mediation (lasting more than 12 hours) ended
22 with the parties signing a CR 2A agreement, which was approved by each Plaintiff's governing
23 board. The parties then negotiated and documented the complete terms of the settlement.

24 Chandler Decl. ¶ 2.

25 **C. The settlement**

26 The Settlement Agreement and Release (SA) is Exhibit 1 to the Chandler Declaration.
27

1 1. The Settlement Class

2 The Class is defined as:

3 All condominium or homeowners associations that: (a) had a
4 property management relationship with Kappes Miller, Yates
5 Wood, eCondoServices; (b) within four years before June 6, 2023,
6 purchased insurance through AUW; (c) paid a broker fee as a part
7 of the “premium,” which made the “premium” greater than the
8 actual consideration owed for an insurance contract or renewal as
 shown on the declaration pages of the relevant insurance policy,
 and (d) who did not otherwise receive and sign a compensation
 disclosure form disclosing a broker fee.

9 SA II.1. “Class Member” means a condominium or homeowners association that satisfies the
10 definition of the Class, and “Settlement Class Members” means all Class Members who do not
11 timely requested to be excluded from this Settlement. SA II.3, II.19.

12 2. Monetary relief

13 Defendants will pay \$1,265,000 into a Settlement Fund, to be distributed to Settlement
14 Class Members after deducting service awards, administration costs, and attorneys’ fees and
15 costs approved by the Court. SA IV, V. Each Settlement Class Member will be paid a Settlement
16 Award calculated pro rata based on the amount the Settlement Class Member paid in
17 Defendants’ Fees. SA V.1. “Defendants’ Fees” means any amount of broker fee paid as part of a
18 “premium” to AUW by a Class Member. SA II.5.

19 Settlement Award checks not cashed within 90 days will be voided. If it is feasible to pay
20 the costs of a second distribution and make payments of at least \$20 to each Settlement Class
21 Member, the administrator will make a second distribution to those who redeemed their first
22 payment. These payments will be valid for 45 days. SA V.6.

23 Any undistributed amounts remaining in the Settlement Fund will be paid equally to *cy*
24 *pres* recipients Legal Foundation of Washington and Northwest Consumer Law Center. SA V.7.

25 3. Administration costs

26 After a competitive bidding process, Plaintiffs selected Simpluris to serve as Settlement
27 Administrator. Chandler Decl. ¶ 4. Simpluris will implement the Notice Plan and distribute the

1 Settlement Fund. SA VII. Simpluris's estimated costs of \$3,600 will be paid from the Settlement
2 Fund. SA V.3.

3 4. Attorneys' fees, litigation costs, and service awards

4 Plaintiffs will move for Court approval of an award of attorneys' fees of \$421,245, which
5 is equal to 33% of the Settlement Fund, and reimbursement of \$40,000 in litigation costs to be
6 paid from the Settlement Fund. Plaintiffs will also ask the Court to approve service awards of
7 \$30,000 for each Plaintiff in recognition of their time and effort in bringing this case on behalf
8 of the Class. SA V.2. Plaintiffs will file the motion within 30 days of the Settlement Notice Date
9 to ensure Class Members have time to review the motion before the Objection and Opt-Out
10 Deadline. SA V.4, II. 9, 10. Defendants may object to the amount of the request. The motion will
11 be posted to the Settlement Website within one business day. SA V.4.

12 The settlement is not conditioned on the payment or amount of attorneys' fees,
13 litigation costs, or service awards approved by the Court. Any differences between the
14 requested amounts and the amounts awarded by the Court will remain part of the Settlement
15 Fund and be used to pay Settlement Class Members. SA V.5.

16 5. Release

17 The scope of the release is appropriately tailored to all claims arising out of the factual
18 predicate alleged in the complaint. SA II.13-15, XI; *Summers v. Sea Mar Cmty. Health Centers*,
19 29 Wn. App. 2d 476, 504-05 (2024) ("A class settlement agreement may preclude a party from
20 bringing a related claim in the future 'even though the claim was not presented and might not
21 have been presentable in the class action,' but only where the released claim is 'based on the
22 identical factual predicate as that underlying the claims in the settled class action.'" (citations
23 omitted)).

24 6. Class Members' rights

25 Class Members can exclude themselves from the settlement by submitting an individual
26 opt-out request that includes the name, title, email address, and telephone number of the
27

1 authorized representative, is signed by an authorized representative of the condominium or
2 HOA, and is postmarked to the Settlement Administrator by the Opt-Out Deadline. SA VIII.

3 Settlement Class Members may file a written objection with the Court by the Objection
4 Deadline. Objections must be signed and include the objector's name, address, email address,
5 and telephone number, and the reason for the objection. SA IX.1. Anyone who properly objects
6 may appear at the Final Approval Hearing, including through an attorney hired at the objector's
7 expense, after filing a notice of appearance with the Court. SA IX.2.

8 III. STATEMENT OF ISSUES

9 Should the Court conditionally certify the Class for settlement purposes, grant
10 preliminary approval of the settlement, approve the Notice Plan, and schedule a Final Approval
11 Hearing? **Yes.**

12 IV. EVIDENCE RELIED UPON

13 Plaintiffs rely upon the declaration of Blythe H. Chandler in support of preliminary
14 approval (Chandler Decl.), and the pleadings and records on file in this case.

15 V. ARGUMENT AND AUTHORITY

16 A. The class settlement approval process.

17 As a matter of "express public policy," Washington courts strongly favor and encourage
18 settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258 (1997); *see also Pickett v. Holland*
19 *Am. Line Westours, Inc.*, 145 Wn.2d 178, 190 (2001). This is particularly true in class actions
20 where the costs, delays, and risks of continued litigation might otherwise overwhelm any
21 potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d
22 1268, 1276 (9th Cir. 1992).¹

23 Courts use a three-step process to approve class action settlements: (1) preliminary
24 approval of the proposed settlement and conditional certification of a settlement class;

26 ¹ While CR 23 is similar but not identical to Federal Rule of Civil Procedure 23, including with
27 respect to the standards for preliminary approval of class settlements, Washington courts may
consider federal decisions as appropriate. *Summers*, 29 Wn. App. 2d at 487.

1 (2) notice of the settlement to class members; and (3) a final approval hearing at which class
2 members may be heard and evidence and argument concerning the fairness, adequacy, and
3 reasonableness of the settlement may be presented. 4 Newberg and Rubenstein on Class
4 Actions § 13:1 (6th ed. Dec. 2025 update) (discussing Fed. R. Civ. P. 23). This procedure
5 safeguards class members' due process rights and enables the court to fulfill its role as the
6 guardian of class interests. The approval of a class settlement is within the Court's discretion.
7 *Pickett*, 145 Wn.2d at 190.

8 Plaintiffs request the Court grant preliminary approval of the proposed settlement.
9 Because no class has been certified, the Court should also make a determination that the class
10 may be conditionally certified for settlement purposes. See 4 Newberg § 13:16.

11 **B. The Class satisfies the requirements for conditional certification under CR 23.**

12 Conditional certification of the Class for settlement purposes is appropriate and will
13 allow Class Members to receive notice of the proposed settlement.

14 1. The Class satisfies the CR 23(a) requirements.

15 A class must satisfy the requirements of numerosity, commonality, typicality, and
16 adequacy of representation.

17 Numerosity is satisfied because Defendants have determined from their records that
18 there are over 50 Class Members, SA XII.1, and numerosity is generally satisfied when a class
19 has at least 40 members. *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821 (2003).

20 Commonality is satisfied because the central overarching question common to all Class
21 Members is whether Defendants' practice of charging undisclosed fees was unfair or deceptive
22 in violation of the CPA. See *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320 (2002) (a single
23 important issue can satisfy commonality, and "there is a low threshold to satisfy this test").

24 Typicality is satisfied because Plaintiffs' claims "arise[] from the same event or practice
25 or course of conduct that gives rise to the claims of other class members" and are "based on
26 the same legal theory." *Pellino v. Brink's*, 164 Wn. App. 668, 684 (2011) (quoting *Behr*, 113 Wn.
27 App. at 320). Plaintiffs signed substantially the same contracts as Class members, purchased

1 insurance from AUW through one or more of the Defendant property management companies,
2 and paid the allegedly undisclosed fees. Plaintiffs' and Class Members' claims are based on the
3 same legal theory that this practice was unfair or deceptive in violation of the CPA.

4 Adequacy of representation is satisfied because Plaintiffs have prosecuted this case
5 vigorously through qualified counsel and have no interests antagonistic to other class members.
6 *See Hansen v. Ticket Track*, 213 F.R.D. 412, 415 (W.D. Wash. 2003). Plaintiffs assisted in
7 investigating the claims, gathering and providing evidence, and preparing the complaint,
8 participated in multiple meetings and mediation, and were prepared to testify in deposition
9 and at trial. They understand their duties as class representatives and should be appointed to
10 represent the Class. *See Sub.# 140-144, 146* (Plaintiffs' declarations in support of class
11 certification). Plaintiffs' counsel are experienced insurance-fraud and class-action litigators who
12 have demonstrated their commitment to the case and should be appointed Class Counsel.
13 *Sub.# 138-139.*

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

15 A class must satisfy one of the three requirements of CR 23(b). *Sitton v. State Farm Mut.*
16 *Auto. Ins. Co.*, 116 Wn. App. 245, 251, 63 P.3d 198 (2003). Because Plaintiffs seek to recover
17 damages, they ask the Court to certify the Class under CR 23(b)(3). A class action may be
18 maintained under CR 23(b)(3) if the "court finds that the questions of law or fact common to
19 the members of the class predominate over any questions affecting only individual members,
20 and that a class action is superior to other available methods for the fair and efficient
21 adjudication of the controversy."

22 Predominance is satisfied when "there is a common nucleus of operative facts in each
23 class member's claim." *Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 516
24 (2018). "The relevant inquiry is whether the issue shared by class members is the dominant,
25 central, or overriding issue in the litigation." *Id.* (quoting *Miller*, 115 Wn. App. at 825).
26 Predominance is "not defeated merely because individual factual or legal issues exist; a single
27

1 common issue may be the overriding one in the litigation, despite the fact that the suit also
2 entails numerous remaining individual questions.” *Id.* at 519 (cleaned up).

3 Whether Defendants’ practice is unfair or deceptive “is the dominant, central, or
4 overriding issue in the litigation.” *Id.* at 516. Plaintiffs would use evidence common to all Class
5 Members to prove this CPA element, including the OIC’s investigation and findings, Defendants’
6 form insurance proposals and policy documents, and provisions of Washington’s Insurance
7 Code that mandate the written disclosures of fees and commissions. In fact, Plaintiffs contend
8 they would be able to prove all elements of their CPA with predominantly common evidence.
9 *See* Sub.#137 (class certification motion) at 9-12.

10 Superiority is satisfied when a class action is superior to other methods of adjudication.
11 *Chavez*, 190 Wn.2d at 511. The factors outlined in CR 23(b)(3) support certification. Plaintiffs
12 are not aware of any other similar litigation against Defendants, which is not surprising since
13 HOAs are typically run by volunteer boards with limited resources. Sub.#146 ¶ 9; CR 23(b)(3)(B).
14 Because Class Members are in Washington, this Court is an appropriate forum. CR 23(b)(3)(C).
15 Finally, the manageability of litigation is not relevant to certification for settlement purposes.
16 *See* CR 23(b)(3)(D); *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with
17 a request for settlement-only class certification, a district court need not inquire whether the
18 case, if tried, would present intractable management problems.”).

19 **C. The settlement satisfies the preliminary approval criteria.**

20 Review of a proposed settlement “is a delicate, albeit largely unintrusive inquiry by the
21 trial court.” *Pickett*, 145 Wn.2d at 189. At preliminary approval, courts consider whether the
22 settlement appears to be the product of informed, non-collusive negotiations and adequate
23 representation, treats all class members fairly, and is likely to be approved after notice, an
24 objection period, and a fairness hearing. 4 Newberg § 13:10. The proposed settlement satisfies
25 these requirements.

1 Cal. Dec. 2, 2022) (pro rata payments are “an equitable method of distribution”). The payments
2 are estimated to equal 80% of the amounts Class Members paid in Defendants’ Fees. Chandler
3 Decl. ¶ 5.

4 Plaintiffs will move for Court approval of an attorneys’ fees award of \$421,245, which is
5 33% of the Settlement Fund, and reimbursement of no more than \$40,000 in costs. An award of
6 33% of a common fund is within the range of attorney fee awards in Washington. *See Bowles v.*
7 *Dep’t of Ret. Sys.*, 121 Wn.2d 52, 73 (1993) (common fund awards are typically 20 to 30
8 percent, with a 25% benchmark that may be adjusted upward or downward to recognize
9 circumstances of case); *see also* 5 Newberg § 15:83 (percentage-of-the-fund awards are
10 “generally between 20-30%” and “[u]sually, 50% of the fund is the upper limit on a reasonable
11 fee award”).

12 Plaintiffs will ask the Court to approve service awards of \$30,000 for each Plaintiff to
13 recognize their representation of the Class. Service awards are “fairly typical in class action
14 cases.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). They
15 compensate class representatives for work on behalf of the class. *Rodriguez v. W. Publ’g Corp.*,
16 563 F.3d 948, 963 (9th Cir. 2009); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420-
17 YGR, 2018 WL 3064391, at *2 (N.D. Cal. May 16, 2018) (finding \$30,000 service awards for each
18 of nine class representatives “reasonable and justified given: (i) their willingness to serve as
19 private attorneys general; and (ii) their work performed and the active participation in the
20 litigation on behalf of the [] Class”).

21 Plaintiffs will demonstrate the reasonableness of their fee request and the basis for
22 their litigation costs and the service award in their motion, which will be available to Class
23 Members before the Objection and Opt-Out Deadline. The settlement is not contingent on the
24 amounts awarded.

25 3. The Court is likely to grant final approval of the settlement.

26 This is an excellent settlement for the Class. Class Members paid \$813,244 in
27 Defendants’ Fees. The \$1,265,000 Settlement Fund exceeds that amount. If the Court approves

1 the requested service awards, attorneys' fees and costs, and estimated administrative costs,
2 the remaining net Settlement Fund of \$650,343 is equal to approximately 80% of the
3 Defendants' Fees the Class paid. Chandler Decl. ¶ 5; *see also Summers*, 29 Wn. App. 2d at 504
4 ("A proposed settlement is not judged against a hypothetical or speculative measure of what
5 might have been achieved. A possibility that the settlement could have been better does not
6 mean it was not fair, reasonable, or adequate." (internal citation omitted)).

7 The settlement is particularly beneficial given the risks of continued litigation. *See*
8 *Pickett*, 145 Wn.2d at 192 (the existence of risk and uncertainty to the plaintiff at the time of
9 settlement "weighs heavily in favor of finding that the settlement was fair, adequate, and
10 reasonable"). When the parties negotiated the settlement, Plaintiffs had filed their class
11 certification motion. While Plaintiffs expected to prevail, Defendants moved to continue the
12 hearing date instead of responding, seeking additional discovery and previewing anticipated
13 challenges to certification including purported differences among management contracts, need
14 for individualized inquiries into class members' knowledge, and unique defenses. Sub.#165. The
15 outcome remained uncertain, and maintaining certification carries its own risk. *See Rodriguez*,
16 563 F.3d at 966 (recognizing risk that court "may decertify a class at any time").

17 In addition to procedural hurdles like class certification, challenges remained for
18 Plaintiffs in proving their claims. Most facts establishing Defendants' practice are undisputed,
19 but Defendants have argued that Washington insurance law does not prohibit their practice,
20 that Plaintiffs should have known about it, and that Plaintiffs could not hold Mr. Holmes and
21 Ms. Szeto liable. Defendants also assert an affirmative defense of indemnification based on
22 terms of the management agreement. Sub.#127 at 15. Defendants filed a notice of hearing for a
23 summary judgment motion but had not filed the motion when the parties agreed to stay
24 litigation and discuss settlement. Sub.#163. Plaintiffs see no merit in Defendants' positions but
25 acknowledge they present some risk.

26 Continuing to litigate would also be expensive and time-consuming. Defendants said
27 they needed to take over 20 depositions before responding to Plaintiffs' class certification

1 motion, Sub.#164, and expert discovery and additional party discovery remained before
2 summary judgment and trial. *See Nat'l Rural Telecommc'ns Coop. v. DIRECTV, Inc.*, 221 F.R.D.
3 523, 526 (C.D. Cal. 2004) ("The Court shall consider the vagaries of litigation and compare the
4 significance of immediate recovery by way of the compromise to the mere possibility of relief in
5 the future, after protracted and expensive litigation.").

6 **D. The proposed Notice Plan should be approved.**

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

13 The proposed Notice Plan satisfies these requirements. Notice will be sent by U.S. mail
14 to the most recent address for each Class Member in Defendants' records, as updated by the
15 Settlement Administrator using the National Change of Address system or a comparable
16 commercial system, and by email using the email addresses provided by Defendants. A
17 Settlement Website will be established, where the Website Notice and key case documents,
18 including the Settlement Agreement and Plaintiffs' motion for attorneys' fees, costs and service
19 award will be available for review. SA VII.2. *See Summers*, 29 Wn. App. 2d at 494-99 (approving
20 notice by mail and email).

21 The notices are written in plain English. The Postcard Notice and Email Notice provide
22 basic information about the litigation and settlement and direct Class Members to the
23 Settlement Website for additional information. SA Exs. A–B. The Website Notice has more
24 detail. It explains the litigation, the general terms of the settlement, Plaintiffs' intended request
25 for attorneys' fees, costs and service awards, the right to object or opt out and related
26 deadlines, and the date and time of the Final Approval Hearing. SA Ex. C. The Notices provide
27 the information Class Members need to make an informed decision about their options in a

1 clear and concise manner. 3 Newberg § 8:17; *Nobl Park, L.L.C. of Vancouver v. Shell Oil Co.*, 122
2 Wn. App. 838, 846–47 (2004) (“A notice is sufficient if it provides general notice of the action,
3 class membership requirements, and provides information by which interested persons can
4 obtain a copy of the settlement.”).

5 **E. Proposed schedule for final approval.**

6 The last step in the approval process is a Final Approval Hearing. The parties propose the
7 following schedule:

Event	Date
Settlement Notice Date: Settlement Administrator to distribute notice and Settlement Website established (SA II.20, VII.2)	Within 30 days of Preliminary Approval Order
Motion for attorneys’ fees, costs and service awards (SA V.4)	Within 30 days of Settlement Notice Date
Opt-Out and Objection Deadline (SA II.9-10)	60 days after Settlement Notice Date
Settlement Administrator’s Declaration (SA X.1)	At least 21 days before Final Approval Hearing
Motion for final approval (SA X.2)	At least 14 days before Final Approval Hearing
Final Approval Hearing (SA II.7)	Set by Court (at least 120 days after Preliminary Approval Order)

19 **VI. CONCLUSION**

20 Plaintiffs respectfully request the Court grant their motion, approve the Notice Plan, and
21 schedule a Final Approval Hearing.

22 //
23 //
24 //
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26 //

1 RESPECTFULLY SUBMITTED AND DATED this 13th day of March, 2026.

2 TERRELL MARSHALL LAW GROUP PLLC

3 *I certify that this memorandum contains 4,199*
4 *words, in compliance with the Local Civil Rules.*

5 By: /s/Blythe H. Chandler, WSBA #43387
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CERTIFICATE OF SERVICE

I, Blythe H. Chandler, hereby certify that on March 13, 2026, I caused true and correct copies of the foregoing to be served via the means indicated below:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED this 13th day of March, 2026.

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