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CONSTANCE R. WHITE
COUNTY CLERK
NO: 21-2-08744-4

The Honorable Thomas Patrick Quinlan
Hearing: March 15, 2024 @ 9:00 am

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

JULI ANN BENJAMIN, CHERYL
RETHAFORD, and LAURA BRADLEY, on
behalf of themselves and all others similarly
situated,

Plaintiff,

v.

COLUMBIA STATE BANK, a Washington
Bank Corporation, d/b/a Columbia Bank,

Defendant.

NO. 21-2-08744-4

PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Cheryl Rethaford (“Plaintiff”) moves for final approval of the class action Settlement Agreement and Release¹ she reached with Defendant Columbia State Bank (“Defendant” or “the bank”).² The Court granted preliminary approval of the Settlement on

¹ The capitalized terms used herein are defined and have the same meaning as used in the Agreement unless otherwise stated. The Settlement Agreement is attached as Exhibit 1 to the Declaration of Sophia G. Gold filed on October 25, 2023.

² The Settlement is between Plaintiff and Umpqua Bank, as successor by merger to Columbia State Bank. On February 28, 2023, the merger transaction involving Columbia Banking System, Inc., and its wholly owned bank subsidiary, Columbia State Bank, and Umpqua Holdings Corporation and its wholly owned bank subsidiary, Umpqua Bank, closed and took effect. Under the terms of the merger transaction, Umpqua Holdings Corporation merged with and into Columbia Banking System, Inc., with Columbia Banking System, Inc.,

1 November 9, 2023. If the Court grants final approval, the Settlement will finally resolve
2 Plaintiff's and the Settlement Class Members' claims relating to Plaintiff's and the Putative
3 Class Members' challenges to Defendant's assessment and collection of Retry Fees. Defendant
4 does not oppose this motion.

5 Under the Settlement, Defendant has agreed to pay a total of \$700,000 into a Settlement
6 Fund and will forgive \$359,068 in Uncollected Retry Fees, for a total Value of the Settlement
7 of **\$1,059,068** in relief to the Class. Subject to the Court's approval, the Settlement Fund will
8 also be used to pay: a court-approved \$5,000 service award to Plaintiff to compensate her for
9 the time she spent, the risks she incurred, and the benefits she obtained for the Class by serving
10 as class representative; Class Counsel's attorney's fees of no more than 33 1/3% of the Value
11 of the Settlement; Class Counsel's costs incurred in prosecuting this action; and the costs of
12 notice and settlement administration. Since this Court granted preliminary approval, the Parties
13 executed on a robust notice plan that satisfied the requirements of due process and adequately
14 advised Class Members of their rights under the Agreement.

15 As the Court initially found in granting preliminary approval, the Settlement is an
16 excellent result for Settlement Class Members, and it is fair, reasonable, adequate, and in the
17 best interests of the Settlement Class as a whole. The Court's initial conclusion has now been
18 definitively proven correct by the overwhelmingly positive response of Class Members. Out of
19 14,344 Class Members, not a single Class Member opted out, and only one Class Member
20 objected to the Settlement (and even that objection did not articulate a basis for rejecting the
21 settlement). This demonstrates that the Class Members also view the Settlement favorably, and
22 the Court should grant final approval so that the Class Members can receive the benefits of the
23 Settlement and this matter can be resolved.

24 Accordingly, Plaintiff requests that the Court enter the proposed agreed Final Approval
25 Order.

26 _____
27 being the surviving corporation, and Columbia State Bank merged with and into Umpqua
Bank, with Umpqua Bank being the surviving bank.

1 **II. STATEMENT OF FACTS**

2 **A. The Litigation**

3 Plaintiff filed the original Complaint in this litigation on December 16, 2021, and the
4 operative Second Amended Class Action Complaint on May 10, 2022. In the operative
5 Complaint, Plaintiff seeks monetary damages, restitution, and injunctive and declaratory relief
6 from Defendant for breach of contract, including breach of the implied covenant of good faith
7 and fair dealing, and violations of Washington’s Consumer Protection Act. After Defendant
8 filed a motion to dismiss, this Court stayed the case pending mediation.

9 The parties engaged in arms-length settlement negotiations with the assistance of
10 mediator Lou Peterson. At the end of the mediation, Mr. Peterson made a mediator’s proposal
11 that both Parties accepted. Gold Decl., ¶ 2. Importantly, the parties did not discuss attorney’s
12 fees and costs, nor any potential service award, until they first agreed on the material terms of
13 the settlement, including the Class definitions, form and manner of Notice, class benefits, and
14 scope of the Release. *Id.* ¶ 3.

15 **B. The Settlement Agreement**

16 The Settlement includes the following key terms:

- 17
- 18 • Defendant agrees to certification of the Settlement Class, which is defined as
19 follows: “All current or former consumer and business customers of Defendant
20 who were charged Retry Fees in a Columbia Bank account between December
21 15, 2015 and February 28, 2023”;
 - 22 • Defendant will pay \$700,000 into a Settlement Fund from which the following
23 will be paid: reasonable attorney’s fees and costs; any approved Service Award
24 to Plaintiff; the Settlement Administrator’s fees and costs; and payments to
25 Class Members;
 - 26 • Defendant will not pursue collection of Uncollected Retry Fees from members
27 of the Settlement Class, the total value of which is \$359,068;
 - The Settlement Fund will be distributed directly to Class Members by account
credit or check, with no need to submit a claim or take any action;
 - Any Settlement Funds constituting uncashed checks or residual amounts will not

1 revert to Defendant but will instead be paid to an appropriate *cy pres* recipient
2 proposed by Defendant and approved by the Court; and

- 3
- If finally approved, the Settlement will resolve this litigation.

4 The proposed Settlement treats all Class Members fairly and equally. Within 15 days
5 after entry of a Final Approval Order, Defendant shall transfer the Settlement Fund of \$700,000
6 to the Settlement Administrator.³ See Settlement § 8. The Settlement Fund shall be used to pay
7 (a) distributions to Class Members; (b) court-approved Class Counsel's fees and costs; (c) any
8 court-approved service award payment to the Class Representative; and (d) costs associated
9 with settlement administration and notice. See *id.*

10 After the Effective Date of the Settlement, the Settlement Administrator will distribute
11 payments from the Net Settlement Fund to Class Members in accordance with the plan set forth
12 in § 8(iv) of the Settlement. The Net Settlement Fund shall be distributed to Class Members
13 based on the total amount of Retry Fees each Class Member incurred. Any checks that remain
14 uncashed 200 days after the Effective Date, and any other residual amounts held by the
15 Settlement Administrator at the time of the Final Report, will be paid to a *cy pres* recipient
16 proposed by Defendant and approved by the Court. See Settlement §§ 9, 11. The Settlement
17 also provides that Defendant will not pursue collection of any Uncollected Retry Fees assessed
18 against Class Members, calculated to be \$359,068. See *id.* § 2.

19 The Settlement includes a general release from Plaintiff and the Class Members of
20 claims that arise out of and/or relate to the facts and claims alleged in the operative complaint,
21 and any other claims relating to Retry Fees. See Settlement § 14. This includes a waiver of
22 unknown claims with respect to all the matters described in or subsumed by the Settlement.
23
24

25 _____
26 ³ Plaintiff and Class Counsel, in conjunction with Defendant, requested and received the
27 Court's approval of Settlement Services, Inc. as the Settlement Administrator. See Order
Amending Preliminary Approval of Proposed Class Action Settlement, entered on December
15, 2023.

1 **C. Preliminary Approval and Notice to the Settlement Class**

2 On November 9, 2023, the Court granted preliminary approval to the Settlement. *See*
3 *generally* Preliminary Approval Order. In its order, the Court certified the Settlement Class and
4 found that “the Settlement is sufficiently within the range of reasonableness.” *Id.* ¶ 3. The Court
5 approved the form and method of giving notice of the Settlement to Class Members, set
6 deadlines for Class Members to object to, or opt out of, the Settlement, and scheduled a final
7 approval hearing for March 15, 2024 at 9:00 a.m.

8 On December 8, 2023, the Settlement Administrator sent the Court-approved notice to
9 the 14,344 Class Members. Declaration of Robert Hyte of Settlement Services Inc. in
10 Connection with Final Approval of Settlement (“Notice Decl.”) ¶¶ 6-11. The Settlement
11 Administrator also established a settlement website, toll-free phone number, and email address
12 for Settlement Class Members to obtain additional information about the Settlement. *Id.* ¶ 5.
13 The notice program was overwhelmingly successful in reaching Class Members. *Id.* ¶¶ 6-9.

14 The deadline for Class Members to opt out of the Settlement passed on January 8, 2024.
15 *Id.* ¶ 12. Out of 14,344 Class Members, not a single person requested to be excluded from the
16 Settlement. *Id.* The deadline for Class Members to object to the Settlement is February 22,
17 2024. As of February 7, 2024, only one Class Member has objected to the Settlement. *Id.* ¶ 13.

18 **III. STATEMENT OF ISSUES**

19 Whether the Court should grant final approval to the Settlement because it is a fair,
20 reasonable, and adequate compromise?

21 Whether the Court should approve the requested attorney’s fees, expenses, and service
22 award in conjunction with final approval because the requested payments are reasonable and no
23 party nor any Class Member objects.
24

1 **IV. EVIDENCE RELIED UPON**

2 Plaintiff relies upon the Declaration of Sophia G. Gold and the Declaration of Robert
3 HYTE of Settlement Services, Inc. and the exhibits attached thereto in support of this motion, as
4 well as the pleadings and records on file with the Court.

5 **V. ARGUMENT AND AUTHORITY**

6 **A. The Court should grant final approval to the Settlement because it is**
7 **a fair, reasonable, and adequate compromise to which only one Class**
8 **Member objects.**

9 The Court should grant final approval to the Settlement, which represents an excellent
10 result for the Settlement Class, as shown by the fact that no Class Members elected to opt out
11 of the settlement and just one out of the 14,344 class members filed an objection.

12 As a matter of “express public policy,” Washington courts strongly favor and encourage
13 settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258, 947 P.2d 223 (1997); *see also*
14 *Pickett v. Holland Am. Line Westours, Inc.*, 145 Wn.2d 178, 190, 35 P.3d 351 (2001)
15 (“[V]oluntary conciliation and settlement are the preferred means of dispute resolution.”). This
16 is particularly true in class actions and other complex matters where the costs, delays, and risks
17 of continued litigation might otherwise overwhelm any potential benefit the class could hope to
18 obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

19 “[C]ourts generally refer to eight criteria, with differing degrees of emphasis, in making
20 a settlement approval determination: the likelihood of success by plaintiffs; the amount of
21 discovery or evidence; the settlement terms and conditions; recommendation and experience of
22 counsel; future expense and likely duration of litigation; recommendation of neutral parties, if
23 any; number of objectors and nature of objections; and the presence of good faith and the
24 absence of collusion.” *Pickett*, 145 Wn.2d at 192 (citing 2 Newberg & Conte, *Newberg on*
25 *Class Actions* § 11.43). This list is “not exhaustive, nor will each factor be relevant in every
26 case The relative degree of importance to be attached to any particular factor will depend
27

1 upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and
2 the unique facts and circumstances presented by each individual case.”

3 The approval of a settlement agreement “is a delicate, albeit largely unintrusive inquiry
4 by the trial court.” *Pickett*, 145 Wn.2d at 189. Although the Court has discretion to determine
5 whether a proposed class action settlement should be approved,

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

10 *Id.* Moreover, as the court in *Pickett* observed, “it must not be overlooked that voluntary
11 conciliation and settlement are the preferred means of dispute resolution.” *Id.* at 190. In the
12 end, “[s]ettlement is the offspring of compromise; the question we address is not whether the
13 final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free
14 from collusion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also*
15 *Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 544 (W.D. Wash. 2009).

16 In this case, the relevant criteria all support final approval of the Settlement because the
17 Settlement is a fair, reasonable, and adequate compromise that provides substantial benefits to
18 the Class and was reached through an arms-length adversarial process.

19 1. The Settlement is the product of serious, informed, and arm’s-length
20 negotiations.

21 First, this Settlement is the result of hard-fought litigation and arm’s-length negotiations
22 between attorneys experienced in this type of litigation. *Pickett*, 145 Wn.2d at 200 (“When
23 experienced and skilled class counsel support a settlement, their views are given great weight.”
24 (citation omitted)); Gold Decl. ¶¶ 2-7. Class Counsel negotiated the Settlement with the benefit
25 of many years of prior experience and a solid understanding of the facts and law of this case.
26 Gold Decl. ¶ 5. Class Counsel has extensive experience litigating and settling class actions, as
27 well as consumer class actions challenging banking practices in particular. *Id.* They believe the

1 settlement is fair, reasonable, adequate, and in the best interest of the Settlement Classes as a
2 whole. *Id.*

- 3 2. The terms of the Settlement compare favorably with the likelihood of
4 success balanced against the risks, delays, and costs of continued
5 litigation.

6 Second, this is an excellent settlement in light of the obstacles to continued litigation
7 and the uncertain recovery after trial and appeal. The combination of Columbia State Bank's
8 agreement to pay \$700,000.00 to the Settlement Fund, plus its agreement not to pursue
9 Uncollected Retry Fees valued at \$359,068.00 from the Settlement Class, makes this a highly
10 favorable resolution. *Id.* ¶ 5.

11 Plaintiff is confident in the strength of her case but also recognizes the significant risks
12 involved in continued litigation. *Id.* Columbia State Bank could have prevailed on a motion for
13 summary judgment, at trial, or on appeal. *Id.* In addition, Plaintiff faced the risk that the Court
14 might not certify the case adversarially as a class action, in which case no class member would
15 receive any recovery at all. *Id.*

16 The Settlement, by contrast, will provide a guaranteed recovery for all Settlement Class
17 Members. *Id.* ¶ 6. The Net Settlement Fund will be distributed *pro rata* to all Settlement Class
18 Members in proportion to their damages. *Id.* The Settlement Fund represents a recovery of
19 more than 61% of the Settlement Class's best damages case at trial. *Id.* This relief is in addition
20 to Columbia State Bank's agreement not to pursue collection of any Uncollected Retry Fees
21 assessed against Class Members, calculated to be \$359,068. *Id.*

22 The Settlement is an excellent result for Settlement Class Members and compares
23 favorably with settlements in other similar class action cases. *Id.*; *see, e.g., In re Checking*
24 *Account Overdraft Litig.* 830 F. Supp.2d 1330, 1346 (S.D. Fla. 2011) (finding that nine percent
25 of the settlement class's total potential damages "constitutes a fair settlement even absent the
26 risks associated with prosecuting these claims"); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d
27 560, 583 (N.D. Ill. 2011) (approving settlement representing 10% of the class's total recovery).

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

3 Third, the Settlement treats all Settlement Class Members fairly and equally. Gold Decl.
4 ¶ 7. Each Settlement Class Member is entitled to a settlement payment. *Id.* The settlement
5 payments will be calculated *pro rata* based on the amount of Retry Fees each Settlement Class
6 Member was charged. The Settlement Fund is also non-reversionary; none of it will ever be
7 given back to Defendant. If any funds are uncollected they will be paid on a *cy pres* basis.

8 4. The lack of any opt outs and singular objection shows the Settlement is
9 fair, reasonable, and adequate.

10 Finally, and perhaps most importantly, the fact that not one of the over 14,000 Class
11 Members chose to opt out of the Settlement before the deadline to do so shows that the Class
12 Members themselves view the Settlement as a fair, reasonable, and adequate compromise, and
13 that they have chosen to be a part of it. The deadline to object to the Settlement is February 22,
14 2024. As of the date of this filing, only one Class Member formally objected (representing just
15 0.007 percent of the Class). Notice Decl. ¶ 13. The absence of opposition strongly supports
16 final approval. *Nat'l Rural Telecomms. Co-op. v. Directv, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal.
17 2004) (“It is established that the absence of a large number of objections to a proposed class
18 action settlement raises a strong presumption that the terms of a proposed class settlement
19 action are favorable to the class members.”); *In re PPA Prods. Liab. Litig.*, 227 F.R.D. 553,
20 564 (W.D. Wash. 2004) (“[T]he Class Members themselves have effectively voted heavily in
21 favor of the Settlement, by not opting out. In fact, 95% of Class Members have chosen to take
22 part in the Settlement.”). The Court should therefore grant final approval.

23 Courts have typically deemed such a small number of objections as affirmative support
24 for settlement approval, as the number of objections suggests an overall favorable reaction from
25 the class. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (“The court
26 had discretion to find a favorable reaction to the settlement among class members given that, of
27 376,301 putative class members to whom notice of the settlement had been sent, 52,000
submitted claims forms and only fifty-four submitted objections.”); *see also Churchill Vill.*

1 *LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming final approval where “only 45
2 of the approximately 90,000 notified class members objected to the settlement” and 500 class
3 members opted out);, No. C98–1646C, C93–0178C, 2001 WL 34089697, at *8 (W.D. Wash.
4 Mar. 26, 2001) (“Over 37,000 notices were sent and over 3,600 class members contacted class
5 counsel *Hughes v. Microsoft Corp* wanting to participate. . . . [L]ess than 1% of the class opted
6 out and only nine objections were submitted. In view of the widespread publicity about the
7 settlement, these indicia of the approval of the class of the terms of the settlement support a
8 finding of fairness under Rule 23.”).

9 Although the fact that there is only one objection weighs in favor of approving the
10 settlement, it is also important to consider the substance of those objections. *See Allen v.*
11 *Bedolla*, 787 F.3d 1218, 1223–24 (9th Cir. 2015) (“To survive appellate review, the district
12 court . . . must give a reasoned response to all nonfrivolous objections.”). The objection was
13 submitted by joint accountholders Petr Budey/Natalia Budey. Notice Decl., Ex. A. Petr and
14 Natalia Budey do not even state the grounds on which they object to the Settlement. *Id.* In
15 short, they have presented no arguments or evidence to suggest that the settlement is anything
16 other than fair, adequate, and free from collusion.

17 **B. The Court Need Not Revisit Class Certification.**

18 Certification of a settlement class requires analysis of the factors defined in CR 23.
19 *Pickett*, 145 Wn.2d at 188–89. This Court provisionally certified the Settlement Class in its
20 Preliminary Approval Order, finding that the requirements of Rules 23(a) and (b)(3) were met.
21 Because no relevant facts have changed since the Court certified the Settlement Class, the
22 Court need not revisit class certification here. The Settlement Class should now be finally
23 certified.

24 **CONCLUSION**

25 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant final
26 approval to the Settlement by entering the proposed Final Approval Order.
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DATED this 7th day of February, 2024.

Respectfully submitted,

/s/Kim D. Stephens, P.S.

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*Attorneys for Plaintiff and the Settlement
Class*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 7, 2024, a copy of the foregoing *PLAINTIFF'S*
3 *MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT* was served on counsel
4 at the following address by the methods indicated:

5 6 Counsel for Defendant 7 KC Hovda, WSBA #51291 8 Zachary A. Cooper, WSBA #53526 9 MILLER NASH LLP 10 605 5 th Ave. S., Suite 900 11 Seattle, Washington 98104 12 Phone No.: 206.624.8300 13 Facsimile: 206.340.9599 14 KC.Hovda@MillerNash.com 15 zachary.cooper@millernash.com	16 <input type="checkbox"/> U.S. Mail, Postage Prepaid 17 <input type="checkbox"/> Legal Messenger 18 <input type="checkbox"/> Fax 19 <input checked="" type="checkbox"/> PCSC E-Service/Email
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20 I declare under penalty of perjury under the laws of the state of Washington and the
21 United States that the foregoing is true and correct.

22 Executed this 7th day of February, 2024, at Seattle, Washington.

23 s/ Andrea Toll
24 Andrea Toll, Legal Assistant