

THE HONORABLE KEN SCHUBERT
Department 40
Noted for hearing: September 24, 2021 at 11:00 a.m.
With Oral Argument

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

STEVE R. MARICAL; EMILY J. ANDERSON, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

BOEING EMPLOYEES' CREDIT UNION,

Defendant.

NO. 19-2-20417-6 KNT

FINAL APPROVAL ORDER

The Court, having considered Plaintiff Steve R. Marical's Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees and Costs and Class Representative Service Award, the Settlement Agreement and Release between Plaintiff and Defendant Boeing Employees' Credit Union (BECU), the record in this Action, the submissions and arguments presented by counsel, and, having held a Final Approval Hearing on September 24, 2021, finds that:

1. Unless defined herein, all capitalized terms in this Final Approval Order shall have the same meanings as set forth in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter of the Action and over the settling parties, including the Settlement Class Members.
3. On June 9, 2021, the Court preliminarily approved the Settlement and certified, for settlement purposes, the Settlement Class as defined in the Settlement Agreement.

1 4. Class Administrator JND Legal Administration executed the Notice Program
2 outlined in the Settlement Agreement and approved by the Court in its Preliminary Approval
3 Order as satisfying the requirements of due process and applicable state and federal law. The
4 Notice Program reached 99% of Settlement Class Members by Email Notice or Postcard Notice.
5 The Court finds the Notice Program satisfied CR 23(c)(2) and the requirements of due process,
6 provided the best notice practicable under the circumstances, provided individual notice to all
7 members of the Settlement Class who could be identified through reasonable effort, provided
8 an opportunity for Settlement Class Members to object or exclude themselves from the
9 Settlement, and supports the Court's exercise of jurisdiction over Settlement Class Members as
10 contemplated in the Settlement and this Final Approval Order.

11 5. Settlement Class Members were given an opportunity to object to the
12 Settlement. Settlement Class Member Jesse Lee Zesbaugh filed an objection but then withdrew
13 it. There are thus no objections to the Settlement.

14 6. Shirleitha MC Williams and Araceli A. Ventura, who made timely requests for
15 exclusion, are excluded from the Settlement Class and are not bound by this Final Approval
16 Order.

17 7. The Settlement was arrived at as a result of arms' length negotiations conducted
18 in good faith by experienced attorneys familiar with the legal and factual issues of this case and
19 with the assistance of an experienced mediator.

20 8. The Settlement is fair, reasonable, adequate, and in the best interests of the
21 Settlement Class in light of the complexity, expense, and duration of litigation, as well as the
22 risk involved in establishing liability and damages and in maintaining the class action through
23 trial and appeal.

24 9. The consideration provided by the Settlement constitutes fair value given in
25 exchange for the release of the Settlement Class Members' Released Claims against the
26 Released Parties. The Court finds that the consideration provided to the Settlement Class
27 Members is reasonable, considering the facts and circumstances of the claims and affirmative

1 defenses asserted in the action, and the potential risks and likelihood of success of pursuing
2 trial on the merits.

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

4 10. The Settlement is finally approved as fair, reasonable, and adequate, and in the
5 best interest of the Settlement Class. The Settlement Agreement and Release, which shall be
6 deemed incorporated herein, and all terms of the Settlement are finally approved and shall be
7 consummated in accordance with the terms and provisions thereof, except as amended by any
8 subsequent order issued by the Court.

9 11. Within seven days of this Final Approval Order, the Class Administrator shall
10 identify to BECU the full amount of Settlement Class Member Payments, along with the amount
11 of each Settlement Class Member's Payment to be credited to Current Account Holders'
12 Accounts, as well as the remaining amount of the \$6,000,000 Settlement Fund that shall be
13 paid by BECU into the Escrow Account.

14 12. Within 15 days of the Effective Date, BECU shall deposit into the Escrow Account
15 the \$6,000,000 Settlement Fund, minus the amount of the Settlement Class Member Payments
16 to be credited to the Accounts of Settlement Class Members who are Current Account Holders
17 (unless, as described below in Paragraph 13, BECU elects to have the Settlement Administrator
18 make Payments to Current Account Holders' Accounts; in that case BECU shall deposit into the
19 Escrow Account the \$6,000,000 Settlement Fund).

20 13. Within 30 days after the Effective Date, the Settlement Class Member Payments
21 shall be deposited into Current Account Holders' Accounts. At BECU's option, the Class
22 Administrator may deposit the Settlement Class Member Payments into Current Account
23 Holders' Accounts, in which case, BECU shall pay the additional cost of the Class Administrator
24 effectuating the deposits into Current Account Holders' Accounts.

25 14. Within 30 days after the Effective Date, the Settlement Administrator shall pay
26 from the Escrow Account Former Account Holders their Settlement Class Member Payments by
27 check.

1 15. BECU shall implement the nonmonetary consideration set forth in Section V of
2 the Settlement Agreement.

3 16. Pursuant to CR 23(b)(3), the following Settlement Class is certified for settlement
4 purposes only: all current and former BECU consumer members who are residents of the State
5 of Washington and who, (a) between August 2, 2015, and July 1, 2020, were charged one or
6 more (1) Available Balance Overdraft or Available Balance NSF Fees, where the member's
7 ledger balance would have been sufficient to cover the transaction, (2) Available Balance
8 Overdraft or Available Balance NSF fees, where the member's ledger balance would have been
9 sufficient to cover the transaction but for previously incurred fees described in (1) on the same
10 day; or (b) between August 2, 2013, and July 1, 2020, were charged one or more
11 Representment NSF Fees. The start of the Settlement Class period regarding Representment
12 NSF Fees may be adjusted to August 2, 2015 based on the results of confirmatory discovery.
13 Excluded from the Settlement Class is BECU, its parents, subsidiaries, affiliates, officers and
14 directors, all Settlement Class members who make a timely election to be excluded, and all
15 judges assigned to this litigation and their immediate family members.

16 17. Pursuant to CR 23, the Court appoints Plaintiff Steve Marical as the Class
17 Representative and appoints Terrell Marshall Law Group PLLC, Berger & Montague, P.C., and
18 Smith & Dietrich Law Offices PLLC as Class Counsel.

19 18. For settlement purposes only, the Court finds that the Settlement Class satisfies
20 the applicable prerequisites for class action treatment under CR 23(a) and (b)(3), namely:

- 21 • The Class is so numerous that joinder of all members is impracticable;
- 22 • There are questions of law and fact common to the Class Members;
- 23 • The Class Representative's claims are typical of the claims of the
24 Settlement Class Members;
- 25 • The Class Representative and Class Counsel have fairly and adequately
26 represented and protected the interests of all Settlement Class Members;
- 27 • Common issues predominate over any individualized issues; and

- A class action is superior to thousands of individual actions.

19. Plaintiff, Settlement Class Members, and their successors and assigns have released claims pursuant to the release in the Settlement. The Released Claims are compromised, settled, released, discharged, and dismissed with prejudice by virtue of these proceedings and this Final Approval Order.

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

21. The Court retains continuing and exclusive jurisdiction over the parties and all matters relating to the Action or Settlement, including the administration, supervision, interpretation, construction, and enforcement of the Settlement, including its injunctive provisions, and this Final Approval Order. This Final Approval Order finally disposes of all claims and is appealable.

22. This Final Approval Order is not, and shall not be construed as, an admission by BECU of any liability or wrongdoing in this or in any other proceeding.

23. The Court approves Class Counsel's application for \$1,800,000 in attorneys' fees and \$103,375.30 in costs. This amount reflected actual costs incurred and an attorneys' fee award of 30% of the Settlement Fund. The Court approves an additional amount of up to \$10,000 to pay the cost of Plaintiff's expert's work in calculating the allocations of the Settlement Fund to Settlement Class Members.

24. The Settlement created a common fund for the benefit of Settlement Class Members. Accordingly, the Court finds that the percentage of the fund method is the appropriate method to use in determining the appropriate fee award in this case. *Bowles v. Wash. Dep't of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993).

1 25. Class Counsel obtained an excellent result for the Settlement Class. Class
2 Counsel’s work led to the creation of a \$6,000,000 common fund. In addition, the Settlement
3 provides important nonmonetary relief to the Settlement Class Members.

4 26. An attorneys’ fee award equal to 30% of a common fund is within the typical
5 benchmark for common fund cases and is appropriate in this case. *See Bowles*, 121 Wn.2d at
6 72; *City of Seattle v. Okeson*, 137 Wn. App. 1051, 2007 WL 884827, at *7 (2007) (unpublished)
7 (“Twenty to thirty percent of the recovery is a typical benchmark used in awarding
8 attorney fees under the common fund doctrine, but that figure can be adjusted based on the
9 circumstances of the case.”); *see also Ikuseghan v. Multicare Health Sys.*, No. C14-5539 BHS,
10 2016 WL 4363198, at *2 (W.D. Wash. Aug. 16, 2016) (awarding fee of 30% of the fund); *Estate*
11 *of Brown v. Consumer Law Assocs., LLC*, No. 11-cv-0194-TOR, 2013 WL 2285368, at *4 (E.D.
12 Wash. May 23, 2013) (awarding fee of 30% of the fund).

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

- 15 a. The case demanded litigators with the skill and experience of Class Counsel.
- 16 b. Class Counsel’s work on this matter precluded work on other matters.
- 17 c. A 30% fee in contingency cases is customary in this county.
- 18 d. The excellent results obtained, and the amount of time involved support the
19 award.

20 28. While a lodestar crosscheck is not required when using the common fund
21 method, the Court finds that a crosscheck confirms the reasonableness of the fee award. Using
22 local rates ranging from \$400-\$650 for attorneys and \$125-\$200 for paralegals and staff, Class
23 Counsel’s lodestar is \$946,084. The fee award represents a 1.9 multiplier on this lodestar, which
24 is within the range of typical multipliers and justified by the excellent result Class Counsel
25 obtained for the Settlement Class. *See Bowles*, 121 Wn.2d at 73 (finding reasonable a fee
26 awarded under the percentage method that was three times lodestar); *Bowers v. Transamerica*
27 *Title Ins. Co.*, 100 Wn.2d 581, 601, 675 P.2d 193 (1983) (it was not an abuse of discretion to

1 award a fee that was a 50% premium on lodestar); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d
2 1043, 1050 n.6 (9th Cir. 2002) (collecting cases and finding that in approximately 83% of them
3 the multiplier was between 1.0 and 4.0 and affirming a multiplier of 3.65).

4 29. The Court approves a service award to the Class Representative in the amount of
5 \$7,500, to be paid from the Settlement Fund.

6 30. The Court further approves and authorizes the deduction of an amount not to
7 exceed \$89,810 from the Settlement Fund to cover the Class Administrator's costs.

8 31. The attorneys' fees and costs, service award, and Settlement Administration
9 Costs are to be deducted from the Settlement Fund as set forth in the Settlement Agreement.
10 Save and except as expressly set forth to the contrary in this Final Approval Order, Plaintiff and
11 Class Counsel shall take nothing by their claims and each party shall bear his or its own fees,
12 costs, and expenses in connection with this Action. Except for the award to Class Counsel
13 specified above, no fees or funds shall be paid to any other counsel representing any
14 Settlement Class Members.

15 32. The Court approves Financial Beginnings as the cy pres recipient of 50% of any
16 residual amounts in the Settlement Fund and payment of the remaining 50% of any residual
17 funds to Legal Foundation of Washington in accordance with CR 23(f)(2).

18 33. The Court hereby dismisses the Action against BECU, including all claims against
19 BECU, with prejudice, without costs to any party, except as expressly provided for in the
20 Settlement Agreement and this Order.

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

24 **IT IS HEREBY ORDERED.**

25 DATED this _____ day of _____, 2021.

26
27 _____
THE HONORABLE KEN SCHUBERT

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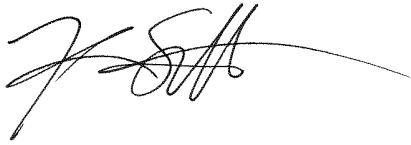
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King County Superior Court
Judicial Electronic Signature Page

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Case Title: MARICAL ET ANO VS BOEING EMPLOYEES CREDIT UNION
Document Title: ORDER RE FINAL APPROVAL
Signed By: Kenneth Schubert
Date: September 27, 2021



Judge: Kenneth Schubert

This document is signed in accordance with the provisions in GR 30.

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O=KCDJA, CN="Ken Schubert:
EPj/VAvS5hGqrSf3AFk6yQ=="