IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

CHRISTINE COLEMAN, on behalf of herself and all others similarly situated, Plaintiff, vs. ALASKA USA FEDERAL CREDIT UNION, Defendant.	)	No. 3:19-cv-0229-HRH

ORDER AND JUDGMENT

Unopposed Motion for Final Approval
of Class Settlement and Unopposed Application for
Attorney Fees, Reimbursement of Costs, and Service Award

Plaintiff moves, unopposed, for Final Approval of a Class Settlement[1] and Plaintiff moves, unopposed, for Attorney Fees, Reimbursement of Costs, Settlement Administration Costs, and a Service Award for Plaintiff Coleman.[2] Counsel for Plaintiff has certified that Defendant does not oppose these motions. Defendant has confirmed its non-opposition to both motions.[3] The definitions and capitalized terms in this order shall have the same

[1]Docket No. 83.

[2]Docket No. 85.

[3]Docket No. 90.

meanings attributed to them in Plaintiff's moving papers and the Settlement Agreement. The Court has read and considered the filings submitted in support of the Motion for Final Approval of Class Settlement and the Application for Attorney Fees, Reimbursement of Costs, Approval of Settlement Administration Costs, and Service Award.

I.

PROCEDURAL BACKGROUND

Plaintiff commenced this Action on August 21, 2019, alleging Defendant improperly assessed and collected Retry Fees from Plaintiff and members of the Settlement Class. Specifically, Plaintiff alleged that pursuant to its Account agreements with Account Holders, Defendant was not permitted to charge Retry Fees on the same item. Plaintiff filed a putative class action Complaint,[4] asserting claims for (1) breach of contract, including breach of the covenant of good faith and fair dealing; (2) unjust enrichment; and (3) violations of Alaska's Unfair Trade Practices Act ("UTPA). All three claims were based on the theory that Defendant allegedly assesses improper Retry Fees.

On October 16, 2019, Defendant filed its Motion to Compel Individual Arbitration,[5] to which Plaintiff filed her opposition[6] on November 29, 2019, and Defendant filed its

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[4]Docket No. 1.

[5]Docket No. 10.

[6]Docket No. 26.

reply[7] on December 6, 2019. On January 9, 2020, the Court entered an Order[8] denying the Motion to Compel Individual Arbitration, and ordered Defendant to answer or respond to the Complaint.

On January 28, 2020, Defendant filed its Motion to Dismiss the Complaint,[9] which Plaintiff opposed[10] on February 18, 2020, and Defendant replied[11] on March 3, 2020. On April 14, 2020, the Court entered an Order[12] granting in part and denying in part the motion. The Court denied the motion with respect to the breach of contract and breach of the implied covenant of good faith and fair dealing claims, while dismissing the unjust enrichment claim without leave to amend.[13]

Following the Court's ruling on the motion to dismiss, Defendant filed its Answer on May 20, 2020.[14] Thereafter, the Parties engaged in formal and informal discovery, including deposing the Defendant. The Parties then participated in a private mediation session before the Honorable Edward A. Infante, Ret., on February 23, 2021. Although they did not settle at mediation, the mediation resulted in a mediator's proposal, to which

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[7]Docket No. 28.

[8]Docket No. 31.

[9]Docket No. 32.

[10]Docket No. 34.

[11]Docket No. 36.

[12]Docket No. 47.

[13]Id.

[14]Docket No. 48.

the Parties later agreed. As a result, the Parties executed the Settlement Agreement on May 3, 2021.[15] Plaintiff filed her Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class on May 20, 2021.[16]

The Court granted Preliminary Approval of the Settlement on June 16, 2021, when the Court entered the Order: (1) conditionally certifying the Settlement Class; (2) preliminarily approving the Settlement Agreement; (3) setting a date for Settlement Class Members to Opt out and a date for Settlement Class Members to make Objections; and (4) setting the Final Approval Hearing date.[17] The Settlement Class Notices were thereafter distributed to members of the Settlement Class pursuant to the terms of the Preliminary Approval Order.[18]

The Final Approval Hearing was held on November 16, 2021, at 1:30 p.m. The hearing was conducted by telephone conference and was attended by Class Counsel and Counsel for Defendant. Class Counsel and Counsel for Defendant spoke in favor of approval of the pending motions. Class Counsel advised the Court that one Settlement Class Member has elected to opt-out of the Settlement Agreement. No Settlement Class Members have filed Objections to the Settlement Agreement or the Attorney Fee Application.

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[15]Docket No. 76-1.

[16]Docket No. 75.

[17]Docket No. 78.

[18]Id. at 4.

II.

LEGAL STANDARD FOR SETTLEMENT APPROVAL

The settlement, voluntary dismissal, or compromise of potential class action claims is governed by Rule 23(e), Federal Rules of Civil Procedure. A class proposed to be certified for purposes of settlement may be settled and voluntarily dismissed "only with the court's approval" after due notice to the proposed class in accord with Rule 23(e)(1). If, as here, the proposed settlement "would bind class members, the court may approve [the settlement] only after a hearing and only on finding that [the settlement] is fair, reasonable, and adequate after consideration of Rule 23(e)(2)(A)-(D). If there are agreements beyond the settlement, they must be identified."

The Ninth Circuit maintains a "strong judicial policy" that favors the settlement of class actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). When the parties to a putative class action reach a settlement agreement prior to class certification, "courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement." Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003). In these situations, settlement approval "requires a higher standard of fairness and a more probing inquiry than may normally be required under Rule 23(e)." Dennis v. Kellogg Co., 697 F.3d 858, 864 (9th Cir. 2012) (internal quotation marks omitted). Before granting approval of a class-action settlement, the Court must first determine whether the proposed class can be certified. Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997) (indicating that a district

court must apply "undiluted, even heightened, attention [to class certification] in the settlement context" in order to protect absentees).

In the following sections, the Court summarizes the provisions of the proposed Class Settlement (Section III), the Notice given Class Members (Section IV), the Settlement Class Certification (Section V), the Settlement Fairness, Reasonableness, and Adequacy (Section VI), the Class Counsel's Costs (Section VIII), the Settlement Administration Costs (Section IX), and a proposed Service Award to Plaintiff (Section X).

III.

THE SETTLEMENT[19]

The total Value of the Settlement is $1,208,447.00 consisting of Defendant's: (a) a $836,000.00 cash Settlement Fund; and (b) debt forgiveness totaling $372,447.00 in Uncollected Retry Fees. Additionally, following the filing of the Complaint, the Defendant modified its disclosures to better inform account holders about the assessment of Retry Fees. The Settlement Fund will be used to pay: (a) Settlement Class Member Payments; (b) any attorneys' fees and costs awarded to Class Counsel; (c) any Service Award to the Class Representative; and (d) the Settlement Administration Costs. A Settlement Class Member may qualify for both a Settlement Class Member Payment and forgiveness of Uncollected Retry Fees. Settlement Class Members need not submit claims. Instead, no later than 30 days after the Effective Date of the Settlement, Defendant and the Settlement Administrator will automatically distribute the Net Settlement Fund. Within 90 days of the

[19]Exhibit A to the Memorandum of Points and Authorities in Support of Plaintiff's Unopposed Motion for Final Approval of Class Settlement, Docket No. 83-1.

Effective Date of the Settlement, Defendant shall forgive, waive, and agree not to collect the Uncollected Retry Fees.

All Settlement Class Members who are entitled to a Settlement Class Member Payment will receive a pro rata distribution from the Net Settlement Fund based on the number of Relevant Retry Fees, as identified by Plaintiff's expert, that the Settlement Class Member paid or was assessed during the Class Period. In exchange for the benefits conferred by the Settlement, all Settlement Class Members are deemed to have released the Released Parties from claims relating to the subject matter of the Action.

IV.

NOTICE

A prerequisite to Final Approval is a finding of adequate Notice to the class. Fed. R. Civ. P. 23(e)(1). In the Preliminary Approval Order, the Court approved the form, content, and method of providing Notice proposed by the Parties. The Settlement Class Notices were thereafter distributed to members of the Settlement Class pursuant to the terms of the Preliminary Approval Order.[20] The Court approved Notice Program has been fully implemented. The Court finds that the Notices given to the Settlement Class fully and accurately informed Settlement Class Members of all material elements of the proposed Settlement and constituted valid, due, and sufficient Notice to Settlement Class Members consistent

[20]Exhibit B, Joint Declaration of Class Counsel, ¶ 53-55, Docket No. 83-2; Exhibit C, Declaration of Cameron Azari Regarding Implementation of Notice and Settlement Administration, Docket No. 83-3; Case Status Report, Exhibit 1, Supplemental Declaration of Cameron Azari, Docket No. 91-1.

with all applicable requirements. The Court further finds that the Notice Program satisfies due process.

V.

SETTLEMENT CLASS CERTIFICATION

Plaintiff seeks class certification under Fed. R. Civ. P. 23(a) and (b)(3) of the same Settlement Class the Court preliminarily certified:

> All current and former members of Defendant with one or more Accounts, who were charged a Retry Fee during the Class Period.
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> Excluded from the Settlement Class are Alaska USA, its parents, subsidiaries, affiliates, officers and directors, all Settlement Class Members who make a timely election to be excluded, and all judges assigned to this litigation and their immediate family members.[21]

"The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 348 (2011). Prerequisites for certification under Rule 23(a) are a showing of numerosity, commonality, typicality and adequacy. Under Rule 23(b)(3), certification is appropriate if the predominance and superiority requirements are satisfied.

Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate. "The Rule's four requirements – numerosity, commonality, typicality, and adequate representation – effectively limit the class claims to

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[21]Order re Motion for Preliminary Approval (June 16, 2021) at 2 of 9, Docket No. 78.

those fairly encompassed by the named plaintiff's claims." Dukes, 564 U.S. at 349 (internal quotation marks and citations omitted).

1. Numerosity

A proposed class must be "so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. P. 23(a)(1). "There is no magic number required to satisfy numerosity; instead, courts consider the facts of each specific case." Crosby v. Calif. Physicians' Srvc., 498 F. Supp. 3d 1218, 1229 (C.D. Cal. 2020).

Here, there are 30,782 Class Members. Plainly, it would be impractical to require the joinder of all 30,782 Class Member / Account Holders of Defendant.

2. Commonality

To meet the commonality factor of Rule 23(a)(2), Plaintiff "must demonstrate that [she] and the proposed class members have suffered the same injury and have claims that depend on a common contention capable of class-wide resolution." Willis v. City of Seattle, 943 F.3d 882, 885 (9th Cir. 2019). "Capable of class-wide resolution 'means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.'" Id. (quoting Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011)). "The commonality element may be fulfilled if the court can determine 'in one stroke' whether a single policy or practice which the proposed class members are all subject to 'expose them to a substantial risk of harm.'" Id. (quoting Parsons, 754 F.3d at 678).

Interpretation of an identical Account agreement underlies the claim of each Settlement Class Member. Each Settlement Class Member claims that Defendant misapplied the

Account agreement by assessing Retry Fees on single Account items. Each Settlement Class Member has suffered the same injury on a per-item basis. Here, the common, dispositive issue of whether the Defendant breached its Account agreement by assessing improper Retry Fees satisfies the commonality element.

3. Typicality

The typicality requirement of Rule 23(a)(3) focuses on the relationship of facts and issues between the class and its representatives.

> The commonality and typicality requirements of Rule 23(a) tend to merge. Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence."

Dukes, 564 U.S. 338, 349 n.5, (internal quotation marks and citation omitted). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." Hanlon, 150 F.3d at 1020 (internal citations and quotation marks omitted). "The typicality prerequisite of Rule 23(a) is fulfilled if 'the claims or defenses of the representative parties are typical of the claims or defenses of the class.'" Hanlon, 150 F.3d at 1020. Fed. R. Civ. P. 23(a)(3). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." Id.

Here, Plaintiff is typical of the Settlement Class she seeks to represent. She was subject to the same Account agreement and suffered the same injury from the same course

of conduct as did the unnamed Settlement Class Members. Plaintiff therefore meets the criteria of Rule 23(a)(3).

4. Adequacy

To serve as a Class Representative, one must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This requirement is aimed at protecting the due process rights of absent members who will be bound by a class action judgment. Hanlon, 150 F.3d at 120. "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Id. (citation omitted).

Plaintiff and Class Counsel have demonstrated their experience and ability to vigorously prosecute this Action on behalf of the Settlement Class. See Section I, PROCEDURAL BACKGROUND and Joint Declaration of Class Counsel.[22] At no time has Defendant or anyone else suggested the possibility of a conflict of interest between Plaintiff and Counsel on the one hand, and Proposed Class Members on the other hand.

The Court finds that there is no conflict of interest between Plaintiff or Counsel and the Settlement Class as a whole. The Court further finds that Class Counsel and Plaintiff have vigorously prosecuted this case on behalf of the Class.

5. Predominance and Superiority

Plaintiff seeks class certification under Rule 23(b)(3). Where, as here, the requirements of Rule 23(a) are met, class certification is proper under Rule 23(b)(3) if "the court

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[22]Docket No. 83-2, ¶¶ 40-41, and Exhibits 1-3.

finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

A. Predominance.

"'The predominance inquiry focuses on the relationship between the common and individual issues and tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" Senne, 934 F.3d at 927 (quoting Vinole v. Countrywide Home Loans, Inc., 571 F.3d 935, 944 (9th Cir. 2009)). "In determining whether the predominance requirement is met, courts have a 'duty to take a close look at whether common questions predominate over individual ones' to ensure that individual questions do not 'overwhelm questions common to the class.'" Id. (quoting Comcast Corp. v. Behrend, 569 U.S. 27, 34 (2013)).

As set out more completely above,[23] the common, dispositive issue in this Action is whether or not the Defendant breached its Account agreement by assessing improper Retry Fees. Were the Action to proceed without the Settlement, that issue would predominate the litigation. There is but one notable individual question: "The number of Accounts of Class Action Members which were subject to Retry Fees and the number of Retry Fees assessed as to each Account by Defendant. Inasmuch as that information comes from Defendant's records, it is quite unlikely that there will be any dispute as to the number of Accounts or number of Retry Fees imposed.

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[23] Supra, page 9.

The Court finds that there are unlikely to be individual issues and that interpretation of the Account agreement is the dominant issue in this case.

B. Superiority

The superiority prong of Rule 23(b)(3) requires the Court to consider whether the "class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

> Generally, the factors relevant to assessing superiority include "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action."

Wolin v. Jaguar Land Rover North Amer., LLC, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Fed. R. Civ. P. 23(b)(3)(A–D)). "This list is not exhaustive and other factors may be considered." Id.

There is no evidence before the Court of Class Members having any individual interest in controlling this litigation. There have been no objections to the Settlement Agreement, and only one potential class member has opted out. There is no evidence of any existing litigation by Class Members. Concentration of some 30,000 claims into one proceeding is highly desirable. In light of the Settlement Agreement, the Court anticipates no difficulty in the management of this case as a class action.

The Court finds that this Action satisfies the Rule 23(a) and (b)(3) requirements for class certification for settlement purposes.

VI.

SETTLEMENT FAIRNESS

The Ninth Circuit's recent decision in Briseño v. Henderson, 998 F.3d 1014, 1023-1024 (9th Cir. 2021), emphasizes that Rule 23(e) sets forth the factors to be considered in determining whether a class action settlement is fair, adequate, and reasonable. Specifically, the Court considers whether:

> (A) the class representatives and class counsel have adequately represented the class;
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> (B) the proposal was negotiated at arm's length;
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> (C) the relief provided for the class is adequate, taking into account:
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> (i) the costs, risks, and delay of trial and appeal;
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> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
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> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
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> (iv) any agreement required to be identified under Rule 23(e)(3); and
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> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

A. Plaintiff and Class Counsel Have Adequately Represented the Class

The Court has already found that Plaintiff and Class Counsel have adequately represented the Class. Based on the submissions made in support of the motion for Final Approval and the application for fees, as well as the docket in this case, Class Counsel had

sufficient information to negotiate a fair Settlement and had adequately prosecuted this Action with Plaintiff's assistance.

B. The Proposal Was Negotiated at Arm's Length

Plaintiff and the Settlement Class, by and through Class Counsel, have sufficiently investigated the facts and law relating to the matters alleged in the Complaint, including through discovery and dispositive motion practice, legal research as to the sufficiency of the claims, an evaluation of the risks associated with continued litigation, trial, and/or appeal. The Settlement was reached as a result of arm's length negotiations between Class Counsel and Defendant's counsel.

C. The Relief Provided for the Class Is Adequate

As set out in Section VIII, below, costs incurred to date in furtherance of the Action have been reasonable. Without a settlement of the Action, the Parties will expend significant resources in further litigation, whereas the Settlement provides substantial, immediate relief to Class Members. Were the Action to continue, Defendant would possibly oppose Class Certification, would surely move for summary judgment on the breach of contract claim, and would take an appeal in the event of adverse judgment. The Settlement obviates those risks and the delays which necessarily attend such risks.

The Settlement Fund will be distributed to Class Members on a pro rata basis without the necessity of the submission of claims by or on behalf of Class Members.[24] Uncollected Retry Fees will be forgiven within 90 days without the necessity of action by

[24]Exhibit A to the Memorandum of Points and Authorities in Support of Plaintiff's Unopposed Motion for Final Approval of Class Settlement, ¶ 62.d.i, Docket No. 83-1.

Class Members.[25] The Court finds the foregoing to be a highly effective method of distributing relief to the Class.

The terms of the proposed award of attorney fees is discussed in Section VII, below, where the Court has approved attorney fees and the timing of payment.

There are no agreements requiring identification pursuant to Rule 23(e)(3).

Class Counsel estimates that the Settlement will afford Plaintiff and the Settlement Class a recovery of approximately 47% of their most probable damages, without the further risks attendant to litigation. The Court estimates that the participation rate will approach 100% because payments from the Settlement Fund are made to known Class Members without the necessity of any action on the part of Class Members. The recovery rate and participation rate are both unusually high for class action litigation. The relief provided by the Settlement Agreement is adequate.

D. Equitable Treatment of Class Members

The Net Settlement Fund (that is, the Settlement Fund minus attorneys' fees , costs incurred by Class Counsel, Administrative Costs, and Service Award) is to be disbursed to Settlement Class Members based upon the number of Retry Fees charged to or paid by Retry Fee Class Members. Put more simply, that means that the Settlement Fund of $836,000.00 is to be divided and disbursed such that each Class Member will receive his/her pro rata share of the Net Settlement Fund based upon the number of Retry Fees paid by each Settlement Class Member. Those Settlement Class Members who were assessed but did not pay Retry Fees obtain the forgiveness of outstanding Uncollected Retry Fees but

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[25] Id., ¶ 43.

do not receive any disbursement from the Net Settlement Fund. They benefit from the forgiveness but are not entitled to a payment from the Net Settlement Fund.

The foregoing effects equitable treatment of Class Members.

In consideration of the foregoing, the Court finds that the Settlement Agreement is fair, adequate, and reasonable.

VII.

ATTORNEYS' FEES

In the application for attorney's fees and costs,[26] Class Counsel request $302,111.75 in fees, which equates to 25% of the $1,208,447.00 Value of the Settlement. In common fund cases such as this, the Court has discretion to employ either the percentage of the fund method or the lodestar method to calculate a proper fee award. Bluetooth, 654 F.3d at 942. In determining fees, "[r]easonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion." Fischel v. Equitable Life Assur. Soc'y of U.S., 307 F.3d 997, 1007 (9th Cir. 2002).

Under the percentage of the fund method, the Court awards some specific percentage of the fund as fees. When selecting the percentage, courts in the Ninth Circuit use 25% as the benchmark percentage for the fee award, which may be adjusted upward or downward to account for the circumstances of the case. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002). Here, Class Counsel request 25% of the Value of the Settlement, which consists of a $836,000.00 cash Settlement Fund and Defendant's agreement to forgive $372,447.00 in Uncollected Retry Fees. The Court considers both cash and cash

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[26]Docket No. 85

equivalents, such as debt forgiveness of the Uncollected Retry Fees, when determining the denominator. In re Pacific Enterprises Sec. Litig., 47 F.3d 379 (9th Cir. 1995). The application of the benchmark in this case would result in an award of $302,111.75 in attorneys' fees.

As explained above under the settlement fairness analysis, the Settlement will afford Settlement Class Members significant benefits. This Action presented a complex issue: whether Defendant breached its Account agreement by assessing Retry Fees. Given the novelty of the issue and the fact that the case was undertaken by Class Counsel on a contingent basis, they faced a risk of nonpayment. The Settlement Class Members have reacted favorably with no objections and only one opt-out. Attached as Exhibit 1 is complete list of all Settlement Class Members who have timely opted-out of the Settlement.

In Plaintiff's Counsel's memorandum of points and authorities in support of Plaintiff's application for attorney fees,[27] Counsel has performed a "lodestar" fee calculation. Counsel's lodestar is $221,362.50. As discussed above, counsel requests fees in the amount of $302,111.75, which implies a lodestar multiplier of 1.36. In light of the recovery rate and participation rate achieved by Plaintiff, a lodestar multiplier of 1.36 is reasonable.

Plaintiff's application for attorney fees in the amount of $302,111.75 is approved on the percentage of fund basis. The Court perceives no need to adjust the benchmark 25% fee. The Court prefers the percentage of fund method of calculating class action fees because that fee formulation is sensitive to the amount recovered, where as the lodestar

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[27]Docket No. 85 at 13, et seq.

method is sensitive, in a subjective way, to the amount of time devoted to the action and attorney fee rates which vary widely, especially when out-of-state counsel are involved.

VIII.

CLASS COUNSEL'S COSTS

Class Counsel also seek $32,093.04 in costs.[28] Upon review of the itemized lists provided in Class Counsel's Joint Declaration, the Court finds the costs were necessarily incurred to prosecute this Action. Therefore, Class Counsel's request for $32,093.04 in costs is granted.

IX.

SETTLEMENT ADMINISTRATION COSTS

Class Counsel have asked the Court to approve the payment of the Settlement Administration Costs.[29] The Court has received confirmation that past and future costs of the Settlement Administrator will not exceed the amount budgeted for settlement administration.[30] Having considered argument of Class Counsel as to what work has been performed and having determined that the work was necessary and fees and costs reasonable, the Court approves payment of the Settlement Administration Costs.

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[28]Joint Declaration of Class Counsel at 15, Docket No. 85-1.

[29]Memorandum of Points and Authorities in Support of Unopposed Application for Attorneys' Fees at 24, Docket No. 85.

[30]Supplemental Declaration of Azari at 7 of 9, Docket No. 91-1.

X.

SERVICE AWARD

Class Counsel request a Service Award of $5,000.00 for the Plaintiff for serving as the Class Representative.[31] Service Awards such as this "are discretionary and are intended to compensate class representatives for work done on behalf of the class, [and] to make up for financial or reputational risk undertaken in bringing the action . . . ." Rodriguez v. West Publ'g Corp., 563 F.3d 948, 958-59 (9th Cir. 2009). The amount of the award should be related to the actual service or value the class representative provides to the class. See id. at 960.

A $5,000.00 Service Award to the Class Representative is reasonable, given that she publicly disclosed her financial difficulties for the benefit of the class. Moreover, Plaintiff conferred with Class Counsel on a number of occasions, responded to discovery and gathered documents pertaining to her claim.

Therefore, the requested Service Award in the amount of $5,000.00 to Plaintiff for serving as the Class Representative is granted.

XI.

ORDER AND JUDGMENT

It is ORDERED that:

1. For the foregoing reasons, Plaintiff's Motion for Final Approval of Class Action Settlement is GRANTED, and

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[31]Memorandum of Points and Authorities in Support of Unopposed Application for Attorneys' Fees at 18, Docket No. 85.

2. Plaintiff's Application for Attorneys' Fees, Reimbursement of Costs, Settlement Administration Costs, and Service Award is GRANTED.

It is ADJUDGED that:

1. The Court has personal jurisdiction over the Parties and the Settlement Class Members, venue is proper, and the Court has subject matter jurisdiction to approve the Settlement and to enter this Final Approval Order.

2. The Court hereby finally certifies as the Settlement Class for settlement purposes only:

> All current and former members of Defendant with one or more Accounts, who were charged a Retry Fee during the Class Period.
>
> Excluded from the Settlement Class are Alaska USA, its parents, subsidiaries, affiliates, officers and directors, all Settlement Class Members who make a timely election to be excluded, and all judges assigned to this litigation and their immediate family members.

3. The Court reaffirms the appointment of Plaintiff as Class Representative.

4. The Court reaffirms the appointment of Class Counsel listed in the Agreement and approved in the Preliminary Approval Order.

5. The Court reaffirms the appointment of the Settlement Administrator.

6. The Court finds that the Notice Program was carried out as set forth in the Agreement and in the Preliminary Approval Order, was the best Notice practicable under the circumstances, was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, the right to object or opt-out, and that the Notice Program constituted adequate and sufficient Notice to all persons entitled to receive Notice,

including members of the Settlement Class, and complied with and satisfied all requirements of law, including Due Process.

7. The Court finds that the Class Action Settlement is fair, adequate, and reasonable.

8. The terms of the Settlement, as set forth in the Agreement, and of this Final Approval Order, are forever binding on, and shall have res judicata and preclusive effect in all pending and future lawsuits maintained by the Class Representative and all Settlement Class Members. The Settlement Class Member who opted-out and is listed on Exhibit 1 to this Order is not bound by the Settlement.

9. The Settlement Fund shall be distributed as provided in the Settlement Agreement.[32]

10. Should any funds remain after the distribution of the class member awards, the Parties shall distribute the remaining funds, if any, to cy pres recipient, Financial Reality Foundation.

11. Upon the occurrence of the Effective Date of the Settlement, the following releases shall take effect:

a. Plaintiff and all Settlement Class Members, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by entireties, agents, attorneys, and all those who claim through them or on

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[32]Settlement Agreement, Exhibit A, ¶ 62, Docket No. 83-1, and in this Order and Judgment.

their behalf shall automatically be deemed to have fully and irrevocably released and forever discharged Defendant and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them, of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Action relating to the assessment of Retry Fees.

b. Each Settlement Class Member is barred and shall be permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against any Released Party in any forum, action, or proceeding of any kind.

c. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applic-

able to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by the Agreement, including by the release herein and that all of their claims in the Action shall be released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual Notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement.

d. Nothing in the Agreement shall operate or be construed to release any claims or rights that Defendant has to recover any past, present, or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans or any other debts with Defendant, pursuant to the terms and conditions of such accounts, loans, or any other debts, with the exception of the Uncollected Retry Fees. Likewise, nothing in the Agreement shall operate or be construed to release any defenses or rights of set-off that Plaintiff or any Settlement Class Member has, other than with respect to the Released Claims.

12. The Action[33] and all Released Claims are dismissed with prejudice. These dismissals are without costs or fees to any Party, except as specifically provided in the Agreement.

13. The Court retains jurisdiction over implementation and enforcement of the Agreement.

DATED at Anchorage, Alaska, this 17th day of November, 2021.

/s/ H. Russel Holland
H. Russel Holland
United States District Judge

[33]Docket No. 1.

EXHIBIT 1

1. Rosa Buirge