

THE HONORABLE KRISTIN RICHARDSON
Department 52
Noted for Consideration: Tuesday, October 12, 2021
Without Oral Argument

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

ANTHONY DEIEN, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

SEATTLE CITY LIGHT,

Defendant.

NO. 19-2-21999-8 SEA

**PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Page No.

I. INTRODUCTION 1

II. RELIEF REQUESTED 1

III. STATEMENT OF FACTS..... 2

 A. Plaintiff’s claims..... 2

 B. The parties engaged in substantial discovery and motion practice 2

 C. Settlement negotiations 2

 D. The proposed settlement 3

 1. The Settlement Class 3

 2. Settlement Relief. 3

 a. Monetary relief 3

 b. Injunctive relief 4

 c. Settlement administration expenses 4

 d. Service award..... 5

 e. Attorneys’ fees and litigation costs 5

 3. Release 5

 4. Settlement Class Members’ rights 5

IV. STATEMENT OF ISSUES..... 5

I. EVIDENCE RELIED UPON 6

II. ARGUMENT AND AUTHORITY 6

 A. Class action approval process..... 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

B. The settlement satisfies the criteria for preliminary approval..... 6

1. The settlement is the product of serious, informed,
arm’s-length negotiations..... 7

2. The settlement has no obvious deficiencies and does not grant
preferential treatment to any Class Member 7

3. The settlement falls within the range of possible judicial approval 8

C. Preliminary certification of the Class is appropriate 9

1. The Class satisfies the CR 23(a)requirements 9

2. The Class satisfies the requirements of CR 23(b)(3)..... 10

D. The proposed notice program should be approved 12

E. Schedule for final approval..... 12

VII. CONCLUSION..... 13

VIII. LCR 7(B)(5)(B)(VI) CERTIFICATION 13

1 **TABLE OF AUTHORITIES**

2 **Page No.**

3 **STATE CASES**

4 *Bowles v. Dep't of Ret. Sys.*,
121 Wn.2d 52, 847 P.2d 440 (1993) 8

5

6 *Chavez v. Our Lady of Lourdes Hosp. at Pasco*,
190 Wn.2d 507, 415 P.3d 224 (2018). 10, 11

7

8 *City of Seattle v. Blume*,
134 Wn.2d 243, 947 P.2d 223 (1997) 6

9

10 *Miller v. Farmer Bros. Co.*,
115 Wn. App. 815, 64 P.3d 49 (2003) 9

11

12 *Pellino v. Brink's Inc.*,
164 Wn. App. 668, 267 P.3d 383 (2011) 10

13

14 *Pickett v. Holland Am. Line Westours, Inc.*,
145 Wn.2d 178, 35 P.3d 351 (2001) 6

15

16 *Probst v. Wash. Dept. of Ret. Sys.*,
150 Wn. App. 1062, 2009 WL 1863993 (Wash. Ct. App. June 30, 2009) 8

17

18 *Smith v. Behr Process Corp.*,
113 Wn. App. 306, 54 P.3d 665 (2002) 10

19 **FEDERAL CASES**

20 *Amchem Prod., Inc. v. Windsor*,
521 U.S. 591 (1997) 11

21

22 *Betorina v. Randstad US, L.P.*,
No. 15-cv-03646-EMC, 2017 WL 1278758 (N.D. Cal. Apr. 6, 2017) 7

23

24 *Class Plaintiffs v. City of Seattle*,
955 F.2d 1268 (9th Cir. 1992) 6

25

26 *Hansen v. Ticket Track, Inc.*,
213 F.R.D. 412 (W.D. Wash. 2003) 10

27

| | | |
|----|---|-----------|
| 1 | <i>In re Online DVD-Rental Antitrust Litig.,</i> | |
| | 779 F.3d 934 (9th Cir. 2015) | 8 |
| 2 | | |
| 3 | <i>Mullane v. Cent. Hanover Bank & Trust Co.,</i> | |
| | 339 U.S. 306 (1950) | 12 |
| 4 | | |
| 5 | <i>Pelletz v. Weyerhaeuser Co.,</i> | |
| | 592 F. Supp. 2d 1322 (W.D. Wash. 2009) | 8 |
| 6 | | |
| | STATE RULES | |
| 7 | | |
| 8 | CR 23(a)..... | 9 |
| 9 | CR 23(a)(1) | 9 |
| 10 | CR 23(b)(3) | 10 |
| 11 | CR 23(c)(2) | 12 |
| 12 | CR 23(e)..... | 12 |
| 13 | | |
| | FEDERAL RULE | |
| 14 | | |
| 15 | Fed. R. Civ. P. 23(e) | 7 |
| 16 | | |
| | STATE STATUTES AND REGULATIONS | |
| 17 | RCW 80.04 | 2, 10, 11 |
| 18 | WAC 480-100 | 2, 10, 11 |
| 19 | | |
| | OTHER AUTHORITIES | |
| 20 | | |
| 21 | SMC 21.49 | 2 |
| 22 | William B. Rubenstein, | |
| 23 | Newberg on Class Actions § 8:17 | 12 |
| 24 | William B. Rubenstein, | |
| 25 | Newberg on Class Actions § 13:1 (5th ed. June 2021 update)..... | 6, 7 |
| 26 | | |
| 27 | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

I. INTRODUCTION

Plaintiff filed this lawsuit on behalf of a class of Seattle City Light residential customers who received bills based on estimated electricity usage followed by bills based on actual usage between August 21, 2015 and June 8, 2020. He alleges that Seattle City Light's bills based on estimated usage were often inaccurate and led to SCL overcharging customers in later billing cycles in an effort to correct what it considered prior underbilling. SCL denies all liability and wrongdoing. After substantial investigation and discovery, the parties engaged in arm's-length settlement negotiations, including private mediation.

The parties' negotiations resulted in an outstanding settlement for the proposed Settlement Class. In addition to establishing a Settlement Fund in the amount of \$3,500,000, SCL agreed to establish a dedicated customer service team to address issues regarding estimated bills that will have authority to investigate and recalculate bills, write off charges, and authorize payment plans for customers who need assistance paying their bills. SCL will post on its website an explanation of how it bills customers for electricity and provide information to customers about its payment assistance programs. The Settlement Fund will consist of either cash or retail bill credits used to pay claims filed by Settlement Class Members, after deducting Court-approved administration costs, attorneys' fees and expenses, and a service award to Plaintiff.

Plaintiff moves for preliminary approval of the proposed settlement. The settlement satisfies the requirements for preliminary approval because it was negotiated at arm's length and is within the range of possible approval.

II. RELIEF REQUESTED

Plaintiff requests that the Court grant preliminary approval of the settlement, certify the Settlement Class for settlement purposes, appoint Plaintiff to serve as class representative and Terrell Marshall Law Group to serve as class counsel, approve the proposed notice plan, and schedule the Final Approval Hearing.

1 **III. STATEMENT OF FACTS**

2 **A. Plaintiff's claims.**

3 Plaintiff filed this lawsuit on August 21, 2019, alleging that when, in 2016, SCL
4 attempted to transition to digital meters and a new software system that would automate the
5 receipt of meter reads directly from the digital meters, the new system did not read customers'
6 meters as hoped and sometimes resulted in inaccurate readings. Plaintiff alleged that because
7 SCL no longer had sufficient numbers of meter readers, SCL began estimating. Plaintiff alleged
8 that the estimated bills were often inaccurate and, in attempting to correct what it considered
9 to be prior underbilling, SCL issued bills for hundreds or thousands of dollars to residential
10 customers. Plaintiff also alleged that "true-up" bills often charged higher current rates for
11 electricity used in prior years at a time when lower rates were in effect, and often billed an
12 incorrect number of kilowatt hours at more expensive "End Block" rates. Plaintiff asserted
13 claims under the Washington Consumer Protection Act, under RCW 80.04 for alleged violations
14 of WAC 480-100, for breach of contract for alleged violations of SMC 21.49, and for civil fines
15 and forfeitures under SMC 21.49. Terrell Decl. ¶ 12.

16 **B. The parties engaged in substantial discovery and motion practice.**

17 Plaintiff served discovery requests on SCL and obtained records from the City Auditor.
18 SCL produced nearly 70,000 pages of documents. SCL also produced substantial discovery,
19 including millions of billing data records, for purposes of mediation. SCL engaged an expert to
20 conduct a complex analysis of bills involving estimated reads. Plaintiff also engaged experts to
21 analyze SCL's billing and metering systems and billing records to evaluate Plaintiff's claims and
22 damages. *Id.* ¶ 13.

23 SCL's motion to dismiss and discovery to Plaintiff were pending when the settlement
24 was negotiated. *Id.* ¶ 14.

25 **C. Settlement negotiations.**

26 The parties mediated on November 5, 2020 and February 25, 2021, with the assistance
27 of Louis Peterson of Hillis Clark Martin & Peterson P.S., an experienced mediator of consumer

1 class action lawsuits. The parties agreed to the basic terms and then continued their
2 adversarial, arm's-length negotiations until September 15, 2021, when they finalized the
3 Settlement Agreement. Terrell Decl. ¶ 15.

4 **D. The proposed settlement.**

5 The details of the settlement are outlined in the Settlement Agreement and Release
6 (SA). Terrell Decl. Ex. 1.

7 1. The Settlement Class.

8 The proposed Settlement Class includes all Seattle City Light residential customers who
9 received one or more bills based on estimated usage followed by a bill based on actual usage
10 between August 21, 2015 and June 8, 2020 and who do not timely and properly opt out from
11 the settlement. SA § III.A.4.

12 2. Settlement Relief.

13 a. *Monetary relief.*

14 SCL will create a common fund of \$3,500,000 in cash and retail bill credits. SA § III.E.1.
15 After deducting Court-approved settlement administration expenses, attorney's fees and costs,
16 and a service award to Plaintiff, the Net Settlement Amount will be distributed to Settlement
17 Class Members who submit a valid claim form online or by mail. SA § III.G.7.

18 The Net Settlement Amount will be allocated 75% to an Elevated Bill Fund, used to
19 compensate Settlement Class Members who Plaintiff's expert identifies as having received a
20 bill in which the average kilowatt hours per day was at least 400% more than the average for a
21 comparable billing period, and 25% to a True Up Fund, used to compensate the remaining
22 Settlement Class Members who received at least one estimated bill followed by an actual
23 consumption bill. *Id.* The Elevated Bill Fund will be distributed *pro rata* based on each claimant's
24 damages as calculated by Plaintiff's expert and the True Up Fund will be distributed to the
25 remaining claimants in equal amounts. *Id.* Current SCL customers will receive a retail bill credit
26 and former customers will be issued checks. *Id.* Any funds leftover after the date for cashing
27 checks has passed will be transferred to SCL's Emergency Low Income Assistance Program. *Id.*

1 **b. Injunctive relief.**

2 Beginning with the Effective Date of the Settlement Agreement, SCL will implement:

- 3 (1) enhanced communication on its website to help residential customers better
4 understand its billing practices and procedures, information on contacting the Specialized
5 Customer Care Team, and information on all available bill-relief programs;
- 6 (2) a standardized customer support checklist (based on Exhibit A to the Settlement
7 Agreement) for customer service staff to use in addressing estimated billing issues;
- 8 (3) a Specialized Customer Care Team dedicated to resolving estimated billing issues;
- 9 (4) an investigative process to resolve disputes regarding the accuracy of meter readings
10 and billing recalculations and adjustments using a table based on the average electricity
11 consumption of an SCL residential customer when the investigation determines that an
12 estimated bill or bill following an estimated bill is not attributable to Customer Conduct;
- 13 (5) billing collection write-offs upon request for customers with debt more than 36
14 months old based on billing corrections associated with estimated bills; and
- 15 (6) extended payment arrangements for customers who request additional time to pay
16 a True Up bill. SA § III.E.2.

17 These measures are intended to last for one year from the Effective Date but the
18 substance of the provisions (except billing correction write-offs) are intended to continue,
19 subject to SCL's modifications and adjustments. SA § III.E.2. At the end of the one-year period,
20 SCL will itemize all modifications with a brief description of the reasons in a report to Plaintiff's
21 Counsel and made available on its website. *Id.*

22 **c. Settlement administration expenses.**

23 The parties selected P&N Class Action Services to serve as Settlement Administrator.
24 P&N will establish a Settlement Website, send notice to Settlement Class Members, process
25 exclusion requests and claim forms, and mail Settlement Award checks to Class Members who
26 are not current SCL customers. SA §§ III.G.3–7. P&N estimates administration expenses of
27 \$168,509. Terrell Decl. ¶ 17.

1 d. *Service award.*

2 Plaintiff's Counsel will request Court approval of a service award of \$2,500 for Plaintiff
3 to compensate him for the time and effort he dedicated to this litigation. SA § III.I; Terrell Decl.
4 ¶ 18.

5 e. *Attorneys' fees and litigation costs.*

6 Plaintiff's Counsel will move for an award of attorneys' fees and litigation costs of 25%
7 of the common fund to be paid from the Settlement Fund. SA § III.H.

8 3. Release.

9 In exchange for the benefits provided by the settlement, Settlement Class Members will
10 release claims based on the factual allegations in this case against SCL and other Released
11 Parties, which include SCL's present, former and future affiliates, parents, subsidiaries, other
12 municipal departments of the City of Seattle, officers, directors, employees, and attorneys. SA
13 § III.D.

14 4. Settlement Class Members' rights.

15 Settlement Class Members can exclude themselves from the Settlement Class by mailing
16 a letter to the Settlement Administrator with their name, address, and signature postmarked by
17 the Opt-Out Deadline. Individuals who exclude themselves will not be Settlement Class
18 Members and will not be bound by the Settlement Agreement, its release, or the judgments of
19 the Court. SA § III.G.5.

20 Settlement Class Members who do not exclude themselves may file a written objection
21 and may appear at the Final Approval Hearing after filing a notice of appearance with the Court.
22 SA § III.G.4.

23 **IV. STATEMENT OF ISSUES**

24 Whether the Court should grant preliminary approval of the proposed settlement,
25 preliminarily certify the Settlement Class for settlement purposes, direct notice to Settlement
26 Class Members, and schedule a Final Approval Hearing.

27

1 **V. EVIDENCE RELIED UPON**

2 Plaintiff relies on the declaration of Beth Terrell and the pleadings and records in this
3 case.

4 **VI. ARGUMENT AND AUTHORITY**

5 **A. Class action approval process.**

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

13 Courts use a three-step process to approve class action settlements: (1) preliminary
14 approval of the proposed settlement; (2) notice of the settlement to all affected class members;
15 and (3) a final approval hearing at which class members may be heard and evidence and
16 argument concerning the fairness, adequacy, and reasonableness of the settlement may be
17 presented. William B. Rubenstein, *Newberg on Class Actions* § 13:1 (5th ed. June 2021 update).
18 This procedure safeguards class members’ due process rights and enables the court to fulfill its
19 role as the guardian of class interests.

20 The approval of a class settlement is within the Court’s sound discretion. *See Pickett*,
21 145 Wn.2d at 190. Because no class has been certified, the court should also make a
22 preliminary determination that the proposed class may be certified for settlement purposes.
23 *Newberg* § 13:16.

24 **B. The settlement satisfies the criteria for preliminary approval.**

25 At the preliminary approval stage, courts typically consider whether the proposed
26 settlement appears to be the product of non-collusive negotiations, has no obvious
27 deficiencies, does not improperly grant preferential treatment to class representatives or

1 segments of the class, and falls within the range of possible judicial approval. Newberg § 13.10.¹
2 The proposed settlement satisfies these requirements.

3 1. The settlement is the product of serious, informed, arm’s-length negotiations.

4 This settlement is the result of adversarial litigation and arm’s-length negotiations
5 between attorneys experienced in this type of litigation. *Pickett*, 145 Wn.2d at 200 (“When
6 experienced and skilled class counsel support a settlement, their views are given great weight.”
7 (citation omitted)). Plaintiff’s counsel negotiated the settlement with the benefit of many years
8 of prior experience and a solid understanding of the facts and law of this case. Terrell Decl.
9 ¶ 11. Plaintiff’s counsel have extensive experience litigating and settling class actions, and
10 consumer class actions in particular. *Id.* ¶¶ 2–10. They believe the settlement is fair,
11 reasonable, adequate, and in the best interest of the Settlement Class as a whole. *Id.* ¶ 19. The
12 parties also negotiated the settlement with the assistance of an experienced mediator. Courts
13 recognize that “the assistance of an experienced mediator in the settlement process confirms
14 that the settlement is non-collusive.” *Betorina v. Randstad US, L.P.*, No. 15-cv-03646-EMC, 2017
15 WL 1278758, at *7 (N.D. Cal. Apr. 6, 2017).

16 2. The settlement has no obvious deficiencies and does not grant preferential
17 treatment to any Class Member.

18 The settlement treats all Class Members fairly. Each Settlement Class Member who
19 received one or more bills based on estimated electricity usage followed by a bill based on
20 actual usage during the class period will be eligible to file a claim form to receive compensation
21 from the Settlement Fund. SA § III.G.7. The claim form is simple and straightforward, requiring
22 only an ID number and contact information, and can be submitted online or by mail. SA Ex. D.
23 The Elevated Bill Fund will be distributed *pro rata* based on each claimant’s calculated damages.
24 The True Up Fund will be divided equally among all remaining claimants. SA § III.G.7. In
25 addition, all Settlement Class Members will benefit from the substantial injunctive relief. SA

26 ¹ As Newberg notes, federal courts use a standard closer to the final approval standard since
27 the amendment of Federal Rule of Civil Procedure 23(e) in 2018. *Id.*

1 § III.E.2. Although reversionary settlements are typically disfavored, the Court should not
2 hesitate to approve this settlement because residual funds will be dedicated to SCL’s ELIA
3 program, which helps low-income SCL customers pay their bills. SA § III.G.7.b.

4 Plaintiff’s counsel will request a service award of \$2,500 for Plaintiff in recognition of his
5 efforts on behalf of the Settlement Class, which included assisting counsel with the
6 investigation and ongoing litigation. SA § III.I; Terrell Decl. ¶ 18. Service awards “are intended to
7 compensate class representatives for work undertaken on behalf of a class” and “are fairly
8 typical in class action cases.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir.
9 2015) (citation omitted); *see also Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329-30 &
10 n.9 (W.D. Wash. 2009) (collecting cases approving awards from \$5,000 to \$40,000); *Probst v.*
11 *Wash. Dept. of Ret. Sys.*, 150 Wn. App. 1062, 2009 WL 1863993, at *5-6 (Wash. Ct. App. June
12 30, 2009) (unpublished opinion) (affirming service award of \$7,500). Plaintiff’s support of the
13 settlement is not conditioned on the service award.

14 The Settlement Fund will also be used to pay attorneys’ fees and costs in an amount
15 approved by the Court. Plaintiff’s counsel anticipate filing a motion for court approval of a
16 reasonable attorneys’ fees and litigation costs award of 25% of the Settlement Fund. SA § III.H.
17 The requested award is within the range of awards the Washington Supreme Court has
18 approved. *Bowles v. Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993) (fee awards for
19 common fund cases typically range from 20% to 30%). The Settlement Agreement is not
20 contingent on the award of attorneys’ fees and costs.

21 3. The settlement falls within the range of possible judicial approval.

22 This is an excellent settlement in light of the obstacles to continued litigation and
23 recovery after trial and appeal. The combination of SCL’s agreement to pay \$3,500,000 *and*
24 provide substantial injunctive relief makes this a highly favorable resolution.

25 Plaintiff is confident in the strength of his case but also recognizes the significant risks
26 involved in seeing this lawsuit through class certification and towards trial. SCL’s motion to
27 dismiss, which challenged the merits of Plaintiff’s claims and the availability of penalties and

1 damages, was pending when the parties negotiated the settlement. If Plaintiff's claims survived
2 that motion, he would file a motion for class certification, which presents some unique risks in
3 this case. For example, it may be difficult to determine whether a particular class member's bill
4 was more expensive due to unusual use of electricity rather than the challenged practices. If
5 the Court denied Plaintiff's motion for class certification, the other Settlement Class Members
6 would be left with no relief. If Plaintiff prevailed on class certification, he would likely face a
7 summary judgment motion that would likely include arguments that the challenged conduct
8 was exempt from actions under the CPA, that SCL's conduct was not deceptive, and that even if
9 it were, that any such conduct did not cause the alleged harm. The parties are also cognizant of
10 the risks inherent in any trial. SCL would likely appeal if Plaintiff won at trial, which creates
11 additional risk.

12 The settlement, by contrast, will provide a guaranteed recovery for all Class Members.
13 Those who file valid claims will recover a percentage of the amounts they allegedly overpaid
14 while all Class Members will benefit from the injunctive relief. While negotiating this
15 settlement, the parties were cognizant of the fact that SCL's revenue comes from its customers'
16 payments for electricity, meaning that a hefty monetary recovery could impact Class Members'
17 and other SCL customers' rates. For this reason, the parties dedicated the larger portion of the
18 Net Settlement Fund to the Elevated Bill Fund and supplemented the settlement with
19 meaningful and robust nonmonetary relief.

20 **C. Preliminary certification of the Class is appropriate.**

21 Preliminary certification of the Settlement Class for settlement purposes is appropriate.

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

23 To be certified, a class must satisfy the requirements of CR 23(a): numerosity,
24 commonality, typicality, and adequacy of representation. Numerosity is satisfied because the
25 Settlement Class consists of approximately 386,103 individuals. *See* CR 23(a)(1); *Miller v. Farmer*
26 *Bros. Co.*, 115 Wn. App. 815, 821, 64 P.3d 49 (2003) (numerosity is generally satisfied when a
27 class has at least 40 members).

1 Commonality is satisfied when there is “a single issue common to all members of the
2 class.” *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d 665 (2002). “[T]here is a low
3 threshold to satisfy this test.” *Id.* Overarching common questions include whether SCL’s
4 practice of billing customers based on estimated electricity usage constitutes an unfair or a
5 deceptive act or practice under the CPA; whether that practice violates SCL’s contractual
6 obligations of good faith and fair dealing; and whether it violates RCW 80.04 *et seq.* and WAC
7 480-100.

8 Typicality is satisfied because Plaintiff’s claims arise from the same course of conduct
9 and are based on the same legal theory as other Class Members’ claims. *See Pellino v. Brink’s*
10 *Inc.*, 164 Wn. App. 668, 684, 267 P.3d 383 (2011). Plaintiff’s and Class Members’ claims all arise
11 from SCL’s practice of billing its customers based on estimated meter readings and its attempts
12 to correct the inaccuracies of previous billing cycles. The same legal theories support Plaintiff’s
13 claims and those of Class Members: that these billing practices were unfair and deceptive under
14 the CPA, violated contractual obligations of good faith and fair dealing, and violated RCW 80.04
15 *et seq.* and WAC 480-100.

16 The adequacy of representation requirement is satisfied because Plaintiff’s interests are
17 not antagonistic to those of the Settlement Class and the Class is represented by qualified
18 counsel. *See Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003); Terrell Decl.
19 ¶¶ 2–10. Plaintiff and his counsel vigorously advocated on behalf of the Class throughout this
20 litigation, including the arm’s-length negotiations that resulted in this settlement.

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

22 Civil Rule 23(b)(3) requires that common questions predominate over any questions
23 affecting only individual class members, and that a class action is superior to other available
24 methods for the fair and efficient adjudication of the controversy. *Chavez v. Our Lady of*
25 *Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 514, 415 P.3d 224 (2018). Predominance is satisfied
26 when “there is a common nucleus of operative facts in each class member’s claim.” *Id.* at 516.
27 “The relevant inquiry is whether the issue shared by class members is the dominant, central, or

1 overriding issue in the litigation.” *Id.* The issues common to Plaintiff and Class Members are
2 dominant, central, and overriding in this litigation. The questions of whether SCL’s billing
3 practices were unfair and deceptive under the CPA, violated contractual obligations of good
4 faith and fair dealing, and violated RCW 80.04 *et seq.* and WAC 480-100 are common to the
5 Class and central to resolution of this case.

6 The superiority requirement is satisfied when a class action is superior to other methods
7 of adjudication for resolution of the claims at issue. *Chavez*, 190 Wn.2d at 511. Relevant factors
8 include: (A) the interest of members of the class in individually controlling the prosecution or
9 defense of separate actions; (B) the extent and nature of any litigation concerning the
10 controversy already commenced by or against members of the class; (C) the desirability or
11 undesirability of concentrating the litigation of the claims in the particular forum; (D) the
12 difficulties likely to be encountered in the management of a class action. CR 23(b)(3).

13 These factors support certification. Resolution of all of Settlement Class Members’
14 claims at once is far superior to individual lawsuits and promotes consistency and efficiency of
15 adjudication. *Id.* at 518-23. This is especially true since Class Members have relatively small
16 claims for damages and are unlikely to pursue individual litigation. *Chavez*, 190 Wn.2d at 523
17 (“[S]mall claims cases somewhat automatically meet the test that a class suit is superior to
18 other forms of adjudication.”).

19 Plaintiff is not aware of any individual litigation regarding SCL’s estimated billing
20 practices. *See id.* at 524 (the fact that defendant is not involved in other litigation over the same
21 issue raised by plaintiffs supports superiority). Concentrating claims against SCL in this forum is
22 likely the only way Class Members’ rights will be vindicated because many may not be aware of
23 their claims. *See id.*

24 Finally, the manageability of litigation is not relevant to certification for settlement
25 purposes. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a
26 request for settlement-only class certification, a district court need not inquire whether the
27 case, if tried, would present intractable management problems.”). The settlement will be easily

1 and fairly managed, as described above.

2 **D. The proposed notice program should be approved.**

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

9 The parties propose that notice be provided in three ways: email notice to Settlement
10 Class Members for whom SCL has email addresses; postcard notice by U.S. mail to former
11 customers for whom SCL does not have valid email addresses; and long form notice posted on
12 the Settlement Website. SA § III.G.3. SCL will also provide information about the settlement on
13 its website. This approach will ensure that notice reaches as many Settlement Class Members
14 as possible.

15 The language of the proposed notice is straightforward and easily understood. Each
16 Class Member will receive a personalized notice that provides all information needed to
17 evaluate and respond to the settlement. The notice will inform Class Members of their right to
18 file a claim to receive a payment from either the Elevated Bill Fund or the True Up Fund. The
19 notice also provides information about the nature of this litigation, the general terms of the
20 proposed settlement, Class Member’s rights under the settlement, including how to file a claim,
21 object to or exclude themselves, the identity of Class Counsel and that Class Counsel will move
22 for approval of payment of attorneys’ fees and costs and Plaintiff’s service award from the
23 Settlement Fund, the Settlement Website and telephone number for additional information,
24 and the date and time of the Final Approval Hearing. SA Ex. C; *see also* Newberg § 8:17.

25 **E. Schedule for final approval.**

26 The last step in the settlement approval process is a fairness hearing at which the Court
27 will make its final evaluation. Plaintiff proposes the following schedule:

| Event | Deadline |
|--|--|
| SCL to provide identity of potential Settlement Class Members to Settlement Administrator and related data to Plaintiff's expert | October 15, 2021 |
| Notice Date (Settlement Administrator to distribute Class Notice and establish Settlement Website) | Within 75 days of the later of Preliminary Approval Order or date SCL provides Class Member identities to Settlement Administrator |
| Deadline for motion for attorneys' fees, costs, and service award | Within 30 days of the Notice Date |
| Claim Form, Opt-Out, and Objection Deadline | 45 days after the Notice Date |
| Deadline for motion for final approval | No later than 14 days after the Objection/ Opt-Out Deadline |
| Settlement Administrator to report on completion of Class Notice | No later than 14 days before the Final Approval Hearing |
| Final Approval Hearing | To be set by the Court, but no fewer than 90 days after the Notice Date |

VII. CONCLUSION

Plaintiff respectfully requests that the Court grant this motion.

VIII. LCR 7(B)(5)(B)(VI) CERTIFICATION

I certify that this memorandum contains 4,145 words in compliance with the Local Civil

Rules.

//

//

//

//

//

1 RESPECTFULLY SUBMITTED AND DATED this 29th day of September, 2021.

2 TERRELL MARSHALL LAW GROUP PLLC

3 By: /s/ Beth E. Terrell, WSBA #26759

4 Beth E. Terrell, WSBA #26759

5 Email: bterrell@terrellmarshall.com

6 Ari Brown, WSBA #29570

7 Email: abrown@terrellmarshall.com

8 Blythe H. Chandler, WSBA #43387

9 Email: bchandler@terrellmarshall.com

10 936 North 34th Street, Suite 300

11 Seattle, Washington 98103-8869

12 Telephone: (206) 816-6603

13 *Attorneys for Plaintiff and Proposed Class*