

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

JOHN J. DIEL, JR. and REBECCA L. CLEVELAND,
husband and wife, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

SALAL CREDIT UNION,

Defendant.

NO. 19-2-10266-7 KNT

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND AWARD OF
ATTORNEYS' FEES, COSTS, AND SERVICE
AWARDS**

The Court, having considered Plaintiffs' Motion for Final Approval of Class Action Settlement and Award of Attorneys' Fees, Costs, and Service Awards in the above-captioned matter (the "Action"), the Settlement Agreement and Release entered into between Plaintiffs John J. Diel, Jr. and Rebecca Cleveland and Defendant Salal Credit Union, the lack of objections to and requests for exclusion from the proposed Settlement, the record in this the Action, the declaration of the Class Administrator regarding the notice provided to the Class, the submissions and arguments presented by counsel, and having held a Final Approval Hearing on August 21, 2020, finds that:

1. All capitalized terms in this Final Approval Order shall have the same meanings as set forth in the Settlement Agreement.

1 2. The Court has jurisdiction over the subject matter of the Action and over the
2 settling parties, including the members of the Settlement Class.

3 3. On February 28, 2020, the Court preliminarily approved the Settlement and
4 certified, for settlement purposes, the Class as defined in the Settlement Agreement.

5 4. Pursuant to the Court's Preliminary Approval Order, notice of the Settlement
6 was distributed to the Class by US Mail and email and via the Settlement Website. The Court
7 hereby finds and concludes that the notice was disseminated to members of the Class in
8 accordance with the terms set forth in the Settlement Agreement and in compliance with the
9 Court's Preliminary Approval Order. The Court further finds and concludes that the notice, and
10 the distribution procedures set forth in the Settlement fully satisfy CR 23(c)(2) and (e) and the
11 requirements of state and federal law and due process, were the best notice practicable
12 under the circumstances, provided individual notice to all members of the Class who could be
13 identified through reasonable effort, provided an opportunity for the Class Members to object
14 or exclude themselves from the Settlement, and support the Court's exercise of jurisdiction
15 over the Settlement Class as contemplated in the Settlement Agreement and this Final
16 Approval Order.

17 5. The Class Members were notified of their right to object to the Settlement or
18 request exclusion from it, the deadline for doing so and were given an opportunity to object
19 to the Settlement or request exclusion. No Class Members objected to the Settlement and no
20 Class Members requested exclusion from the Settlement.

21 6. The Settlement was arrived at as a result of arms' length negotiations
22 conducted in good faith by experienced attorneys familiar with the legal and factual issues of
23 this case.

24 7. Plaintiffs and Class Counsel have adequately represented the
25 Settlement Class Members. The Settlement is fair, reasonable, adequate, and in the best
26 interests of the Settlement Class in light of the complexity, expense, and duration of litigation,

1 as well as the risk involved in establishing liability and damages and in maintaining the class
2 action through trial and appeal.

3 8. The consideration provided by the Settlement constitutes fair value given in
4 exchange for the release of the Released Claims against the Released Parties by Settlement
5 Class Members. The Court finds that the consideration provided to members of the
6 Settlement Class is reasonable, considering that facts and circumstances of the claims, and the
7 potential risks and likelihood of success of alternatively pursuing trial on the merits.

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

9 9. The Settlement is finally approved as fair, reasonable, adequate, just, and in
10 compliance with all applicable requirements of the applicable laws, and in the best interest of
11 the Settlement Class. The Settlement Agreement, which shall be deemed incorporated herein,
12 and all terms of the Settlement are finally approved and shall be consummated in accordance
13 with the terms and provisions thereof, except as amended by any subsequent order issued by
14 the Court.

15 10. Pursuant to CR 23(c)(3), the Action is hereby certified, for settlement purposes
16 only and without any admission of liability by Defendant, as a class action on behalf of the
17 following Settlement Class Members: All Washington residents who were Salal Credit Union
18 members and who at any point from April 15, 2015 through November 18, 2019 incurred an
19 overdraft fee for a transaction when the amount of the ledger balance shown in Salal's record
20 of the account was equal to or greater than the amount of the transaction. Each person to
21 whom the Class Administrator sent an Email Notice or a Long Form Notice regarding the
22 Settlement is a Settlement Class Member.

23 11. The Plaintiffs and each Settlement Class Member, their respective estates,
24 heirs, executors, administrators, representatives, agents, attorneys, partners, marital
25 communities, domestic partnerships, affiliates, successors, predecessors-in-interest, and
26 assigns have released, resolved, relinquished, and discharged forever each of the Released

1 Parties from each of the Released Claims, as defined in the Settlement Agreement. The
2 Released Claims are compromised, settled, released, discharged, and dismissed with prejudice
3 by virtue of these proceedings and this Final Approval Order, provided, however, that the
4 Released Claims shall not be construed to limit the right of Defendant or any member of the
5 Settlement Class to enforce the terms of the Settlement. Plaintiffs have represented
6 and warranted in the Settlement Agreement that they have the full right, power and authority
7 to grant the releases of the Released Claims on their own behalf, that they own or have the
8 right to release each of the Released Parties from each of the Released Claims, and that they
9 have not transferred any interest in any Released Claims to any third party. Settlement Class
10 Members shall be conclusively deemed to have made these same representations and
11 warranties upon and as of the Effective Date.

12 12. This Final Approval Order and the Settlement Agreement are binding on all
13 Settlement Class Members.

14 13. To the extent permitted by law and without affecting the other provisions of
15 this Final Approval Order, this Final Approval Order is intended by the parties and the Court to
16 be *res judicata* and to enjoin, prohibit and preclude any prior, concurrent, or subsequent
17 litigation brought individually, or in the name of, and/or otherwise on behalf of, Plaintiffs, any
18 Settlement Class Member or any Releasing Party with respect to the Released Claims.

19 14. The Court retains jurisdiction over the parties regarding the administration,
20 interpretation, construction, effectuation, enforcement, and consummation of the
21 Settlement, including its injunctive provisions, and this Final Approval Order.

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

24 16. The Court approves Class Counsel's application for \$146,224.84 in attorneys'
25 fees and \$16,275.16 in costs, which, together, represents twenty-five percent of the
26 Settlement Fund.

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

5 18. Class Counsel obtained an excellent result for the Settlement Class. Class
6 Counsel's work lead to the creation of a \$650,000 common fund from which Settlement Class
7 Members will receive cash payments. The Settlement benefits also include Salal's agreement
8 (1) to not charge in the future overdraft fees on transactions involving an authorization hold
9 for which there were sufficient funds available at the time of authorization, but for which
10 there are not sufficient funds available at the time of settlement; (2) bear the cost of
11 settlement administration including the cost of identifying Class Members and providing
12 notice to each Class Member of the settlement; and (3) provide additional information to
13 Class Members about how they can use Salal's existing mobile and online banking applications
14 to reduce the chance of incurring overdraft fees.

15 19. An attorneys' fee and cost award equal to twenty-five of the common fund is
16 appropriate in this case and is in line with the established benchmark of twenty to thirty
17 percent of the total recovery. *Bowles*, 121 Wn.2d at 72 (under the "percentage of recovery"
18 method, attorneys are awarded a reasonable percentage of the total recovery, "often in the
19 range of 20 to 30 percent.").

20 20. The Court approves service awards to the named Plaintiffs in the amount of
21 \$1,250, to be paid from the Settlement Fund. This amount is reasonable in light of Plaintiffs'
22 efforts in this case, which included assisting their counsel with the investigation of his claims,
23 ongoing litigation, and assisting with settlement negotiations.

24 21. The attorneys' fees and costs and service awards are to be paid solely from the
25 Settlement Fund as set forth in the Settlement Agreement. Except as expressly set forth to the
26 contrary in this Final Approval Order, Plaintiffs, Settlement Class Members and Class Counsel

1 shall take nothing by their claims and each party shall bear his or its own fees, costs, and
2 expenses in connection with this Action. Except for the award to Class Counsel specified
3 above, no attorneys' fees or costs shall be paid to any other counsel representing any
4 Settlement Class Members.

5 22. The Court dismisses the Action against Defendant, including all claims against
6 Defendant, with prejudice, without an award of fees or costs to any party, except as expressly
7 provided for in the Settlement and this Final Approval Order.

8 23. This Final Approval Order shall constitute a final judgment pursuant to CR 58
9 that is binding on the settling parties and the Settlement Class.

10 IT IS SO ORDERED.

11 DATED this _____ day of _____, 2020.

12
13 _____
14 SUPERIOR COURT JUDGE

15 Presented by:

16 TERRELL MARSHALL LAW GROUP PLLC

17
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