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SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF YAKIMA

THEODORE STRONG,

Plaintiff,

v.

NUMERICA CREDIT UNION,

Defendant.

NO. 17-2-01406-39

**PLAINTIFF’S UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

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I. INTRODUCTION

Plaintiff sued Defendant Numerica Credit Union on behalf of a class of borrowers whose vehicles were repossessed and sold by Numerica. Plaintiff alleges that the form notices Numerica sent to borrowers regarding the sale of their repossessed vehicles did not comply with the requirements of Article 9 of Washington’s Uniform Commercial Code and violated Washington’s Consumer Protection Act. After hard-fought litigation and several rounds of settlement negotiations, the parties have reached a Settlement that requires Numerica to pay a total of \$1,100,000 for the benefit of the Settlement Class and also provides millions of dollars in debt relief. Numerica will provide the \$1,100,000 in cash payments to the Settlement Class Members whose statutory damages under the UCC are greater than the remaining Deficiency Balance on their Numerica auto loan. Numerica will agree to permanently cease collection of all remaining Deficiency Balances of the Settlement Class Members whose statutory damages are less than their Deficiency Balance or who do not have statutory damages—which amounts to approximately \$8,330,822.93 in debt waiver—and dismiss all pending legal actions to collect those deficiency balances. In addition, all Settlement Class Members will have their credit reporting “tradeline” for their Numerica auto loans permanently deleted from their credit reports, freeing them from the derogatory credit reporting associated with the repossession of their vehicles. Simply put, as a result of Plaintiff’s efforts on behalf of the Class, all remaining debt on Settlement Class Members’ auto loans to Numerica will be erased.

Plaintiff respectfully moves the Court for preliminary approval of the class action Settlement with Numerica. The Settlement satisfies the requirements for preliminary approval because it was negotiated at arm’s length and is within the range of possible approval. Plaintiff therefore requests that the Court take the following initial steps in the settlement approval process: (1) grant preliminary approval of the Settlement; (2) certify the Class for settlement purposes; (3) appoint Plaintiff as the representative of the Class; (4) appoint The Trueblood Law Firm and Terrell Marshall Law Group as Class Counsel; (5) approve the proposed notice

1 plan; (6) appoint Postlethwaite & Netterville (P&N) as the Class Administrator; and (7)
2 schedule the Final Approval Hearing.

3 II. STATEMENT OF FACTS

4 A. Plaintiff's claims.

5 Plaintiff Theodore Strong filed this lawsuit after Numerica repossessed his vehicle and
6 sent him form notices that did not comply with UCC disclosure requirements. ¶¶ 1-4.¹ First,
7 Numerica mailed Plaintiff its form Notice of Our Plan to Sell Property (Notice of Plan to Sell)
8 that included the erroneous sentence, "If we get less money than you owe, you (will or will not,
9 as applicable) still owe us the difference." ¶ 3. Until this lawsuit was filed, Numerica never
10 selected "will" or "will not" on its form Notice of Plan to Sell, leaving Plaintiff and Class
11 Members unable to determine whether they would be liable for a deficiency balance. *Id.*
12 Plaintiff alleges that this Notice of Plan to Sell did not include "[a] description of any liability
13 for a deficiency of the person to which the notification is sent," as required by the Washington
14 UCC. RCW 62A.9A-614(1)(B). Second, Numerica sent Plaintiff a form post-sale accounting
15 notice (Notice of Deficiency) that Plaintiff alleges failed to include at least five of the pieces of
16 information required by the UCC to explain how the lender calculated the surplus or deficiency
17 from the sale of the borrower's property. ¶ 4; RCW 62A.9A-616(a)(1)(B).

18 Plaintiff alleges that by sending these deficient form notices to him and to Class
19 Members, Numerica violated Article 9 of Washington's Uniform Commercial Code and
20 Washington's Consumer Protection Act. ¶¶ 24-35.

21 B. Procedural background.

22 Plaintiff filed this lawsuit on an individual basis on April 24, 2017. He filed a first
23 amended complaint on January 29, 2018, asserting the same claims on behalf of a proposed
24 class of Washington borrowers. Numerica moved for partial summary judgment on Plaintiff's
25 claim that Numerica's Notice of Deficiency violated RCW 62A.9A-616(a)(1)(B), which

26 ¹ References to "¶ ___" are to Plaintiff's First Amended Complaint.
27

1 Plaintiff opposed. Terrell Decl. ¶ 10. After hearing oral argument from both parties, the Court
2 granted Numerica’s motion. *Id.*

3 The parties have taken significant discovery in this case. Plaintiff has propounded two
4 sets of requests for production, three sets of interrogatories, and two sets of requests for
5 admission on Numerica, to which Numerica has responded. *Id.* ¶ 9. Plaintiff has reviewed and
6 analyzed the more than 7,000 pages of documents produced by Numerica. *Id.* ¶ 12. Numerica
7 has propounded one set of requests for production and interrogatories on Plaintiff, to which
8 Plaintiff has responded. *Id.* ¶ 9. The parties met and conferred about discovery issues and
9 briefed one issue to the Court. *Id.* The parties have also completed depositions, including the
10 deposition of Plaintiff and the Rule 30(b)(6) deposition of Numerica, which involved deposing
11 five Numerica employees over the course of three days. *Id.*

12 On October 29, 2018, Numerica moved to deny class certification. *Id.* ¶ 11. This
13 prompted the parties to begin discussing the possibility of early resolution of Plaintiff’s claims.
14 *Id.* The parties recognized that one of the key issues that would affect potential resolution was
15 the likelihood that the Court would certify this case as a class action. *Id.* The parties agreed that
16 before engaging in settlement negotiations it would be beneficial for Plaintiff to affirmatively
17 move for class certification and for the parties to fully brief both Plaintiff’s and Numerica’s
18 motions on class certification. *Id.* That way, the parties would go into mediation with a
19 complete understanding of each side’s strengths and weaknesses. *Id.* The parties agreed to
20 participate in a mediation on March 1, 2019, after the motions were briefed but before the court
21 issued a ruling. *Id.* The parties filed a total of six briefs on the motions on class certification
22 between December 21, 2018 and February 8, 2019. *Id.*

23 **C. Settlement negotiations.**

24 The parties attended mediation with a solid grasp of the strengths and weaknesses of
25 their claims and an understanding of the potential range of damages. In preparation for the
26 mediation, Plaintiff’s counsel analyzed Numerica’s documents to identify each individual to
27

1 whom Numerica sent a Notice of Plan to Sell Property and/or a Notice of Deficiency during the
2 class period of April 14, 2015 and May 17, 2017. Terrell Decl. ¶ 12. Plaintiff's counsel
3 calculated the statutory damages for the defective notices for each class member and identified
4 each class member's deficiency balance. *Id.* On March 1, 2019, the parties mediated with
5 Thomas McLane of the Law Firm of Thomas W. McLane in Spokane, Washington. *Id.* ¶ 13.
6 After a full day of mediation, the parties were unable to reach an agreement, but continued
7 negotiations with Mr. McLane's assistance. *Id.* One of the primary sources of disagreement was
8 each party's analysis of potential damages. *Id.* Plaintiff spent a significant amount of time
9 auditing and refining his damages analysis and the parties attempted to reach an agreement
10 regarding the scope of the Class. *Id.* At a second mediation on April 17, 2019, the parties
11 agreed to the basic terms of the Settlement. *Id.* The parties continued negotiating the final terms
12 of the agreement and signed a CR-2A Agreement on May 16, 2019. *Id.* The parties finalized
13 the Settlement Agreement on July 16, 2019. *Id.*

14 **D. The proposed Settlement.**

15 The full details of the class Settlement are in the parties' Settlement Agreement and
16 Release. Terrell Decl. ¶ 14, Ex. A (Agreement).

17 1. The Settlement Class.

18 The proposed Class for settlement purposes includes all persons who:

19 (a) resided in Washington state when they purchased or otherwise
20 financed a vehicle primarily for personal, family, or household
21 use;

22 (b) whose contract was assigned to Defendant or financing was
provided by Defendant; and

23 (c) to whom Defendant issued or failed to issue a Notice of Intent
24 to Sell, pursuant to RCW 62A.9A-614 during the period April 14,
25 2015 through May 17, 2017 and/or to whom Defendant issued or
26 failed to issue a Notice of Deficiency, pursuant to RCW 62A.9A-
616, during the period April 14, 2015 through July 31, 2018.

1 Agreement § II.3. Excluded from the Class are all persons who (a) filed for bankruptcy
2 protection as to their Numerica auto loan and whose bankruptcy case was not dismissed or
3 otherwise closed as July 16, 2019; or (b) against whom Defendant's assignee obtained a
4 judgment to collect on their Deficiency Balance before May 20, 2019, which judgments are
5 held by unrelated third party debt collectors. *Id.* The Settlement Class will include all members
6 of the Class who have not requested to be excluded from the Settlement. *Id.* § II(22).

7 Numerica has identified 1,795 members of the proposed Class. Terrell Decl. ¶ 15, Ex. B
8 ¶ 3 (Numerica's Corporate Declaration).

9 2. Settlement relief.

10 Numerica will pay a total of \$1,100,000 to the Settlement Class as a common fund.
11 Agreement § II(1). The Settlement Fund will be used to pay (1) Settlement Awards to eligible
12 Settlement Class Members, (2) a service award to Plaintiff, if approved by the Court, (3)
13 settlement administration expenses, and (4) Court-approved attorneys' fees and costs.

14 In addition to the cash payments, Numerica has agreed to permanently cease collection
15 of all Deficiency Balances remaining after the sale of Settlement Class Members' vehicles and
16 dismiss any pending legal action against Settlement Class Members to collect on those
17 Deficiency Balances. *Id.* §§ III(3), (5). In total, Numerica will cease collection of
18 \$8,330,822.93 in . Terrell Decl. ¶ 16.

19 Finally, Numerica will also direct Equifax, Experian, and Trans Union to permanently
20 delete all references to Settlement Class Members' Numerica auto loans from their credit
21 reports. *Id.* § III(4).

22 a. *Payments to Settlement Class Members.*

23 Numerica has identified 527 Class Members whose statutory damages are greater than
24 their remaining Deficiency Balances. Numerica's Corporate Declaration ¶ 6. These Class
25 Members are eligible for a Settlement Award and will be paid a pro rata share of the Settlement
26 Fund, after subtraction of attorneys' fees, Plaintiff's service award, and settlement
27

1 administration expenses. Agreement § III(2). Each Class Member’s pro rata share will be based
2 on his or her calculated damages, calculated as the total statutory damages under the UCC for
3 Numerica’s improper Notice of Plan to Sell minus the Deficiency Balance. Agreement §
4 III(2)(a); RCW 62A.9A-625(c)(2). Numerica has provided Plaintiff’s counsel with a Corporate
5 Declaration that contains with this information for each Class Member. *Id.* § III(6); Terrell
6 Decl. ¶ 15; Numerica’s Corporate Declaration.

7 Settlement Class Members will not need to submit a claim form to receive payments or
8 any other benefits afforded by the Settlement. *Id.* § III(2)(a). Any remaining funds from
9 uncashed settlement checks will be donated to the Legal Foundation of Washington, the
10 Northwest Consumer Law Center, the Northwest Justice Project, and Consumer Credit
11 Counselling. *Id.* § III(2)(d). No funds will revert to Numerica. *Id.* § IV(3).

12 b. *Settlement administration expenses.*

13 Following a competitive bidding process, Plaintiff selected P&N to serve as the Class
14 Administrator. Terrell Decl. ¶ 18; Agreement § II(1). The Class Administrator will update the
15 addresses of Class Members, send notice of the Settlement to Class Members by certified mail
16 with return receipt service and email, trace any undeliverable or returned mailings, track
17 responses, and mail Settlement Awards. Agreement §§ VII(1)-(5). P&N has agreed to cap
18 settlement administration expenses at \$19,000. Terrell Decl. ¶ 18. Subject to Court approval,
19 this cost will be deducted from the Settlement Fund before distributions to Settlement Class
20 Members. Agreement § VII(2).

21 c. *Service award to Plaintiff.*

22 Class Counsel will request a service payment of \$10,000 for Plaintiff, to compensate
23 him for the significant time he dedicated to this litigation and the risk he undertook in stepping
24 forward as the representative of the class. Agreement § VI(1); Terrell Decl. ¶ 19.

1 d. *Attorneys' fees and litigation costs.*

2 Class Counsel will file a motion for an award of attorneys' fees and costs to be paid
3 from the Settlement Fund. Agreement § VI(2); Terrell Decl. ¶ 21.

4 3. Settlement Class Members' release.

5 In exchange for the benefits provided by the Settlement, Settlement Class Members will
6 release "any and all existing claims [they have], may have, or may claim to have, which arise
7 from or relate to the notices required under RCW 62A.9A-614 and/or RCW 62A.9A-616,
8 including those defects in the notices alleged in the First Amended Complaint in the Action,
9 and including but not limited to all such claims arising under Article 9 of Washington's
10 Uniform Commercial Code and the Washington Consumer Protection Act." Agreement § XI.
11 The release "explicitly includes claims for actual and statutory damages, and punitive damages,
12 as well as for attorneys' fees and costs." *Id.*

13 **III. STATEMENT OF ISSUES**

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

17 **IV. EVIDENCE RELIED UPON**

18 Plaintiff relies on the declarations of Beth E. Terrell and Alexander B. Trueblood in
19 support of this motion, the Settlement Agreement, and Numerica's Corporate Declaration.

20 **V. AUTHORITY AND ARGUMENT**

21 **A. Class action settlement approval process.**

22 As a matter of "express public policy," Washington courts strongly favor and encourage
23 settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258, 947 P.2d 223 (1997); *see also*
24 *Pickett v. Holland Am. Line Westours, Inc.*, 145 Wn.2d 178, 190, 35 P.3d 351 (2001)
25 ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution."). This
26 is particularly true in class actions and other complex matters where the costs, delays, and risks
27

1 of continued litigation might otherwise overwhelm any potential benefit the class could hope to
2 obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

3 The Manual for Complex Litigation describes a three-step process to approve class
4 action settlements: (1) preliminary approval of the proposed settlement; (2) dissemination of
5 notice of the settlement to all affected class members; and (3) a “fairness hearing” at which
6 class members may be heard and evidence and argument concerning the fairness, adequacy,
7 and reasonableness of the settlement may be presented. Manual for Complex Litigation
8 (Fourth) §§ 21.632–21.634 (2004) (Ann. ed. 2017). This procedure safeguards class members’
9 due process rights and enables the court to fulfill its role as the guardian of class interests. *See*
10 William B. Rubenstein, *Newberg on Class Actions* § 13:1 (5th ed. June 2019 update).

11 Plaintiff requests the Court take the first step in the settlement approval process by
12 granting preliminary approval of the proposed Settlement, which is within the Court’s sound
13 discretion. *See Pickett*, 145 Wn.2d at 190. Because no class has been certified, “the judge
14 should make a preliminary determination that the proposed class satisfies the criteria set out in
15 Rule 23(a) and at least one of the subsections of Rule 23(b).” Newberg § 13.18 (citation
16 omitted).

17 **B. The Settlement satisfies the criteria for preliminary approval.**

18 Proposed class action settlements are not effective unless approved by the Court. CR
19 23(e). At the preliminary approval stage, courts “undertake *some* review of the settlement” but
20 do not conduct the more thorough analysis required at the final approval stage. *Newberg*
21 §13.10. Courts typically consider whether “the proposed settlement appears to be the product of
22 serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly
23 grant preferential treatment to class representatives or segments of the class, and falls within
24 the range of possible [judicial] approval.” *Id.* (citation omitted). The proposed Settlement
25 satisfies these requirements.

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

3 This Settlement is the result of hard-fought litigation and arm’s-length negotiations
4 between attorneys experienced in consumer class actions and litigating UCC claims. *See*
5 *Hughes v. Microsoft Corp.*, No. C98-1646C, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26,
6 2001) (a “presumption of correctness is said to attach to a class settlement reached in arms-
7 length negotiations between experienced capable counsel after meaningful discovery” (citation
8 omitted)); *see also Pickett*, 145 Wn.2d at 200 (“When experienced and skilled class counsel
9 support a settlement, their views are given great weight.” (citation omitted)). Plaintiff’s counsel
10 have extensive experience in litigating consumer cases, including class actions involving
11 violations of the UCC’s post-repossession notice requirements. Terrell Decl. ¶¶ 1-8, 22-23;
12 Trueblood Decl. ¶¶ 2-8 Plaintiff’s counsel diligently obtained the information and data needed
13 to analyze the class claims. Terrell Decl. ¶ 9. Among other things, Plaintiff’s counsel
14 propounded multiple sets of written discovery, deposed five Numerica employees, and
15 reviewed thousands of pages of documents, including the sales contracts for Class Members’
16 vehicles and the form notices that Numerica sent to each Class Member. *Id.* ¶¶ 9, 12. From this
17 work, they were able to identify Class Members and calculate each individual’s statutory
18 damages. *Id.* ¶ 12.

19 Discovery and motion practice also ensured that the parties were well informed about
20 the strengths and weaknesses of their respective positions when the Settlement was negotiated.
21 In August 2018, the Court granted Numerica’s motion for summary judgment on Plaintiff’s
22 claim that Numerica’s post-sale Notice of Deficiency violated the UCC. *Id.* ¶ 10. And the
23 parties purposefully delayed mediation so that they could approach mediation with the benefit
24 of complete briefing of the motions regarding class certification. *Id.* ¶ 11.

25 The parties also reached the Settlement with the assistance of mediator Thomas
26 McClane, who has substantial experience litigating and settling complex cases. *Id.* ¶ 13. Courts
27 recognize that “the assistance of an experienced mediator in the settlement process confirms

1 that the settlement is non-collusive.” *Betorina v. Randstad US, L.P.*, No. 15-cv-03646-EMC,
2 2017 WL 1278758, at *7 (N.D. Cal. Apr. 6, 2017).

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

5 The Settlement treats all Class Members fairly and equally. Agreement §§ III(2)(a), (6).
6 Each Settlement Class Member who received an improper Notice of Plan to Sell is entitled to
7 statutory damages under RCW 62A.9A-625(c)(2), which are the amount of the finance charge
8 disclosed in the contract for the purchase of his or her vehicle plus 10% of the total amount
9 financed. Agreement § III(6)(b). Because statutory damages are based on each individual’s
10 contract, no Settlement Class Member with entitlement to higher statutory damages will
11 “donate” any of their statutory damages to other Settlement Class Members with lower
12 statutory damages.

13 The statutory damages of each Settlement Class Member will be applied to their
14 remaining Deficiency Balance. Terrell Decl. ¶¶ 8-9. The Settlement Class Members whose
15 statutory damages are greater than their Deficiency Balances will receive a pro rata share of the
16 Settlement Fund as a cash payment, without having to submit a claim form. Agreement §
17 III(2)(a). For Settlement Class Members whose statutory damages are less than their Deficiency
18 Balances, Numerica will permanently cease collection of the remaining Deficiency Balances
19 and will dismiss any pending legal action to collect those Deficiency Balances. *Id.* § III(3), (5).
20 However, if a Settlement Class Member brings any claim against Numerica that is not subject
21 to the Release, Numerica may assert that the Settlement Class Member’s Deficiency Balance is
22 an offset to that claim. *Id.* § III(3).

23 Some Settlement Class Members have no statutory damages under RCW 62A.9A-
24 625(c)(2) because they did not receive a deficient Notice of Plan to Sell. These individuals did,
25 however, receive an improper Notice of Deficiency. Numerica will permanently cease
26 collection of their remaining Deficiency Balances and will dismiss any pending legal action to
27 collect those Deficiency Balances. *Id.*

1 All Settlement Class Members will benefit from deletion adverse credit reporting from
2 their credit reports. *Id.* § III(4). As a result, Settlement Class Members will be free from the
3 derogatory credit reporting currently appearing on their credit reports, including the delinquent
4 balance owed, the repossession notation, and late payment history. Settlement Class Members
5 will also be able to purchase new vehicles, sometimes after years of being unable because of
6 adverse credit reporting.

7 Plaintiff's counsel will request a service payment of \$10,000 for Plaintiff in recognition
8 of his efforts on behalf of the Class, which included assisting counsel with the investigation and
9 ongoing litigation, answering written discovery, spending two days preparing for and attending
10 a deposition, and attending a full day of mediation. Agreement §§ VI(1); Terrell Decl. ¶ 19.
11 Service payments "are intended to compensate class representatives for work undertaken on
12 behalf of a class" and "are fairly typical in class action cases." *In re Online DVD-Rental*
13 *Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted); *see also Probst v. Wash.*
14 *Dep't of Ret. Sys.*, 150 Wn. App. 1062, 2009 WL 1863993, at *5-6 (Wash. Ct. App. June 30,
15 2009) (unpublished opinion) (affirming payment of \$7,500 to named plaintiff). Plaintiff's
16 support of the Settlement is not conditioned on the Court awarding a certain amount or an
17 award at all. Terrell Decl. ¶ 19; Agreement ¶ IV(3). A service award of \$10,000 is reasonable
18 and in line with awards approved by courts in similar cases involving violations of the UCC's
19 post-repossession notice provisions. *See* Final Judgment Approving Settlement and Certifying
20 Settlement Class at 6, *Gales v. Capital One, N.A. d/b/a Capital One Auto Finance*, Case No.
21 8:13-cv-01624-WGC (D. Md. August 5, 2015), ECF No. 78 (approving \$15,000 service
22 award); Final Judgment, *Smith v. Toyota Motor Credit Corporation*, Case No. 12-02029-WDQ
23 (D. Md. Oct. 2, 2014), ECF No. 53 (approving \$5,000 service award to each of two class
24 representatives); Order and Final Judgment, *Jenkins v. Hyundai Motor Finance Company, et.*
25 *al.*, Case No. 2:04-cv-00720-EAS-NMK (S.D. Ohio July 7, 2009), ECF No. 146 (approving
26 \$5,000 service award).

1 The Settlement Fund will also be used to pay attorneys' fees and costs in an amount
2 approved by the Court. Plaintiff's counsel anticipate filing a motion for court approval of a
3 reasonable attorneys' fee award and reimbursement of litigation costs, which will not exceed
4 33% of the total Settlement Fund. Agreement § IV(2). The Settlement Agreement is not
5 contingent on the amount of attorneys' fees or costs awarded. *Id.* § IV(3). To date, Plaintiff's
6 counsel have incurred approximately \$289,520 in fees and \$17,961.26 in costs, for which they
7 have not been compensated, and will continue to incur fees and costs through final approval
8 and settlement administration. Terrell Decl. ¶¶ 20-21; Trueblood Decl. ¶ 9.

9 3. The Settlement falls within the range of possible judicial approval.

10 This is an excellent settlement in light of the obstacles to continued litigation and
11 recovery after trial and appeal. Plaintiff is confident in the strength of his case but also faces
12 significant risks created by the pending class certification motions. The Court could deny
13 Plaintiff's motion, leaving only his individual claim. There is also a risk of Numerica prevailing
14 on Plaintiff's claim regarding Numerica's Notice of Plan to Sell on summary judgment or at
15 trial. Because the parties disagree on the correct methodology for calculating statutory damages
16 under the UCC, Plaintiff faces the risk that the Class would be awarded a fraction of the
17 damages Plaintiff has calculated, even upon prevailing at trial. *See* Numerica's Reply in
18 Support of Motion to Deny Class Certification at 13-14. Numerica has also indicated that it
19 would aggressively pursue its counterclaims against Plaintiff and Class Members for their
20 Deficiency Balances and seek attorneys' fees on those claims. Terrell Decl. ¶ 17.

21 Even if Plaintiff were to defeat summary judgment and prevail at trial, he would likely
22 face an appeal by Numerica. Plaintiff himself would likely appeal the Court's summary
23 judgment of his claim that Numerica's Notice of Deficiency violated RCW 62A.9A-
24 616(a)(1)(B), which would also delay Class Member recovery. *Id.* Plaintiff faces the risk that
25 he could lose any appeal regarding Numerica's Notice of Deficiency. Given the risks and
26 expense of continued litigation, the Settlement provides a fair recovery for class members and
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1 avoids further delay. *See Nat'l Rural Telecommc'ns Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,
2 526 (C.D. Cal. 2004) (“The Court shall consider the vagaries of litigation and compare the
3 significance of immediate recovery by way of the compromise to the mere possibility of relief
4 in the future, after protracted and expensive litigation.” (citation omitted)). Settlement Class
5 Members whose statutory damages are greater than their remaining Deficiency Balances will
6 recover around 73% of their statutory damages, which will be applied to completely eliminate
7 their Deficiency Balances and to make pay Settlement Awards. Terrell Decl. ¶ 16. Numerica
8 will permanently cease collection on 100% of the remaining Deficiency Balances of Settlement
9 Class Members whose statutory damages are less than their Deficiency Balance and Settlement
10 Class Members with no statutory damages, which totals approximately \$8,330,822.93 in debt
11 relief. *Id.* Numerica will also dismiss any pending legal action against these Settlement Class
12 Members to collect their Deficiency Balances. Agreement § III(5). And all Settlement Class
13 Members will have all references to their Numerica auto loan deleted from their Equifax,
14 Experian, and Trans Union credit reports. *Id.* § III(4).

15 This recovery compares favorably with settlements in similar class actions challenging
16 post-repossession notices. *See* Motion for Final Approval of Class Action Settlement, *Salimi et*
17 *al v. BMW Financial Services NA, LLC et al*, Case No. 4:12-cv-01754-JSW (N.D. Cal. Nov. 8,
18 2018), ECF No. 142 (settlement benefits included waiver of deficiency balance, updated trade
19 line on credit reports, and cash refund to class members who made payments toward
20 deficiency); Motion in Support of Final Approval, *Jenkins v. Hyundai Motor Finance*
21 *Company, et. al*, Case No. 2:04-cv-00720-EAS-NMK (S.D. Ohio June 30, 2009), ECF No. 144
22 (settlement benefits included waiver of remaining deficiency balances, dismissal of pending
23 collection actions, deletion of trade line on credit report); Memorandum of Law in Support of
24 Final Settlement Approval, *Gales v. Capital One, N.A. d/b/a Capital One Auto Finance*, Case
25 No. 8:13-cv-01624-WGC (D. Md. July 29, 2015), ECF No. 72-1 (settlement benefits included
26 waiver of remaining deficiency balances, dismissal of pending collection lawsuits, update to
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1 tradeline to show auto loan paid in full, and refund of amounts paid in excess of the principal
2 loan amount); Final Judgment, *Smith*, Case No. 12-cv-2029-WDQ (settlement benefits included
3 waiver of deficiency balances, dismissal of collection actions, deletion of trade lines from
4 credit reports, pro rata payments to class members who paid more than principal amount of
5 loan).

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

7 Preliminary certification of the Class for settlement purposes is appropriate under CR
8 23(a) and (b)(3).

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

10 To be certified, a class must satisfy the threshold requirements of CR 23(a): numerosity,
11 commonality, typicality, and adequacy of representation. The numerosity requirement is
12 satisfied because the Class consists of 1,795 individuals. *See* CR 23(a)(1); *Miller v. Farmer*
13 *Bros. Co.*, 115 Wn. App. 815, 821, 64 P.3d 49 (2003) (numerosity is generally satisfied when a
14 class has at least 40 members).

15 Commonality is satisfied when there is “a single issue common to all members of the
16 class.” *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d 665 (2002). Whether
17 Numerica’s form Notice of Plan to Sell and form Notice of Deficiency failed to comply with
18 the Washington UCC’s notice provisions is a question common to the Class. *See* CR 23(a)(2);
19 *Erickson v. Elliot Bay Adjustment Co., Inc.*, No. C16-0391JLR, 2017 WL 1179435, at *8 (W.D.
20 Wash. Mar. 29, 2017) (commonality is satisfied where the issue of whether collection letters
21 with the same allegedly misleading language “can be resolved, as a matter of law, simply by
22 reference to the collection letter”); *McCall v. Drive Fin. Servs., L.P.*, No. 00005, 2009 WL
23 8712847 (Pa. Com. Pl. Apr. 10, 2009) (finding commonality satisfied where the plaintiffs
24 alleged the defendant failed to send written explanation of the deficiency claimed due as
25 required by the state UCC); *Cooley v. FNB Corp.*, No. 100010 OF 2003, C.A., 2008 WL
26 5724573 (Pa. Com. Pl. Nov. 13, 2008) (finding commonality satisfied where the “[t]he claim is
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1 the same as to each class member; to wit, that the notice sent by the defendant to the borrower
2 whose vehicle was repossessed did not comply” with the applicable state UCC provisions).

3 The typicality requirement is satisfied because Plaintiff’s claims arise from the same
4 course of conduct that gives rise to the claims of other Class Members and is based on the same
5 legal theory. *See* CR 23(a)(3); *Pellino v. Brink’s Inc.*, 164 Wn. App. 668, 267 P.3d 383, 392
6 (2011). Plaintiff and Class Members were all sent the same allegedly noncompliant notices by
7 Numerica and seek statutory damages.

8 The adequacy of representation requirement is satisfied because Plaintiff’s interests are
9 not antagonistic to the interests of the Class and the Class is represented by qualified counsel.
10 *See Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003); Trueblood Decl.
11 ¶¶ 2-8; Terrell Decl. ¶¶ 1-8, 20, 22-23. Plaintiff and his counsel vigorously advocated on behalf
12 of the Class throughout this litigation, settlement negotiations, and two full days of mediation.

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

14 CR 23(b)(3) requires that common questions predominate over any questions affecting
15 only individual class members, and that a class action is superior to other available methods for
16 the fair and efficient adjudication of the controversy. *Chavez v. Our Lady of Lourdes Hosp. at*
17 *Pasco*, 190 Wn.2d 507, 514, 415 P.3d 224 (2018). Predominance is satisfied when “there is a
18 common nucleus of operative facts in each class member’s claim.” *Id.* at 516. “The relevant
19 inquiry is whether the issue shared by class members is the dominant, central, or overriding
20 issue in the litigation.” *Id.* This requirement is satisfied because the overriding common issue is
21 whether Numerica’s Notice of Plan to Sell and Notice of Deficiency complied with the
22 requirements of the UCC’s notice provisions. *See Schulken v. Wash. Mut. Bank*, No. 09-CV-
23 02708-LHK, 2012 WL 28099, at *14 (N.D. Cal. Jan. 5, 2012) (finding predominance satisfied
24 where class members were sent form notices that allegedly violated Truth in Lending Act
25 notice requirements); Opinion and Order at 15, *Jenkins v. Hyundai Motor Fin. Co.*, Case No.
26 C2-04- 720 (S.D. Ohio Mar. 24, 2008), ECF No. 108 (finding predominance satisfied where
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1 “the questions of whether Hyundai engaged in a uniform course of conduct with respect to
2 issuing the same or substantially similar pre-disposition Notices to class members and whether
3 these Notices violate Ohio law are central to this litigation”). The overarching common issues
4 related to Numerica’s form notices predominate over any individual issues relating to the
5 calculation of Class Members’ statutory damages and remaining Deficiency Balances. *Chavez*,
6 190 Wn.2d at 519 (“[T]he predominance requirement is not defeated merely because individual
7 factual or legal issues exist; ... ‘[a] single common issue may be the overriding one in the
8 litigation, despite the fact that the suit also entails numerous remaining individual questions.’”
9 (alterations in original) (citation omitted)).

10 Resolution of 1,795 claims in one action is far superior to individual lawsuits and
11 promotes consistency and efficiency of adjudication. *See* CR 23(b)(3); *Chavez*, 190 Wn.2d at
12 518-23. This is especially true given that Class Members are likely unaware they have a claim
13 for statutory damages under Washington’s UCC and are also unlikely to be able to afford an
14 attorney, having had their vehicles repossessed for failure to make timely payments. *See Levy*
15 *v. Medline Indus. Inc.*, 716 F.3d 510, 515 (9th Cir. 2013) (finding superiority requirement
16 satisfied where “class certification may be the only feasible means for [class members] to
17 adjudicate their claims”); Opinion and Order at 16, *Jenkins*, Case No. C2-04-720 (“The Court
18 is mindful that a failure to certify a class will most likely render individual actions in this case
19 noneconomical for Plaintiffs to pursue.”); Final Judgment Approving Settlement and Certifying
20 Settlement Class at 5, *Gales*, Case No. 8:13-cv-01624-WGC (D. Md. August 5, 2015), ECF
21 No. 78 (“This Court finds that there are common overriding legal claims held by all Class
22 Members regarding the legality of the practice of repossessing motor vehicle from consumers
23 while allegedly failing to provide adequate post-sale notice of the private sale during the Class
24 Period. The Court further finds that the pursuit of numerous individual cases, which would be
25 essentially identical, would be a waste of judicial time and resources.”).

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

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

9 The parties propose to update the addresses of Class Members using the National
10 Change of Address database, and then send notice to all Class Members by first class mail with
11 return receipt service as well as by email to those Class Members whose email addresses are
12 available. Agreement § VII(5)(a). Numerica will provide the Class Administrator with names
13 and contact information for Class Members, which the Class Administrator will update and
14 verify before distributing notice. *Id.* § VII(3). Plaintiff’s counsel will also establish a website to
15 provide Class Members with additional information about the Settlement. *Id.*, § VII(5)(c). If
16 any notice is returned as undeliverable, the Class Administrator will attempt to obtain an
17 updated address and resend the notice. *Id.*, § VII(5)(b). This approach will ensure that direct
18 notice reaches as many Class Members as possible. Class Members will have sixty days from
19 the initial mailing of the notices to object to or opt out of the Settlement. *Id.* §§ II(15)-(16),
20 VIII(1), IX(1).

21 The language of the proposed notice is plain and easily understood. Each Class Member
22 will receive a personalized notice that provides all the information needed to evaluate and
23 respond to the Settlement. The notice will inform Class Members of the amounts of their
24 Deficiency Balances, their estimated statutory damages, and whether they are entitled to a
25 Settlement Award. *Id.*, Ex A. The notice also provides the following information: (1) the nature
26 of this litigation; (2) the general terms of the proposed Settlement; (3) a statement of each Class
27 Member’s rights under the Settlement, (4) an explanation of how Class Members can object to

1 or exclude themselves from the Settlement; (5) the identity of Class Counsel and that Class
2 Counsel will seek payment of their attorneys' fees and costs; (6) the service payment that Class
3 Counsel will seek for the named Plaintiff; (7) the website created by Class Counsel; (8) a
4 telephone number that Class Members can call with questions; and (9) the date and time of the
5 Final Approval Hearing. *Id.*, Ex A; *see also* Newberg § 8:17.

6 **E. Schedule for final approval.**

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

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EVENT	DEADLINE
Numerica to provide class list to Class Administrator	Within 14 days of preliminary approval order
Class Counsel to provide Allocation Plan to Class Administrator	Within 14 days of preliminary approval order
Class Administrator to distribute notice	Within 30 days of preliminary approval order
Notice deadline (last day to submit requests for exclusion and objections)	60 days after notice distribution
Class Administrator to report on completion of class notice	Within 14 days of the notice deadline
Deadline for the parties' responses to objections	Within 21 days of the notice deadline
Deadline for Plaintiff to move for final approval, and for fees and costs and a service award for the named Plaintiff	Within 30 days of the notice deadline
Final Approval Hearing	To be set by the Court, but no fewer than 60 days after the notice deadline

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25 **VI. CONCLUSION**

26 Plaintiff respectfully requests that the Court grant his motion.

1 RESPECTFULLY SUBMITTED AND DATED this 19th day of September, 2019.

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3 


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PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT - 19
CASE NO. 17-2-01406-39

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