

THE HONORABLE RICARDO S. MARTINEZ
THE HONORABLE BRIAN A. TSUCHIDA

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

CEDRIC JACKSON, MARYANNE ATKINS,
TORY LOVE, TRISTAN PASCUA,
PATRICK TABLES and all others similarly
situated,

Plaintiffs,

vs.

KING COUNTY, a municipal corporation
Defendant.

CLASS ACTION

No. 21-cv-995-RSM-BAT

PLAINTIFFS' MOTION FOR APPROVAL
OF ATTORNEYS' FEES AND COSTS

Noted for Consideration: January 11, 2022

I. INTRODUCTION

Plaintiffs respectfully move, unopposed, for approval of \$50,000 in attorneys' fees and costs. Defendant King County has agreed to pay this amount to Columbia Legal Services (hereinafter "Class Counsel"), contingent on this Court's final approval of the underlying Class Settlement and the Court's approval of the proposed fee award. Dkt #7-1 (Settlement Agreement) at ¶6. As outlined below, the proposed fee and cost award is reasonable and fair, considering the substantial and beneficial total award to the Class, the costs that Class Counsel has incurred, and the extensive hours and effort Class Counsel has spent in investigation and negotiation.

1 **II. STATEMENT OF FACTS**

2 As outlined in the motion for preliminary approval of the settlement, Dkt. #6, the
3 proposed settlement in this case requires King County to pay each eligible Class Member \$500
4 per each day (and prorated for each partial day) spent in solitary confinement prior to the age of
5 18 and for each day after the age of 18 if the class member was covered under King County
6 Ordinance 18637; an ordinance that prohibits the use of solitary confinement against certain
7 juveniles charged as adults, even after the age of 18. The parties have agreed that the Class is
8 owed at least \$1,086,000 and that it includes at least 77 people. *See* Dkt #6 at 13; *also*,
9 Declaration of Alison S. Bilow at ¶11. The final settlement amount will likely be greater than
10 \$1,086,000 following additional discussions between the parties and consideration of additional
11 information to be received before the final settlement hearing. Final information about the total
12 settlement amount will be provided to this Court as part of Class Counsel's Final Approval
13 briefing due on December 27, after all the applicable claims and opt out deadlines.

14 In addition to the financial settlement to the Class, Defendant King County also agreed to
15 pay \$50,000 for Class Counsel's costs and fees, separate from the total award to the class. Dkt
16 #7-1 at 6. The agreement to pay this to Class Counsel is contingent on the total settlement being
17 approved and contingent on approval of fees and costs by this Court.

18 Class notices informed class members that King County has agreed to pay Class Counsel
19 \$50,000 in attorneys' fees and costs and that a copy of this fee motion would be added to the
20 settlement website, on or around November 13th. The notices also explained that a copy of the
21 fee motion could be mailed to any class members that contacted Class Counsel to request one.
22 The deadline to file objections in this case is December 13th. If any Class member objects to the
23

1 proposed fee and cost award, Class Counsel will address any such objections in its final
2 settlement approval briefing and at the January 11th fairness hearing.

3 This settlement followed an extensive investigation by Class Counsel, which began in
4 2019. Dkt # 6 at 10-13 (describing the settlement and negotiation process). Class Counsel spent
5 extensive time negotiating across three and half different mediation dates, extensive time
6 reviewing thousands of pages of jail records to calculate solitary confinement time, and initially
7 interviewed or exchanged correspondence with over 50 class members. Class Counsel, Columbia
8 Legal Services, is a nonprofit law office which took this civil rights case without substantial
9 monetary motivation and negotiated for a reduced reimbursement of costs and some of its fees,
10 in order to achieve the highest possible amount of recovery for the class. Dkt #6 at 23.

11 Class Counsel has spent roughly \$13,105 in costs for this case, primarily in mediation
12 fees, initial investigation/skip tracing costs, and record retrieval. Bilow Decl. at ¶3. Class
13 Counsel has also budgeted and plan to expend possible further mediation costs concerning day
14 count disputes from any Class Members that need to go to a third party neutral/mediator for
15 decision, in accordance with the process laid out in the settlement agreement. If a full day of
16 mediation is needed, the current estimate for this additional cost is likely between \$3,000-\$4,000.
17 *Id.* at ¶5.

18 According to the time logs kept by Columbia Legal Services for this case, even following
19 the exercise of reasonable billing judgment and significant reductions in total time, Class
20 Counsel spent over 1090 compensable attorney hours on this case between March 2020-
21 September 2021. *Id.* at 8; *see also* Dkt. #7 at ¶90 (previous declaration from Class Counsel
22 Nicholas Straley noting roughly 950 hours spent on the case as of June 2021). Class Counsel also
23 expended further initial investigation hours on this case prior to March 2020, has spent

1 significant additional time skip tracing and locating class members as part of notice in October
2 2021, and expects to spend additional time resolving any possible disputed day count issues and
3 to put together final approval materials and briefing for this Court.

4 **III. AUTHORITY AND ARGUMENT**

5 **A. Class Counsel’s fees and costs are reasonable and fair and should be awarded**

6 In class action cases, Federal Rule of Civil Procedure 23(h) provides that a court may
7 “award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the
8 parties agreement.” In this case, Defendant King County has agreed to pay Class Counsel
9 \$50,000 in fees and costs. Recovery of fees and costs would also be authorized by law, pursuant
10 to 42 U.S.C. § 1988, allowing for reasonable attorney fee and cost recovery in cases of this
11 nature. In determining whether a request for attorneys’ fees is reasonable, the Ninth Circuit
12 typically uses either a “percentage-of-recovery method” or the “lodestar” method,” and the
13 choice between tests depends on the nature of the case. *In re Online DVD-Rental Antitrust Litig.*,
14 779 F.3d 934, 949 (9th Cir. 2015) (internal citations omitted) (discussing the two different
15 methods); *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.3d 1301, 1311 (9th Cir. 1990)
16 (discussing when each of the methods may be appropriate).

17 Under either method, Class Counsel’s request for \$50,000 in agreed costs and fees is
18 eminently reasonable. Under the percentage of recovery method, Class Counsel’s requested fees
19 and costs represent approximately only 4-5% of the likely total settlement amount. This is far
20 lower than typical fee awards for common fund cases, where the “bench mark” is typically 25%
21 of the recovery obtained, with a general range of between “20 percent to 30 percent.” *See Paul,*
22 *Johnson, Alston & Hunt v. Grauldy*, 886 F.2d 268, 272 (9th Cir. 1989). If the approximately
23 \$13,000 in costs by Class Counsel are separately accounted for and subtracted from the \$50,000

1 total, the percentage of recovery in fees is even lower, at an estimated 3% of the recovery. Class
 2 Counsel's rather low requested fees, in light of its nonprofit status, provided a significant benefit
 3 to the class by not significantly reducing the total recovery and damages award to the class. In
 4 contrast to typical common fund cases, the \$50,000 was separately negotiated and does not
 5 diminish the settlement due to individual class members.

6 Under the lodestar method for attorney fee calculations, the proposed attorney fee and
 7 cost award are also appropriate. Under fee-shifting statutes, Courts first calculate the "lodestar,"
 8 by multiplying the reasonable hours expended by a reasonable hourly rate, and then may
 9 subsequently modify the lodestar upwards or downwards based on various factors. *Staton v.*
 10 *Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003). In assessing reasonableness according to the
 11 lodestar method, courts in the Ninth Circuit also consider a number of different non-exclusive
 12 factors. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).¹ Not all factors have
 13 to be considered, just the most relevant ones. *Quesada v. Thomason*, 850 F.2d 537, 539 (9th Cir.
 14 1988).

15 Under the most relevant of these factors, the assessed attorney fees are more than
 16 reasonable and provide a significant benefit to the class. Columbia Legal Services' standard
 17 hourly office rate would be between \$250-\$300 for class counsel Alison Bilow and between
 18 \$475-\$600 for class counsel Nicholas Straley, rates which are comparable to rates charged by
 19 other attorneys in the Seattle area at similar experience levels. Dkt #7 at ¶90. According to
 20

21 _____
 22 ¹ These factors are: "(1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the
 23 skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to
 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed
 by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation,
 and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional
 relationship with the client; and (12) awards in similar cases." *Quesada* at 539 n. 1.

1 Columbia Legal Services time logs, Alison Bilow and Nicholas Straley have spent over 1,090
2 potentially compensable hours on this case. That number contains substantial reasonable
3 reductions and also does not include time spent in October 2021 and time which will be spent
4 between November 2021-January 2022 on day count disputes and final approval briefing. The
5 requested \$50,000 in fees and costs is far less than what would be appropriate under the lodestar
6 method. Even if both Nicholas Straley and Alison Bilow requested all fees under the lodestar
7 method at the lowest \$250/hour rate for 1090 hours, this award would amount to \$272,500. The
8 proposed fee and cost award thus represents a substantial “negative” lodestar.

9 Class Counsel spent significant time and labor on this case, particularly in reviewing and
10 assessing solitary confinement time and calculations, significant time in negotiations, and
11 obtained a high and beneficial amount for the class. The case also presented difficult and novel
12 questions concerning damages awards for solitary confinement, including complex constitutional
13 and statutory claims. Class counsel investigated and negotiated the case efficiently and
14 effectively, and achieved settlement without a costly trial or appeal. Finally, Counsel faced the
15 risk over the course of substantial negotiation that it might recover nothing in fees. Given these
16 factors, the fees and costs requested by Class Counsel are eminently reasonable.

17 **IV. CONCLUSION**

18 Class Counsel respectfully requests that this Court grant this motion for an award of
19 attorneys’ fees and costs to Class Counsel in the amount of \$50,000.

20 Dated this 12th day of November, 2021.

21 COLUMBIA LEGAL SERVICES

22 s/ Nicholas B. Straley
23 NICHOLAS B. STRALEY, WSBA #25963
Nick.Straley@columbialegal.org

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

Nick Straley declares as follows:

I hereby certify that on November 12, 2021, I electronically served the foregoing document upon counsel for Defendants in this action at their email addresses as listed below:

**King County Prosecutor's Office
Civil Division**

JESSICA KOZMA
jessica.kozma@kingcounty.gov

ANN SUMMERS
ann.summers@kingcounty.gov

PASCAL HERZER
pascal.herzer@kingcounty.gov

DATED this 12^h day of November, 2021.

COLUMBIA LEGAL SERVICES

s/ Nicholas B. Straley
NICHOLAS B. STRALEY, WSBA #25963
Nick.Straley@columbialegal.org

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THE HONORABLE RICARDO S. MARTINEZ
THE HONORABLE BRIAN A. TSUCHIDA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CEDRIC JACKSON, MARYANNE)	
ATKINS, TORRY LOVE, TRISTAN)	CLASS ACTION
PASCUA, PATRICK TABLES and all)	
others similarly situated,)	NO. 2:21-cv-00995
)	
Plaintiffs,)	DECLARATION OF CLASS COUNSEL
)	ALISON S. BILOW
v.)	
)	
KING COUNTY, a municipal corporation,)	
)	
Defendants.)	
_____)	

I, Alison S. Bilow, declare under penalty of perjury under the laws of the State of Washington:

1. I am an attorney with Columbia Legal Services (CLS) and co-counsel for Plaintiffs in this lawsuit. I make this declaration based on personal knowledge, and I am competent to testify regarding the statements made herein.

2. I am submitting this declaration in support of CLS’s unopposed motion for approval of attorneys’ fees and costs in the amount of \$50,000.

1 3. I have reviewed the costs that my office spent in investigation and negotiation of
2 this class action settlement. Based on my review, total costs spent on this case are currently
3 around \$13,105, broken down as follows:

- 4 a. \$6,105 paid to Judicial Dispute Resolution LLC for mediation costs for two full
5 days of mediation regarding this matter on September 24, 2020 and October 9,
6 2020. Mediation costs were split evenly between Defendant King County and
7 Columbia Legal Services. The \$6,105 is Columbia Legal Services' half of the
8 mediation costs for those dates.
- 9 b. \$3,460 paid by CLS to Judicial Dispute Resolution LLC for mediation costs for
10 another full day of mediation on May 26, 2021.
- 11 c. \$1,535 spent on investigation and skip tracing costs in 2020, to locate last known
12 addresses and contact information for Class members during the initial
13 investigation and mediation of this case.
- 14 d. \$788 spent to obtain court documents from electronic court record systems, over
15 the course of 2020-2021, for purposes of reviewing information to assess who
16 may be a class member, and for skiptracing contact information for purposes of
17 finding class members.
- 18 e. \$815 spent on translation costs for translating class notice information from
19 English to Spanish.
- 20 f. \$402 paid in filing fees.

21 4. My office was initially billed an additional \$1,315 for a half day of mediation in
22 this matter in July 2021, which was noted as a cost in our preliminary approval motion. The
23 mediator ultimately agreed to waive this cost for both parties.
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1 5. If Class Counsel and King County Counsel cannot resolve or agree on any day
2 count disputes for class members who choose to appeal their day count determination, the
3 settlement in this case provides that day count disputes will go to an agreed third party neutral.
4 In the event that the assistance of a third party neutral is needed, Columbia Legal Services and
5 King County counsel have reserved the assistance of a mediator for a full day on December 1st.
6 If mediation services are needed for a full day, this cost is expected to be in the \$3,000-\$4,000
7 range. Columbia Legal Services is fully prepared to expend this cost or more, if needed, to
8 resolve any day count disputes.

9 6. Columbia Legal Services also spent additional money on various costs, some of
10 which were not itemized or readily available to me at the time of filing this motion. For
11 instance, money has been spent over the past couple years on postage costs and postage costs
12 for class notices. Postage costs typically come out of our overhead and existing prepaid postage
13 and stamps, and are not individually calculated for each case by my office. However, my rough
14 estimate of postage costs for this case based on the number of letters mailed over the course of
15 2020-2021 would be in the range of at least \$200. A phone line was also set up for this case,
16 the phone number of which was detailed on class notices. The phone number was set up as a
17 collect number at multiple prisons and jails, so that class members could call into that line from
18 prisons or jails without spending money on the call. I am not sure of the total amount that has
19 been spent on those collect phone costs.
20

21 7. CLS staff keep contemporaneous time logs for hours spent on cases. This
22 information is then input into a case management system. I have pulled the time logs for this
23 case from February 2020 to September 2021 and made reasonable reductions to the hours
24 spent. According to those time logs, myself and co-counsel Nicholas Straley have spent at least
25

1 1,098.4 hours on this case during that time. In accord with reasonable hours reductions, this
2 number does not include hours spent by a few additional CLS attorneys who assisted or
3 consulted on this matter over the past two years. It also does not include time spent by
4 paralegal and legal assistant staff. I also reduced the number of hours to not include substantial
5 additional investigation time spent between the Summer of 2019 and February 2020, since
6 some of that time overlapped with three other clients who had initially expressed interest in
7 being class representatives but who agreed to settle their individual cases during an earlier
8 round of mediation. In my opinion, a 1,000-1,100 hours would be a minimum reasonable
9 lodestar hours number, with significant and substantial reasonable hours reductions.

10 8. This case presented complex legal questions and logistical considerations. A
11 considerable amount of time was spent on this case over the Fall 2019-present, including three
12 and a half mediation sessions, many negotiations with opposing counsel, substantial time
13 finding and interviewing potential class members, legal research, and extensive review of
14 records.
15

16 9. As noted in my co-counsel's declaration filed in support of preliminary approval
17 of the settlement, Columbia Legal Services is a nonprofit organization. We specifically agreed
18 on a reasonable figure for reimbursement of our costs and a portion of our fees, in order to
19 maximize the amount of recovery that would be available to the class.

20 10. Prior to class notices being mailed, and under a protective order, Columbia Legal
21 Services reviewed records and identified and agreed with King County that there were
22 additional class members with additional solitary confinement days. 77 identified class
23 members were provided with class action notices, and the total settlement award for this 77-
24 person class is now *up to* \$1,231,510, subject to changes in the total amount depending on opt-
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1 outs, claims, and day count disputes. Pursuant to the settlement agreement and subsequent
2 discussions with Class Counsel and King County counsel, 60 individuals, who had prior
3 contact with Columbia Legal Services and provided Releases of Information at some point, do
4 not have to do anything to “claim” or be included in the settlement, but they still retain opt out
5 and objection rights, in accord with the approved notice form. 17 class members who had not
6 previously provided Columbia Legal Services a Release of Information form at any point have
7 to contact Class Counsel by November 13th to be included in the case. Their notices contain
8 different language to this effect.

9 DATED this 12th of November 2021 at Seattle, Washington

10
11 s/ Alison Bilow
12 ALISON S. BILOW, WSBA #49823
13 nick.straley@columbialegal.org

14 Columbia Legal Services
15 101 Yesler Way, Suite 300
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17 (206) 464-0838 phone; (206) 382-3386 fax
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CERTIFICATE OF SERVICE

Nicholas B. Straley declares as follows:

I hereby certify that on November 12 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

I further certify that I served the foregoing filing upon attorneys for Defendants in this action at their email addresses as listed below:

DAN SATTERBERG, King County Prosecutor
Civil Division
King County Courthouse
516 Third Avenue, W400
Seattle, WA 98104

Ann Summers, Ann.Summers@kingcounty.gov
Jessica Kozma, Jessica.Kozma@kingcounty.gov
Pascal Herzer, Pascal.Herzer@kingcounty.gov

DATED this 12th day of November, 2021.

/s/ Nicholas B. Straley
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