

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

COPY
Original Filed

JUN 09 2017

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON
COUNTY OF SPOKANE

Christina Martin, Jason Longoria, Charles
Arnold, John Sager, Darrel Nash, Erick
Thomas, Darin Foster, and Luis Gonzalez
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

The State of Washington, the Washington
State Patrol, Jeffrey DeVere, Jay
Cabezuela, Timothy Winchell, and John
Batiste,

Defendants.

) Case No.: 14-2-00016-7

) [PROPOSED] ORDER GRANTING
) PLAINTIFFS' MOTIONS FOR CLASS
) CERTIFICATION AND
) PRELIMINARY APPROVAL OF
) SETTLEMENT AGREEMENT

This matter came before the Court on Plaintiffs' Unopposed Motion for Class
Certification and Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement
Agreement.

Having considered the relevant pleadings together with foregoing motions, the court
finds:

1. The proposed Class meets the four prerequisites of Civil Rule 23(a), and the
requirements of Civil Rule 23(b)(3).

1 2. “[T]he class is so numerous that joinder of all members is impracticable.” CR
2 23(a)(1). The Plaintiffs have identified at least 878 members of the Class, which far exceeds
3 the ordinary threshold of 40 Class Members that presumptively satisfies the numerosity
4 standard. *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821 (2003).

5 3. There are “questions of law or fact common to the Class,” CR 23(a)(2),
6 including whether the Defendants’ pattern or practice violated the Uniformed Services
7 Employment & Reemployment Rights Act, whether the Plaintiffs’ had a state-created property
8 right in receiving the veteran preference under Washington state law, whether such a property
9 right was disregarded in violation of the Due Process Clause of the U.S. Constitution, and the
10 legal and equitable remedies available to the Class Members. Accordingly, Plaintiffs have
11 demonstrated that there are far more than a “single issue common to all members of the class.”
12 *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d 665, 673 (2002).

13 4. The claims of the Plaintiffs “are typical of the claims or defenses of the class.”
14 CR 23(a)(3). “Typicality is satisfied if the claim ‘arises from the same event or practice or
15 course of conduct that gives rise to the claims of other class members, and if his or her claims
16 are based on the same legal theory.’” *Pellino v. Brink’s Inc.*, 164 Wn. App. 668, 683-84, 267
17 P.3d 383, 392 (2011). In this action, all Plaintiffs challenge the same course of conduct that
18 was applied to all Class Members as they claim that the Washington State Patrol did not follow
19 the veteran preference in the hiring or promotion process as mandated by Washington state law.

20 5. “[T]he representative parties will fairly and adequately protect the interests of
21 the class.” CR 23(a)(4). Plaintiffs and each Class member alleged that they “have been injured
22 by the conduct of Defendants, and Plaintiffs seek relief that is identical to that which could be
23 sought by every other member of the Class.” *See id.* Plaintiffs have vigorously pursued the
24
25

1 interest of the class in challenging WSP's practice of denying the veteran preference. No
2 conflicts between Plaintiffs and the Class have been identified. Furthermore, Plaintiffs' counsel
3 have experience in prosecuting complex class actions such as this one. Plaintiffs' counsel have
4 the experience, skill, and resources to vigorously prosecute this type of complex employment
5 class action lawsuit.

6 6. In this case, "questions of law or fact common to the members of the class
7 predominate over any questions affecting only individual members," CR 23(b)(3), because the
8 vast majority of legal and factual questions in this action are common to all Class Members and
9 there are few, if any, individualized issues. As such, here "there is common nucleus of
10 operative facts' to each class member's claim." *Smith*, 113 Wn. App. at 323 (citation and
11 quotations omitted).

12 7. In this case, a "class action is superior to other available methods for fair and
13 efficient adjudication of the controversy," CR 23(b)(3), as a class action will be the most fair
14 and efficient way to resolve the claims of approximately 900 Class Members who allege they
15 were injured by the same general pattern or practice by the Defendants. The members of the
16 class do not have an interest in individually controlling the prosecution of this case in separate
17 actions. CR 23(b)(3)(A), given the modest value of the claims, the complexity and cost of
18 litigating the claims, and the low likelihood that Class Members could obtain counsel to litigate
19 their claims separately. Furthermore, no other litigation has been commenced by members of
20 the Class regarding the practices challenged in this action. CR 23(b)(3)(B). In addition, its
21 desirable to concentrate the litigation of the claims in a single forum, as a single class action
22 will resolve the same legal and factual issues for approximately 900 Class Members who
23
24
25

1 worked for or applied for employment in the State of Washington and many of whom live in the
2 State of Washington.

3 8. As a preliminary matter, the Settlement Agreement is fair, adequate, and
4 reasonable. The Settlement Agreement appears to be the product of serious, informed, non-
5 collusive negotiations, which were intensive, lengthy, and negotiated at arm's length by
6 experienced counsel for the parties. The Settlement Agreement has no obvious deficiencies.
7 The Settlement Agreement does not improperly grant preferential treatment to class
8 representatives or segments of the class. The Settlement Agreement falls within the range of
9 possible approval, providing between \$13 million to \$15 million of estimated monetary relief to
10 the Class as well as significant programmatic relief.

11 9. All of the relevant factors for considering whether a settlement is fair, adequate,
12 and reasonable support a preliminary finding that the Settlement Agreement is fair adequate and
13 reasonable.

14 a. There are significant legal and factual issues that impact the likelihood of
15 success by the Plaintiffs, including a range of affirmative defenses that the
16 Defendants have asserted and the range of possible amounts of damages in the
17 action.

18 b. Significant discovery has occurred in this case over the Washington State
19 Patrol's hiring and promotion policies, including the production of voluminous
20 personnel data and documents and expert analyses of the potential damages in
21 this action.

22 c. The Settlement Agreement's terms are highly favorable to the Class
23 Members, providing \$13 million of consideration plus additional pension
24
25

1 contributions that has an estimated value of \$2 million, as well as significant
2 programmatic relief.

3 d. The Settlement Agreement is recommended by experienced counsel, who
4 have extensive class action experience in employment litigation, including in
5 cases brought under the Uniformed Services Employment & Reemployment
6 Rights Act.

7 e. The future expenses and likely duration of the litigation would be
8 significant, including substantial discovery, motion practice, and a lengthy trial.

9 f. The Settlement Agreement was reached in good faith and without
10 collusion, following the denial of Defendants' motion to dismiss, three years of
11 discovery, notice to putative Class Members to obtain information relevant to
12 settlement, arms-length negotiations that spanned numerous months, and a
13 mediation presided over by two well-respected attorneys

14 NOW, THEREFORE, based on the above findings, IT IS HEREBY ORDERED:

15 1. Plaintiffs' Motion for Class Certification is granted.

16 2. Pursuant to Washington Civil Rule 23(a) and (b)(3), the proposed Class is

17 certified with respect to all claims in the Second Amended Complaint, and is defined as
18 follows:

19 (1) individuals who, prior to January 1, 2013, applied for employment in the
20 position of Trooper with the Washington State Patrol or were employed by and
21 applied for a promotion to a higher ranking position of employment within the
22 Washington State Patrol, including a position with the rank of Sergeant, or
23 Lieutenant; and

24 (2) individuals who were eligible to receive a veteran preference pursuant to
25 RCW 41.04.010(1)-(3) with respect to such application for a position of

1 employment or application for a promotion to a higher ranking position of
2 employment; and

3 (3) individuals who on one or more occasions did not receive such veteran
4 preference in connection with such application for a position of employment or
5 for a promotion to a higher ranking position of employment.

6 Excluded from the Class are Defendants, the Defendants' legal representatives,
7 assignees and successors, the judge to whom this case is assigned, any member
8 of the judge's family, any person who has previously settled the same claims as
9 set forth in this Complaint, and any individual who applied for a position of
10 employment or a promotion to a position of employment other than Trooper,
11 Sergeant, or Lieutenant (i.e. persons who applied for or were employed as non-
12 commissioned positions are not included in the Class, unless they also applied
13 for a position of Trooper, Sergeant, or Lieutenant).

14 3. Plaintiffs Christina Martin, Jason Longoria, Charles Arnold, John Sager, Darrel
15 Nash, Erick Thomas, Darin Foster, and Luis Gonzalez are appointed as the Class
16 Representatives.

17 4. R. Joseph Barton of Block & Leviton LLP and Peter Romer-Friedman of Outten
18 & Golden LLP are appointed as Co-Lead Class Counsel, and Matthew Z. Crotty of Crotty &
19 Son Law Firm PLLC and Thomas G. Jarrard of The Law Office of Thomas Jarrard are
20 appointed as Class Counsel.

21 5. Plaintiffs' Motion for Preliminary Approval is granted.

22 6. The Settlement Agreement is granted preliminary approval, and the Plan of
23 Allocation is granted preliminary approval.

24 7. A.B. Data is appointed as the Notice Administrator.

25 8. _____ is appointed as the Settlement Administrator.

9. James McDevitt is appointed as the Special Master.

10. The Proposed Notice and Notice Plan are approved. The court hereby directs
that the Notice Administrator shall mail the Notice by no later than 20 days after the date of this

1 preliminary approval order, establish the website provided for in the Settlement Agreement not
2 earlier than the date on which Class Notice is mailed and not later than 3 business days
3 thereafter, and commence the publication notice not earlier than that the date on which the
4 website is established and no later than 30 days after the preliminary approval order.

5 11. Defendants will provide Class Member contact information to Class Counsel no
6 later than 20 days after the date of this preliminary approval order.

7 12. Defendants will file a declaration that Notice has been provided to Class
8 Members consistent with this Order no later than 30 days after the date of this Order.

9 13. All objections to the Settlement Agreement must be postmarked by 8/28,
10 2017.

11 14. All requests to opt out of the Class and the Settlement Agreement must be
12 postmarked by 8/28, 2017.

13 15. All challenges by Class Members or any person seeking to establish themselves
14 as a member of the Class must be postmarked by 8/28, 2017.

15 16. Class Counsel will submit any motion for an award of attorneys' fees and costs
16 and any motion for a service award to the Class Representatives by 8/11, 2017.

17 17. The Settlement Administrator will file a declaration that it has completed all
18 adjudications of any Class Member challenges and has send an explanation of its adjudications
19 to challenging Class Members (and the dates on which it did so) by 9/8, 2017.


20 18. Class Counsel will file a motion for final approval of the settlement by
21 9/15, 2017.

1 Attorneys for Plaintiffs

2

3 ROBERT FERGUSON
Attorney General

4

5 

Jason Brown WSBA# 34249
6 Attorney for Plaintiff's Attorney for Defendants
Assistant Attorney General

7 Attorneys for Defendants

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085 the undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the ___ day of _____ 2017, the foregoing was delivered to the following persons in the manner indicated:

Jason D. Brown, Esq. Attorney General of Washington 1116 W. Riverside Ave. Spokane, WA 99201	VIA REGULAR MAIL ___ VIA FACSIMILE ___ HAND DELIVERED <u> X </u> VIA EMAIL <u> X </u>
---	--

CROTTY & SON LAW FIRM, PLLC

Matthew Z. Crotty, WSBA 39284
905 West Riverside Ste. 409
Spokane, WA 99201
Office: (509) 850- 7011