

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

STACY SCHAPKER,

Plaintiff,

v.

WADDELL & REED FINANCIAL, INC., *et al.*,

Defendants.

Case No. 17-cv-2365-JAR-JPO

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

Plaintiff hereby moves for Conditional Class Certification and Preliminary Approval of Class Action Settlement. Defendants do not oppose this motion.

This Settlement resolves Plaintiff’s class-action claims against Defendants regarding their management of the Waddell & Reed Financial, Inc. 401(k) and Thrift Plan (the “Plan”). Under the terms of the Settlement, Defendant Waddell & Reed Financial, Inc. will cause its fiduciary insurance carrier, RLI Insurance Company (“RLI”), to pay \$4.875 million into a common fund for the benefit of Class Members, which will be allocated pro rata among Class Members in proportion to their account balances in the Plan during the Class Period (after deduction of Court-approved Attorneys’ Fees and Costs, Administrative Expenses, and Class Representative Compensation). The Settlement also provides for ongoing prospective relief for at least three years in the form of an independent investment advisor to assist in making decisions about managing the Plan and its investments.

The Court should conditionally certify the Class for purposes of settlement because: (1) the Class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the Class; (3) Plaintiffs’ claims are typical to those of the Class; (4)

Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class; and (5) prosecuting separate actions by or against individual Class Members would create a risk of (a) inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for the party opposing the Class, and/or (b) adjudications with respect to individual Class Members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. Fed. R. Civ. P. 23(a), (b)(1).

The Court should appoint Foulston Siefkin LLP as Class Counsel because: (1) it has done significant work identifying, investigating, and litigating the claims in this case; (2) it has experience in handling class actions, other complex litigation, and ERISA claims; (3) it has extensive knowledge of the applicable law; and (4) it will commit whatever resources are necessary to represent the Class. Fed. R. Civ. P. 23(a)(1)(A).

The Court should preliminarily approve the proposed Settlement because: (1) it was fairly and honestly negotiated; (2) it is fair and reasonable and provides adequate relief to the Class; (3) serious questions of law and fact place the ultimate outcome of the case in doubt; and (4) the value of an immediate recovery outweighs the possibility of future relief after protracted and expensive litigation. Fed. R. Civ. P. 23(e); *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002).

The Court should approve the proposed Settlement Notices and authorize the proposed distribution of the Settlement Notices via first-class mail because this will fairly apprise Class Members of the terms of the proposed Settlement and their options, and thus is reasonable and satisfies due process. Fed. R. Civ. P. 23(e)(1), (c)(2)(A).

Accordingly, Plaintiff respectfully requests that the Court enter an order: (1) conditionally

certifying the Class for settlement purposes; (2) appointing Foulston Siefkin LLP as Class Counsel; (3) preliminarily approving the Settlement; (4) approving the proposed Settlement Notices and authorizing distribution of same; (5) scheduling a Final Approval Hearing; and (6) granting other relief as set forth in the proposed Preliminary Approval Order. Defendants do not oppose Plaintiff's motion.

This motion is accompanied by a Memorandum in Support.

Plaintiff is submitting a proposed Preliminary Approval Order along with this motion, which is being submitted directly to the Judge, in accordance with D. Kan. Rules 7.1(b) and 5.4.4. The proposed Preliminary Approval Order is also attached as Exhibit A-1 to the Memorandum in Support.

Respectfully prepared and submitted by,

FOULSTON SIEFKIN LLP

*/s/ Boyd A. Byers* \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 19, 2018, I electronically filed the above and foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all attorneys of record.

/s/ Boyd A. Byers  
Boyd A. Byers, KS Bar No. 16253