The Honorable Nelson Lee
Noted for: September 17, 2024
Without Oral Argument

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

MICHAEL MEHOLIC, individually and on behalf of all others similarly situated,

Plaintiff,

v.

SEATTLE ARENA COMPANY,

Defendant.

NO. 23-2-20824-2 SEA

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Michael Meholic, on behalf of himself and the other members of the Proposed Settlement Class (together "Plaintiffs"), respectfully move the Court for an order: (1) granting preliminary approval of the settlement reached in this action, as set forth in the Settlement Agreement and Release ("Settlement Agreement")[1] attached to the Declaration of Kaleigh N. Boyd in Support of Motion for Preliminary Approval as Exhibit 1 (hereinafter "Boyd Decl."); (2) approving the proposed Notices to Settlement Class Members of the settlement and related information (including the hearing on final approval and any objections to the proposed settlement) in the forms attached to the Settlement Agreement as Exhibits A and C; (3) directing issuance of Notice to Settlement Class Members; and (4) determining that the Court will likely be able to approve the Settlement Agreement under the Superior Court Civil Rules, and

[1] Unless otherwise indicated, all capitalized terms used herein have the same meaning as those used in the Settlement Agreement. *See* Boyd Decl., Ex. A.

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

determining that the Court will likely be able to certify the Settlement Class for purposes of judgment, consistent with all material provisions of the Settlement Agreement; and (5) setting a schedule for filing of objections to the proposed settlement and hearing on final approval of the settlement. Defendant Seattle Arena Company, LLC, (hereinafter "Defendant") does not oppose this Motion.

I. INTRODUCTION

This action arises from Plaintiff's Complaint that Defendant allegedly charged customers an undisclosed 3% service fee when they purchased certain concessions at certain events operated at Climate Pledge Arena (hereinafter "Arena") in the Spring of 2023. Plaintiff alleges that Defendant assessed the 3% fee without notifying customers, that Defendant did not include the 3% fee in the listed price of the items purchased, and that Defendant failed to notify customers that such fee would be added to the total amount paid.

Defendant represents that it collected approximately $162,917.16 (the "Collected Fee Amount") from patrons of the Arena in conjunction with the 3% fee, but denies the allegations and contentions against it in this litigation and denies all wrongdoing or liability. Nevertheless, Defendant agrees that continuing to litigate would be time consuming, burdensome, and expensive, and that it is therefore desirable to fully and finally settle this litigation in the manner and upon the terms set forth in the Settlement Agreement, which will provide full restitution to the Proposed Settlement Class.

II. BACKGROUND

On October 25, 2023, Plaintiff filed a Class Action Complaint against Defendant[2]

[2] Plaintiff initially filed this action against Oak View Group, LLC. Pursuant to the parties' Stipulated Motion to Amend the Complaint, Defendant Seattle Arena Company, LLC was substituted as the appropriate Defendant.

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

individually and on behalf of all others similarly situated ("the Complaint"). *See* Dkt. No. 1. Plaintiff alleges that Defendant failed to notify Plaintiff of a 3% service fee. *See id*. The Complaint asserts claims under the Washington Consumer Protection Act, RCW 19.86.010, as well as for negligence and unjust enrichment. *See id*.

Defendant denies all claims of wrongdoing or liability that Plaintiff asserts in the Complaint. However, following the exchange of informal discovery, the Parties engaged in settlement negotiations and reached a settlement in principle to resolve all of Plaintiff's claims against Defendant. Decl. Boyd, ¶¶ 3-4. The parties thereafter finalized all the terms of the Settlement Agreement on August 26, 2024. *Id*. ¶ 4. Neither the Settlement Agreement nor any negotiation or act performed, or document created in relation to the Settlement Agreement or negotiation or discussion thereof, is or may be deemed to be, or may be used as an admission of, any wrongdoing or liability. The material terms of the Settlement Agreement are set forth below.

A. Proposed Settlement Class

The Settlement Agreement will provide relief for the following Settlement Class:

> All individuals who purchased a concession at Climate Pledge Arena between February 27, 2023 and July 22, 2023 and were assessed a 3% fee. The Settlement Class specifically excludes: (i) Defendant and its officers and directors; (ii) all Settlement Class Members who timely and validly submit requests for exclusion from the Settlement Class; (iii) members of the judiciary to whom this case is assigned, their families, and members of their staff.

S.A. ¶ 39.

B. Business Practice Commitments

For a period of five years following the execution of a formal settlement agreement, Defendant agrees to implement and maintain clear and conspicuous concession fee disclosures, in accordance with applicable law ("Business Practice Commitments"). *Id.* ¶ 56. Actual costs for the implementation and maintenance of Business Practice Commitments will not be paid from

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

settlement proceeds. *Id.*

C. Settlement Fund and Settlement Payments

As part of the settlement, Defendant agrees to pay the Collected Fee Amount into a non-reversionary common fund created by the Settlement Administrator, which will be used to fund the Settlement Payments and Settlement Checks. *Id.* ¶ 42. Settlement Class Members who submit a timely Valid Claim using an approved Claim Form, along with necessary supporting documentation, are eligible to receive a cash payment of ten dollars ($10.00), plus the actual 3% fee paid or, if the 3% fee cannot be determined, an additional one dollar ($1.00) for every eligible transaction. In the event the total dollar amount of claims made exceeds the funds available, all Class Member payments will be reduced on a pro-rata basis such that Defendant's maximum amount to be paid does not exceed the Settlement Fund. *Id.* ¶ 49. Claims will be subject to review for timeliness, completeness, and validity by a Settlement Administrator. *Id.*

Participating Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via a claims website or physically by USPS mail to the Settlement Administrator. Claim Forms must be submitted electronically through the Settlement Website or postmarked during the Claims Period and on or before the Claims Deadline. *Id.* ¶ 55.

D. Class Notice and Settlement Administration

Subject to the Court's approval, the Settlement Administrator will provide Class Notice to all Class Members as described in the Settlement Agreement. Reasonable expenses and costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, processing claims, and determining the eligibility of any person to be a Settlement Class Member will be paid directly by Defendant and will not come from the Settlement Fund. *Id.* ¶ 27.

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Within ten (10) days after the date of the Preliminary Approval Order, Defendant shall provide the Settlement Class Data and Ticket Purchaser List to the Settlement Administrator. *Id.* ¶ 57. Within thirty (30) days after the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate Notice to members of the Settlement Class. *Id.* Notice will be issued in a manner reasonably calculated to satisfy due process, and the Settlement Provider will provide a declaration establishing notice conforming to due process requirements that Plaintiffs may file as part of a motion for final approval of the settlement. *Id.* ¶ 58.

As soon as practicable but starting no later than thirty (30) days from the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Email Notice to all Ticket Purchases for which it has email address. *Id.* It shall be presumed that the intended recipients received the Email Notice if the Email Notices have not been returned or "bounced back" to the Settlement Administrator as undelivered. Additionally, as soon as practicable but starting no later than thirty (30) days from the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Internet Notice to reach potential Settlement Class Members in Washington, Oregon, California, and Idaho. *Id.* The Notice will set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement. *Id*. ¶ 60. The Notice will also explain the procedure for Settlement Class Members to exclude themselves or "opt-out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator and the procedure for Settlement Class Members to object to the Settlement or Fee Application. *Id*. ¶¶ 59, 60. A reminder Email Notice shall be

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

issued by the Settlement Administrator no later than fourteen (14) days before the Claims Deadline. *Id.* ¶ 58.

Payments for Valid Claims for reimbursement for approved Claims shall be issued in the form of a check mailed and/or electronic payment to the Settlement Class Member as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the date the claim is approved. *Id.* ¶ 50.

E. Class Representative Service Award, Attorneys' Fees, and Costs

At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application and request for a Service Award Payment for the Settlement Class Representative in recognition for his contribution to this Action. *Id.* ¶ 76. Class Counsel's Fee Application will also be for an award of attorneys' fees and Litigation Costs, and Expenses to be paid by Defendant—separately from the common fund—of $57,500, subject to Court approval. *Id.* ¶ 78. Defendant is aware of, and will not oppose, Plaintiff's request for attorneys' fees up to this amount and Plaintiff's reasonable costs. *Id.* The parties negotiated the payment of attorneys' fees and costs after the Parties reached an agreement on the total settlement amount, and Court approval of the settlement is not dependent on the Court awarding attorneys' fees and costs. *Id.*

Defendant also agrees not to oppose a service award of $5,000 to the Settlement Class Representative, subject to Court approval. *Id.* ¶ 76. This service award shall be separate and apart from any other benefits available to the Settlement Class Representative as a Participating Settlement Class Member under the terms of this Agreement. *Id.* Such Service Award Payment shall be paid by Defendant, in the amount approved by the Court, no later than ten (10) days after the Effective Date. *Id.* No decision by the Court, or modification or reversal or appeal of any

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

decision by the Court, concerning the amount of the service award shall constitute grounds for termination of this Agreement. *Id.* ¶ 77.

F. Reduction and Residual Funds

Plaintiff believes the Collected Fee Amount—which represents the entirety of what Defendant collected as the 3% fee—will be more than ample to accommodate the amounts drawn from it, (Boyd Decl. ¶ 8), but, in the unlikely event it is not, the total cost to Defendant will not exceed the Collected Fee Amount, and all claims drawn from it will be reduced *pro rata* and no additional monetary benefits shall be paid to any claimants. S.A. ¶ 49. If, after accounting for all claims, there are residual funds in the cash settlement fund, these residual funds will be paid to the Legal Foundation of Washington in accordance with Civil Rule 23. *Id.*

G. Class Release

Upon Final Approval of this Settlement Agreement, Settlement Class Representative and Participating Settlement Class Members, and each of their spouses and children with claims on behalf of the Settlement Class member, and each of their respective heirs, executors, administrators, estates, representatives, agents, partners, predecessors, successors, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, and assigns and all who claims through them or who assert claims (or could assert claims) on their behalf shall be deemed to have, and by operation of Judgment shall have released, acquitted, relinquished, and forever discharged any and all Released Claims against Defendant and its present and former departments or divisions, and any and all of their respective past, present, and future officers, directors, employees, partners, servants, agents, successors, attorneys, advisors, consultants, contractors, vendors, service providers, representatives, insurers, reinsurers, parents, subsidiaries, affiliates, subrogees and the predecessors, successors, and assigns of any of the foregoing. *Id.* ¶ 73.

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

III. ARGUMENT AND AUTHORITY

As a matter of "express public policy," Washington courts strongly favor and encourage settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258 (1997); *see also Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 190 (2001) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution." (citation omitted)). This is particularly true in class actions and other complex matters where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 555–56 (9th Cir. 2019) (*en banc*); *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015).[3] Nonetheless, the settlement of a class action requires the Court's approval to ensure that the settlement is fair, reasonable, and adequate. This inquiry requires that the reviewing court decide whether the settling parties have shown that the Court likely will be able both (i) to approve the proposal and, if it has not previously certified a class, (ii) to certify the class for purposes of judgment on the proposal. This requirement has been characterized as "a preliminary determination that the settlement 'is fair, reasonable, and adequate'" when considering the factors set out in Rule 23. *Rollins v. Dignity Health*, 336 F.R.D. 456, 461 (N.D. Cal. 2020). The decision to approve or reject a proposed settlement is committed to the Court's sound discretion. *See Pickett*, 145 Wn.2d at 190 (an appellate court will "intervene in a judicially approved settlement of a class action only when the objectors to that settlement have made a clear showing that the [trial court] has abused its discretion."); *see also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

[3] When the language of a Washington rule and its federal counterpart are the same, courts look to decisions interpreting the federal rule for guidance. *Gillett v. Conner*, 132 Wn. App. 818, 823 (2006) (citing *Am. Disc. Corp. v. Saratoga W., Inc.*, 81 Wash.2d 34, 37–38 (1972)).

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Preliminary approval of a class action settlement, and proceeding to class notice stage, is appropriate if "the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *Rollins*, 336 F.R.D. at 461 (citing *In re Tableware*, 484 F. Supp. 2d at 1079). Courts must give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1027 (9th Cir. 1998).

As explained below, the Settlement Agreement is fair, reasonable, provides complete relief to the Class, and it satisfies the standards for granting preliminary approval. The Parties' Notice Plan also constitutes the best notice practicable under the circumstances. Accordingly, the Court should preliminarily approve the Settlement Agreement and direct the Parties and the Settlement Administrator to execute its Notice Plan.

A. The Court should certify the Proposed Settlement Class.

The proponent of a settlement class must demonstrate that (1) the action meets Washington Civil Rule 23(a)'s requirements of numerosity, commonality, typicality, and adequate representation, and (2) that the action falls within one of the three categories of class actions provided for in Washington Civil Rule 23(b).

1. The Proposed Settlement Class satisfies CR 23(a).

a. Numerosity

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Washington Civil Rule 23(a)(1) requires the class to be "so numerous that joinder of all members is impractical." CR 23(a)(1). "As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21." *Cottle v. Plaid Inc*., 340 F.R.D. 356, 370 (N.D. Cal. 2021) (quoting *Slaven v. BP Am., Inc*., 190 F.R.D. 649, 654 (C.D. Cal 2000)). Impracticability of joinder does not mean impossibility, but rather difficulty or inconvenience. *Miller v. Farmer Bros. Co*., 115 Wn. App. 815, 821 (2003). While there is no fixed rule with respect to the requisite number of class members, more than 40 generally suffices. *Id*. at 822.

Here the Class definition includes all individuals who purchased a concession at Climate Pledge Arena between February 27, 2023 and July 22, 2023 and were assessed a 3% fee. While Plaintiff cannot definitively state how many individuals are in the Proposed Settlement Class, Defendant has identified approximately 183,000 transactions that were assessed the 3% fee, which surpasses the threshold required to establish numerosity.

b. Commonality

The second prerequisite for class certification is the existence of "a single issue common to all members of the class." *Smith v. Behr Process*, 113 Wn. App. 306, 320 (2002); *see also* CR 23(a)(2). As Washington courts have noted, "there is a low threshold to satisfy this test." *Behr Process*, 113 Wn. App. at 320. If a defendant has "engaged in a 'common course of conduct' in relation to all potential class members," class certification is appropriate regardless of whether "different facts and perhaps different questions of law exist within the potential class." *Brown*, 6 Wn. App. at 255; *accord Miller*, 115 Wn. App. at 825; *see also* 1 *Newberg* § 3:10.

Here, there are a number of key common questions of law and fact arising out of Defendant's practices. These include (but are not limited to):

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

- Whether Defendant assessed patrons who purchased concessions a 3% fee without notice;
- Whether Defendant failed to inform or notify customers that an additional 3% fee would be added to the price they paid for their purchase;
- Whether Defendant represented the cost of concessions at events with prices that did not include a 3% service fee;
- Whether Defendant concealed and/or omitted the 3% service fee from patrons;
- Whether Defendant's concealment and/or omission affected the public interest;
- Whether Defendant's practices were unfair or deceptive;
- Whether patrons who purchased concessions at an event at the Arena ended up paying more than they intended because the 3% service fee was added to their purchase without notice;
- Whether Plaintiff and the Class are entitled to damages, treble damages, attorneys fees', costs, and injunctive relief.

In the absence of settlement class certification and settlement, each individual Class Member would be required to litigate numerous common issues of fact that can be readily, objectively, and accurately resolved in a single action. In addition, the application of Washington law, which governs in this case, is uniform and creates common issues that arise out of a nucleus of operative facts. For these reasons, the commonality requirement is satisfied for purposes of settlement class certification.

c. Typicality

The typicality requirement asks whether "the claims or defenses of the representative parties are typical of the claims or defenses of the class." CR 23(a)(3). "[A] plaintiff's claim is

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Behr Process*, 113 Wn. App. at 320 (citation omitted). "Where the same unlawful conduct is alleged to have affected both named plaintiffs and the class members, varying fact patterns in the individual claims will not defeat the typicality requirement." *Id*.; *see also State v Oda*, 111 Wn. App. 79, 89 (2002).

Here, Plaintiff's and Settlement Class Members' claims all stem from the same course of conduct and pattern of alleged wrongdoing, namely charging an undisclosed 3% service fee when Settlement Class Members purchased concessions. Thus, Plaintiff's claims are typical of the Settlement Class Members' and the typicality requirement is satisfied.

d. Adequacy

The fourth prerequisite for class certification is a finding that the named plaintiffs will "fairly and adequately protect the interest of the class." CR 23(a)(4). This test is satisfied if (1) the named plaintiffs are able to prosecute the action vigorously through qualified counsel, and (2) the named plaintiffs do not have interests that are antagonistic to those of absent class members. *See De Funis v. Odegaard*, 84 Wn.2d 617 (1974); *Marquardt v. Fein*, 25 Wn. App. 651, 656–57 (1980); *Hansen v. Ticket Track, Inc*., 213 F.R.D. 412, 415 (W.D. Wash. 2003).

Here, Plaintiff and Class Counsel are adequate representatives of the Class. Plaintiff Meholic was injured by the same course of conduct common to all Class Members: he was charged a 3% fee in addition to the advertised price of concessions he purchased at an event at the Arena. Under the terms of the Settlement Agreement, Plaintiff and Settlement Class Members will all be eligible for the same relief. Accordingly, their interest in this litigation is aligned with that of the Class.

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Further, Class Counsel has undertaken a significant amount of work, effort, and expense during this litigation to advance Plaintiff's and the other Settlement Class Members' claims. Decl. Boyd, ¶ 20. Class Counsel thoroughly investigated and analyzed Plaintiff's claims, Defendant's liability, class-wide damages theories, and Defendant's potential defenses. *Id*. Class Counsel was, therefore, able to knowledgeably evaluate the strengths and weaknesses of the claims, the suitability of the claims for class treatment, and the value of the Settlement to the Class Members—in this case, total relief. *Id.* Class Counsel's representation is more than adequate.

2. The Proposed Settlement Class satisfies CR 23(b).

"In addition to meeting the conditions imposed by [Washington Civil] Rule 23(a), the parties seeking class certification must also show that the action is maintainable under [Washington Civil Rule] 23(b)(1), (2) or (3)." *Hanlon*, 150 F.3d at 1022. Plaintiffs seek certification of the class under Washington Civil Rule 23(b)(3), which requires a finding that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." CR 23(b)(3). The predominance and superiority requirements of CR 23(b)(3) are satisfied "whenever the actual interests of the parties can be served best by settling their differences in a single action." *Cottle*, 340 F.R.D. at 371 (quoting *Hanlon*, 150 F.3d at 1022). This "inquiry focuses on 'the relationship between the common and individual issues' and 'tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Stromberg v. Qualcomm Inc*., 14 F.4th 1059, 1067 (9th Cir. 2021) (quoting *Vinole v. Countrywide Home Loans, Inc*., 571 F.3d 935, 944 (9th Cir. 2009)).

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

The proposed Settlement Class is well-suited for certification under Washington Civil Rule 23(b)(3) because questions common to the Settlement Class Members predominate over questions affecting only individual Settlement Class Members, and the class action device provides the best method for the fair and efficient resolution of the Settlement Class Members' claims against Defendant.

a. Common Questions Predominate

The predominance requirement "is not a rigid test, but rather contemplates a review of many factors, the central question being whether 'adjudication of the common issues in the particular suit has important and desirable advantages of judicial economy compared to all other issues, or when viewed by themselves.'" *Sitton v. State Farm Mut. Auto. Ins. Co*., 116 Wn. App. 245, 254 (2003) (quoting 2 Newberg § 4:25). "[A] single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions." *Id*. (quoting 2 *Newberg* § 4.25); *see also Miller*, 115 Wn. App. at 825. In deciding whether common issues predominate, the Court "is engaged in a pragmatic inquiry into whether there is a common nucleus of operative facts to each class member's claim." *Behr Process*, 113 Wn. App. at 323 (citations and internal marks omitted). Here, whether Defendant's practice of charging an undisclosed 3% fee was unfair or deceptive are dominant issues central to resolution of this case. These common questions present a significant aspect of the case and can be resolved uniformly as to all Settlement Class Members.

Plaintiff and Class Counsel have conducted an investigation into the facts and the law regarding the Litigation and have concluded that a settlement according to the terms in the Settlement Agreement is fair, reasonable, and, and beneficial to and in the best interests of Plaintiff and the Settlement Class, recognizing: (1) the Settlement Fund amount consists of the

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

entire amount of money Defendant collected as a result of the 3% fee; (2) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (3) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (4) Plaintiff's determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members. Additionally, here, "[t]he Class Members do not have a strong interest in bringing individual cases, as the maximum amount of recovery for an individual class member would likely be a fraction of the cost of bringing a lawsuit." *Cottle*, 340 F.R.D. at 372. Lastly, manageability considerations are not a hurdle for certification for purposes of settlement since "the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

b. Superiority

"[A] primary function of the class suit is to provide a procedure for vindicating claims which, taken individually, are too small to justify individual legal action but which are of significant size and importance if taken as a group." *Behr Process*, 113 Wn. App. at 318–19 (quoting *Brown*, 6 Wn. App. at 253).

Here, resolution of all of the Settlement Class Members' claims at once is far superior to individual lawsuits and promotes consistency and efficiency of adjudication. *Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 518–23 (2018). This is especially true because the Class Members have relatively small claims for potential damages and are unlikely to be able to afford an attorney to prosecute their claims on their own. *Id.* at 523. ("[S]mall claims cases somewhat automatically meet the test that a class suit is superior to other forms of

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

adjudication."). Additionally, litigating the Class Member's claims against Defendant in this forum is likely the only way the Class Members' rights will be vindicated: many of them are likely not even aware of their claims, as the 3% fee charged was not advertised or disclosed in all instances. *See id.* at 524.

A class action is also superior to other means of adjudicating the Class Members' claims here because it allows both the Parties and the Court to benefit from economies of scale and the final and consistent resolution of relatively small claims in one forum. Class treatment permits a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense. Litigating the claims of thousands of Class Members would be infeasible because it would require presentation of the same evidence and expert opinions many times over.

B. The Proposed Settlement warrants preliminary approval because it falls within the range of reasonable possible approval.

On preliminary approval, and prior to approving notice be sent to the proposed Class, the Court must determine that it will "likely" be able to grant final approval of the Settlement under Washington Civil Rule 23(e)(2).

C. Rule 23(e)(2) factors are satisfied.

1. Plaintiff Meholic and his counsel have adequately represented the Class.

Plaintiff's Counsel are experienced and vigorous class action litigators, and they are well suited to advocate on behalf of the class. *See* Boyd Decl. ¶¶ 19-21. Tousley Brain Stephens PLLC has significant experience litigating and settling class actions, and numerous courts have previously approved them as class counsel due to their qualifications, experience,

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

and commitment to the prosecution of cases. *Id*. Moreover, Counsel has put their experience to use in negotiating an early-stage settlement that guarantees full relief to Settlement Class Members, insofar as it includes the entire amount of the 3% fee collected by Defendant.

2. The Proposed Settlement is the result of good faith, arm's-length negotiations by informed, experienced counsel.

Courts recognize that arm's-length negotiations conducted by competent counsel are prima facie evidence of fair settlements. A "presumption of correctness" attaches where, as here, a "class settlement [was] reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." *See Free Range Content, Inc. v. Google, LLC*, No. 14-02329, 2019 WL 1299504, at *6 (N.D. Cal. Mar. 21, 2019); *Harris v. Vector Mktg. Corp.,* No. 08-5198, 2011 WL 1627973, at *8 (N.D. Cal. Apr. 29, 2011) ("An initial presumption of fairness is usually involved if the settlement is recommended by class counsel after arm's-length bargaining."). The settlement here is the result of arm's-length negotiations between experienced attorneys who are highly familiar with class action litigation in general and with the legal and factual issues of this case in particular. Counsel for both parties are particularly experienced in the litigation, certification, trial, settlement, and claims processing of consumer and class actions.

In this case, parties reached a settlement after participating in arms-length negotiations. Decl. Boyd, ¶ 4. Prior to the settlement, the parties exchanged informal discovery and Class Counsel conducted an investigation into the facts and the law regarding the Litigation. Counsel concluded that a settlement according to the terms set forth in the Settlement Agreement is fair, reasonable, and adequate. Importantly, the Settlement Fund encompasses the total Collected Fee Amount from patrons of the Arena in conjunction with the 3% fee. *Id.* ¶ 12. If approved, the Settlement Agreement will resolve all pending litigation and provide outstanding relief. *Id*. The

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

arm's-length nature of the settlement negotiations, Plaintiff's independent investigation into the facts, and the return of the total Collected Fee Amount, support the conclusion that the settlement was achieved free of collusion, and should be preliminarily approved.

3. The Settlement provides full relief to the Class.

a. The substantial benefits for the Class, weighed against the costs, risks, and delay of trial and appeal, support preliminary approval.

Defendant has represented that the Collected Fee Amount was approximately $162,917.16, and is the amount to be funded into the Settlement Fund by Defendant. Therefore, 100% of the Collected Fee Amount is to be returned through the Settlement if approved by the Court, a significant achievement for the Class. *Bodnar v. Bank of Am., N.A.*, No. 14-3224, 2016 WL 4582084, at *4 (E.D. Pa. Aug. 4, 2016) (praising as "outstanding" and "a significant achievement," a cash fund providing between 13 and 48 percent of the maximum damages in an overdraft fee class action).

Defendant denies all claims of wrongdoing or liability that Plaintiffs asserted in this Litigation or may assert in the future. Defendant also denies that Plaintiff and the Class suffered any damage. When compared with the risks of continued litigation, this is an outstanding recovery. Legitimate disputes exist as to many legal issues, including, for example, treble damages and certification of a class for trial. Plaintiff acknowledges the risks inherent in litigation. The settlement of this litigation will provide a magnitude of benefits to Plaintiff that does not expose them to the potential risk of receiving no recovery at all. The Parties have agreed to settle this litigation only after recognizing that the outcome of litigation is uncertain, and that achieving a final result through litigation would require substantial additional risk and uncertainty.

b. The proposed method for distributing relief is effective.

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Within ten days of the Preliminary Approval Order, Defendant will provide the Settlement Class Data and Ticket Purchaser List to the Settlement Administrator, who will in turn have within thirty days of Preliminary Approval to disseminate Notice to the Settlement Class Members. S.A. ¶ 57. Notice will be disseminated via email to all Ticket Purchasers for which it has email addresses, as well as Internet Notice to reach potential Settlement Class Members in Washington, Oregon, California and Idaho for whom Defendant does not have direct contact information. *Id.* ¶ 58. The Settlement Administrator will also establish and administer a Settlement Website, which will contain information about the Settlement, including electronic copies of the Claim Form. *Id*. In order to submit a claim, a Settlement Class Member need only fill out the Settlement Claim Form and submit it along with supporting documentation either electronically via a claims website or physically by USPS mail to the Settlement Administrator. *Id.* ¶ 55. All Settlement Class Members who submit a Valid Claim are eligible to receive compensation for the lesser of (a) $10 plus, the actual 3% fee paid, (or, if the 3% fee cannot be determined, $1), and (b) such claimant's pro rata portion of the cash settlement fund, subject to the limits of the Settlement Fund. *Id.* ¶ 48. Claims will be subject to review for timeliness, completeness, and validity by a Settlement Administrator. *Id*.

The proposed form of notice and the manner of dissemination are reasonably calculated to reach all class members and constitute the best forms of notice available under the circumstances. For example, the Settlement Administrator will be required to post the Long-Form Notice on the Settlement Website. *Id.* ¶ 58. Additionally, the Internet Notice will consist of notice to be published on the Internet to reach potential Settlement Class Members. *Id.* ¶ 23, Exhibit B. The Settlement Website and Internet Notice will supplement the Email Notice, in which it will be presumed that the intended recipients received the Email Notice if the Email

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Notices have not been returned or "bounced back" to the Settlement Administrator as undeliverable. *Id.* ¶ 58. Numerous courts have allowed notice to be sent to Class Members through e-mail. *See, e.g.*, *Sanders v. Glendale Rest. Concepts, LP.*, No. 19-cv-01850-NYW, 2019 WL 6799459, at *4 (D. Colo. Dec 13, 2019) ("[A]s to the method of delivery of the Proposed Notice, the court finds that the use of mail, email, and text message, as stipulated by the Parties, is more than sufficient . . . ."); *Fairnella v. Paypal, Inc*., 611 F. Supp. 2d 250 (E.D.N.Y. 2009); *Keirsey v. eBay, Inc*, No. 12-cv-01200, 2014 WL 644697, at *1 (N.D. Cal. 2014); *Anwar v. Fairfield Greenfield Ltd*., No. 1:11-cv-00813, 2012 WL 2273332, at *1 (S.D.N.Y. 2012).

Together, these various forms of notice provide an effective method for distributing relief.

4. The Settlement is designed to treat Class Members equitably.

The proposed settlement includes the use of a non-reversionary common fund that does not distinguish or prefer any segments of the Class. The settlement provides Settlement Class Members the ability to recover the 3% fee they were charged by Defendant. While treating Settlement Class Members equally, it also provides individualized compensation, as each total dollar amount of the fee charged will be different for individual Settlement Class Members.

Plaintiff, as the Class Representative, will not receive preferential treatment nor compensation disproportionate to his respective alleged harm and contribution to this case. The proposed Class Representative plans to apply for a Service Award, which will be subject to Court approval. The Service Award requested in this matter will be $5,000, which is "fairly typical in class action cases" and is intended to compensate class representatives for participation in the litigation. *See Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 958–59 (9th

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

Cir. 2009); *see also La Fleur v. Med. Mgmt. Int'l, Inc.*, No. 13-00398, 2014 WL 2967475, at *8 (C.D. Cal. June 25, 2014) (approving incentive awards of $15,000 each to two class representatives for a $535,000 settlement).

D. The Court should approve the Notice Plan.

Washington Civil Rule 23(e)(1) requires the Court to "direct reasonable notice to all class members who would be bound by" a proposed settlement. For classes certified under Washington Civil Rule 23(b)(3), parties must provide "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." CR 23(c)(2). The best practicable notice is that which "is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Notice proposed in the Settlement is the best notice practicable under the circumstances for reaching the Settlement Class. Within ten days of the Preliminary Approval Order, Defendant will provide the Settlement Class Data and Ticket Purchaser List to the Settlement Administrator, who will disseminate the Notice to Class Members via Email Notice and Internet Notice. S.A. ¶ 58. In addition to the written notice, the Settlement Administrator will establish and maintain a settlement website at a URL to be chosen by the Parties, which will be publicly viewable and will contain broad information about the Settlement, including a copy of the Long-form Notice and Claim Form. *Id*. Additionally, a Reminder Email Notice shall be issued by later than 14 days before the Claims Deadline. *Id*.

Finally, the substance of the proposed Notices—which are attached as Exhibits A and C to the Settlement Agreement—provide a comprehensive explanation of the Settlement in

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

simple terms, along with directions for submitting a Claim Form. The proposed Notices also sufficiently inform Settlement Class Members of their rights, including their ability to request exclusion from, or object to, the proposed Settlement, as well as the relevant deadlines, requirements, and procedures for doing so. Accordingly, Plaintiff respectfully requests that the Court approve and order the Parties to execute the Notice Plan.

E. The Court should enter Plaintiff's proposed schedule.

The Court should schedule a final approval hearing to decide whether to grant final approval to the Settlement. Plaintiff respectfully proposes the following schedule for the Court's review and approval, which summarizes deadlines in the proposed Preliminary Approval Order. (If any date falls on a weekend or legal holiday, it will automatically move to the next court date.) If the Court agrees with the proposed schedule, Plaintiff requests that the Court schedule the final approval hearing for a date at least 120 days from Preliminary Approval.

Defendant provides Ticket Purchaser List to the Settlement Administrator	+10 days from date of Preliminary Approval
Notice Date	+30 days from date of Preliminary Approval
Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	-14 Days from Final Approval Hearing
Reminder Notice	-14 days from Claims Deadline
Opt-Out & Objection Deadline	+90 days from Preliminary Approval
Settlement Administrator Provide List of Objections/Exclusions to Counsel	+93 days from Preliminary Approval
Claims Deadline	+150 days from Preliminary Approval
Final Approval Hearing	Subject to Change
Motion for Final Approval	-14 Days from Final Approval Hearing

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order: (1) granting the Motion for Preliminary Approval; (2) certifying the Class for settlement purposes; (3) approving the form and content of the Notices attached as Exhibits A and C to the Settlement Agreement; (4) directing issuance of the Notice to Settlement Class Members; (5) determining that the Court will likely be able to approve the Settlement Agreement under the Superior Court Civil Rules; and (6) setting a schedule for filing of objections to the proposed settlement and for the final approval hearing. A proposed order is being submitted with this Motion.

DATED this 13th day of September, 2024.

TOUSLEY BRAIN STEPHENS PLLC

By: *s/Kaleigh N. Boyd*

Kaleigh N. Boyd, WSBA #52684
Joan M. Pradhan, WBA #58134
1200 Fifth Avenue, Suite 1700
Seattle, WA 98101
Tel: (206) 682-5600
Fax: (206) 682-2992
kboyd@tousley.com
jpradhan@tousley.com

Counsel for Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

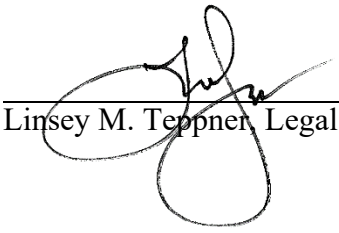
I, Linsey M. Teppner, declare and say that I am a citizen of the United States and resident of the state of Washington, over the age of 18 years, not a party to the above-entitled action, and am competent to be a witness herein. My business address and telephone number are 1200 Fifth Avenue, Suite 1700, Seattle, Washington 98101, telephone 206.682.5600.

On September 13, 2024, I caused to be served the foregoing document on the individual named below via King County E-Filing and E-Service System and email:

Meeghan Dooley, WSBA #61735
MDooley@perkinscoie.com
David A. Perez, WSBA #43959
DPerez@perkinscoie.com
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

I declare under penalty of perjury under the laws of the state of Washington and the United States that the foregoing is true and correct.

Executed this 13th day of September, 2024, at Seattle, Washington.



Linsey M. Teppner, Legal Assistant

TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
TEL. 206.682.5600 • FAX 206.682.2992