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Honorable Nelson K.H. Lee
Hearing Date: January 24, 2025
Hearing Time: 9:00 a.m.
With 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

PLAINTIFF'S MOTION FOR FINAL
APPROVAL

I. INTRODUCTION

Since this Court granted Plaintiff's Motion for Preliminary Approval, the reaction of the settlement class has been overwhelmingly positive. After 123,936 notice emails were delivered successfully, 3,093 claims have been submitted, and as of January 2, 2025 no class member has objected or opted-out of the Settlement. The proposed Settlement,¹ which provides for a \$162,917.16 Settlement Fund, will provide the class with significant monetary and non-monetary relief. The \$162,917.16 Settlement Fund represents the total amount Defendant Seattle Area Company (Defendant) collected as a result of the 3% fee – an exceptional result for the Class. Reached through arm's-length negotiations by experienced and well-informed counsel, the

¹ Unless otherwise indicated, all capitalized terms used herein have the same meaning as those used in the Settlement Agreement, previously filed with the court. Dkt. 29.

1 Settlement will deliver tangible, immediate benefits to Settlement Class Members while also
2 addressing the potential harms of protracted and inherently risky litigation.

3 Plaintiff respectfully requests this Court grant Plaintiff’s Motion for Final Approval of
4 this Class Action Settlement so that Plaintiff may begin the process of distributing benefits to
5 those members of the Settlement Class who have submitted valid claims. Because the proposed
6 Settlement is fair, reasonable, and adequate, and because it satisfies all the requirements of Rule
7 23, the Court should finally certify the Settlement Class and grant final approval.
8

9 II. STATEMENT OF THE FACTS

10 A. Factual Background

11 This action arises from Plaintiff’s Complaint that Defendant allegedly charged customers
12 an undisclosed 3% service fee when they purchased certain concessions at certain events operated
13 at Climate Pledge Arena (hereinafter “Arena”) in the Spring of 2023. *See* Dkt. 22 (Am.
14 Complaint). Plaintiff alleges that Defendant assessed the 3% fee without notifying customers,
15 that Defendant did not include the 3% fee in the listed price of the items purchased, and that
16 Defendant failed to notify customers that such fee would be added to the total amount paid. The
17 Complaint asserts claims for violation of the Washington Consumer Protection Act, RCW
18 19.86.010 and unjust enrichment. *See id.*
19

20 Defendant denies all claims of wrongdoing or liability that Plaintiff asserts in the
21 Complaint.
22

23 B. Procedural History, Discovery, and Settlement Negotiations

24 Plaintiff filed his Complaint on October 25, 2023 against Defendant² on behalf of himself
25 and others similarly situated. *See id.* Following the exchange of informal discovery, the Parties
26

27 ² Plaintiff initially filed this action against Oak View Group, LLC.

1 engaged in settlement negotiations and reached a settlement in principle to resolve all of Plaintiff's
2 claims against Defendant. Dkt. 29 (Decl. Boyd ISO Motion for Preliminary Approval), ¶¶ 3–4. The
3 parties thereafter finalized the terms of the Settlement Agreement on August 26, 2024. *Id.* ¶ 4.

4 Plaintiff filed his Motion for Preliminary Approval on September 13, 2024, which this Court
5 granted on September 17, 2024. Dkt. 28, 33. The Notice Plan approved therein has been carried out
6 and the response of the Class has been favorable. EAG Admin Decl., ¶ 15. For the reasons set forth
7 herein, and consistent with the Court's initial decision to grant preliminary approval, Plaintiff now
8 seeks final approval of the Settlement.
9

10 III. THE SETTLEMENT TERMS

11 The following section briefly summarizes the core terms of the Settlement Agreement
12 (“S.A.”), which Plaintiff's previously filed with the Court, Dkt. 29.

13 **Settlement Class**

14 The Settlement Class is defined as:

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

21 S.A. ¶ 39.

22 **Consideration**

23 As a result of this litigation, for a period of five years following the execution of a formal
24 settlement agreement, Defendant agrees to implement and maintain clear and conspicuous
25 concession fee disclosures, in accordance with applicable law (“Business Practice
26 Commitments”). *Id.* ¶ 56. Actual costs for the implementation and maintenance of Business
27 Practice Commitments will not be paid from settlement proceeds. *Id.* Under the terms of the

1 settlement agreement, Defendant will also provide a \$162,917.16 settlement fund in exchange
2 for a full release of claims by the Settlement Class Members. *See id.* ¶¶ 42, 73. The Settlement
3 Fund is to be used to fund Settlement Payments and Settlement Checks. *Id.* All Settlement Class
4 Members were eligible to submit a claim for the following:

5
6 Settlement Class Members who submit a timely Valid Claim using an approved
7 Claim Form, along with necessary supporting documentation, are eligible to
8 receive a cash payment of ten dollars (\$10.00), plus the actual 3% fee paid or, if
9 the 3% fee cannot be determined, an additional one dollar (\$1.00) for every
10 eligible transaction.

11 *Id.* In the event that Settlement Payments or Settlement Checks exceed the Settlement Fund, all
12 class member payments will be reduced on a pro-rata basis such that Defendant’s maximum
13 amount to be paid does not exceed the nonreversionary Settlement Fund amount. *Id.* ¶ 49.

14 **IV. NOTICE TO THE CLASS**

15 As directed by this Court’s Preliminary Approval Order, the parties worked diligently to
16 implement the Notice Plan in coordination with the approved Claims Administrator, EAG Gulf
17 Coast, LLC (“Settlement Administrator” or “EAG”). Using records provided by Defendant, EAG
18 implemented the Notice Plan, including Email Notice to Ticket Purchasers for which it has email
19 addresses, internet notice, a settlement website, and a toll-free phone number. As detailed below
20 and in the Declaration of Brandon Schwartz of EAG in Connection with Final Approval of
21 Settlement (“Admin. Decl.”), submitted herewith, that notice plan is now complete, and the
22 results are successful.

23 **A. Email Notice**

24 On October 3, 2024, EAG received a file containing the Ticket Purchaser List
25 (collectively the “Class Notice List”) that included the names and email address for a total of
26 144,341 records. Admin Decl. ¶ 6. After reviewing and deduplicating the data, EAG determined
27

1 that the records contained 124,564 valid email addresses. *Id.* Individual notice was attempted to
2 all on the Class Notice list for whom a valid email address was provided. *Id.* Ultimately, the
3 Email Notice was successfully delivered to 123,936 email addresses, resulting in 98.5% of the
4 Settlement Class receiving direct email notice. *Id.* ¶ 7.

5 **B. Settlement Website & Digital Notice**

6 In addition to direct email notice, EAG caused digital banner notices to run across a
7 network of sites as well as social media sites. *Id.* ¶ 8. The digital notices allowed website visitors
8 to identify themselves as potential Settlement Class Members and click through to the Settlement
9 Website. *Id.* During the digital notice campaign more than 10,985,440 impressions were
10 generated. *Id.*

11 The Settlement Website, www.seattlearenafeesettlement.com, went live on October 17,
12 2024. *Id.* ¶ 9. Visitors to the Settlement Website were able to download the Notices, the Claim
13 Form, court documents and the Settlement Agreement. *Id.* Visitors were also able to
14 electronically submit Claims, documentation, address updates, find answers to frequently asked
15 questions (“FAQs”), important dates and deadlines, and contact information for the Settlement
16 Administrator, as well. *Id.* The email address, info@seattlearenafeesettlement.com, and a toll-
17 free phone hotline, were established by EAG, which allowed Settlement Class Members to obtain
18 essential information regarding the Settlement and get responses to FAQs. *Id.* ¶¶ 10-11.

19 **C. Effectiveness of Notice Program**

20 As of January 2, 2025, the Notice Plan as designed and implemented resulted in 98.5%
21 of certain ticket holders receiving direct email notice. *Id.* ¶ 7. The methods of notice
22 dissemination implemented by this Settlement and Notice Plan, which provided effective and the
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1 best notice that is practicable, adhered to Wash. Sup. Ct. Civ. R. 23 and Fed. R. Civ. P. 23, and
2 met the requirements of due process. *Id.* ¶ 19.

3 **V. CLAIMS, OPT-OUTS, AND OBJECTIONS**

4 As of January 2, 2025, EAG has received 3,093 net claims, representing 10,258
5 transactions that totaled \$367,295.23.³ *Id.* ¶ 15. Based on the dollar value of the transaction, this
6 equates to a claims rate of 6.7% of the collected fee. As of January 2, 2025, EAG has received
7 zero objections and zero opt-outs. *Id.* ¶¶ 16, 17.

9 **A. The Settlement Class Continues to Merit Certification**

10 Approval of a class action settlement “take[s] place over three stages. First, the parties
11 present a proposed settlement asking the Court to provide preliminary approval for both (a) the
12 settlement class and (b) the settlement terms.” *Rinky Dink Inc. v. Elec. Merch. Sys. Inc.*, No. C13-
13 1347 JCC, 2015 WL 11234156, at *1 (W.D. Wash. Dec. 11, 2015). “Second, if the court does
14 preliminarily approve the settlement and class, (i) notice is sent to the class describing the terms
15 of the proposed settlement, (ii) class members are given an opportunity to object or opt out, and
16 (iii) the court holds a fairness hearing at which class members may appear and support or object
17 to the settlement.” *Id.* “Third, taking account of all of the information learned during the
18 aforementioned processes, the court decides whether or not to give final approval to the
19 settlement and class certification.” *Id.*

20
21
22 When considering final approval of a class action settlement, a court determines whether
23 the settlement is “fair, adequate, and reasonable.” *Pickett v. Holland Am. Line-Westours, Inc.*,
24 145 Wn.2d 178, 188, 35 P.3d 351 (2001) (quotation omitted). This is a “largely un-intrusive

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26
27 ³ The 3% fee attributable to those transactions is .03 x \$367,295.23, or \$11,018.86.

1 inquiry.” *Id.* at 189. Although the Court possesses some discretion in determining whether to
2 approve a settlement,

3 [T]he court’s intrusion upon what is otherwise a private consensual agreement
4 negotiated between the parties to a lawsuit must be limited to the extent necessary
5 to reach a reasoned judgment that the agreement is not the product of fraud or
6 overreaching by, or collusion between, the negotiating parties, and that the
settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

7 *Id.* (quotation omitted). Moreover, “it must not be overlooked that voluntary conciliation and
8 settlement are the preferred means of dispute resolution.” *Id.* at 190 (quotation omitted).

9 In evaluating whether a class settlement is “fair, adequate, and reasonable,” courts
10 generally reference the following criteria, with differing degrees of emphasis: (1) the likelihood
11 of success by plaintiffs; (2) the amount of discovery or evidence; (3) the settlement terms and
12 conditions; (4) recommendation and experience of counsel; (5) future expense and likely duration
13 of litigation; (6) recommendation of neutral parties, if any; (7) number of objectors and nature of
14 objections; and (8) the presence of good faith and absence of collusion. *Id.* at 188–89 (citing 2
15 HERBERT B. NEWBERG & ALBA CONTE, NEWBERG ON CLASS ACTIONS § 11.43 (3d
16 ed. 1992)). This list is “not exhaustive, nor will each factor be relevant in every case.” *Id.* at 189
17 (quotation omitted).
18
19

20 **B. The Settlement is Fair, Adequate, and Reasonable**

21 This settlement provides exceptional monetary relief to the Class, fosters judicial
22 efficiency, and furthers public policy. As a matter of “express public policy,” Washington courts
23 strongly favor and encourage settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258 (1997);
24 *see also Pickett*, 145 Wn.2d at 190. This is particularly true in class actions and other complex
25 matters where the inherent costs, delays, and risks of continued litigation might otherwise
26 overwhelm any potential benefit the Class could hope to obtain. *See Class Plaintiffs v. City of*
27 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

1 The settlement is fair, adequate, and reasonable. Settlement Class Members were eligible
2 to receive compensation for the lesser of (a) \$10 plus, the actual 3% fee paid, or, if the 3% fee
3 cannot be determined, \$1, and (b) such claimant’s pro rata portion of the Settlement Fund, subject
4 to the limits of the Settlement Fund. S.A. ¶ 48. Additionally, as a result of the litigation and
5 settlement, Defendant has agreed to provide Concession Fee Disclosures for a period of five
6 years following the execution of the settlement agreement. *Id.* ¶ 56. Actual costs for the
7 implementation and maintenance of Business Practice Commitments will not be paid from
8 settlement proceeds. *Id.*

9 Also, as part of the settlement, Defendant has agreed to pay (i) a maximum court approved
10 attorney fee award of \$57,500, (ii) reasonable costs, and (iii) a service award payment to the
11 Settlement Class Representative of \$5,000. *Id.* ¶ 76, 78. The attorney fee award and service
12 award, if approved by the Court, is to be paid by Defendant *separately* from the common fund.
13 *Id.*

14 **1. Plaintiff’s Likelihood of Success Supports Final Approval**

15 The existence of risk and uncertainty to the Plaintiff and Class “weigh heavily in favor of
16 a finding that the settlement was fair, adequate, and reasonable.” *Pickett*, 145 Wn.2d at 192. Here,
17 Plaintiff and the Class sought to hold Defendant responsible for the undisclosed 3% service fee
18 Defendant charged customers when they purchased concessions.

19 The value achieved through the Settlement Agreement is guaranteed, where chances of
20 prevailing on the merits are uncertain—especially where serious questions of law and fact exist.
21 Plaintiff’s claims included those for unjust enrichment and RCW 19.89.010, including a request
22 for statutory treble damages, which are given at the Court’s discretion and are not guaranteed
23 even if successful at trial. Additionally, if the case proceeds, Plaintiff would face the hurdle of
24 class certification, which would most certainly be opposed by Defendant—as part of the
25 Settlement Agreement, Defendant denied that “the Action satisfies the requirements to be
26 certified or tried as a class action under CR 23.” S.A. ¶ 3. Defendant also denies all claims of
27

1 wrongdoing or liability that Plaintiff asserted in this litigation or may assert in the future.
2 Accordingly, although Plaintiff is confident in the strength of his case against Defendant, the
3 outcome is nonetheless uncertain. There is also a very real risk of a prolonged and expensive
4 appeals process. While attorneys' fees and costs would undoubtedly have increased as a result of
5 prolonged litigation, the potential for recovery for Class Members not exceeding the settlement
6 amount is great. This is especially true considering the Settlement Fund represents the total
7 amount Defendant collected as a result of the 3% fee.

8 Class Counsel understood and considered these risks when negotiating the Settlement
9 Agreement, which eliminates these risks and provides outstanding compensation to Class
10 Members without further delay.

11 **2. The Amount of Discovery and Evidence Supports Final Approval**

12 Where "extensive discovery" takes place before a class action settlement, final approval
13 is favored. *See Pickett*, 145 Wn.2d at 199. This is to ensure the parties have "sufficient
14 information to make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*,
15 151 F.3d 1234, 1239 (9th Cir. 1998). This information can be obtained through formal or
16 informal discovery. *See Clesceri v. Beach City Investigations & Protective Servs., Inc.*, 2011 WL
17 320998, at *9 (C.D. Cal. Jan. 27, 2011).

18 Here, prior to settlement, parties exchanged informal discovery. Dkt. 29 ¶ 3. As a part of
19 the informal discovery process Defendant represented that it collected approximately
20 \$162,917.16 related to the 3% fee patrons were assessed when purchasing certain concessions at
21 certain events operated at Climate Pledge Arena from the period of February 27, 2023 to July 22,
22 2023. *Id.* Class Counsel also conducted an investigation into the facts and the law regarding the
23 litigation. *Id.* Based on Class Counsel's independent investigation of the relevant facts and
24 applicable law, experience with other consumer protection cases, and information provided by
25 Defendant, Plaintiff's counsel concluded that the Settlement is fair, reasonable, adequate, and in
26 the best interests of the Settlement Class. *Id.* ¶ 12.

1 **3. The Settlement Terms and Conditions Support Final Approval**

2 The terms and conditions of the proposed Settlement Agreement support its final
3 approval. The Settlement’s terms are designed to address the harm caused by the application of
4 the 3% fee—by creating a common fund of the total amount Defendant represents it collected as
5 a result of the 3% fee. *Id.* ¶¶ 13, 42. Settlement Class Members who submit a timely Valid Claim
6 using an approved Claim Form, along with necessary supporting documentation, are eligible to
7 receive compensation for the lesser of (a) \$10 plus, the actual 3% fee paid, or, if the 3% fee
8 cannot be determined, \$1, or (b) such claimant’s pro rata portion of the Settlement Fund, subject
9 to the limits of the Settlement Fund. *Id.* ¶ 48.

10 Additionally, as a result of the settlement, Defendant has agreed to implement and
11 maintain, for a period of five years following the execution of the settlement agreement, clear
12 and conspicuous concession fee disclosures. *Id.* ¶ 56. Accordingly, the settlement provides fair,
13 reasonable and adequate recovery in light of the risks of further litigation.

14 **4. The Positive Recommendation of Experienced Counsel Supports Final Approval**

15 “When experienced and skilled class counsel support a settlement, their views are given
16 great weight.” *Pickett*, 145 Wn.2d at 200. Class Counsel in the present matter, who are vigorous
17 and experienced class action and consumer protection litigators, support the settlement as fair,
18 adequate, and reasonable, and in the best interests of the Class. Dkt. 29, ¶¶ 12–21. With Class
19 Counsel’s significant class action experience it litigated the case aggressively and effectively.
20 Given Class Counsel’s knowledge and experience, Counsel believe the settlement is an excellent
21 result that provides substantial benefits for Settlement Class Members.

22 **5. Future Expense and Likely Duration of Litigation Support Final Approval**

23 Another factor the Court considers in assessing the fairness of a settlement is the expense
24 and likely duration of the litigation had a settlement not been reached. *Pickett*, 145 Wn.2d at 188.
25
26
27

1 While Plaintiff strongly believes in the merits of the claims brought in this case, he is also
2 aware that a successful outcome is uncertain and would be achieved, if at all, only after
3 prolonged, arduous litigation. Plaintiff faces risks of prevailing on the merits, at class
4 certification, at trial, and surviving appeal. A settlement today not only avoids the risks of
5 continued litigation, but it also provides benefits to the Settlement Class Members *now*, as
6 opposed to after years of risky litigation.

7 This settlement guarantees exceptional recovery for the Class as well as the
8 implementation of business practices by Defendant, while obviating the need for lengthy,
9 uncertain, and expensive litigation. This is especially true considering the Settlement's terms are
10 designed to address the harm caused by the application of the 3% fee—by creating a common
11 fund of the total amount Defendant represents it collected as a result of the 3% fee. The settlement
12 makes the Collected Fee Amount as monetary relief available to Class Members now in a prompt
13 and efficient manner.

14 **6. The Reaction of the Class Supports Final Approval**

15 Not one of the over 125,850 Class Members chose to opt out of or object to the Settlement
16 before the deadline to do so, which shows that the Class Members themselves view the Settlement
17 as a fair, reasonable, and adequate compromise, and that they have chosen to be a part of it.

18 A court may infer a class action settlement is fair, adequate, and reasonable when few, if
19 any, class members object to it. *See Pickett*, 145 Wn.2d at 200–01 (approving settlement with
20 almost fifty objections). Here, the deadline to opt out or object to settlement is January 17, 2025.
21 As of the date of this filing, no Class Member formally objected and no Class Member opted out.
22 Admin Decl. ¶ 16, 17. This indicates strong support for the settlement by the Settlement Class
23 Members and weighs heavily in favor of final approval. In fact, courts have typically deemed a
24 small number of objections as affirmative support for settlement approval, as the number of
25 objections suggests an overall favorable reaction from the class. *Rodriguez v. West Publishing*
26 *Corp.*, 563 F.3d 948, 967 (9th Cir. 2009). Here, there are **zero** objections.
27

1 Thus far, the Notice Plan has generated a 6.7% claims rate, a successful rate that shows
2 the support of the Class. Courts have noted that “response rates in class actions generally range
3 from 1 to 12 percent, with a median response rate of 5 to 8 percent.” *Gascho v. Glob. Fitness*
4 *Holdings, LLC*, 822 F.3d 269, 290 (6th Cir. 2016); *see also Sullivan v. DB Invs., Inc.*, 667 F.3d
5 273, 329 n.60 (3d Cir. 2011) (“[C]onsumer claim filing rates rarely exceed seven percent, even
6 with the most extensive notice campaigns.”) (internal quotations omitted).

7 **C. Class Members Received the Best Notice Possible**

8 This Court has determined that the notice program meets the requirements of due process
9 and applicable law, provides the best notice practicable under the circumstances, and constitutes
10 due and sufficient notice of all individuals entitled thereto. *See* Dkt. 33.

11 To date, the Notice Program has been successful. Approximately 123,936 email notices
12 were delivered successfully. Admin Decl. ¶ 7. The Claims Administrator was able to achieve
13 direct notice to approximately 98.5 percent of individuals who had an email ticket to Climate
14 Pledge. *Id.* The success of the Notice Program exemplifies the methods of notice dissemination
15 implemented by this Settlement provided effective notice that met the requirements of due
16 process. *Id.* ¶ 19.

17 **D. The Requested Attorneys Fees are Fair and Reasonable**

18 By a separate motion, filed concurrently, Class Counsel is requesting an award of
19 \$57,500.00 in attorneys’ fees and \$990.66 in costs. *See* Plaintiff’s Motion for Attorneys’ Fees,
20 Costs, and Service Award. The attorney fee award is to be paid by Defendant separate from the
21 common fund. The Parties negotiated the attorney fee award separately from after the
22 Parties reached an agreement on the total settlement amount. S.A ¶ 78. Court approval of the
23 settlement is not dependent on the Court awarding attorneys’ fees and costs. *Id.*

24 Class Counsel’s requested fee award is fair and reasonable under the percentage of the
25 fund analysis. Washington contingency fee percentages in individual cases are usually in the
26 range of 33 to 40 percent. *See Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wn.2d 157, 161–66 (2010)
27

1 (discussing contingency fee percentages between 33 1/3 percent and 44 percent). Washington
2 courts and courts in the Ninth Circuit routinely award percentage recoveries more than the 25
3 percent benchmark. *See, e.g., Lyzanchuk*, 73 Wn. App. at 9 (33 percent fee); *In re Pac. Enters.*
4 *Secs. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (same); *Bennett v. SimplexGrinnell LP*, No. 11-cv-
5 1854-JST, ECF No. 278, at 11 (N.D. Cal. Sept. 3, 2015) (awarding 38.8 percent of common
6 fund).

7 Washington courts, including those in King County, have regularly granted fee requests
8 at or exceeding 30 percent of the common fund. *See Bowers v. Transamerica Title Ins. Co.*, 100
9 Wn.2d 581, 601–02 (1983). Here, Class Counsel’s fee request for \$57,500 is fair and reasonable,
10 especially in light of the fact the fee award will not be paid from the common fund available to
11 the Class. A lodestar cross-check confirms the propriety of the requested fee here, with the fee
12 award Class Counsel will be receiving a negative multiplier on its lodestar amount. *See Plaintiff’s*
13 *Motion for Attorneys Fee Award, Costs, and Service Award*, p. 11.

14 **E. The Requested Service Award is Fair and Reasonable**

15 Class Counsel has requested a Service Award Payment for the Settlement Class
16 Representative in recognition for his contribution to this Litigation in the amount of \$5,000.00,
17 in accordance with the terms of the Settlement Agreement. *Id.* at 13–14.

18 The requested service award of \$5,000 is well in line with awards approved by state and
19 federal courts in Washington and elsewhere in the data breach context. *See, e.g., In re Online*
20 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947–48 (9th Cir. 2015) (approving service payments
21 to plaintiffs in the amount of \$5,000 each); *Lutz v. Electromed, Inc.*, No. 21-cv-02198, Dkt. No.
22 73 (D. Minn.) (service award of \$9,900). Service awards “are intended to compensate class
23 representatives for work done on behalf of the class, to make up for financial or reputational risk
24 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a
25 private attorney general.” *Peterson v. Kitsap Cnty. Fed. Credit Union*, 171 Wn. App. 404, 430
26 (2012) (citation omitted).

1 The settlement is not contingent on the Court's granting of the service award. S.A. ¶ 76.
2 The service award is recognition of Settlement Class Representative's contribution to this action.
3 *Id.* Throughout the litigation Mr. Meholic performed important work on the case, including
4 gathering facts and documents, assisting Class Counsel with allegations in Complaint, keeping
5 abreast of the litigation, and maintaining communication with Class Counsel throughout the
6 litigation. Fee Decl. of Kaleigh N. Boyd (filed concurrently with this motion) ¶ 8. Thus, the
7 service award does not constitute preferential treatment.

8 **F. Final Certification of the Settlement Class is Appropriate**

9 Certification of a settlement class requires analysis of the factors defined in CR 23.
10 *Pickett*, 145 Wn.2d at 188–89. This Court provisionally certified the Settlement Class in its
11 Preliminary Approval Order, finding that the requirements of Rules 23(a) and (b)(3) were met.
12 *See* Dkt. 33. Because no relevant facts have changed since the Court certified the Settlement
13 Class, the Court need not revisit class certification here. The Settlement Class should now be
14 finally certified.

15 **VI. CONCLUSION**

16 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant final
17 approval to the Settlement by entering the proposed Final Approval Order.

18 I certify that this memorandum contains 4,185 words, in compliance with the Local Civil
19 Rules.

20 DATED this 3rd day of January, 2025.

21 TOUSLEY BRAIN STEPHENS PLLC

22 ,
23
24 By: s/Kaleigh N. Boyd
25 Kim D. Stephens, P.S., WSBA #11984
26 kstephens@tousley.com
27 Kaleigh N. Boyd, WSBA #52684
kboyd@tousley.com
Joan M. Pradhan, WSBA #58134

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jpradhan@tousley.com
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101-3147
Tel: 206.682.5600
Fax: 206.682.2992

Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

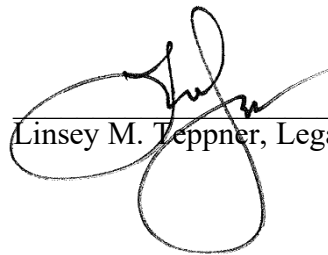
2 I, Linsey M. Teppner, declare and say that I am a citizen of the United States and resident
3 of the state of Washington, over the age of 18 years, not a party to the above-entitled action, and
4 am competent to be a witness herein. My business address and telephone number are 1200 Fifth
5 Avenue,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

6 On January 3, 2025, I caused to be served the foregoing document on the individual
7 named below via the methods indicated:

8 9 Perkins Coie LLP Meeghan Dooley, WSBA #61735 David A. Perez, WSBA #43959 10 1201 Third Ave., Suite 4900 Seattle, WA 98101 11 mdooley@perkinscoie.com dperez@perkinscoie.com 12 13 <i>Attorneys for Defendant Seattle Arena Company,</i> 14 <i>LLC</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Fax <input checked="" type="checkbox"/> King County E-Service/Email
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15
16 I declare under penalty of perjury under the laws of the state of Washington and the
17 United States that the foregoing is true and correct.

18 Executed this 3rd day of January, 2025, at Seattle, Washington.

19
20 
21 _____
Linsey M. Teppner, Legal Assistant

Honorable Nelson K.H. Lee
Hearing Date: January 24, 2025
Hearing Time: 9:00 a.m.
With 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

[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL AND
MOTION FOR AWARD OF FEES,
COSTS, AND SERVICE AWARD

WHEREAS, the above-captioned class action is pending in this Court (the “Action”);

WHEREAS, Plaintiff Michael Meholic (“Plaintiff”), individually and on behalf of all others similarly situated, and Defendant Seattle Arena Company (“SAC” or “Defendant”) have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendant in the above-captioned action (the “Action”) on the terms and conditions set forth in the Settlement Agreement, that was approved by this Court;

WHEREAS, Plaintiff has made an application, pursuant to Rule 23 of the Washington Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only, appointing Plaintiff as Class Representatives, appointing Class Counsel as counsel for the

1 Settlement Class, appointing Eisner Advisory Group, LLC (“EAG”) and allowing notice to
2 Settlement Class Members as more fully described herein;

3 **WHEREAS**, the Court granted Plaintiff’s application for an order preliminarily
4 approving the Settlement on September 17, 2024.

5 **WHEREAS**, Plaintiff has made an application, pursuant to Rule 23 of the Washington
6 Rules of Civil Procedure, for a Final Order approving the Settlement in accordance with the
7 Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only,
8 appointing Plaintiff as Class Representative, appointing Class Counsel as counsel for the
9 Settlement Class, appointing Eisner Advisory Group, LLC, and allowing notice to Settlement
10 Class Members as more fully described herein;

11 **WHEREAS**, the Court has read and considered: (a) Plaintiff’s Unopposed Motion for
12 Final Approval of Class Action Settlement, and the papers filed and arguments made in
13 connection therewith; and (b) the Settlement Agreement and exhibits attached thereto; and (c)
14 the Declaration of Brandon Schwartz Regarding Notice Plan Implementation and Settlement
15 Administration and (d) the Declaration of Kaleigh N. Boyd in Support of Plaintiff’s Motion for
16 Award of Fees, Costs, and Service Award.

17 **WHEREAS**, on January 24, 2025, the Court held a Final Fairness Hearing to determine
18 whether the proposed settlement is fair, reasonable and adequate and whether judgment should
19 be entered dismissing this Action with prejudice. The Court reviewed (a) Plaintiff’s Unopposed
20 Motion for Final Approval of Class Action Settlement and Plaintiff’s Motion for an Award of
21 Attorneys’ Fees, Costs and Service Award (together, the “Motions”) and all supporting materials,
22 including but not limited to the Settlement Agreement and the exhibits thereto; (b) any objections
23 filed with or presented to the Court; and (c) the Parties’ responses to any objections. The Court
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1 also considered the oral argument of counsel and any objectors who appeared. Based on this
2 review and the findings below, the Court finds good cause to grant the Motions.

3 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

4 1. The Court has jurisdiction over the subject matter of this Litigation, all claims
5 raised therein, and all Parties thereto, including the Settlement Class.

6
7 2. The Settlement Agreement is fair, reasonable, adequate and in the best interests
8 of Settlement Class Members. The Settlement Agreement was negotiated at arm's-length, in
9 good faith and without collusion, by capable and experienced counsel, with full knowledge of
10 the facts, the law, and the risks inherent in litigating the Action, and with the active involvement
11 of the Parties. Moreover, the Settlement Agreement confers substantial benefits on the Settlement
12 Class Members, is not contrary to the public interest, and will provide the Parties with repose
13 from litigation. The Parties faced significant risks, expense, and/or uncertainty from continued
14 litigation of this matter, which further supports the Court's conclusion that the settlement is fair,
15 reasonable, adequate and in the best interests of the Settlement Class Members.

16
17 3. The Court grants final approval of the Settlement Agreement in full, including but
18 not limited to the releases therein and the procedures for effecting the Settlement. All Settlement
19 Class Members who have not excluded themselves from the Settlement Class are bound by this
20 Final Approval Order and Judgment.

21
22 4. The Parties shall carry out their respective obligations under the Settlement
23 Agreement in accordance with its terms. The relief provided for in the Settlement Agreement
24 shall be made available to the various Settlement Class Members submitting valid Claim Forms,
25 pursuant to the terms and conditions in the Settlement Agreement.

1 **OBJECTIONS AND REQUESTS FOR EXCLUSION**

2 5. No objections to the settlement were submitted. All persons who did not object to
3 the settlement in the manner set forth in the Settlement Agreement are deemed to have waived
4 any objections, including but not limited to by appeal, collateral attack, or otherwise.

5 6. No class member has submitted a valid opt-out request.

6 **CERTIFICATION OF THE SETTLEMENT CLASS**

7
8 7. Solely for purposes of the Settlement Agreement and this Final Approval and
9 Order and Judgment, the Court hereby certifies the following Settlement Class:

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

16 8. The Court incorporates its preliminary conclusions in the Preliminary Approval
17 Order regarding the satisfaction of Rule 23 of the Washington Rules of Civil Procedure. Because
18 the Settlement Class is certified solely for purposes of settlement, the Court need not address any
19 issues of manageability for litigation purposes.

20 9. The Court grants final approval to the appointment of Representative Plaintiff
21 Michael Meholic as Class Representative of the Settlement Class and concludes that he has fairly
22 and adequately represented the Settlement Class and shall continue to do so.

23 10. The Court grants final approval to the appointment of Kaleigh N. Boyd of Tousley
24 Brain Stephens PLLC as Class Counsel. Class Counsel has fairly and adequately represented the
25 Settlement Classes and shall continue to do so.

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27 //

1 **NOTICE TO THE CLASS**

2 11. The Court finds that the Notice Program provided for in the Settlement Agreement
3 and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable
4 under the circumstances; (ii) was reasonably calculated to provide, and did provide due and
5 sufficient notice to the Settlement Class regarding the existence and nature of the Action,
6 certification of the Settlement Class for settlement purposes only, the existence and terms of the
7 Settlement Agreement, and the rights of Settlement Class Members to exclude themselves from
8 the settlement, to object and appear at the Final Fairness Hearing, and to receive benefits under
9 the Settlement Agreement; and (iii) satisfied the requirements of the Washington Rules of Civil
10 Procedure, the United States Constitution, and all other applicable law.
11

12 **ATTORNEYS' FEES AND COSTS, SERVICE AWARD**

13 12. The Court awards Class Counsel \$57,500 for attorneys' fees and \$990.66 for
14 reimbursement of costs and expenses. The Court finds this amount to be fair and reasonable.
15 Payment shall be made pursuant to Section XIV of the Settlement Agreement.
16

17 13. The Court awards a Service Award of \$5,000 to Plaintiff Michael Meholic. The
18 Court finds this amount is justified by his service to the Settlement Class. Payment shall be made
19 pursuant to Section XIII of the Settlement Agreement.
20

21 **RELEASE**

22 14. Each Settlement Class member, including the Class Representative, are be
23 deemed to have, and by operation of the Judgment shall have, fully, finally, and forever
24 released, relinquished, and discharged all Released Claims as defined in the Settlement
25 Agreement and including Unknown Claims. The full terms of the release described in this
26 paragraph are set forth in Section XII of the Settlement Agreement and are specifically
27 approved and incorporated herein by this reference (the "Release"). Further, upon the Effective

1 Date, and to the fullest extent permitted by law, each Settlement Class Member, including
2 Plaintiff, shall directly, indirectly, or in any representative capacity, be permanently barred and
3 enjoined from commencing, prosecuting, or participating in any recovery in any action in this
4 or any other forum (other than participation in this Settlement Agreement as provided herein) in
5 which any of the Released Claims is asserted.

6 15. The Settlement Agreement and this Final Judgment and Order apply to all
7 claims or causes of action settled under the Settlement Agreement, and binds Class
8 Representative and all Settlement Class Members who did not properly request exclusion. The
9 Settlement Agreement and this Final Approval Order and Judgment shall have maximum res
10 judicata, collateral estoppel, and all other preclusive effect in any and all causes of action,
11 claims for relief, suits, demands, petitions, or any other challenges or allegations that arise out
12 of or relate to the subject matter of the Cases.

13 **OTHER PROVISIONS**

14 16. The Court directs the Parties and their counsel to implement and consummate the
15 Settlement Agreement, and make available to Settlement Class Members the relief provided for
16 therein, in accordance with the Settlement Agreement's terms and provisions.

17
18 17. The Settlement Agreement and this Final Approval Order and Judgment, and all
19 documents, supporting materials, representations, statements and proceedings relating to the
20 settlement, are not, and shall not be construed as, used as, or deemed evidence of, any admission
21 by or against Defendant of liability, fault, wrongdoing, or violation of any law, or of the validity
22 or certifiability for litigation purposes of the Settlement Class or any claims that were or could
23 have been asserted in the Action.

24
25 18. The Settlement Agreement and this Final Approval Order and Judgment, and all
26 documents, supporting materials, representations, statements and proceedings relating to the
27 settlement shall not be offered or received into evidence, and are not admissible into evidence,

1 in any action or proceeding, except that the Settlement Agreement and this Final Approval Order
2 and Judgment may be filed in any action by any Defendant or the Settlement Class Members
3 seeking to enforce the Settlement Agreement or the Final Approval Order and Judgment.

4 19. If the Effective Date does not occur for any reason, the Action will revert to the
5 status that existed before the Settlement Agreement's execution date, and the Parties shall be
6 restored to their respective positions in the Action as if the Settlement Agreement had never been
7 entered into. No term or draft of the Settlement Agreement, or any part of the Parties' settlement
8 discussions, negotiations, or documentation, will have any effect or be admissible in evidence
9 for any purpose in the Litigation.

10 20. Without affecting the finality of this Final Approval Order and Judgment, the
11 Court will retain jurisdiction over this Action and the Parties with respect to interpretation,
12 implementation and enforcement of the Settlement Agreement for all purposes.

13 21. The Court hereby dismisses the Action in its entirety with prejudice, and without
14 fees or costs except as otherwise provided for herein.

15
16
17
18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for
19 Final Approval is GRANTED.

20 DATED this _____ day of _____, 2025.

21
22
23 _____
Honorable Nelson K.H. Lee

1 Presented By:

2
3 By: s/Kaleigh N. Boyd

4 Kim D. Stephens, P.S., WSBA #11984

5 kstephens@tousley.com

6 Kaleigh N. Boyd, WSBA #52684

7 kboyd@tousley.com

8 Joan M. Pradhan, WSBA #58134

9 jpradhan@tousley.com

10 TOUSLEY BRAIN STEPHENS PLLC

11 1200 Fifth Avenue, Suite 1700

12 Seattle, Washington 98101-3147

13 Tel: 206.682.5600

14 Fax: 206.682.2992

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Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

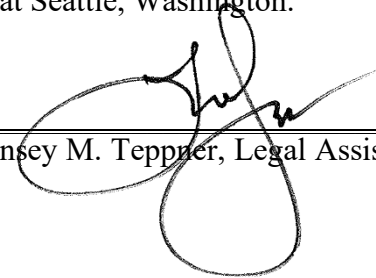
2 I, Linsey M. Teppner, declare and say that I am a citizen of the United States and resident
3 of the state of Washington, over the age of 18 years, not a party to the above-entitled action, and
4 am competent to be a witness herein. My business address and telephone number are 1200 Fifth
5 Avenue,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

6 On January 3, 2025, I caused to be served the foregoing document on the individual
7 named below via the methods indicated:

8 Perkins Coie LLP 9 Meeghan Dooley, WSBA #61735 10 David A. Perez, WSBA #43959 11 1201 Third Ave., Suite 4900 12 Seattle, WA 98101 13 mdooley@perkinscoie.com dperez@perkinscoie.com <i>Attorneys for Defendant Seattle Arena Company</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Fax <input checked="" type="checkbox"/> King County E-Service/Email
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14 I declare under penalty of perjury under the laws of the state of Washington and the
15 United States that the foregoing is true and correct.

16 Executed this 3rd day of January, 2025, at Seattle, Washington.

17
18
19 
20 _____
21 Linsey M. Teppner, Legal Assistant