

SHORT FORM ORDER

Index No. 631543/2024

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

PRESENT:

MOTION DATE 03/03/2025

Mot. Seq. # 002-MOTD

HON. CHRISTOPHER MODELEWSKI
Justice of the Supreme Court

-----X
JOSHUA HOMER, individually and on behalf of
all others similarly situated,

Plaintiff,

-against-

HY ATTRACTIONS MANAGER, LLC,

Defendant.
-----X

BURSOR & FISHER, P.A
Attorneys for Plaintiff & Proposed Class
1330 Avenue of the Americas, 32nd Floor
New York, New York 10019

WALDEN MACHT HARAN & WILLIAMS, LLP
Attorneys for Defendant
250 Vesey Street, 27th Floor
New York, New York 10281

Upon the e-filed documents in this matter numbered 14 to 22, considered on the instant unopposed motion of the Plaintiff's attorney in this action for an order (i) granting preliminary approval of the Class Action Settlement; (ii) provisionally certifying the Settlement Class under CPLR 902 in connection with the settlement process; (iii) appointing Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A. as Class Counsel; (iv) appointing Joshua Homer as the Class Representative for the Settlement Class; and (v) approving the Notice Plan for the Class Action Settlement described in the Settlement Agreement and its Exhibits, as well as the specific Notice of Class Action and Proposed Settlement (the "Proposed Notice"), attached as Exhibits B-C to the Settlement Agreement, and directing distribution of the Proposed Notice; it is

ORDERED that the motion is granted, to the extent and as provided for herein, and the matter is set down for a fairness hearing on JULY 2, 2025 at 11:00 A.M.

The instant matter is a putative consumer class action suit alleging that defendant failed to disclose a "processing fee" on its Website for electronic admission tickets to it's the Edge NYC, prior to those tickets being selected for purchase, in alleged violation of New York Arts and Cultural Affairs Law ("ACAL") § 25.07(4). Before the Court is a motion for an Order (I) granting preliminary approval of the Class Action Settlement; (ii) provisionally certifying the Settlement Class under CPLR 902 in connection with the settlement process; (iii) appointing Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A. as Class Counsel; (iv) appointing Joshua Homer as the Class Representative for the Settlement Class; and (v) approving the Notice Plan for the Class Action Settlement described in the Settlement Agreement and its Exhibits, as well as the specific Notice of Class Action and Proposed

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Settlement (the “Proposed Notice”), attached as Exhibits B-C to the Settlement Agreement, and directing distribution of the Proposed Notice.

Article 9 of the CPLR is to be “liberally construed” (*Beller v William Penn Life Ins. Co. of N.Y.*, 37 AD3d 747, 748, 830 NYS2d 759 [2d Dept 2007]; *Jacobs v Macy’s e, Inc.*, 17 AD3d 318, 319, 792 NYS2d 574 [2d Dept 2005] in favor of the granting of class certification if all of the prerequisites of CPLR 901(a)(1) through (5) and CPLR 902(1) through (5) are met (*see Matter of Colt Indus. Shareholder Litig.*, 77 NY2d 185, 566 NE2d 1160, 565 NYS2d 755 [1991]; *Klein v Robert’s Am. Gourmet Food, Inc.*, 28 AD3d 63, 808 NYS2d 766 [2d Dept 2006]; *Ackerman v Price Waterhouse*, 252 AD2d 179, 683 NYS2d 179 [1st Dept 1998]).

“The prerequisites articulated in CPLR 901(a) include proof that the proposed class is so numerous that joinder of all members is impracticable, that common questions of law and fact applicable to the class predominate over questions affecting only individual members, that claims or defenses of the representative parties are typical of the claims or defenses of the class, and that the class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

Preliminary Approval of Settlement

At the outset, this Court must make an initial evaluation of whether the proposed settlement “is fair, adequate, reasonable, and in the best interest of class members” (*Klein v Robert’s Am. Gourmet Food, Inc.*, 28 AD3d at 73; *see Matter of Traffic Exec. Assoc.-Eastern R.R.*, 627 F.2d 631, 634 [2d Cir 1980]).

“Where, as here, the action is primarily one for the recovery of money damages, determining the adequacy of a proposed settlement generally involves balancing the value of that settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation” (*Klein v Robert’s Am. Gourmet Food, Inc.*, 28 AD3d at 73).

In light of the nature of the alleged processing fee violation that was only in effect from February 16, 2024, to and through July 6, 2024, and which also showed that Defendant collected approximately \$250,000 in processing fees associated with electronic ticket purchases to The Edge NYC during that time period, and on the submissions now before the Court, it appears that the lump sum fund set forth in the settlement agreement in the amount of \$250,000 fairly and adequately compensates the class members for the undisclosed processing fee, and is in their overall best interest.

Conditional Certification of the Proposed Settlement Class

On the record before the Court at this time, it appears to the Court that this action satisfies all of the prerequisites of New York Civil Practice Law and Rules (“CPLR”) §901, and that consideration of the CPLR §902 factors support certification for purposes of settlement.

The Court provisionally certifies the following class under Article 9 of the CPLR, for settlement purposes only (“Settlement Class”).

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All individuals who purchased electronic tickets to The Edge NYC from Defendant's website from February 16, 2024, to and through July 6, 2024. Excluded from the Settlement Class are (1) any Judge presiding over this Action and members of their families; (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) persons who submit a timely and valid request for exclusion from the class; (4) the legal representatives, successors or assigns of any such excluded persons; and (5) Class Counsel.

Appointment of Named Plaintiff's Counsel as Class Counsel

The Court appoints Philip L. Fraietta and Stefan Bogdanovich of Bursor & Fisher, P.A., as Class Counsel because based upon the record before the Court, it appears they did substantial work identifying, investigating, litigating, and settling the named plaintiff's and the class members' claims, have experience prosecuting and settling consumer class actions, and are well-versed in consumer class action lawsuits.

Based upon the record before the Court, it appears that the work that the Bursor & Fisher, P.A. law firm has performed both in litigating and settling this case demonstrates their commitment to the class and to representing the interests of class members.

Appointment of the Named Plaintiff

The Court appoints Named Plaintiff Joshua Homer as the class representative.

Class Notice and Claims Form

The Court approves the proposed Notice Plan for the Class Action Settlement described in the Settlement Agreement and its Exhibits.

CPLR §908 requires that "[n]otice of the proposed. . . compromise [of a class action] shall be given to members of the class in such manner as the court directs."

The contents of the Class Notice complies with due process. The Class Notice describes the terms of the settlement, explains how class members can participate in the settlement and how class members can object or opt-out, informs the class about the allocation of attorneys' fees and costs, and provides specific information regarding the date, time, and place of the final approval hearing.

Class Action Settlement Procedure

The Court hereby adopts the following settlement procedure:

Within 14 days after the Court issues its Order Granting Preliminary Approval, Defendant will provide both Class Counsel and the Settlement Claims Administrator with

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a list, in electronic form with the names, dates of employment and last known address of Named Plaintiff and all Class Members (the "Class List");

The Settlement Claims Administrator shall mail, via First Class United States mail, postage prepaid, the Notice of Class Members within 24 days after the entry of the Preliminary Approval Order by the Court;

Class Members will have 45 days from the date the Class Notice and Claims Form is initially mailed to file a Claims Form, opt out of or object to the settlement ("Notice Period"). To be effective, the Claims Form, objection or opt-out must be received by the Settlement Claims Administrator within 45 days of the initial mailing of the Class Notice and Claims Form.

Named Plaintiff will file a Motion for Final Approval of Settlement no later than five (5) calendar days before the Fairness Hearing.

The Court will hold a final Fairness Hearing on JULY 2, 2025 at 11:00 a.m., (which date is approximately 90 days after the date of this Order) at the Supreme Court of the State of New York, County of Suffolk, located at 1 Court Street, Riverhead, New York, 11901.

If the Court grants Named Plaintiff's Motion for Final Approval of the Settlement, the Court will issue an Order Granting Final Approval. If no party appeals the Court's Order Granting Final Approval, the "Final Effective Date" of settlement will be thirty (30) days after the Court enters its Order Granting Final Approval and the expiration of any appeal period.

If there is an appeal the latest of the following, if applicable, becomes the Final Effective Date: (1) any appeal from the Final Approval Order has been finally dismissed; (2) the Final Approval Order has been affirmed on appeal in a form substantially identical to the form of the Final Approval Order entered by the Court; (3) the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; and (4) if a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Approval Order in a form entered by the Court;

The Settlement Claims Administrator will pay the Class Members who timely file a Claims Form and who do not opt out, their individual settlement payments within thirty (30) days after the Final Effective Date;

The Settlement Claims Administrator will pay the Court-approved service payment to Named Plaintiff within thirty (30) days after the Final Effective Date;

The Settlement Claims Administrator will pay Class Counsel its Court-approved attorneys' fees and expenses within thirty (30) days after the motion for final approval is granted;

The Settlement Claims Administrator shall recover its agreed upon fees from the Settlement Amount. In the event that the Settlement Agreement is not finally approved,


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any fees and expenses of the Settlement Claims Administrator already spent or funds attributable to labor and/or expenses incurred but not yet paid shall be paid out of the Settlement Fund; and

The parties shall abide by all other terms of the Settlement Agreement.

The foregoing constitutes the decision and Order of the Court.

Dated: April 10, 2025



HON. CHRISTOPHER MODELEWSKI, J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION