UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NICK SNYDER, et al.,

Plaintiffs,

v.

WASHINGTON NATIONALS BASEBALL CLUB, LLC,

Defendant.

Civil Action No. 1:24-cv-01182 (CJN)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR RULE 23 CERTIFICATION OF THE SETTLEMENT CLASS AND PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT AGREEMENT

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I. INTRODUCTION

In this action, Plaintiffs Nick Snyder and David Coyne allege, individually and on behalf of a proposed Settlement Class, that the Washington Nationals Baseball Club, LLC ("the Nationals") violated the D.C. Human Rights Act's prohibition on age discrimination in places of public accommodations by denying persons 40 and older the opportunity to receive a ticket discount of up to 30% and a $5 to $15 per-ticket spending credit that the Nationals offered to 21- to 39-years-old fans through the team's "Millennial Ticket Discount" in 2023 and "Young Professionals Ticket Discount" in 2024 (collectively, "the Discount"). *See* ECF No. 1-1 at p. 15 ("Compl."). The Nationals offered the Discount from March 29, 2023, through March 28, 2024, and ended the Discount immediately after the Complaint was filed in this action on March 28, 2024. Decl. of Peter Romer-Friedman ("Romer-Friedman Decl.") ¶¶ 29, 32.

In May 2024, the Parties agreed to attempt to settle the dispute through mediation. *See* ECF No. 12. Those efforts were ultimately successful, and on May 9, 2025, the Parties jointly filed the Settlement Agreement with the Court. ECF No. 25.

In this motion, Plaintiffs move to certify a class under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, for preliminary approval of the Settlement Agreement, and for approval of notice to the members of the proposed Settlement Class ("Settlement Class Members"). Pursuant to the Settlement Agreement, the Nationals do not oppose the certification of the Settlement Class for the purposes of implementing the Settlement Agreement and consent to preliminary approval of the Settlement Agreement.

II. BACKGROUND

A. Procedural History

On March 28, 2024, Plaintiffs filed a putative class action against the Nationals in the Superior Court of the District of Columbia, Case No. 2024-CAB-001961. *See* ECF No. 1; ECF No. 1-1 at p. 15. On April 23, 2024, the Nationals removed the matter to the United States District Court for the District of Columbia, No. 1:24-cv-01182 (CJN). *See* ECF No. 1.

On May 21, 2024, the Parties agreed to pursue mediation to attempt to resolve the matter amicably. *See* ECF No. 12. Accordingly, the Parties jointly requested, and this Court granted, the Parties' request to stay the action so that the Parties could seek to resolve the dispute by engaging in informal discovery and taking part in a mediation. *Id.*

To further facilitate settlement discussions, the Parties entered into a Protective Order, *see* ECF Nos. 13-14, and the Nationals generated and produced documents and information that were necessary for the Parties to assess liability and potential damages on a class-wide basis. Romer-Friedman Decl. ¶¶ 35-37. In particular, the Nationals produced a spreadsheet that contained information on hundreds of thousands of single-game tickets that the Nationals sold between March 29, 2023 and March 28, 2024 (the "Class Period"), the period in which the Nationals had offered the Discount, and the Nationals produced other information about the various discounts that the Nationals offered during the Class Period. *Id.* ¶ 36. This information collectively enabled the Parties and their respective damages analysts to estimate the actual economic damages that the proposed Settlement Class Members may have experienced because they could not receive the Discount during the Class Period. *Id.*

The Parties estimated potential "Actual Damages" for each "Covered Ticket Purchase"—*i.e.*, each ticket purchased during the Class Period to which the Discount could have applied—by calculating the difference between (1) the price the ticket purchaser paid in connection with such

Covered Ticket Purchase less any spending credit received in connection with such Covered Ticket Purchase and (2) the price that the ticket purchaser would have paid in connection with such Covered Ticket Purchase had such ticket purchaser received the Discount less any spending credit they would have received in connection with such Covered Ticket Purchase had they received the Discount. *Id.* ¶ 38. For example, if a fan paid $70 for a Covered Ticket Purchase and received no spending credit, but a fan purchasing the same ticket with the Discount would have paid $50 and received a $5 spending credit, then the Actual Damages for that Covered Ticket Purchase would be $25 (*i.e.*, [$70 - $0] - [$50 - $5] = $25). *Id.* ¶ 39.

Based on the information produced by the Nationals, Plaintiffs estimated that the total Actual Damages of all Settlement Class Members was $1,286,683. *Id.* ¶ 40. To estimate this figure, Plaintiffs first identified the Actual Damages for all the Covered Ticket Purchases for which the Nationals had age information for the ticket purchaser (either based on the purchaser's self-reported age or approximated age data provided by a third-party vendor) that indicated the purchaser was 40 or older at the time of purchase. That amount was $864,819. *Id.* Then, Plaintiffs identified the Actual Damages for all Covered Ticket Purchases for which the Nationals did *not* have age information for the ticket purchaser, and then multiplied that figure by 63.84%, based on Plaintiffs' estimate that 63.84% of those purchasers were age 40 or older (since for Covered Ticket Purchases, the Nationals' data indicated that 63.84% of the purchasers were age 40 or older). That resulting figure was $421,864. *Id.* The sum of those two figures was $1,286,683. *Id.*

On November 20, 2024, the Parties participated in a joint mediation before Linda Singer of JAMS in Washington, D.C. *Id.* ¶ 42. During several months before the mediation, the Parties met a number of times to discuss the data and information the Nationals had produced and to develop a common methodology for estimating the potential Actual Damages. *Id.* ¶ 43. In addition,

the Parties met collectively and separately with Ms. Singer to discuss the Parties' positions, and the Parties exchanged mediation statements that analyzed liability, potential defenses, and estimated damages. *Id.* While the Parties did not reach settlement on November 20, 2024, the Parties continued settlement negotiations. *Id.* ¶ 44. On December 20, 2024, the Parties reached an agreement on the terms of relief to the Settlement Class, ECF No. 17, and on February 5, 2025, the Parties reached an agreement on the attorneys' fees and costs and Class Representatives' service awards to be proposed to the Court. Romer-Friedman Decl. ¶ 44; ECF No. 21. On May 16, 2025, the Parties executed and filed the Settlement Agreement. Settlement Agreement, ECF No. 25 ("Settlement"); Romer-Friedman Decl. ¶ 45.

B. The Settlement Agreement

1. The Settlement Class

The "Settlement Class" is defined as:

> [A]ll personas who made at least one Covered Ticket Purchase, *i.e.,* a single-game ticket to a Nationals home baseball game that was scheduled to occur during the 2023 or 2024 Major League Baseball regular season; where the purchase was made directly from the Nationals on the Nationals or MLB.com websites, by phone, or at the Nationals' box office between March 29, 2023 and March 28, 2024; where the purchaser was 40 years of age or older at the time of ticket purchase; where the purchase was for an Eligible Seat;[1] where the purchaser suffered Actual Damages due to not having access to the "Millennial" or Young Professional" discount with respect to their purchase; and where the purchaser would have been eligible for the "Millennial" or Young Professional" discount with respect to their purchase but for their age.

[1] "Eligible Seat" means a seat eligible for the Millennial or Young Professional Discount, *i.e.*, a seat located in the following sections of the Nationals' Stadium: Baseline Box, Baseline Reserved, Infield Box, Corner, Scoreboard Pavilion, and Upper Gallery.

Settlement §§ 1(L), (HH).[2] To put it another way, the Settlement Class includes every person whom Plaintiffs estimate suffered Actual Damages with respect to a Covered Ticket Purchase. The Parties estimate there are no more than 32,000 Settlement Class Members. *Id.* § 1(HH).

2. Relief for the Class

Under the Settlement Agreement, every Settlement Class Member will have a choice to receive either a cash payment or a credit to their MLB.com account that can be used toward the purchase of one or more tickets to a future Nationals home game ("Ticket Credit"), based on the amount of their Actual Damages. *See* Settlement § 2(A). If all Settlement Class Members receive Ticket Credit, the default form of consideration, the dollar value of all Ticket Credit provided to Settlement Class Members will be $3 million, which is roughly 2.33 times the estimated Actual Damages of the Settlement Class Members. If all Settlement Class Members opt to receive a cash payment instead of Ticket Credit, the dollar value of all cash payments made to Settlement Class Members will be $800,000, which is 62.2% of the estimated Actual Damages of the Settlement Class Members. *Id*. §§ 1(C), 2(A). The foregoing alternative amounts are collectively referred to herein as the "Settlement Fund." The Ticket Credit amount provided to Settlement Class Members who do not opt to receive consideration in the form of a cash payment is the *greater* of (A) $18.00 or (B) two (2) times the Actual Damages for each Covered Ticket Purchase. *Id*. Each Settlement Class Member who opts to receive consideration in the form of a cash payment will receive a cash payment that is 62.2% of their Actual Damages. *Id.* For example, if a Settlement Class Member

[2] Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this action and members of their families; (2) the Nationals, the Nationals' subsidiaries, parent companies, successors, predecessors, and any entity in which the Nationals or the Nationals' parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) persons who properly execute and file a timely request for exclusion from the Settlement Class; and (4) the legal representatives, successors or assigns of any excluded persons. Settlement § I(HH).

bought a single ticket that is a Covered Ticket Purchase and had $20 of Actual Damages, they could choose to receive $12.44 in a cash or a Ticket Credit of $40. If a Settlement Class Member does not elect to receive cash, the Member will automatically be provided with Ticket Credit to their MLB.com account. *Id.* § 2(E)(a).

Under the Settlement, Settlement Class Members may also receive a second cash payment or Ticket Credit based on the leftover Settlement Fund, depending on how many Potential Class Members (as defined in the Settlement Agreement) file claim forms establishing that they were 40 or older at the time of their purchase such that they are Settlement Class Members. *Id.* § 2(F). Because of this second round of payments, none of the Settlement Fund will revert to the Nationals.

Furthermore, as described in greater detail below, because the Nationals have agreed to pay attorneys' fees and costs and Class Representatives' service awards separately, the consideration that the Class receives will not be reduced as a result of those fees or awards, *see id.* § 8(A), and each Settlement Class Member will have the opportunity to receive consideration in the form of Ticket Credit that is at least 200% of their Actual Damages. *Id.* § 2(A).

3. The Release

The Settlement Agreement contains a specific release that releases the claims of the Named Plaintiffs and Settlement Class Members that were brought or could have been brought in the Action relating to the Nationals and other Released Parties, or that in any way relate to or arise out of the Discount or the other allegations in the Action, from the date of entry of judgment in this action. Settlement § 3. The release is not a general release and does not release claims that the Settlement Class Members may have against the Nationals or other entities that are unrelated to the subject matter of this Action or the Discount. *See id.*

4. Notice, Settlement Administration, and Payments to Class Members

The Notice of Settlement will be provided to the above-defined Settlement Class in the form of the proposed Settlement Notices (each, a "Notice") attached to the Settlement Agreement as Exhibit A ("Known Class Members") and Exhibit B ("Potential Class Members"). *Id*. § 7(A). The Notice to approximately 18,000 Known Class Members will be sent to persons whom the Parties have already identified as Settlement Class Members and will explain that they do not need to do anything to receive benefits under the Settlement, and that they can submit a Claim Form to receive cash rather than Ticket Credit. The notice to approximately 21,000 Potential Class Members will be sent to persons who would be Settlement Class Members if they were 40 or older at the time they made a Covered Ticket Purchase. *Id.* § 2(E)(a). It will inform Potential Class Members that they need to submit a Claim Form that establishes that they were 40 or older at the time of the purchase to receive benefits under the Settlement and that in doing so they can choose whether to receive cash or a Ticket Credit. *Id.* § 2(E)(b).

The Parties have selected Analytics, a national class action settlement administrator, as the Settlement Administrator, after a rigorous process in which several well-regarded and experienced claims administration firms submitted competitive bids. Romer-Friedman Decl. ¶ 46. The settlement administration costs will be paid by the Nationals apart from and in addition to the Settlement Fund. *Id*. § 6(G). Analytics will satisfy the relevant due process requirements in notifying Class Members of the settlement, allowing Settlement Class Members to select their form of payment, and distributing Settlement payments. *Id.* § 5(A). If Settlement Class Members choose to receive cash, the Settlement Administrator will, after this Court's final approval, make the cash payment to such Class Members. *Id.* § 2(E)(a) If Settlement Class Members choose the Ticket Credit, the Nationals, shall, after this Court's final approval, apply the Ticket Credit directly to the Settlement Class Member's online ticket account. *Id*.

The Settlement Agreement provides what Plaintiffs believe is the fairest and most practicable procedure for notifying Settlement Class Members of the terms of the Settlement and their respective rights and obligations under the Agreement through direct mail, email, website, and ad posting. *See generally Id*. §§ 4-5. The Nationals will produce a class list in electronic format, based on its records, that includes the names and last known email, and U.S. mailing addresses that belong to each Known and Potential Class Member ("Class List"). *Id.* § 4(A)(i).

No later than 21 calendar days from the date of entry of the Preliminary Approval Order, the Settlement Administrator shall send Notice to each member of the Class List via email. If email Notice to a member of the Class List is returned as non-deliverable, or if the member of the Class List does not have an email address, the Settlement Administrator shall send the Notice to the person's mailing address via First Class U.S. Mail. *Id.* § 4(A)(ii). If any Notice is returned as non-deliverable, and a forwarding address is provided, the Settlement Administrator will resend the Notice to the forwarding address within five business days. *Id.* § 4(A)(iii). If any Notice is returned as non-deliverable, and no forwarding address is provided, the Settlement Administrator will attempt to ascertain a valid address for such member of the Class List by seeking change of address information via the U.S. Postal Service's National Change of Address Link and will resend the Notice within five business days to the address(es) that are found. *Id.*

Within 10 calendar days from the date of entry of the Preliminary Approval Order, Notice will be provided on the Nationals' website, mlb.com/nationals, and a website established by the Settlement Administrator, *id.* § 4(A)(iv), and Notice will be published in *the Washington Post* at the Nationals' expense. *Id.* § 4(B).

Any balance of the Settlement Fund will be redistributed among all Known Class Members by dividing the remainder of the Settlement Fund, such that each Known Class Member receives

a percentage of the remaining Settlement Fund balance in proportion to the Actual Damages suffered by such Known Class Member in relation to the total amount of Actual Damages of all Known Class Members. *Id.* § 2(F)(a)-(d). The Settlement Fund balance will be distributed to each Known Class Member in the form of Consideration that such Known Class Member elected in Phase One (*i.e.*, Ticket Credit or cash payment). *Id.* § 2(F)(b).

5. Attorneys' Fees and Costs and Service Awards

The Settlement Agreement provides that the Nationals, separate and apart from the Settlement Fund and subject to this Court's approval, will pay $640,000 for fees, costs and expenses to the proposed Class Counsel, and will pay a total of $10,000 for service awards to be provided to the two proposed Class Representatives. *Id.* § 8(A), (C)-(D).

III. ARGUMENT

A. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE GRANTED PRELIMINARY APPROVAL

The Parties' Settlement resolves this litigation on favorable terms for all the persons whom Plaintiffs allege were harmed by the Discount, and the Court should preliminarily approve the Settlement under Federal Rule of Civil Procedure 23(e). *See Kinard v. E. Capitol Fam. Rental, L.P.*, 331 F.R.D. 206, 213 (D.D.C. 2019) (reiterating "long-standing judicial attitude favoring class action settlements") (citations omitted); *Osher v. SCA Realty I, Inc.*, 945 F. Supp. 298, 304 (D.D.C. 1996) ("In the context of class actions, settlement is particularly appropriate given the litigation expenses and judicial resources required in many such suits.").

The Court's "primary task is to evaluate the terms of the settlement in relation to the strength of the plaintiffs' case," *Thomas v. Albright*, 139 F.3d 227, 231 (D.C. Cir. 1998), and "[g]enerally, preliminary approval . . . will be granted if [the settlement] appears to fall within the range of possible approval' and 'does not disclose grounds to doubt its fairness or other obvious

deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys." *Trombley v. Nat'l City Bank*, 759 F. Supp. 2d 20, 23 (D.D.C. 2011) (cleaned up). Although the D.C. Circuit has not adopted a test for considering the preliminary approval of a settlement, courts in this Circuit have typically "considered the following factors: (a) whether the settlement is the result of arm's length negotiations; (b) the terms of the settlement in relation to the strength of plaintiffs' case; (c) the status of the litigation at the time of settlement; (d) the reaction of the class; and, (e) the opinion of experienced counsel." *Jones v. Chopra*, 2023 WL 6037295, at *7 (D.D.C. Sept. 15, 2023) (cleaned up).

Ultimately, at the final approval stage the Court will consider whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;
(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
(iii) the terms of any proposed award of attorney's fees, including timing of payment; and
(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

All the traditional factors support the conclusion that the Court should grant preliminary approval of the Settlement Agreement in this case.

The Settlement secures favorable relief for tens of thousands of Settlement Class Members whose rights Plaintiffs allege were violated by the Discount, with each Settlement Class Member receiving a choice of 62.2% of their Actual Damages or Ticket Credit that is at least 200% their Actual Damages with a minimum Ticket Credit of $18 per ticket. Romer-Friedman Decl. ¶ 48.

With this Ticket Credit, every Settlement Class Member will have the opportunity to attend a future Nationals game for free or, in the case of more expensive tickets, at a reduced cost. *Id.* The total value of this relief ranges from $800,000 in cash to $3 million in Ticket Credit. In exchange for these benefits, Settlement Class Members will provide a limited, specific release. Moreover, due to the filing of this lawsuit, the Nationals have discontinued the Discount that Plaintiffs alleged violated the civil and consumer protection rights of the Settlement Class Members. *Id.* ¶ 49.

Furthermore, the Settlement Agreement is the result of extensive arm's length negotiations with the aid of an experienced third-party mediator, which occurred after the Parties engaged in sufficient discovery to analyze liability, defenses, and damages. *Id.* ¶ 50. And the Parties negotiated attorneys' fees and costs separately from the relief that they agreed would be provided to the Class, and those fees and costs will be paid separately by the Nationals, subject to approval by this Court. *Id.* ¶¶ 44, 51. Finally, the Settlement Agreement meets all requirements of Rule 23(e) with its payments, streamlined claims procedure, and limited release. The Settlement Agreement, thus, merits preliminary approval by this Court.

1. The Settlement is the Product of a Series of Informed, Arm's-Length and Adversarial Negotiations

The Settlement Agreement represents a hard-fought compromise reached by experienced counsel on both sides through arm's length, adversarial negotiations. Romer-Friedman Decl. ¶¶ 5-28, 33-46, 63; Decl. of Ryan Allen Hancock ("Hancock Decl.") ¶ 13; *see, e.g.*, *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d 100, 106 (D.D.C. 2004); *Howard v. Liquidity Servs. Inc.*, 2018 WL 4853898, at *4 (D.D.C. Oct. 5, 2018) ("The sophistication and experience of counsel support the arm's-length nature of the negotiations in this case, and the length and nature of the settlement negotiations further support this conclusion."). This case involved the production and analysis of voluminous data from the Nationals concerning tens of thousands of potential class members from

a variety of data sources. Romer-Friedman Decl. ¶¶ 36-37. The process was overseen and assisted by a respected mediator who worked with the Parties over a day-long mediation and numerous meet-and-confers before and after the date of mediation to reach a resolution. *Id.* ¶¶ 33, 42-43. The participation of "an experienced and respected mediator . . . further bolsters the arm's length nature of the negotiations." *Dew v. Mindfinders, Inc.*, 2021 WL 4797551, at *5 (D.D.C. Oct. 14, 2021).

2. The Settlement Terms are Adequate Given the Risks of Litigation

The Settlement provides adequate relief when "the Court compares [its] terms . . . with the likely recovery plaintiffs would attain if the case proceeded to trial, an exercise which necessarily involves evaluating the strengths and weaknesses of plaintiffs' case." *In re Fed. Nat'l Mortg. Ass'n Sec., Deriv. & "ERISA" Litig.*, 4 F. Supp. 3d 94, 103 (D.D.C. 2013); *see also In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 26 (D.D.C. 2011) (this comparative assessment is "the most important factor."). Because "the outcome of litigation is always uncertain and inevitably time-consuming and expensive," a class settlement may be adequate even if it provides "only a fraction of the potential recovery" at trial. *In re New Jersey Tax Sales Certificates Antitrust Litig.*, 750 F. App'x 73, 82 (3d Cir. 2018) (citing 2 McLaughlin on Class Actions § 6:16); *see, e.g.*, *In re Fed. Nat'l Mortg. Ass'n Sec., Deriv. & "ERISA" Litig.*, 4 F. Supp. 3d at 103-04; *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 495 (S.D.N.Y. 2018) (finding no reason "why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery") (citations omitted).

The relief achieved in this case is a favorable result for the Settlement Class Members. Under the Settlement, each Settlement Class Member will receive either a cash payment that represents 62.2% of their Actual Damages or a Ticket Credit that is at least 200% of their Actual Damages, with a minimum Ticket Credit of $18 per ticket. Settlement § 2(A). And with the second

phase distribution, Settlement Class Members may receive an additional amount of consideration. *Id.* § 2(F).

In the absence of a Settlement, Plaintiffs would have faced numerous challenges that could result in some or all Plaintiffs receive nothing or far less than what tens of thousands of Settlement Class Members will receive under this Settlement. Romer-Friedman Decl. ¶ 52. For starters, on the issue of liability, there are no reported cases directly involving the types of price discounts at issue in this case under District of Columbia law. *Id.* ¶ 53. In addition, the Nationals would be likely to advance a range of arguments that could adversely impact liability and damages, including that some Settlement Class Members could have obtained tickets at lower prices by relying on other equivalent discounts (like discounts for government employees, military members, teachers, and healthcare workers), but did not, and that the Discount was not well publicized and most class members likely would never have seen the relevant advertisement. *Id.* ¶ 54. Furthermore, without a Settlement, the Nationals might have obtained an order compelling nearly all the Settlement Class Members to individually arbitrate their claims, which would effectively mean that the vast majority of Settlement Class Members might receive no remedy whatsoever. *Id.* ¶ 55. In most, if not all instances, the filing fees that Settlement Class Members would have had to pay to file any arbitration demand would exceed any damages they may have incurred by not having access to the Discount. *Id.*

In light of these significant challenges that could result in all or most Settlement Class Members receiving nothing or far less than under this Settlement, and the significant time that would be required to resolve those issues, the significant benefits to Class members without the need for significant, protracted litigation are an indication that the proposed settlement is fair, reasonable, and adequate. *See Cohen v. Warner Chilcott Pub. Ltd. Co.*, 522 F. Supp. 2d 105, 118

(D.D.C. 2007) (approving settlement where "it is obvious that [p]laintiffs faced significant risks in establishing both liability and damages. Even if [p]laintiffs had prevailed over these obstacles at trial, it is likely that a verdict would have been followed by an appeal, which might have further delayed the final resolution of this case."); *Craig v. Rite Aid Corp.*, 2013 WL 84928, at *9 (M.D. Pa. Jan. 7, 2013), *appeal dismissed* (3d Cir. Feb. 20, 2013) (preliminary approval appropriate where "[n]ot only would continued litigation of these cases result in a massive expenditure of Class Counsel's resources, it would likewise place a substantial drain on judicial resources.")

In the instant case, the complexity and expense of proceeding with litigation is clearly outweighed by the efficiency and financial relief presented by the Settlement Agreement.

3. The Status of the Litigation at the Time of the Settlement Supports Preliminary Approval

As described above, the Parties engaged in significant discovery before starting their settlement negotiations. Through this discovery, Plaintiffs were able to obtain all the information that was necessary for them to assess liability and the Nationals' potential defenses and to determine the potential damages of each Settlement Class Member. Romer-Friedman Decl. ¶¶ 36-41. Accordingly, discovery had advanced far enough for the Parties to be fully informed and negotiate a resolution responsibly.

4. Plaintiffs and Plaintiffs' Counsel Support the Settlement Agreement

Because notice has not occurred yet, "reactions of the class to the proposed settlement cannot be assessed." *Jones*, 2023 WL 6037295, at *8. But the Settlement is supported by both named Plaintiffs and Class Representatives, as well as by Plaintiffs' Counsel. Romer-Friedman Decl. ¶¶ 59-60. And it is well established that "[t]he opinion of experienced class counsel is 'afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement.'" *Jones*, 2023 WL 6037295, at *8 (quoting *Stephens v. Farmers Rest. Grp.*, 329 F.R.D.

476, 488 (D.D.C. 2019)); *accord In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d at 106; *Stewart v. Rubin*, 948 F. Supp. 1077, 1087 (D.D.C. 1996). Here, Plaintiffs' counsel are experienced class action lawyers who have successfully litigated novel and large civil rights actions in this District and other jurisdictions. Romer-Friedman Decl. ¶¶ 5-28, 33-46, 63; Hancock Decl. ¶¶ 11-12. Plaintiffs' counsel extensively analyzed the legal and factual issues at stake in this case and developed a methodology to identify the damages of all Settlement Class Members, and they believe this Settlement is in the best interests of the Class. Romer-Friedman Decl. ¶¶ 57, 60.

In summary, the proposed Settlement Agreement is the product of careful factual and legal research, extensive damages analysis from the Parties' informal discovery process, and arm's-length negotiations between the Parties, including with the assistance of a respected mediator. There are no obvious deficiencies in the terms of the Settlement Agreement, and the Court should grant preliminary approval so that notice can be provided to Settlement Class Members.

5. The Notice is the Best Notice Practicable and Approval of Notice is Warranted

Federal Rule of Civil Procedure 23(e)(1)(B) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by the proposal." Generally, the notice "must be 'reasonably calculated' . . . to apprise [the Class Members] of the pendency of the action and afford them an opportunity to present their objections.'" *Brown v. Wells Fargo Bank, N.A.*, 869 F. Supp. 2d 51, 64 (D.D.C. 2012) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

Here, the Notice is reasonably calculated to apprise all Settlement Class Members of the Settlement, the opportunity to lodge any objections to it, and the right to opt out of the Settlement. All the Known Class Members and Potential Class Members will receive Notice via the e-mail associated with their purchase of tickets from the Nationals, or if an e-mail address is not available

or non-deliverable, they will receive Notice via first-class mail. Settlement §§ 1(V), 2(E)(a), 4. Within 21 days of the Court granting preliminary approval, the Notice will inform the Known Class Members about the Settlement, what relief they would stand to receive under the Settlement, how that relief is calculated, their right to opt out or object, the ability to submit a Claim Form to receive a cash payment, and the amount of proposed attorneys' fees and costs and service awards. *Id.* § 4(A)(ii). Another Notice will inform Potential Class Members of the same information and also inform them that they must submit a Claim Form to identify their own ages to receive benefits under the Settlement. *Id.* §§ 1(W), 2(E)(b). A second Notice will be sent to the same group of people to remind them to submit Claim Forms. *Id.* § 2(E).

In addition to the Notice provided directly to Settlement Class Members, Notice will be published in a *Washington Post* advertisement, on the Nationals' website, and on a website established by the Settlement Administrator. *Id.* §§ 1(V), 4(B).

IV. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS

The proposed Settlement Class satisfies the requirements of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure. As such, the Court should certify the proposed Settlement Class for the purposes of settlement, appoint the named Plaintiffs as the Class Representatives, and appoint Plaintiffs' counsel as Class Counsel.

A. The Class Satisfies Numerosity

Numerosity may be presumed if there are 40 class members and "can be satisfied so long as there is a reasonable basis for the estimate provided." *Hoyte v. District of Columbia*, 325 F.R.D. 485, 490 (D.D.C. 2017) (cleaned up). Here, numerosity under Rule 23(a)(1) is satisfied because there are approximately 32,000 Class members. *See* Settlement § 1(II).

B. Commonality is Satisfied

The commonality requirement of Rule 23(a) is met. Although even a "'single common question'" may suffice to establish commonality, *In re District of Columbia*, 792 F.3d 96, 100 (D.C. Cir. 2015), here there are several common legal and factual issues in this litigation and resolving those issues would decide the validity of each Settlement Class Member's claim and each Settlement Class Member's damages. *See Brown v. District of Columbia*, 928 F.3d 1070, 1080 (D.C. Cir. 2019) (requiring a "common contention . . . capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke") (citation omitted). Those common questions at the heart of Plaintiffs' claims include whether the Discount constitutes unlawful age discrimination under the D.C. Human Rights Act, whether the Discount violates the Consumer Protection Procedures Act regarding its ticket discount offers, and the methodology by which to calculate the Class Members' damages. Romer-Friedman Decl. ¶¶ 38-40, 61; Compl. ¶¶ 49, 57-94.

C. Typicality is Satisfied

Plaintiffs' claims are typical of the Class under Rule 23(a)(3), because they arise from the same course of conduct—alleged violations of the D.C. Human Rights Act and D.C. Consumer Protection Procedures Act—and Plaintiffs assert the same legal theories. *See Hardy v. District of Columbia*, 283 F.R.D. 20, 25 (D.D.C. 2012) (a claim is "typical if it arises from the same event or practice or course of conduct that gives rise to a claim of another class member's where his or her claims are based on the same legal theory") (citation omitted); Compl. ¶¶ 50, 57-94. Moreover, Plaintiffs are not subject to a defense that is inapplicable to many members of the Class.

D. Adequacy is Met

Rule 23(a)'s adequacy requirement "imposes two criteria on plaintiffs seeking to represent the class: '(1) the named representative must not have antagonistic or competing interests with the unnamed members of the class, and (2) the representative must appear able to vigorously prosecute the interests of the class through qualified counsel.'" *Hoyte*, 325 F.R.D. at 490 (quoting *Twelve John Does v. District of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997)).

Both these requirements are satisfied here. The named Plaintiffs' interests in this litigation do not conflict with those of any Class Member, and they have already shown that they will vigorously prosecute the claims on behalf of the Class. Romer-Friedman Decl. ¶¶ 58-59. They have filed the Complaint, consistently communicated with their attorneys, provided evidence, participated in the negotiation of the settlement, and evaluated and approved the Settlement's terms. *Id.* ¶ 58. Both Plaintiffs support the Settlement, irrespective of whether the Court approves any service awards. *Id*. ¶ 59. The same is true of Plaintiffs' counsel, who have no conflicts with the Class Members and have already spent hundreds of hours successfully advocating on behalf of the Class. *Id.* ¶ 60; *Hardy*, 283 F.R.D. at 25 (holding that "Plaintiffs and counsel have met the adequacy requirement" based on how they "vigorously pursued" the litigation.").

E. Rule 23(b)(3)'s Requirements Are Satisfied

Rule 23(b)(3) certification is satisfied when (1) "the questions of law or fact common to class members predominate over any questions affecting only individual members[,]" and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Coleman through Bunn v. District of Columbia*, 306 F.R.D. 68, 84 (D.D.C. 2015) (cleaned up); *see* Fed. R. Civ. P. 23(b)(3).

"The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues. When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3)[.]" *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (cleaned up). In this case, all the legal and factual issues that are common to the Class—as described above—predominate over any questions that might affect individual Class Members. That is because all Class Members were subject to the same uniform policy under which they were not eligible to receive up to a 30% discount and a $5 to $15 spending credit, since they were 40 years old or older at the time they purchased tickets from the Nationals, and because all Class Members paid more for their tickets because they could not receive the same discount and spending credit. Romer-Friedman Decl. ¶ 61.

Moreover, because in this action "damages can be calculated using a common methodology that applies to all members of the respective classes," "damages issues [] predominate over individualized issues." *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations*, 2021 WL 5799379, at *9 (D.D.C. Dec. 7, 2021) (citing *In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 268 (D.D.C. 2002)); *see also Bouaphakeo*, 577 U.S. at 453 (holding that common issues can predominate even if damages "will have to be tried separately"); *McCarthy v. Kleindienst*, 741 F.2d 1406, 1415 (D.C. Cir. 1984) (stating that the need to determine class members' individual damages does not "preclude class certification."); *see* Romer-Friedman Decl. ¶¶ 38-40, 57.

A class action is also superior to individual actions. Superiority is "often found when use of the class action device would enable vindication of the rights of groups of people who individually would be without effective strength to bring their opponents into court at all. In such

circumstances, multiple lawsuits would be costly and inefficient." *Coleman*, 306 F.R.D. at 87-88 (cleaned up). Here, because the potential individual recoveries are relatively small—typically tens of dollars per ticket or less—most ticket purchasers lack an incentive to retain counsel to assert individual claims. Romer-Friedman Decl. ¶ 62. That makes a class action a superior means of resolving this controversy. Here, there are significant efficiencies and other benefits to be gained by resolving claims over the Discount in a single proceeding. *Id.*

F. The Court Should Appoint Class Counsel and the Class Representatives

To appoint class counsel, Rule 23(g)(1)(A) requires the Court to consider "the work counsel has done in identifying or investigating potential claims in the action," "counsel's experience in handling class actions, other complex litigation, and the types of claim asserted in the action," "counsel's knowledge of the applicable law," and "the resources that counsel will commit to representing the class." Rule 23(g)(1)(B) states that the Court "may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class."

Plaintiffs' counsel is experienced in complex and class litigation, including in the field of civil rights law, and have demonstrated their skills and commitment to pursuing the Class members' best interests, including by negotiating a fair and adequate resolution of their claims that which will provide significant benefits to the Class Members. Romer-Friedman Decl. ¶¶ 5-28, 33-46, 63; Declaration of Ryan Allen Hancock ¶ 13. As such, the Court should appoint Plaintiffs' counsel as Class Counsel under Rule 23(g).

Finally, the Court should appoint the named Plaintiffs Nick Snyder and David Coyne as Class Representatives.

V. CONCLUSION

For the foregoing reasons, the Court should certify the proposed Settlement Class, appoint Class Counsel and the Class Representatives, approve the proposed Class Notice, and grant preliminary approval of the Settlement.

Respectfully submitted,

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