

SEP -3 2024

Clerk of the Superior Court
By: R. Cersosimo, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MARY RICKEY, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

BALLER, INC., a Delaware corporation; and
DOES 1-50, inclusive,

Defendants.

CASE NO. 37-2022-00044840-CU-BT-CTL

CLASS ACTION

~~[PROPOSED]~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND PROVIDING FOR
NOTICE

[IMAGED FILE]

1 Pending before the Court is the Unopposed Motion for Preliminary Approval of Class
2 Action Settlement (“Motion”) relating to the Settlement Agreement (“Settlement”) between
3 plaintiff Mary Rickey (“Plaintiff”) and defendant Baller, Inc. (“Baller” or “Defendant”). Having
4 read and considered the moving papers, including the Settlement Agreement, and finding good
5 cause, the Court finds and orders as follows:

6 1. Based upon the Court’s review of the Settlement Agreement, the Memorandum of
7 Points and Authorities in Support of the Motion, the discussion at the hearing, and the entire
8 record, the Unopposed Motion for Preliminary Approval of Class Action Settlement is
9 GRANTED.

10 2. The Court hereby conditionally certifies the following class (“Class”) for
11 settlement purposes only: “All individuals who, while residing in California and between February
12 14, 2019 and June 6, 2023, inclusive, purchased a subscription through the website
13 www.BallerTV.com, limited to individuals who did not receive a full refund. Excluded from the
14 Class are all employees of Defendant, all employees of Plaintiff’s counsel, and the judicial officers
15 to whom this case is assigned.” The Court grants leave for Plaintiff to file a Second Amended
16 Complaint, setting forth the foregoing definition of the Class. Defendant is deemed to have denied
17 all material allegations of the Second Amended Complaint without the necessity of filing an
18 Answer.

19 3. The Court appoints Dostart Hannink LLP as Class Counsel. The Court appoints
20 plaintiff Mary Rickey as the Class Representative. The Court designates CPT Group, Inc. as the
21 Settlement Administrator.

22 4. The Court preliminarily approves the Settlement,¹ including the monetary relief,
23 injunctive relief, procedure for payment of Class Counsel’s attorneys’ fees and litigation expenses
24 to the extent ultimately awarded by the Court, and procedure for payment of any service award to
25 the extent ultimately awarded by the Court. The Court has reviewed the monetary relief and the
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27 ¹ The definitions of capitalized terms in this Order are the same as the definitions of those terms in
28 the Settlement Agreement.

1 injunctive relief that are provided as part of the Settlement and recognizes the value to the Class. It
2 appears to the Court on a preliminary basis that the Settlement is fair, adequate, and reasonable as
3 to all Class Members when balanced against the cost and uncertainty associated with further
4 litigation. It further appears that settlement of the Action at this time will avoid substantial
5 additional costs by all Parties, as well as the delay and risks that would be presented by the further
6 prosecution of the Action. It also appears that the Settlement has been reached as a result of
7 intensive, serious, and non-collusive arm's-length negotiations.

8 5. The Court approves the emailed Summary Class Notice (Exhibit A to the
9 Settlement Agreement) and the Long Form Notice (Exhibit B to the Settlement Agreement). The
10 notice procedure described in the Settlement Agreement meets the requirements of Rule 3.766(d)
11 of the California Rules of Court and due process, and constitutes the best practicable notice under
12 the circumstances. The Settlement Administrator is directed to disseminate the Summary Class
13 Notice to Class Members via email no later than twenty-one (21) days following entry of this
14 order. The date on which the Summary Class Notice is emailed is the "Notice Date." The
15 Settlement Administrator is directed to take all steps necessary to establish a settlement website
16 and to post the Long Form Notice on the website by the Notice Date.

17 6. As set forth in the Settlement Agreement, any individual who wishes to exclude
18 himself or herself from the Settlement shall mail, email, or personally deliver to the Settlement
19 Administrator a written request for exclusion no later than forty-five (45) days following the
20 Notice Date. The written request for exclusion must set forth the name of the lawsuit (*Rickey v.*
21 *Baller, Inc.*, Case No. 37-2022-00044840-CU-BT-CTL), the class member's name, address,
22 telephone number, and email address, along with the statement: "I wish to be excluded from the
23 *Rickey v. Baller, Inc.* Settlement" or words to that effect. Any request for exclusion must be
24 personally signed by each person requesting exclusion. So-called "mass" or "class" opt-outs shall
25 not be allowed. Class Members who do not timely request exclusion shall be bound by the
26 provisions of the Settlement Agreement and all orders or judgments that may be entered by the
27 Court.

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1 7. Class Members may object to the Settlement in writing. To object to the
2 Settlement, a class member must file a written objection with the Court and serve copies of the
3 objection on Class Counsel, Defendant’s counsel, and the Settlement Administrator, no later than
4 forty-five (45) days following the Notice Date. The written objection must set forth the name of
5 the lawsuit (*Rickey v. Baller, Inc.*, Case No. 37-2022-00044840-CU-BT-CTL), the class member’s
6 name, address, telephone number, and email address, along with the statement: “I declare under
7 penalty of perjury that, to the best of my knowledge, between February 14, 2019 and June 6, 2023,
8 while residing in the State of California, I purchased a subscription through the website
9 www.BallerTV.com and did not receive a full refund, and I wish to object to the Settlement.” The
10 written objection must also state the factual and legal basis for the objection; the name and contact
11 information of any and all attorneys representing, advising, or in any way assisting the objector in
12 connection with the preparation or submission of the objection or who may profit from the pursuit
13 of the objection; and a statement indicating whether the objector intends to appear at the Final
14 Approval Hearing. Any documents that the objecting class member wishes for the Court to
15 consider must also be attached to the objection. Any written objection must be filed with the Court
16 and served by mail as follows: (1) to Rickey v. Baller, Inc. Settlement Administrator, c/o CPT
17 Group, Inc., 50 Corporate Park, Irvine, California 92606; (2) to Defendant’s counsel, Michele D.
18 Floyd, Kilpatrick Townsend & Stockton LLP, Two Embarcadero Center, Suite 1900, San
19 Francisco, CA 94111; and (3) to Class Counsel, Zach P. Dostart, Dostart Hannink LLP, 4225
20 Executive Square, Suite 600, La Jolla, California 92037.

21 8. Plaintiff shall file her motion for final approval, which may be combined with
22 Class Counsel’s motion for attorneys’ fees, litigation expenses, and for any class representative
23 service award, by the date specified below. The motion for final approval shall identify a proposed
24 *cy pres* recipient for any excess funds, consistent with Section IV.B. of the Settlement Agreement
25 and with Code of Civil Procedure section 384.

26 9. A Final Approval Hearing shall be held by this Court, located at 330 West
27 Broadway, San Diego, California 92101, Department 68, on December 6, 2024, at
28 10:30 a.m., at which time the Court will determine whether the Settlement should be granted

1 final approval. At that time, the Court will also consider Class Counsel's motion for attorneys'
2 fees, litigation expenses, and any proposed service awards.

3 10. If the Settlement is not finally approved by the Court, (i) the conditional
4 certification of the Class shall be withdrawn, (ii) the Second Amended Complaint and any Answer
5 thereto shall be stricken or withdrawn; and (iii) the Settlement Administrator will, after deducting
6 any settlement administration expenses incurred as of that date, return any Settlement funds in its
7 possession to Defendant.

8 11. The Court reserves the right to adjourn or continue the date of the Final Approval
9 Hearing and all dates provided for in the Settlement without further emailed notice to the Class
10 Members, and retains jurisdiction to consider all further matters arising out of or connected with
11 the proposed Settlement.

12 12. In accordance with the terms of the Settlement, the Court hereby adopts the
13 following dates for performance of the specified activities leading to the Final Approval Hearing:

Deadline	Event
3 business days after entry of Court's Order granting Preliminary Approval	Deadline for Baller to provide to the Settlement Administrator an Excel spreadsheet that includes each Class Member's name, telephone numbers, and email addresses, to the extent such information is available in Baller's business records
10 business days after entry of Court's Order granting Preliminary Approval	Deadline for Baller to wire transfer the Settlement Amount to Settlement Administrator
21 days after entry of Court's Order granting Preliminary Approval	Deadline for Settlement Administrator to email the Court-Approved Summary Class Notice to Class Members and establish the Settlement Website ("Notice Date")
45 days after Notice Date	Last day for Class Members to object or opt out
5 court days after Exclusion/Objection Deadline	Deadline for Settlement Administrator to provide written report to Class Counsel and Defendant's counsel regarding opt outs and objections
16 court days prior to Final Approval Hearing	Deadline for Plaintiff to file Motion for Final Approval of Settlement

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10 days prior to Final Approval Hearing	Deadline for Parties respond to any objections to the Settlement
As set forth above in Paragraph 9	Final Approval Hearing

13. The Parties are ordered to carry out the Settlement in the manner provided in the Settlement Agreement and this Order.

IT IS SO ORDERED.

DATED: SEP - 3 2024, ~~2024~~

RICHARD S. WHITNEY
Hon. Richard S. Whitney
Judge of the Superior Court