Supreme Court No. 102788-5
Court of Appeals No. 84910-7-I

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

MARIA BARNES,

Appellant-Petitioner,

_____

JEFFRIE ALAN SUMMERS II, on behalf of himself and all others similarly situated,

Defendant-Respondent,

v.

SEA MAR COMMUNITY HEALTH CENTERS,

Defendant-Respondent.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Respondent submitting this Answer is Sea Mar Community Health Centers ("Sea Mar"), which is a non-profit health care provider.

II. COURT OF APPEALS DECISION

The Court of Appeals, Division One, filed a published decision on January 8, 2024, affirming the trial court's orders granting final approval to the class action settlement and denying petitioner Maria Barnes' ("Petitioner" or "Barnes") motion to consolidate the six class action lawsuits pending against Sea Mar. In doing so, the Court of Appeals held the superior court acted within its discretion when granting final approval of the settlement, denying the motion to consolidate, and approving both the class notice plan as well as the settlement as "fair, reasonable, and adequate." Petitioner's Appendix, Opinion at 1. Barnes did not seek reconsideration of that decision.

III. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW

Sea Mar asserts the issues raised in the Petition are more appropriately formulated as:

1. Did the Court of Appeal appropriately affirm the superior court's order granting final approval of the class action settlement where the superior court properly exercised its discretion to rule there was no evidence of collusion or bad faith between the Settling Parties?

2. Did the Court of Appeal appropriately affirm the superior court's order granting final approval of the class action settlement where the superior court properly exercised its discretion to rule the Settling Parties provided the best notice practicable to reach Sea Mar's patients?

IV. COUNTERSTATEMENT OF THE CASE

A. Factual Background of the Litigation.

Sea Mar is a non-profit health care provider that serves low-income individuals throughout Washington. 1 Clerk's

Papers ("CP") 5; 2 CP 774. Sea Mar's services include medical, dental, behavioral health, education, farmworkers' assistance and affordable housing, which involve collecting and maintaining patients' personally identifiable information ("PII") and protected health information ("PHI"). 1 CP 10, 143; 2 CP 774. In June 2021, Sea Mar discovered that it was the victim of a sophisticated cyberattack in which an intruder accessed Sea Mar's network and the PII and PHI of 688,000 individuals stored therein between December 2020 and March 2021 (the "Data Breach"). 1 CP 8. The accessed data included 163,499 social security numbers. 1 CP 397.

While the cyber attackers attempted to auction information they claimed was stolen in the Data Breach on an internet marketplace, there is no evidence that any data was purchased by cybercriminals. 1 CP 7; 2 CP 776. Significantly, no Sea Mar patients, guarantors or employees came forward with evidence that their personal data was wrongfully used to steal their identity so as to cause actual harm. *Id.*

B. Procedural Background of the Litigation.

Six class actions arising out of the Data Breach were filed in King County Superior Court. 1 CP 114–15. Relevant here, plaintiff Jeffrie Alan Summers II ("Summers") alleged violations of (1) RCW 70.02.005, Washington State Uniform Healthcare Information Act, and (2) RCW 19.86.010, Washington State Consumer Protection Act, as well as allegations of (3) negligence, (4) breach of express contract, (5) breach of implied contract, and (6) breach of confidence. 1 CP 311.

On January 14, 2022, plaintiff Alan Hall ("Hall") served Sea Mar with formal written discovery. 2 CP 754. Sea Mar timely responded to those requests, including producing responsive documents. *Id.* Shortly thereafter, Sea Mar and counsel for Hall and Summers began to discuss resolution via private mediation. 2 CP 754. The parties agreed to mediate with the Honorable Wayne R. Anderson (Ret.) of JAMS on March 29, 2022. 2 CP 754.

On February 8, 2022, Sea Mar informed HHS of the pending litigation in order to request certification that Sea Mar was acting within the scope of a deemed public health services employee. *Barnes v. Sea Mar Cmty. Health Ctrs.*, No. 2:22-181-RSL-TLF, 2022 WL 1541927, at *1 (W.D. Wash. Apr. 27, 2022) (report and recommendation). In response, on February 11, 2022, a United States Attorney advised the superior court that the United States was considering whether to intervene in the action. *Id.*

After unsuccessfully seeking to consolidate the matters via stipulation, Barnes moved to consolidate each of the pending cases against Sea Mar on February 14, 2022. 1 CP 112-23. As Sea Mar asserted the United States District Court for the Western District of Washington had jurisdiction over the action under the Federal Tort Claims Act (28 U.S.C. § 1346(b)) and under the Federally Supported Health Centers Assistance Act (42 U.S.C. § 233), Sea Mar filed a notice of removal under 28 USC § 1346(b)(1) in the pending cases. 1 CP 143–44. In

support of removal, Sea Mar provided documentation showing that it was a public health service employee of the federal government; thus, the causes of action alleged against Sea Mar were within the scope of the federal statutes. 1 CP 143, 259–64. The superior court ordered Barnes' motion to consolidate stricken due to the removal of the *Barnes* action to federal court. 1 CP 255–66.

On March 29, 2022, Sea Mar and the *Hall* and *Summers* plaintiffs conducted arm's length negotiations before Judge Anderson who is among the nation's leading data security class action mediators. 2 CP 754-55. While the parties were unable to reach a resolution during the mediation session, they continued to negotiate and received a mediator's proposal from Judge Anderson. 2 CP 755. Over a week after the initial mediation, the parties eventually agreed to a class wide settlement.[1] *Id.*

[1] Collectively Hall, Summers and Sea Mar will be referred to hereafter as the "Settling Parties" where appropriate.

The Settling Parties notified the district court of the settlement and requested the court stay proceedings to allow Summers to file a motion for preliminary approval of the settlement in federal court. 1 CP 272. However, the Magistrate's Report and Recommendation in the *Barnes* action found the district court lacked jurisdiction over the action. Sea Mar stipulated with Hall and Summers to remand the actions to King County Superior Court for further proceedings. 1 CP 272–73, 285.

On remand, Summers filed a motion for preliminary approval of the settlement in the superior court, which attached the executed settlement agreement. 1 CP 303–54. The motion for preliminary approval demonstrated the settlement satisfied the requirements for state and federal approval of class action settlements. 1 CP 426–569.

Although the action had already settled, and the settlement was pending before the superior court, Barnes filed a second motion to consolidate the actions on May 20, 2022. 1

CP 275-86. Barnes requested appointment of lead counsel to "oversee" the settlement and accused Sea Mar of removing the actions to federal court as a ploy to foil Barnes' earlier attempt to consolidate the actions. 1 CP 277–78, 284–85. The Settling Parties opposed and asserted the settlement was properly reached through arm's length negotiations, consolidation would neither expedite nor economize proceedings and the class action had already settled. 1 CP 294–95, 398–401. Consequently, the superior court denied Barnes' motion to consolidate. 2 CP 614-16.

Barnes then moved to intervene in the *Summers* action and objected to the motion for preliminary approval. 2 CP 578-90. Likewise, the superior court denied the motion to intervene and granted Summers' motion to strike the objection. 2 CP 924–25. The superior court also granted Summers' motion for preliminary approval. 2 CP 916–21.

Barnes made yet another attempt to forestall the settlement by filing an objection to Hall and Summers' motion

for final approval of the settlement. 2 CP 679. And again, Barnes contended that counsel for Barnes could have achieved a superior result, Sea Mar's removal was a collusive ploy to engage in a reverse auction, and the parties settled the litigation behind Barnes' counsel's back. 2 CP 681–85.

In response, Sea Mar asserted it could not have engaged in a reverse auction because neither Barnes, nor counsel for any other plaintiffs, made a settlement demand on Sea Mar. 2 CP 745. Sea Mar further demonstrated the basis for its removal of the pending actions was not frivolous. 2 CP 754–55. After the actions were remanded, the United States District Court for the District of South Carolina entered an order on June 2, 2022, granting the defendant's Motion to Substitute United States Government as Defendant in a case involving similar facts as those alleged here. 2 CP 754–55, 759–73. Thus, Sea Mar's theory of removal under the Federal Tort Claims Act (28 U.S.C. § 1346(b)) and the Federally Supported Health Centers Assistance Act (42 U.S.C. § 233) was properly advanced. *Id.*

As further evidence of arm's length negotiations, Sea Mar emphasized the Settling Parties' mediation was overseen by one of the nation's leading data security class action mediators and resolved only after a mediator's proposal. 2 CP 745.

Hall and Summers also responded that Barnes' latest objection was nothing more than an attempt to frustrate the settlement. 2 CP 878–79. Barnes' accusations lacked any factual support since the settlement was the product of arm's length negotiations between informed adversaries. 2 CP 880–81. Indeed, the Settling Parties conducted adequate discovery to ensure settlement discussions were fully informed. 2 CP 882. Further, the settlement release was narrowly tailored to the alleged facts of this dispute. 2 CP 883. Finally, the notice provided to the settlement class members was adequate. 2 CP 883–84.

On December 9, 2022, the superior court held a final approval hearing on the proposed settlement. Verbatim Transcript of Proceedings ("VP") 1–75. The parties addressed

two key issues: (1) whether the proposed settlement was adequate and fair and (2) whether the class members received adequate notice. VP 8-9, 11. Attorney Loeser, counsel for Summers, argued a $4.4 million non-revisionary settlement was substantial and in line with similar data breach litigation settlements over the last 10 years. VP 12–13. Further, Attorney Loeser demonstrated class members received notice via multiple channels, which included mail, email and 8 million Facebook and Instagram impressions. VP 18-19. Attorney Aliment, counsel for Sea Mar, also emphasized Sea Mar serves the low income and no income homeless populations, which are difficult to reach. VP 28–29.

Following the hearing, the superior court entered a final order and judgment granting final approval of the class action settlement and denying Barnes' objection. 2 CP 903–10. The court ruled the terms of the settlement agreement were fair, reasonable and adequate. 2 CP 906. Further, the court ruled the notice of the final approval hearing, proposed motion for

attorneys' fees, costs and expenses and proposed service award payment constituted the best practicable notice and was sufficient under Washington Civil Rule 23(c)(2). *Id.* As for Barnes' objection, the court noted that "on balance" the settlement was "fair, adequate and reasonable." *Id.*

Barnes' notice of appeal was filed on January 17, 2023.

C. The Court of Appeals Affirms the Superior Court's Orders and Rulings.

Upon review, the Court of Appeals affirmed the superior court's order and rulings holding that "the superior court acted within its discretion in making each ruling." Opinion at 1. Accordingly, the Court of Appeals determined the superior court properly denied consolidation because the court had discretion to review the potential settlement first before coordinating the class actions. The superior court also appropriately ruled on the best notice practicable for the difficult to reach class. And, lastly, Barnes' arguments that the settlement fell outside the range the superior court had

discretion to approve as "fair, adequate and reasonable" because a better settlement might have been achieved were nothing "more than a speculative possibility." *Id.*

Barnes did not seek reconsideration and this Petition ensued.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Considerations Governing Acceptance of Review Compel Rejection of the Petition.

The Supreme Court remains a court of last resort that does not relitigate factual disputes, but instead weighs in on important matters of public policy with far reaching consequences. Indeed, Supreme Court review is *always* discretionary. See RCW 2.06.030; RAP 13.1(a). Thus, this Court sparingly grants review and limits review to the following circumstances:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court;

> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals;
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.
>
> RAP 13.4(b).

Barnes' claims her Petition raises an issue of substantial public interest under subdivision (b)(4) that necessitates Supreme Court review. While issues of substantial public interest warranting review vary, the common denominator among such issues is their widespread and urgent effect on Washington's citizens. This Court also grants review to provide guidance, as well as uniformity, to the lower courts throughout Washington.

For example, review was recently granted on substantial public interest grounds to resolve whether an elderly and sickly inmate's confinement during the COVID-19 pandemic constituted cruel punishment in violation of article I, section 14

of the Washington Constitution and the Eighth Amendment to the United States Constitution. *In re Pers. Restraint of Williams*, No. 99344 - 1, 2021 Wash. LEXIS 159, at *5 (Feb. 3, 2021). The Supreme Court held review was warranted because "[t]he chaos wrought by COVID-19 at Coyote Ridge and other heavily affected correctional facilities, and the department's efforts in responding to this constantly changing threat, constitutes an ongoing issue of substantial public interest within the meaning of RAP 13.4(b)(4)." *Id.* at *5-6.

Likewise, the Supreme Court granted review on the substantial public interest ground where the Court of Appeals' holding had "the potential to affect every sentencing proceeding in Pierce County after November 26, 2001, where a DOSA [drug offender sentencing alternative] sentence was or is at issue." *State v. Watson*, 155 Wash. 2d 574, 577, 122 P.3d 903, 904 (2005). According to the Supreme Court, the reasoning of the Court of Appeals' decision "invite[d] unnecessary litigation…and create[d] confusion generally." *Id.*

Both of the foregoing cases demonstrate that the public interest at issue must be "substantial" in that the consequences of granting review would not be limited to the petitioning party's case-specific grievances. As will be shown, Barnes' falls far short of establishing review would serve a substantial public interest rather than solely her and her attorneys' own goals in continuing to contest the settlement.

B. Barnes Fails to Establish Any Substantial Public Interest Warranting Supreme Court Review.

As Barnes does not raise issues that promise to widely affect the public at large, or that are expected to reoccur, she cannot establish a substantial public interest is implicated and her Petition should be denied.

Barnes focuses on rehashing the arguments made below in the Court of Appeals instead of establishing the Supreme Court's review is warranted. According to Barnes, the Supreme Court should grant review because (1) "the fairness, reasonableness, and adequacy of class action settlements

reached in the context of a reverse auction is a substantial public interest warranting review" and (2) the "notice plan was inadequate and was not cured by unauthorized unilateral acts of settling parties." Petition at 11, 26. Barnes also renews her arguments criticizing the settlement amount and release language. These issues are inherently factual arguments and affect Barnes—*not* the public at large or even other members of the class.

Significantly, Barnes was the only objector to the superior court's proceedings to confirm the settlement. 2 CP 803. While the settlement administrator, Kroll, received thirty-five Requests for an Exclusion from the class, no other class members objected to the settlement. *Id.* "It is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 333 (E.D.N.Y. 2010) (quoting *Grinnell*, 495 F.2d at 462). Indeed,

"the lack of objections may well evidence the fairness of the Settlement." *Id.*

Here, all settlement class members except Barnes were, and continue to be, satisfied with the settlement reached among the Settling Parties. The will of the class members to join in the settlement demonstrates the superior court properly exercised its discretion to approve the settlement. See *Hughes v. Microsoft Corp.*, No. 98-CV-01646, 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697, at *1, *8 (W.D. Wash. Mar. 26, 2001) (finding indicia of approval where nine out of 37,155 class members submitted objections). Thus, there is no support for Barnes' claims that the adequacy of the settlement is of substantial public interest.

C. Barnes' Arguments Do Not Support Review and Many Are Waived.

1. The Court of Appeals correctly applied existing standards to hold the superior court appropriately exercised its discretion to approve the settlement.

Two separate courts have determined the settlement resulting from arms-length negotiations before an experienced and well-regarded mediator is a "fair, reasonable and adequate" resolution of the claims arising out of the Data Breach. And, contrary to Barnes' insinuations, neither court has found any evidence that the settlement was the product of collusion or a reverse auction. Indeed, the Court of Appeals concluded "[w]hile there was a risk of a reverse auction to the extent there is in any case in which multiple proposed class actions are presented, Barnes's lead argument that Sea Mar's removal to federal court was designed to frustrate consolidation is not borne out by the record." Opinion at 26.

Barnes now argues—*ipse dixit* and without the convenience of facts in support—the Court of Appeals "promulgated a lenient ad hoc standard for approving settlements where there is evidence of a reverse auction, undermining court oversight of the class action device." Petition at 13. Barnes fails to establish why review of the Court of Appeals' thorough and well-reasoned decision should be granted. Instead, Barnes' Petition contains pages and pages of factual arguments that were already considered and rejected by the Court of Appeals. The Court of Appeals should remain the end of the line for Barnes' criticisms of the settlement.

Barnes also argues review should be granted in order for the Supreme Court to set "standards" that would prevent reverse auctions. Petition at 14. According to Barnes, the Court of Appeals incorrectly applied "less protective federal class action rules" to hold that a reverse auction did not occur. *Id.* Barnes' arguments ignore that well-established standards already exist, and that Washington's courts have specifically

adopted federal criteria for evaluation of class action settlements.

First, the settlement as a whole is subject to the "fair, adequate and reasonable" standard set forth in *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 188, 35 P.3d 351 (2001) (*Pickett*). *Pickett* provides that the "fair, adequate and reasonable" standard is derived from Federal Rule of Civil Procedure 23. Indeed, CR 23 "was once "an exact counter-part" of Rule 23 of the Federal Rules of Civil Procedure." See Opinion at 8. As the Court of Appeals noted, there is a long tradition of Washington courts looking to federal statutes and precedent for formulation of Washington law on class actions. *Id.* Barnes presents no reason to depart from this tradition, nor does she demonstrate federal law is somehow lacking in safeguards for class members. On the contrary, "the text of the two rules does not indicate divergence, and the rules in respect to their goals and purposes remain substantially similar." *Id.*

Moreover, whether a settlement is fair, adequate and reasonable is not an "ad hoc" analysis. The fairness, adequacy and reasonableness of a settlement are measured by evaluating the following factors: (1) the likelihood of success by plaintiffs; (2) the amount of discovery or evidence; (3) the settlement terms and conditions; (4) recommendation and experience of counsel; (5) future expense and likely duration of litigation; (6) recommendation of neutral parties, if any; (7) number of objectors and nature of objections; and (8) the presence of good faith and the absence of collusion. *Pickett*, at 188–89; Opinion at 22-23. Barnes' claim that the *Pickett* factors are too lenient misses the point.

Promulgating a set of rigid factors that must each be satisfied in order for a court to approve a class settlement would destroy an inquiry that is necessarily "delicate" and "largely unintrusive." *Pickett,* at 189. As the *Pickett* Court recognized, the superior court's evaluation of a settlement is "limited to the extent necessary to reach a reasoned judgment that the

agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id*. Contrary to Barnes' arguments throughout these proceedings, "[i]t is *not* the trial court's duty, nor place, to make sure that every party is content with the settlement." *Id.* (emphasis). As Barnes continues to demonstrate, there is no pleasing everyone. The *Picket* factors are more than sufficient to ensure a settlement is not approved unless it is fair, adequate and reasonable.

Second, criteria also already exist for courts to evaluate whether a settlement was arrived at through arms-length negotiations or is the product of collusion or a reverse auction. Courts evaluate whether the settlement is "the result of either "overt misconduct by the negotiators" or improper incentives of class members at the expense of others." *Rosales v. El Rancho Farms*, No. 1:12-cv-01934-AWI-JLT, 2015 U.S. Dist. LEXIS 95756, at *44 (E.D. Cal. July 21, 2015). In doing so, courts

look to the terms of the settlement agreement for "indications that the incentives favoring pursuit of self-interest rather than the class's interests in fact influenced the outcome of the negotiations." *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003). Within this framework, the Court of Appeals correctly affirmed the superior court's order approving the class settlement finding there was no evidence of a reverse auction or collusion of any sort. Opinion at 23-26.

Additionally, the Court of Appeals evaluates the superior court's determination that the settlement was fair, adequate and reasonable under the abuse of discretion standard. *Pickett*, 145 Wn.2d at 191-92; Opinion at 23. Barnes does not acknowledge this standard, nor the role of the Court of Appeals, which is "even more limited than that of the superior court" and "accord[s] great weight to the superior court's views." Opinion at 23. Barnes' argument for a separate standard evaluating the presence of collusion not only invades the province of the Legislature, whose role it would be to amend CR 23, but also

that of the lower courts, whose role it is to evaluate a settlement holistically in light of all available evidence.

2. The Court of Appeals correctly holds the settlement amount is adequate and Barnes' arguments to the contrary purely speculative.

As a threshold matter, Barnes' does not identify the settlement amount as an issue for review in her Petition. Petition at 2. Consequently, the issue should be deemed waived based upon Barnes' failure to separately identify the issue as warranting review. RAP 13.4(c)(5); RAP 13.7(b); See *State v. Korum*, 157 Wn.2d 614, 623-24, 141 P.3d 13 (2006) (en banc) (*Korum*).

Even if Barnes had properly raised the issue, the Court of Appeals' holding on the settlement amount does not implicate a substantial public interest and is limited to Barnes, and her counsel's, complaints regarding the settlement. As the Court of Appeals noted, Barnes' complaints "resort to speculation." Opinion at 27. Barnes' speculation continues in her Petition by

relying on the average settlement amount per class member, and Sea Mar's supposed funds remaining in its insurance policy, rather than any actual evidence that the settlement amount, and the considerable non-monetary benefits of the settlement, do not adequately compensate class members. Petition at 24. And speculation is no basis for this Court to grant review.

The parties settled for $4.4 million—a total that Barnes avoids mentioning in her Petition. While the non-reversionary settlement fund amounts to $3.66 per class member when averaged across all class members, the reality is that any class member who submits a claim will receive much more. 2 CP 790. The fund also covers three years of three-bureau credit monitoring for all class members via IDX Identity Protection Services. 1 CP 343; 2 CP 785. The monitoring also includes $1 million of per incident insurance for each class member to remedy any data breach or identity theft incidents that are uncovered. VP 20.

According to Barnes, the settlement is insufficient when compared to the severity of the data breach. Significantly, only 163,499 of the 1.2 million total settlement class members had their Social Security Numbers potentially compromised. 2 CP 881. Additionally, only the client data of 688,000 persons, out of the 1.2 million whose data was accessed, was posted for sale on the dark web. 2 CP 689, 883.

Barnes also claims her arguments are not speculative because class action settlements are often compared to settlements achieved in other cases. However, the Court of Appeals' decision considered the parties' citations to other settlements and concluded that Barnes did not present an adequate record to show the settlement was somehow inadequate. Opinion at 27-28. As the appellant, the burden to show the superior court abused its discretion rested with Barnes. *Deien v. Seattle City Light*, 527 P.3d 102, 104-05 (Wash. Ct. App. 2023) Barnes failed to satisfy this burden on appeal and cannot now satisfy her burden to show review of the

Court of Appeals' decision under *any* of the criteria set forth in RAP 13.4(b) is warranted.

3. The Court of Appeals correctly holds the release is "cabined" by the data security incident and not overbroad.

Once again, Barnes does not identify the release language as an issue for review. Petition at 2. This issue should likewise be deemed waived and is not a proper ground upon which to base review. RAP 13.4(c)(5); RAP 13.7(b); See *Korum*, 157 Wn.2d at 623-24.

Additionally, the language of the release is not only specific to this case, but this particular settlement agreement. Class members agreed to release "all claims and causes of action pleaded or that could have been pleaded that are related in any way to the activities stemming from the Sea Mar Data Incident described in the operative complaint." Opinion at 29. The Court of Appeals properly held this language was narrowly tailored and did not release unrelated claims. Barnes

perfunctorily argues the Supreme Court should grant review because the language of the settlement release is overly broad. However, Barnes makes no attempt to demonstrate such language will reoccur in the future or is of widespread significance.

On a petition for review, this Court evaluates whether review should be granted within the framework of four, limited criteria. RAP 13.4(b). The purpose of granting such review is to settle important legal questions affecting Washington's citizens. Barnes misunderstands this purpose and instead treats her Petition as another bite at the apple.

4. The Court of Appeals correctly holds the Settling Parties provided the best notice practicable to reach the class members.

Finally, Barnes continues to rehash the arguments raised on appeal rather than establish review of the adequacy of the class notice is warranted. By raising factual arguments already made on appeal, Barnes again demonstrates that her Petition

does not implicate any widespread or substantial public interest necessitating Supreme Court review. Indeed, any insinuation by Barnes that a class action de facto involves the public interest should be rejected as Barnes remains the *only* objector to the settlement. Barnes also does not claim that any of the other criteria set forth in RAP 13.4(b) support review of the notice issue.

Moreover, the Court of Appeals correctly affirmed the superior court's discretionary ruling that the Settling Parties provided adequate notice to the class. After analyzing the multiple methods of notice employed to inform Sea Mar's difficult to reach, underserved population of the settlement, the Court of Appeals determined the Settling Parties properly did "more" than rely on mail alone. Opinion at 21. Indeed, "provided a notice plan afford[s] individual notice to members who can be identified through reasonable effort, it is within the superior court's discretion to assess the extent to which additional available means of notice must be employed to

provide the best notice practicable under the circumstances." *Id.* As the Settling Parties' notice complied with due process requirements and Rule 23(e), Barnes' criticisms of the notice are unfounded.

The Settling Parties provided cumulative notice via first-class mail, e-mail addresses, online advertising and a toll-free phone number to call. 2 CP 786, 801–02; VP 18–19. For example, 96.53% of the class members received direct notice. *Id.* Also, an online media campaign delivered over 8 million impressions to potential class members via Facebook and Instagram in both English and Spanish. 2 CP 786, 802. In response to Barnes' prior criticisms of the notice, the superior court agreed that the more methods of notice employed, the better. VP 67. Thus, Barnes' claims the Settling Parties provided defective notice that did not reach a sufficient percentage of the class are unfounded and again purely speculative.

Barnes also omits that the settlement terms accounted for any difficulties in reaching the class members by providing cy pres relief. The settlement fund is non-reversionary: any unclaimed funds are paid to an appropriate cy pres recipient instead of reverting to Sea Mar. Opinion at 17-18. Cy pres relief is considered a significant, mitigating factor when evaluating notice to class members who are inherently difficult to reach. *Id*. Thus, Barnes cannot demonstrate *any* grounds upon which to grant review of the notice issue, or even that the Court of Appeals erred.

VI. CONCLUSION

Based on the foregoing, respondent Sea Mar Community Health Centers respectfully requests that Barnes' petition for discretionary review be denied.

Pursuant to RAP 18.17(b), the undersigned hereby certifies that this document contains 4,953 words.

RESPECTFULLY SUBMITTED this 22nd day of March, 2024.

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DECLARATION OF SERVICE

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

EXECUTED this 22nd day March, 2024.

/s/ Annie Kliemann
Annie Kliemann, Legal Secretary

LEWIS BRISBOIS BISGAARD & SMITH LLP

March 22, 2024 - 8:17 AM

Transmittal Information

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