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CASE #: 26-2-14262-9 KNT

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

LILLIAN DERRY, BOBBI RANGEL, and
LON DEAN, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

CARDINAL SERVICES, INC., an Oregon
corporation,

Defendant.

NO. 26-2-14262-9

**PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Plaintiffs Lillian Derry, Bobbi Rangel, and Lon Dean on behalf of themselves and the other members of the Proposed Settlement Class, respectfully move the Court for an order: (1) granting Preliminary Approval of the settlement reached in this action, as set out in the Settlement Agreement ("Settlement Agreement" or "SA") attached to the Joint Declaration of Class Counsel ("Joint Decl.") as **Exhibit A**; (2) approving the proposed Notices to Settlement Class Members of the Settlement and the hearing on objections to the proposed Settlement and Final Approval of the Settlement in the forms attached to the Settlement Agreement as **Exhibits 1 and 2**; (3) directing issuance of Notice to Settlement Class Members; (4) determining that the Court will likely be able to approve the Settlement Agreement under the CR 23, and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment, consistent with

all material provisions of the Settlement Agreement; and (5) setting a schedule for the filing of objections to the proposed Settlement and hearing on Final Approval of the Settlement. Defendant Cardinal Services, Inc. (hereinafter “Cardinal” or “Defendant” and collectively with the Plaintiffs, the “Parties”) does not oppose this Motion.

I. INTRODUCTION

This action relates to cyberattacks impacting Defendant on or about June 30, 2025, and August 8, 2025 (the “Data Incidents”). Plaintiffs allege that in the Data Incidents, an unauthorized third party accessed personal and private data of approximately 142,000 individuals, including their names, addresses, dates of birth, Social Security numbers, drivers’ license and other government identification documents, banking and financial information, financial statements, payroll data, tax documents and banking records (collectively, “Private Information”).

Following extensive arms’-length negotiations, which included a day-long formal mediation and continued negotiations in the weeks that followed, the Parties reached an agreement to resolve the claims in this class action. The Settlement is an outstanding result for the Class. It consists of a non-reversionary common fund of \$850,000.00 from which Settlement Class Members may elect monetary payments and credit monitoring protection. If approved, this Settlement will resolve the claims asserted in this putative class action lawsuit arising from the Data Breach and bring substantial and meaningful relief to the proposed Settlement Class.

II. BACKGROUND

A. Defendant Cardinal Services, Inc.

Defendant is a staffing agency that facilitates employment opportunities for its clients. As part of its business, Defendant collected Plaintiffs and Class Members’ Private Information including their names, addresses, dates of birth, Social Security numbers, drivers’ license and other government identification documents, banking and financial information, financial statements, payroll data, tax documents and banking records. Given the sensitive nature of the information stored in Defendant’s systems, Plaintiffs and Class Members reasonably believed Defendant would adequately safeguard their Private Information.

1 **B. The Data Incidents**

2 On or about June 30, 2025, and August 8, 2025, cybercriminals accessed Private
3 Information belonging to Plaintiffs and Class Members on Defendant’s computer networks. SA
4 ¶ 2. The potentially affected Private Information may have included individuals’ names, addresses,
5 dates of birth, Social Security numbers, drivers’ license and other government identification
6 documents, banking and financial information, financial statements, payroll data, tax documents
7 and banking records. *Id.*

8 **C. Litigation, Background, Plaintiffs’ Claims, and Relief Sought**

9 After the announcement of the Data Incidents, Plaintiff Derry filed the first class action
10 complaint on October 9, 2025 in the United States District Court for the District of Oregon,
11 entitled *Lillian Derry v. Cardinal Services, Inc.*, No. 6:25-cv-1857-AP, alleging injuries arising
12 out of the Data Incidents. SA ¶ 3. Thereafter, two other complaints arising out of the Data
13 Incidents were filed in the District of Oregon, which the Court Consolidated on October 28, 2025.
14 *Id.* In addition, the Court named Kaleigh N. Boyd of McNaul Ebel PLLC (formerly of Tousley
15 Brain Stephens PLLC), Jeff Ostrow of Kopelowitz Ostrow P.A., John J. Nelson of Milberg PLLC,
16 and Leanna A. Loginov of Shamis & Gentile, P.A as Interim Co-Lead Class Counsel. SA ¶ 4.

17 On November 28, 2025, Plaintiffs filed their Amended Class Action Complaint alleging
18 negligence, negligence per se, unjust enrichment, and breach of implied contract. SA ¶ 5.

19 **D. Settlement Negotiations**

20 Shortly thereafter the Parties began discussing the possibility of early resolution. The
21 Parties agreed to extensions of Defendant’s deadline to respond to the Consolidated Amended
22 Complaint and to exchange informal discovery regarding: (i) the scope of the Data Security
23 Incidents; (ii) the number of Settlement Class Members; (iii) the geographic location of
24 Settlement Class Members; (iv) and the types of Private Information allegedly breached. By
25 exchanging informal discovery, the Parties obtained an objective understanding of the underlying
26 facts and were able to carefully evaluate the strengths and weaknesses of the claims and defenses.
27 SA ¶ 6.

1 Armed with information learned through informal discovery, the Parties attended a full-
2 day mediation on April 4, 2026, with experienced data breach class action mediator Steve Jaffe
3 of Upchurch Watson White & Max. Notably, Mr. Jaffe has substantial experience with mediating
4 analogous complex class actions. Prior to the mediation, the Parties prepared mediation
5 statements outlining each side's respective strengths and weaknesses. SA ¶ 7. Under the guidance
6 of Mr. Jaffe, the Parties engaged in arm's length negotiations—wherein the Parties evaluated and
7 discussed the relevant facts and law and carefully weighed the risks and uncertainties of continued
8 litigation. SA ¶ 8. Over the course of the full-day mediation, the Parties discussed the relevant
9 facts and law and advocated their positions through Mr. Jaffe. Throughout the entire process, the
10 Parties agreed to not negotiate attorney fees or Service Awards until the core terms of a settlement
11 were finalized (i.e., to avoid any conflicts). After numerous rounds of back-and-forth negotiations,
12 the Parties eventually reached an agreement on the core terms of the Settlement. *Id.*

13 During the settlement discussions, the Parties determined that jurisdiction was appropriate
14 in state court. Consequently, they agreed to dismiss the federal consolidated action and file a new
15 complaint in the Superior Court for the State of Washington, in and for King County. Other than
16 negligence per se, this action contained the same causes of action as the federal CAC. SA ¶¶ 9–
17 10.

18 Defendant has denied and continues to deny: (a) each and every allegation and all charges
19 of wrongdoing or liability of any kind whatsoever asserted or which could have been asserted in
20 the Action; (b) that Plaintiffs and the class they purport to represent have suffered any cognizable
21 damage or harm caused by Defendant's conduct related to the Data Security Incidents; and (c)
22 that the Plaintiffs could satisfy the requirements necessary to try the Litigation as a class action
23 under Washington law. SA ¶ 11. Nonetheless, Defendant has concluded that further litigation
24 would be protracted and expensive, and that it is desirable that the Action be fully and finally
25 settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.
26 *Id.* Neither this Settlement Agreement nor any negotiation or act performed, or document created
27

in relation to the Settlement Agreement or negotiation or discussion thereof, is or may be deemed to be, or may be used, as an admission of, any wrongdoing or liability. *Id.*

III. STATEMENT OF FACTS

A. Proposed Settlement Class

The Settlement Fund will provide relief for the following Settlement Class:

All individuals residing in the United States who were impacted in the Data

Security Incidents.

SA ¶ 51. Excluded from the Settlement Class are (i) Defendant (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (iii) any judges assigned to this case and their staff and immediate family. *Id.*

B. Settlement Fund and Cash Payments

The settlement requires Defendant to pay \$850,000.00 into a non-reversionary common settlement fund set up by Settlement Administrator (the “Settlement Fund”). This fund will be used to pay for (a) Settlement Class Member Benefits, (b) the Credit Monitoring service, (c) Settlement Administration Costs, (d) Service Awards to the Class Representatives, and (e) Attorney’s Fees, Costs, and Expenses. SA ¶ 65.

Settlement Class Members who submit a Valid Claim using an approved Claim Form, along with necessary supporting documentation, are eligible to select to receive a Cash Payment for Out-of-Pocket Losses up to a total of \$5,000.00 per person, subject to the limits of the Settlement Fund. SA ¶ 68(a). In addition to or in lieu of reimbursement for Out-of-Pocket Losses, Settlement Class Members are eligible to select to receive a Pro Rata Cash Payment estimated at an amount of \$50.00, subject to pro rata adjustments based on the limits of the Settlement Fund. SA ¶ 68(b). Claims will be subject to review for timeliness, completeness, and validity by a Settlement Administrator.

C. Credit Monitoring Services

In addition to cash payments for Out-of-Pocket Losses or Pro Rata Payments, all Settlement Class Members shall be offered an opportunity to enroll in Credit Monitoring Services:

two (2) years of single-bureau credit monitoring, which will include \$1 million in identity theft protection insurance, among other features. The costs of credit monitoring services shall be paid from the Settlement Fund. SA ¶ 67.

D. Class Notice and Settlement Administration

Subject to the Courts' Approval, the Parties have chosen to retain EAG Gulf Coast LLC ("Settlement Administrator") as the Settlement Administrator. See Joint Dec. ¶ 7. The Settlement Administrator will provide the Class Notice to all Class Members as described in the Settlement Agreement. Within 10 days of the Preliminary Approval Order, Defendant will provide the Settlement Class List to the Settlement Administrator. SA ¶ 80. Within 30 days after the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate Notice to the members of the Settlement Class. SA ¶ 81. Notice shall be disseminated via postcard format through email (for those Settlement Class Members for whom the Settlement Administrator has a valid email address) and via First Class U.S. mail to Settlement Class Members on the Settlement Class List. SA ¶ 78. The Postcard Notice will direct the recipients to the Settlement Website and inform Settlement Class Members, among other things, of the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys' fees, and the date of the Final Approval Hearing. *Id.*

The Settlement Administrator will also establish a dedicated Settlement Website (and will maintain and update the website throughout the claim period) with the Long Form Notice and Claim Form approved by the Court, as well as the Settlement Agreement. SA ¶ 83. The Settlement Administrator will also make available a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries and to answer the questions of Settlement Class Members. *Id.* After approval of Valid Claims, the Settlement Administrator will be responsible for processing and transmitting Settlement Payments to Settlement Class Members. SA ¶ 73.

E. Service Awards and Attorneys' Fees

The Parties have agreed that Plaintiffs will separately petition the Court to award each Class Representative a service award up to \$3,000.00 in recognition of the time, effort, and

1 expense they incurred pursuing claims that benefited the entire class. SA ¶ 105. This payment
2 will be made from the Settlement Fund and shall be separate and apart from any other benefits
3 available to the Class Representatives and Participating Settlement Class Members under the
4 terms of the Settlement Agreement. *Id.*

5 Plaintiffs will also separately seek an award of attorneys' fees and reimbursement of
6 litigation costs and expenses. Subject to Court approval, Class Counsel will ask the Court to
7 approve, and Defendant does not oppose, an award of attorneys' fees of up to \$283,333.33
8 Settlement Fund, plus litigation costs and expenses, to be paid from the Settlement Fund. SA ¶
9 106. The Parties did not discuss the payment of attorneys' fees, costs, expenses, and/or service
10 awards to the Class Representatives until after the substantive terms of the settlement had been
11 agreed upon. Joint Decl. ¶ 16.

12 **F. Reductions and Residual Funds**

13 Plaintiffs believe the \$850,000.00 fund will be more than sufficient to accommodate the
14 amounts drawn from it. Joint Decl. ¶ 11. The Settlement Administrator must use the funds
15 available in the Settlement Fund to make payments in the following order: (i) notice expenses,
16 settlement administration expenses, and Taxes and Tax-Related Expenses; (ii) Service Awards
17 and Fee Award and Costs; (iii) Approved Claims for Out-of-Pocket Losses; (iv) Approved Claims
18 for Credit Monitoring Services; and (v) the Pro Rata Cash Payments. SA ¶ 71. If the funds
19 remaining in the Net Settlement Fund are insufficient to pay for all Approved Claims for Out-of-
20 Pocket Losses, then the value of the payments Approved Claims for Out-of-Pocket Losses shall
21 be reduced on a pro rata basis—such that the aggregate value of all payments for Approved
22 Claims for Out-of-Pocket Losses does not exceed the Net Settlement Fund. SA ¶ 72(a). In such
23 an event, no Net Settlement Funds will be distributed for Pro Rata Cash Payments. *Id.* If the funds
24 remaining in the Net Settlement Fund are insufficient to make payment for those Approved
25 Claims for Credit Monitoring Services, then the duration and/or extent of the Credit Monitoring
26 Services shall be reduced. SA ¶ 72(b).

1 The funds remaining in the Settlement Fund after completion of these disbursements and
2 after the time for cashing and/or depositing checks has expired will be Residual Funds. The
3 Residual Funds will be sent to the Legal Foundation of Washington as a *cy pres* distribution. SA
4 ¶ 47.

5 **G. Class Release**

6 Settlement Class Members who do not affirmatively opt out will release any and all claims,
7 liabilities, rights, claims, demands, suits, actions, causes of action, obligations, damages, penalties,
8 costs, attorney fees, losses, and remedies of every kind or description—whether known or
9 unknown (including Unknown Claims), existing or potential, suspected or unsuspected, asserted
10 or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that result from, relate to,
11 are based upon, or arise out of the Data Security Incidents or the operative facts alleged in the
12 Action, including the complaint and any amendment thereto, regardless of whether such claims
13 arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other
14 source of law. SA ¶ 47.

15 **IV. LEGAL AUTHORITY**

16 As a matter of “express public policy” Washington courts strongly favor and encourage
17 settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258 (1997); *see also Pickett v. Holland Am.*
18 *Line-Westours, Inc.*, 145 Wn.2d 178, 190 (2001) (“[V]oluntary conciliation and settlement are
19 the preferred means of dispute resolution.” (citation omitted)). This is particularly true in class
20 actions and other complex matters where the inherent costs, delays, and risks of continued
21 litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See In*
22 *re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 555–56 (9th Cir. 2019) (en banc); *Allen v.*
23 *Bedolla*, 787 F.3d 1218, 1229 (9th Cir. 2015). Nonetheless, the settlement of a class action
24 requires the Court’s approval in order to ensure that the settlement is fair, reasonable, and
25 adequate. This inquiry requires that the reviewing court decide whether the settling parties have
26 shown that the Court likely will be able both (1) to approve the proposal and, if it has not
27 previously certified a class, (ii) to certify the class for purposes of judgment on the proposal. This

1 requirement has been characterized as “a preliminary determination that the settlement ‘is fair,
2 reasonable, and adequate’” when considering the factors set out in Rule 23. *Rollins v. Dignity*
3 *Health*, 336 F.R.D. 456, 461 (N.D. Cal. 2020). The decision to approve or reject a proposed
4 settlement is committed to the Court’s sound discretion. *See Pickett*, 145 Wn.2d at 190.

5 The requirements of Washington Civil Rule 23 are procedural and require that notice of
6 the settlement be given to the class. Washington Civil Rule 23 is nearly identical to its federal
7 counterpart, Federal Rule of Civil Procedure 23. Consequently, Washington courts look to the
8 more numerous federal cases for guidance, finding such cases to be highly persuasive. *Pickett*,
9 145 Wn.2d at 188; *Brown v. Brown*, 6 Wn. App. 249, 252 (1971). The purpose of the Court’s
10 preliminary evaluation of the settlement is to determine whether it falls “within the range of
11 possible approval,” *Rollins*, 336 F.R.D. at 461 (citing *In re Tableware Antitrust Litig.*, 484 F.
12 Supp. 2d 1078, 1080 (N.D. Cal. 2007)), and thus whether notice to the class of the terms and
13 conditions of the settlement, and the scheduling of a formal fairness hearing, are worthwhile.
14 *Pickett*, 145 Wn.2d at 188; William Rubenstein et al., *Newberg on Class Actions* § 11.25 et seq.,
15 and § 13.64 (4th ed. 2002 and Supp. 2004) (“Newberg”).

16 Preliminary approval does not require the Court to make a final determination that the
17 settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final
18 approval stage, after notice of the settlement has been given to the class members and they have
19 had an opportunity to voice their views of the settlement or to exclude themselves from the
20 settlement. *See 5 James Wm. Moore*, *Moore’s Federal Practice* § 23.83[1], at 23-336.2 to 23-339
21 (3d ed. 2002). Thus, in considering a potential settlement, the Court need not reach any ultimate
22 conclusions on the issues of fact and law that underlie the merits of the dispute, *West Va. v. Chas.*
23 *Pfizer & Co.*, 440 F.2d 1079, 1086 (2d Cir. 1971), and need not engage in a trial on the merits,
24 *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). Preliminary
25 approval is merely the prerequisite to giving notice so that “the proposed settlement . . . may be
26 submitted to members of the prospective class for their acceptance or rejection.” *Philadelphia*
27 *Hous. Auth.*, 323 F. Supp. at 372. Preliminary approval of a class action settlement, and

proceeding to class notice stage, is appropriate if “the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *Rollins*, 336 F.R.D. at 461 (citing *In re Tableware*, 484 F. Supp. 2d at 1079). “The initial decision to approve or reject a settlement proposal is committed to the sound discretion of the trial judge.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). However, courts must give “proper deference to the private consensual decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be 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.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

A. The Settlement Class Should Be Certified

The proponent of a settlement class must demonstrate that (1) the action meets Washington Civil Rule 23(a)’s requirements of numerosity, commonality, typicality, and adequate representation, and (2) that the action falls within one of the three categories of class actions provided for in Washington Civil Rule 23(b).

1. The Proposed Settlement Class Satisfies the Requirements of CR 23(a)

a) Numerosity

Washington Civil Rule 23(a)(1) requires the class to be “so numerous that joinder of all members is impractical.” CR 23(a)(1). “As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21.” *Cottle v. Plaid Inc.*, 340 F.R.D. 356, 370 (N.D. Cal. 2021) (quoting *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal 2000)). Impracticability of joinder does not mean impossibility, but rather difficulty or inconvenience. *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821 (2003). While there is no fixed rule with respect to the requisite number of class members, more than 40 generally suffices. *Id.* at 822.

1 Here, the class definition includes “all individuals residing in the United States who were
2 impacted in the Data Security Incidents.” SA ¶ 51. This proposed Settlement Class encompasses
3 approximately 142,000 individuals, which is enough to surpass the threshold required to establish
4 numerosity. *Id.* This figure is based on the amount of individuals who were notified their Private
5 Information may have been accessed during the Data Breach. Accordingly, the Settlement Class
6 is sufficiently numerous to justify certification.

7 **b) Commonality**

8 The second prerequisite for class certification is the existence of “a single issue common
9 to all members of the class.” *Smith v. Behr Process*, 113 Wn. App. 306, 320 (2002); see also CR
10 23(a)(2). As Washington courts have noted, “there is a low threshold to satisfy this test.” *Behr*
11 *Process*, 113 Wn. App. at 320. If a defendant has “engaged in a ‘common course of conduct’ in
12 relation to all potential class members,” class certification is appropriate regardless of whether
13 “different facts and perhaps different questions of law exist within the potential class.” *Brown*, 6
14 Wn. App. at 255; *accord Miller*, 115 Wn. App. at 825; *see also* 1 Newberg § 3:10.

15 Here, Plaintiffs contend that there are a number of key common questions of law and fact
16 arising out of Defendant’s practices. These include (but are not limited to):

- 17 • Whether Defendant had a duty to protect the Private Information compromised in
18 the Data Incidents;
- 19 • Whether Defendant failed to implement and maintain reasonable security
20 procedures and practices appropriate to the nature and scope of the Private
21 Information compromised in the Data Incidents;
- 22 • Whether Defendant’s failures were the direct and proximate cause of the Data
23 Incidents;
- 24 • Whether Defendant’s conduct was negligent; and
- 25 • Whether Plaintiffs and Class are entitled to damages, attorneys’ fees, and/or
26 injunctive relief.

1 The resolution of those inquiries revolves around evidence that does not vary from
2 Settlement Class Member to Settlement Class Member, and so can be fairly resolved—whether
3 through litigation or settlement—for all Class Members at once. In the absence of settlement class
4 certification and settlement, each individual Class Member would be required to litigate numerous
5 common issues of fact that can be readily, objectively, and accurately resolved in a single action.
6 In addition, the application of Washington law, which governs in this case, is uniform and creates
7 common issues that arise out of a nucleus of operative facts. For these reasons, the commonality
8 requirement is satisfied for purposes of settlement class certification.

9 **c) Typicality**

10 The typicality requirement asks whether “the claims or defenses of the representative
11 parties are typical of the claims or defenses of the class.” CR 23(a)(3). “[A] plaintiff’s claim is
12 typical if it arises from the same event or practice or course of conduct that gives rise to the claims
13 of other class members, and if his or her claims are based on the same legal theory.” *Behr Process*,
14 113 Wn. App. at 320 (citation omitted). “Where the same unlawful conduct is alleged to have
15 affected both named plaintiffs and the class members, varying fact patterns in the individual
16 claims will not defeat the typicality requirement.” *Id.*; *see also State v. Oda*, 111 Wn. App. 79, 89
17 (2002). Here, Plaintiffs’ and Settlement Class Members’ claims all stem from the same course of
18 conduct and pattern of alleged wrongdoing (namely, collecting, storing, and maintaining
19 confidential, sensitive Private Information allegedly without implementing appropriate
20 cybersecurity measures). Additionally, Plaintiffs’ and Settlement Class Members’ claims all stem
21 from the same event—the hacker’s attack on Defendant’s computers and servers—and the
22 cybersecurity protocols that Defendant had (or did not have) in place to protect Plaintiffs’ and
23 Settlement Class Members’ data. Thus, Plaintiffs’ claims are typical of the Settlement Class
24 Members’ and the typicality requirement is satisfied.

25 **d) Adequacy**

26 The fourth prerequisite for class certification is a finding that the named plaintiffs will
27 “fairly and adequately protect the interest of the class.” CR 23(a)(4). This test is satisfied if (1)

1 the named plaintiffs are able to prosecute the action vigorously through qualified counsel, and (2)
2 the named plaintiffs do not have interests that are antagonistic to those of absent class members.
3 *See De Funis v. Odegaard*, 84 Wn.2d 617 (1974); *Marquardt v. Fein*, 25 Wn. App. 651, 656–57
4 (1980); *Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003).

5 Here, Plaintiffs and Class Counsel are adequate representatives of the Class. Plaintiffs
6 were injured by the same course of conduct common to all Class Members. Plaintiffs’ and
7 Settlement Class Members’ data was allegedly compromised by Defendant in the same manner.
8 Under the terms of the Settlement Agreement, Plaintiffs and Settlement Class Members will all
9 be eligible for the same relief. Accordingly, their interest in this litigation is aligned with that of
10 the Class. *See In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 975–76 (8th
11 Cir. 2018) (finding that class members’ interests were aligned where, as a result of a data breach,
12 “a discrete and identified class . . . has suffered a harm the extent of which has largely been
13 ascertained”).

14 Further, Class Counsel are experienced vigorous class action litigators and are well suited
15 to advocate on behalf of the class. See Joint Decl. ¶ 17. Class Counsel have significant experience
16 litigating and settling class actions, including consumer and data breach class actions, and
17 numerous courts have previously approved them as class counsel in data breach cases due to their
18 qualifications, experience, and commitment to the prosecution of cases. Moreover, Class Counsel
19 have put their experience to use in negotiating an early-stage settlement that guarantees immediate
20 relief to Settlement Class Members. Thus, the requirements of CR 23(a) are satisfied.

21 **2. The Proposed Settlement Satisfies the Requirements of CR 23(b)**

22 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class
23 certification must also show that the action is maintainable under 23(b)(1), (2) or (3).” *Hanlon*,
24 150 F.3d at 1022. Plaintiffs seek certification of the class under CR 23(b)(3), which requires a
25 finding that “questions of law or fact common to the members of the class predominate over any
26 questions affecting only individual members, and that a class action is superior to other available
27 methods for the fair and efficient adjudication of the controversy.” CR 23(b)(3). The

1 predominance and superiority requirements of CR 23(b)(3) are satisfied “whenever the actual
2 interests of the parties can be served best by settling their differences in a single action.” *Cottle*,
3 340 F.R.D. at 371 (quoting *Hanlon*, 150 F.3d at 1022). This “inquiry focuses on ‘the relationship
4 between the common and individual issues’ and ‘tests whether proposed classes are sufficiently
5 cohesive to warrant adjudication by representation.’” *Stromberg v. Qualcomm Inc.*, 14 F.4th 1059,
6 1067 (9th Cir. 2021) (quoting *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th
7 Cir. 2009)).

8 The proposed Settlement Class is well-suited for certification under Washington Civil
9 Rule 23(b)(3) because questions common to the Settlement Class Members predominate over
10 questions affecting only individual Settlement Class Members, and the class action device
11 provides the best method for the fair and efficient resolution of the Settlement Class Members’
12 claims against Defendant. When addressing the propriety of settlement class certification, courts
13 take into account the fact that a trial will be unnecessary and manageability, therefore, is not an
14 issue. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

15 **a) Common Questions Predominate**

16 The predominance requirement “is not a rigid test, but rather contemplate a review of
17 many factors, the central question being whether ‘adjudication of the common issues in the
18 particular suit has important and desirable advantages of judicial economy compared to all other
19 issues, or when viewed by themselves.’” *Sitton v. State Farm Mut. Auto. Ins. Co.*, 116 Wn. App.
20 245, 254 (2003) (quoting 2 Newberg § 4:25). “[A] single common issue may be the overriding
21 one in the litigation, despite the fact that the suit also entails numerous remaining individual
22 questions.” *Id.* (quoting 2 Newberg § 4.25); *see also Miller*, 115 Wn. App. at 825. In deciding
23 whether common issues predominate, the Court “is engaged in a pragmatic inquiry into whether
24 there is a common nucleus of operative facts to each class member’s claim.” *Behr Process*, 113
25 Wn. App. at 323 (citations and internal marks omitted). Common questions predominate here
26 because the claims of Plaintiffs and Settlement Class Members arise out of the common and
27

uniform conduct of Defendant. Moreover, these common questions present a significant aspect of the case and can be resolved in one settlement proceeding for all Settlement Class Members.

Other courts have recognized that the types of common issues arising from data breaches predominate over any individualized issues. *See, e.g., In re Heartland Pmt. Sys.*, 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) (finding predominance satisfied in data breach case despite variations in state laws at issue, concluding such variations went only to trial management, which was inapplicable for settlement class); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312–15 (N.D. Cal. 2018) (finding predominance was satisfied because “Plaintiffs’ case for liability depend[ed], first and foremost, on whether [the defendant] used reasonable data security to protect Plaintiffs’ personal information,” such that “the claims rise or fall on whether [the defendant] properly secured the stolen personal information”); *see also Hapka v. CareCentrix, Inc.*, 2018 WL 1871449, at *2 (D. Kan. Feb. 15, 2018) (finding predominance was satisfied in a data breach case, stating “[t]he many common questions of fact and law that arise from the E-mail Security Incident and [defendant’s] alleged conduct predominate over any individualized issues”); *In re The Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding common predominating questions included whether Home Depot failed to reasonably protect class members’ personal and financial information, whether it had a legal duty to do so, and whether it failed to timely notify class members of the data breach).

b) Superiority

“[A] primary function of the class suit is to provide a procedure for vindicating claims which, taken individually, are too small to justify individual legal action but which are of significant size and importance if taken as a group.” *Behr Process*, 113 Wn. App. at 318–19 (quoting *Brown*, 6 Wn. App. at 253). Courts recognize that data breach litigation often has an impact on large numbers of consumers in ways that are sufficiently similar to make class-based resolution appropriate and efficient.

Here, the resolution of approximately 142,000 claims in one action is far superior to litigation via individual lawsuits. Additionally, settlement class certification—and class

1 resolution—provide an increase in judicial efficiency and conservation of resources over the
2 alternative of individually litigating tens of thousands of individual data breach cases arising out
3 of the same data breach. *See Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996)
4 (class litigation is superior when it will reduce costs and conserve judicial resources); *Zinser v.*
5 *Accufix Rsch. Inst.*, 253 F.3d 1180, 1190 (9th Cir. 2001) (“Where damages suffered by each
6 putative class member are not large, this factor weighs in favor of certifying a class action.”).

7 **B. The Proposed Settlement Warrants Preliminary Approval Because it Falls Within**
8 **the Range of Reasonable Possible Approval.**

9 On preliminary approval, and prior to approving notice be sent to the proposed Class, the
10 Court must determine that it will “likely” be able to grant final approval of the Settlement
11 under Washington Civil Rule 23(e)(2).

12 **C. Rule 23(e)(2) Factors Are Satisfied.**

13 **1. Plaintiffs and Their Counsel Have Adequately Represented the Class**

14 As set forth above, Counsel for Plaintiffs are experienced class action litigators and are
15 well suited to advocate on behalf of the class. See Joint Decl. ¶¶ 17–19. They and their firms have
16 significant experience litigating, trying, and settling class actions, including consumer and data
17 breach class actions, and numerous courts have previously approved them as class counsel in data
18 breach cases due to their qualifications, experience, and commitment to the prosecution of cases.
19 *Id.* Moreover, Class Counsel have put their experience to use in negotiating an early-stage
20 settlement that guarantees substantial and near-term relief to Settlement Class Members.

21
22 **2. The Proposed Settlement is the Result of Good Faith, Arm’s-Length**
23 **Negotiations by Informed, Experienced Counsel Who Were Aware of the**
24 **Risks of the Litigation.**

25 Courts recognize that arm’s-length negotiations conducted by competent counsel are
26 prima facie evidence of fair settlements, as are settlements achieved with the help of a mediator.
27 See 2 McLaughlin on Class Actions § 6:7 (8th ed. 2011) (“A settlement reached after a supervised

mediation receives a presumption of reasonableness and the absence of collusion.”). This deference reflects the understanding that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness consideration of CR 23(e). As the United States Supreme Court has observed, “[o]ne may take a settlement amount as good evidence of the maximum available if one can assume that parties of equal knowledge and negotiating skill agreed upon the figure through arms-length [sic] bargaining” *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 852 (1999); *see also Hughes v. Microsoft Corp.*, No. C98-1646C, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001) (“A presumption of correctness is said to attach to a class settlement reached in arms-length [sic] negotiations between experienced capable counsel after meaningful discovery.”); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 227 F.R.D. 553, 567 (W.D. Wash. 2004) (approving settlement entered into in good faith, following arm’s-length and non-collusive negotiations). The settlement here is the result of intensive, arm’s-length negotiations between experienced attorneys who are highly familiar with class action litigation in general and with the legal and factual issues of this case in particular.

In this case, the Parties reached an agreement only after Plaintiffs requested certain information from Defendant, to which Defendant responded by providing information related to, among other things, the number of individuals and the specific type of information breached. The Parties also prepared and submitted mediation statements in advance of the mediation. Joint Decl. ¶¶ 4–5. The Parties engaged with Steven Jaffe of Upchurch Watson White & Max as a mediator to oversee settlement negotiations in the action. *Id.* ¶ 5. Prior to mediation, the Parties prepared and submitted mediation briefs addressing the strengths and weaknesses of their respective claims. Following extensive arm’s-length settlement negotiations conducted through Mr. Jaffe that included formal mediation session, the Parties reached a resolution that—if approved—will resolve all pending litigation and provide outstanding relief. *Id.* The arm’s-length nature of the settlement negotiations and the involvement of an experienced mediator like Mr. Jaffe in support the conclusion that the settlement was achieved free of collusion, and it should be preliminarily approved.

1 **3. The Settlement Provides Adequate Relief to the Class**

2 **a) The Substantial Benefits for the Class, Weighed Against the Costs,**
3 **Risks, and Delay of Trial and Appeal, Support Preliminary**
4 **Approval**

5 As discussed above, Defendant denies: (1) the allegations and all liability with respect to
6 facts and claims alleged; (2) that the Class Representatives and the class they purport to represent
7 have suffered any damage; and (3) that the action satisfies the requirements to be certified or tried
8 as a class action under CR 23. The value achieved through the Settlement Agreement is
9 guaranteed, where chances of prevailing on the merits are uncertain—especially where questions
10 of law and fact exist, which is common in data breach litigation. Data breach litigation is evolving;
11 and there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc.*, No.
12 17-cv01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach
13 cases . . . are particularly risky, expensive, and complex.” (citation omitted)). While Plaintiffs
14 strongly believe in the merits of their case, they also understand that Defendant asserts a number
15 of potentially case-dispositive defenses.
16

17 Plaintiffs dispute the defenses Defendant asserts, but it is obvious that success at trial is
18 far from certain. Through the Settlement, Plaintiffs and Settlement Class Members gain
19 significant benefits without having to face further risk of not receiving any relief at all. Most
20 importantly, the Settlement guarantees Settlement Class Members real relief and value as well as
21 protections from potential future fall-out from the Data Breach.

22 **b) The Proposed Method for Distributing Relief is Effective**

23 The Settlement negotiated on behalf of the Class provides for a \$850,000.00 non-
24 reversionary Settlement Fund where Settlement Class Members can easily submit a Claim for
25 monetary benefits. Participating Settlement Class Members may submit Claim Forms to the
26
27

Settlement Administrator electronically via the Settlement Website or physically by USPS mail to the Settlement Administrator. SA ¶ 56.

4. The Proposed Settlement is Designed to Treat Class Members Equitably

The proposed Settlement is a non-reversionary common fund that does not provide any preferential treatment to any segments of the Settlement Class. Settlement Class Members are able to recover damages for injuries caused by the Data Breach. The reimbursement for Out-of-Pocket Losses allows Settlement Class Members to obtain relief based upon the specific types of damages they incurred and treats every Claimant in those categories equally.

The proposed Class Representatives intend to apply for Service Awards. These awards “are fairly typical in class action cases” and are intended to compensate class representatives for participation in the litigation. *See Rodriguez v. W. Pul’g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). Service Awards to the named Plaintiffs are appropriate given the efforts and participation of Plaintiffs in the litigation.

5. Other Factors Considered by Courts in Washington and the Ninth Circuit Are Also Satisfied

To make the preliminary fairness determination, courts are tasked with balancing several relevant factors, including:

(1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement.

Kim v. Allison, 8 F.4th 1170 (9th Cir. 2021) (citing *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). CR 23 also requires the court to consider “the terms of any proposed award of attorney’s fees” and scrutinize the settlement for evidence of collusion or

1 conflicts of interest before approving the settlement as fair. *Id.* at 1179 (citing *Briseño v.*
2 *Henderson*, 998 F.3d 1014, 1024–25 (9th Cir. 2021)).

3 Here, all the relevant factors support preliminary approval. Factors 1–4 and 6 are
4 discussed above, and all overwhelmingly support settlement. With respect to the fifth factor—the
5 extent of discovery completed—the Parties reached a settlement only after Plaintiffs requested
6 certain information from Defendant, to which Defendant responded by providing information
7 related to, among other things, the number of individuals and the specific type of information
8 breached, and the Parties discussed their respective positions on the merits of the claims and class
9 certification. In addition, prior to mediation, the Parties prepared and submitted lengthy mediation
10 briefs addressing the strengths and weaknesses of their respective claims. Joint Decl. ¶ 5. This
11 factor therefore weighs in favor of approval, too.

12 **D. Approval of the Proposed Class Notice is Warranted**

13 CR 23(e) requires the Court to direct notice to all members of the class of the proposed
14 settlement. The best practicable notice is that which “is reasonably calculated, under all the
15 circumstances, to apprise interested parties of the pendency of the action and afford them an
16 opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 US. 306,
17 314 (1950).

18 The Notice provided under the Settlement Agreement meets all the criteria set forth by
19 CR 23 and the Manual for Complex Litigation. *See* SA, Exhibits 1 & 2. Here, the Settlement
20 provides for direct and individual notice to be sent via first class mail to each Settlement Class
21 Member. Not only has Defendant agreed to provide Settlement Class Members with
22 individualized notice via direct mail, but all versions of the settlement Notice will be available to
23 Settlement Class Members on the Settlement Website, along with all relevant filings. SA ¶ 81.
24 The Settlement Administrator will also make a toll-free telephone number available by which
25 Settlement Class Members can seek answers to questions about the Settlement. *Id.* ¶ 83.

26 The notices themselves are clear and straightforward. They provide important information
27 and then direct Settlement Class Members to the Settlement Website where they can find more

1 information, insofar as they define the Settlement Class; clearly describe the options available to
2 Settlement Class Members and the deadlines for taking action; describe the essential terms of the
3 Settlement; disclose the requested Service Awards for the Settlement Class Representatives as
4 well as the amount that proposed Settlement Class Counsel intends to seek in fees and costs;
5 explain procedures for making claims, objections, or requesting exclusion; provide information
6 that will enable Settlement Class Members to calculate their individual recovery; describe the
7 date, time, and place of the Final Approval Hearing; and prominently display the address and
8 phone number of Class Counsel. *See* SA, Exhibits 1 & 2.

9 The Notice is designed to be the best practicable under the circumstances, apprises
10 Settlement Class members of the pendency of the action, and gives them an opportunity to object
11 or exclude themselves from the Settlement. Accordingly, the Notice process should be approved
12 by this Court.

13 **V. CONCLUSION**

14 Plaintiffs have negotiated a fair, adequate, and reasonable Settlement that guarantees
15 Settlement Class Members significant relief in monetary payments and identity theft protections.
16 The Settlement is well within the range of reasonable results, and an assessment of factors
17 required for final approval favors Preliminary Approval. Plaintiffs respectfully request this Court
18 certify the Class for settlement purposes and grant the Motion for Preliminary Approval.

19
20 DATED this 7th day of July, 2026.

21 *I certify that this memorandum contains 6,925*
22 *words, in compliance with the Local Civil Rules.*

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