

JUDGE KRISTIN RICHARDSON  
Noted for: January 18, 2022  
Without Oral Argument

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

GARY STEVE CLOPP, SHLON SMITHSON,  
and LEEANN CRAWFORD, individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

PACIFIC MARKET RESEARCH LLC, a  
foreign limited liability company; and DOES  
1-10,

Defendants.

No. 21-2-08738-4 KNT

PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT

Plaintiffs Gary Steve Clopp, Shlon Smithson, and LeeAnn Crawford (collectively, "Plaintiffs") submit this Unopposed Motion for Preliminary Approval of Class Settlement.

**I. INTRODUCTION**

On May 22, 2021, Defendant Pacific Market Research, LLC ("Defendant") became the victim of a ransomware attack wherein cybercriminals gained access to Defendant's company computer systems (the "Ransomware Attack"). Decl. of Timothy W. Emery ("Emery Decl.") Ex. 1, at Section I. As a contractor to the Washington State Department of Labor and Industries ("L&I"), Defendant's computer systems contained a document with L&I data. *Id.* Upon discovering the cyberattack, Defendant hired a cybersecurity firm to conduct an independent investigation into the Ransomware Attack and notified L&I that approximately 16,466

1 individuals' information may have been impacted. In turn, L&I notified the individuals whose  
2 information may have been impacted. *Id.* The information potentially accessed in the  
3 Ransomware Attack may have included one or more of the following: demographic information  
4 (such as full name, date of birth, phone number, address) and workers' compensation claim  
5 number(s) related to Washingtonians who had been injured and filed claims with L&I. *Id.*

6 After extensive arm's-length negotiations, the Parties reached a settlement that is fair,  
7 adequate, and reasonable. The settlement provides for monetary relief to be paid by Defendant to  
8 eligible claimants of a Class that includes "All individuals residing in the United States whose  
9 personal information may have been accessed by a third party in the ransomware attack on Pacific  
10 Market Research disclosed by the Washington State Department of Labor & Industries in July  
11 2021." Emery Decl. Ex. 1, at ¶ 1.26. The monetary relief provides for reimbursements of ordinary  
12 and extraordinary expenses reasonably tied to the Ransomware Attack up to \$250.00 and  
13 \$2,500.00, respectively. The settlement also provides for reopened access to credit monitoring  
14 services, paid for by Defendant. Finally, the settlement requires increased security measures,  
15 which are designed to prevent future data breaches. Plaintiffs strongly believe the settlement is  
16 favorable to the Settlement Class.

## 17 II. STATEMENT OF ISSUES AND RELIEF REQUESTED

18 Accordingly, and relying on the following memorandum of points and authorities, the  
19 Declaration of Timothy W. Emery and attached exhibits filed herewith, Plaintiffs respectfully  
20 request that the Court preliminarily approve the Parties' Settlement Agreement and enter an order  
21 that:

- 22 (1) Certifies the Settlement Class for settlement purposes only;
- 23 (2) Preliminarily approves the Settlement Agreement;
- 24 (3) Stays this action for all activities other than approval of the Settlement Agreement;
- 25 (4) Appoints Proposed Settlement Class Counsel, Timothy W. Emery and Patrick B.  
26 Reddy of Emery Reddy, PLLC, as Settlement Class Counsel;

- 1 (5) Appoints Plaintiffs Gary Steve Clopp, Shlon Smithson, and LeeAnn Crawford as  
2 Class Representatives;
- 3 (6) Approves a Claim Form substantially similar to that attached as Exhibit A to the  
4 Settlement Agreement;
- 5 (7) Approves a customary Short Form Notice to be mailed to Settlement Class  
6 Members (“Short Notice”) in a form substantially similar to the one attached as  
7 Exhibit B to the Settlement Agreement;
- 8 (8) Approves a customary Long Form Notice (“Long Notice”) to be posted on the  
9 settlement website in a form substantially similar to the one attached as Exhibit C  
10 to the Settlement Agreement;
- 11 (9) Directs Notice to be sent to the Settlement Class in the form and manner proposed  
12 as set forth in the Settlement Agreement and Exhibits A and B thereto;
- 13 (10) Appoints Postlethwaite & Netterville (“Claims Administrator”) to serve as the  
14 Notice Specialist and Claims Administrator;
- 15 (11) Appoints Mark G. Honeywell to serve as a claims referee; and
- 16 (12) Sets a hearing date and schedule for Final Approval of the Settlement and  
17 consideration of Settlement Class Counsel’s Motion for Award of Fees, Costs,  
18 Expenses, and Service Awards.

19 **III. STATEMENT OF FACTS AND EVIDENCE RELIED UPON**

20 **A. Initial Investigation and Communications**

21 Defendant is a data and consulting firm. Emery Decl. ¶ 8. As a contractor to L&I,  
22 Defendant’s computer systems contained a document with L&I data, which included the  
23 following: demographic information (such as full name, date of birth, phone number, address)  
24 and workers’ compensation claim number(s) related to Washingtonians who had been injured and  
25 filed claims with L&I (the “PII”). Emery Decl. Ex. 1, at Section I.

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1 Plaintiffs allege the Ransomware Attack, which occurred on May 22, 2021, occurred when  
2 cybercriminals gained access to Defendant’s computer systems, including the PII of Plaintiffs and  
3 the proposed Class. *Id.* Defendant provided notice to L&I of the Ransomware Attack. In turn,  
4 L&I notified affected individuals in July 2021. *Id.* An independent investigation determined  
5 approximately 16,466 individuals’ information may have been impacted. *Id.*

6 **B. Procedural Posture**

7 On July 2, 2021, Plaintiffs filed the Class Action Complaint, alleging causes of action for:  
8 (1) negligence, and (2) violation of the Washington Consumer Protection Act (“CPA”). *See*  
9 *Compl.* (Dkt. 1).

10 **C. History of Negotiations**

11 Since the filing of the Complaint, counsel for Plaintiffs and Defendant have been pursuing  
12 early resolution of this case. Emery Decl. ¶ 9. Counsel for Plaintiffs and Defendant corresponded  
13 regularly by telephone and email regarding settlement options and offers. *Id.* at ¶¶ 9, 21. On  
14 October 19, 2021, the Parties reached an agreement on the material terms of the settlement. *Id.* at  
15 ¶ 10. Over the following seven weeks, the Parties diligently drafted, negotiated, and finalized the  
16 Settlement Agreement and Notice Forms. *Id.*

17 Despite the grounds that exist for each of Plaintiffs’ claims, which Defendant denies, none  
18 are certain to resolve in their favor on the merits. Further litigation would subject Plaintiffs to  
19 numerous risks, including the risk that they and the other Class Members get no recovery at all.  
20 *Id.* at ¶¶ 14-16, 21. The settlement provides significant relief to Class Members. *Id.* Plaintiffs  
21 strongly believe that it is favorable for the Settlement Class, fair, reasonable, adequate, and worthy  
22 of preliminary approval. *Id.*

23 **IV. SUMMARY OF THE SETTLEMENT**

24 **A. Settlement Class**

25 The Settlement Class includes all individuals residing in the United States whose personal  
26 information may have been accessed by a third party in the ransomware attack on Pacific Market

1 Research disclosed by the Washington State Department of Labor & Industries in July 2021.”  
2 Emery Decl. Ex. 1, at ¶ 1.26.

3 **B. Settlement Benefits**

4 Subject to Court approval, Defendant will pay a maximum settlement amount of  
5 \$250,000.00. *Id.* at ¶ 2.1. The payments available to Settlement Class Members are divided into  
6 two separate categories. The first category is to provide expense reimbursement for out-of-pocket  
7 expenses up to \$250.00 per Class Member, that were incurred as a result of the Ransomware  
8 Attack: bank fees, long distance phone charges, cell phone charges (only if charged by the  
9 minute), data charges (only if charged based on the amount of data used), postage, or gasoline for  
10 local travel; fees for credit reports, credit monitoring, or other identity theft insurance product  
11 purchased between July 1, 2021 (the date L&I reported the Ransomware Attack) and the date of  
12 the Preliminary Approval Order (with affirmative statement by Settlement Class Member that it  
13 was purchased primarily because of the Ransomware Attack); up to three hours of documented  
14 lost time spent dealing with the Ransomware Attack (calculated at the rate of \$20 per hour), but  
15 only if at least one full hour was spent dealing with the Ransomware Attack, and only if the time  
16 can be documented with reasonable specificity by answering the questions on the Claim Form.  
17 *Id.* The second category of payments to Class Members is for reimbursement of more  
18 extraordinary expenses up to \$2,500.00 per Class Member for monetary out-of-pocket losses  
19 which the Class Member claims to have incurred more likely than not as a result of the  
20 Ransomware Attack. *Id.* at ¶ 2.2.

21 Additionally, Defendant will provide, at its own expense, and in addition to all other  
22 payments and benefits listed herein, 12 months of credit monitoring to all Settlement Class  
23 Members who did not previously redeem now expired credit monitoring codes sent by L&I at  
24 Defendant’s expense. *Id.* at ¶ 2.3.

25 Further, Defendant will provide equitable relief in the form of information security  
26 enhancements. Defendant has spent at least \$32,646.00 in improved information security

1 enhancements since the Ransomware Attack and will commit to continuing security  
2 enhancements in each of years 2022, 2023, and 2024. *Id.* at ¶ 2.12. The information security  
3 enhancements that Defendant has or will be implementing include, but are not limited to: (1)  
4 Installing additional endpoint monitoring tools to detect and remediate malware; (2) Upgrading  
5 Defendant’s firewall, Watchguard Firebox, to a newer version that can accommodate increased  
6 network traffic and has a more robust identity provider; (3) Taking additional steps to protect  
7 data, including auditing every endpoint to ensure that they are protected with individual login  
8 credentials, two-factor authentication, full-disk encryption, and, when available, the latest patches  
9 and anti-virus software; (4) Hiring an IT firm to assist with implementing additional security  
10 measures to strengthen Defendant’s network; (5) Adding a local/cloud backup device to add a  
11 secondary backup (in addition to Egnyte cloud services); (6) Adding Proof Point, an Office 365  
12 SPAM/Phishing pre-filter; (7) Modifying remote access by establishing a remote gateway website  
13 with Secure Sockets Layer and two factor authentication that the remote desktop protocol sits  
14 within and limiting the number of authorized employees that can access the remote desktop  
15 protocol; (8) Resetting all passwords, and setting up a 90 day password change policy for all user  
16 accounts; and (9) Retraining employees to ensure that all confidential files including client  
17 confidential information are zipped and encrypted at rest and in transit. *Id.*

18 **C. The Notice and Claims Process**

19 The Parties agreed to use Postlethwaite & Netterville as the Notice Specialist and Claims  
20 Administrator in this case. Emery Decl. ¶ 17 and Ex. 1, at ¶ 3.1(g). Defendant has agreed to pay  
21 for providing Notice to the Settlement Class. Emery Decl. Ex. 1, at ¶¶ 2.9, 3.2. The Notice and  
22 Claim Forms negotiated by the Parties are clear and concise and inform Settlement Class  
23 Members of their rights and options under the settlement, including detailed instructions on how  
24 to make a claim, object to the settlement, or opt-out of the settlement. *Id.* at ¶ 3.2 and Exs. A, B,  
25 and C to Ex. 1. The agreed upon Notice Plan calls for Notice to be provided to Settlement Class  
26 Members via mail. *Id.* at ¶ 3.2. The Claims Administrator will mail a Postcard Summary Notice

1 directly to Settlement Class Members: (1) notifying Settlement Class Members of the settlement  
2 and its terms; (2) providing Settlement Class Members with the URL settlement website, and (3)  
3 instructing Settlement Class Members on how to make a claim. *Id.* Where postcards are returned  
4 undeliverable, the Claims Administrator will process the undeliverable mail and run a skip trace  
5 to find updated addresses.

6 The Claims Administrator will establish a dedicated settlement website and will maintain  
7 and update the website throughout the Claims Period with the Short Notice, Long Notice, and  
8 Claim Form approved by the Court, as well as the Settlement Agreement. *Id.* at ¶ 3.2. The Claims  
9 Administrator will also make a toll-free help line available to provide Settlement Class Members  
10 with additional information about the settlement. *Id.* The Claims Administrator is also authorized  
11 and required to provide copies of the Short Notice, Long Notice, and Claim Form approved by  
12 the Court, as well as the Settlement Agreement, upon request. *Id.*

13 The timing of the Claims Process is structured to ensure that all Class Members have  
14 adequate time to review the terms of the Settlement Agreement, compile documents supporting  
15 their claim, and decide if they would like to opt-out or object. *Id.* at ¶¶ 2.1, 3.2. Class Members  
16 will have 90 days from the completion of the notice mailing to submit their Claim Form to the  
17 Claims Administrator, either by mail or online. *Id.* at ¶ 2.1. The Claims Administrator is given  
18 the authority to assess the validity of claims and to ask for additional documentation. *Id.* at ¶¶ 2.4-  
19 2.8. Should any Class Member wish to dispute the amount offered after making a claim, there is  
20 a process by which he or she can do so. *Id.*

21 Any Class Member who wishes to opt-out of the settlement will have 90 days from the  
22 date preliminary approval is granted to provide such Notice to the Claims Administrator. *Id.* at ¶  
23 4.1. Class Members who wish to object to the terms of the Settlement Agreement must do so in  
24 writing, and file such writing with the Clerk of Court within 90 days from the date on which the  
25 Court issues an order granting preliminary approval of the settlement. *Id.* at ¶ 5.1. The written  
26 objection must be served concurrently on Class Counsel. *Id.*

1           **D.      Computation of Time and Deadlines**

2           For purposes of the Settlement Agreement, if the prescribed time period in which to  
3 complete any required or permitted action expires on a Saturday, Sunday, or legal holiday, such  
4 time period shall be continued to the following business day. For illustrative purposes, and  
5 recognizing that certain deadlines listed herein may be continued due to unforeseen delay of the  
6 part of the Parties and/or by order of the Court, the following schedule provides an outline of the  
7 deadlines required to carry out the Settlement Agreement:

<b>EVENT</b>	<b>DATE</b>
Defendant to Pay to Claims Administrator the Estimated Costs Associated with Notifying the Class Members of the Settlement	15 Days After the Preliminary Approval Order
Mailing of Notice, Start of Notice Period	30 Days After the Preliminary Approval Order
End of Notice Period, Deadline for Class Members to Submit Claim Forms, Opt-Out, or Object	120 Days After the Preliminary Approval Order (i.e., 90 Days After the Start of the Notice Period)
Claims Administrator’s Report Identifying Opt-Outs	127 Days After the Preliminary Approval Order (i.e., 7 Days After Deadline to Opt-Out)
Class Counsel to File Motion Requesting Final Approval of Settlement, Entry of Judgment, and Dismissal of Action	After the End of the Notice Period
Final Fairness Hearing	Final Fairness Hearing
Final Approval Order, Entry of Judgment, Dismissal of Action	Final Approval Order, Entry of Judgment (the “Effective Date”)
Defendant to Pay to Settlement Administrator an Amount Sufficient to Satisfy the Full Amount of Approved Claims	10 Days After the Effective Date
Defendant to Pay to Class Counsel Any Attorneys’ Fees, Costs, Expenses, and Service Awards	10 Days After the Effective Date
Mailing of Settlement Checks to Eligible Class Members	21 Days After the Effective Date, or 30 Days After the Date that the Claim is Approved
Deadline for Eligible Class Members to Cash Settlement Checks	60 Days after Issuance of Settlement Checks

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## V. LEGAL AUTHORITY

Plaintiffs bring this motion pursuant to CR 23(e). The Rule provides in pertinent part: “a class action cannot be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” CR 23(e). Rule 23 is nearly identical to its federal counterpart, and thus, federal cases interpreting the analogous federal provision are highly persuasive. *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 188 (2001). “The primary concern of this subsection is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” *Id.* (compiling cases). The requirements of Rule 23(e) are primarily procedural, requiring notice of the proposed settlement be given to class members and that those class members be given an opportunity to object. *Id.*

Washington courts endorse the three step process described by *The Manual for Complex Litigation*: (1) preliminary approval of the proposed settlement; (2) dissemination of notice of the settlement to settlement class members; and (3) a fairness hearing or final approval hearing where class members may be heard regarding the settlement, evidence regarding the fairness, adequacy and reasonableness of the settlement can be presented, and the court can safeguard class member interests and determine whether to provide final approval.

The decision to approve or reject a proposed settlement lies firmly within the Court’s discretion. *See Pickett*, 145 Wn.2d 178, 190 (2001). Granting preliminary approval will allow Settlement Class Members the opportunity to learn about the settlement, make a claim, opt-out, or object and be heard by the Court.

Here, Plaintiffs seek preliminary approval of the proposed settlement. Because the settlement falls firmly within the range of possible approval required to obtain preliminary approval, this Court should grant Plaintiffs’ motion. *See Newberg* § 13:13.

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## VI. LEGAL DISCUSSION

Washington courts strongly encourage settlements as a matter of “express public policy.” *City of Seattle v. Blume*, 134 Wn.2d 243, 258 (1997). This is particularly true in class actions where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could otherwise obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (acknowledging a strong judicial policy of favoring class action settlements). Traditional means of handling claims like those at issue here—individually—would cause an undue burden on the court system and would require an enormous amount of public and private resources. Where the value of individual claims, like those here, is relatively small, such an individual case is rendered completely impractical. The proposed settlement is the best vehicle by which the Settlement Class Members can receive relief in a prompt and efficient manner.

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### A. The Settlement Class Should Be Preliminarily Approved.

Plaintiffs here seek certification of a Settlement Class consisting of “All individuals residing in the United States whose personal information may have been accessed by a third party in the ransomware attack on Pacific Market Research disclosed by the Washington State Department of Labor & Industries in July 2021.” Emery Decl. Ex. 1, at ¶ 1.26. The Manual for Complex Litigation (Fourth) advises that in cases presented for both preliminary approval and class certification, the “judge should make a preliminary determination that the proposed class satisfies the criteria.” *Manual for Complex Litigation (Fourth)* § 21.632.

Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court’s evaluation is somewhat different than in a case that has not yet settled. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In some ways, the court’s review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *See id.* Other certification issues however, such as “those designed to protect absentees by blocking unwarranted or overbroad

1 class definitions” require heightened scrutiny in the settlement-only class context “for a court  
2 asked to certify a settlement class will lack the opportunity, present when a case is litigated, to  
3 adjust the class, informed by the proceedings as they unfold.” *Id.*

4 Washington law regarding class actions mirrors its federal counterpart, making federal  
5 court cases regarding the certification of class actions “highly persuasive” authority. *Pickett*, 145  
6 Wn.2d 178, 188 (2001). Under Superior Court Civil Rule 23, a party seeking certification of a  
7 class must demonstrate four things: (1) the class is so numerous that joinder of all members is  
8 impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses  
9 of the representative parties are typical of the claims and defenses of the class, and (4) the  
10 representative parties will fairly and adequately protect the interests of the class. CR 23.  
11 Additionally, pursuant to Rule 23(b), to maintain a class action the court must also find that  
12 common questions of law or fact predominate over individualized issues, making the class device  
13 the superior mechanism for resolving the case. *Id.*

14 Class actions are regularly certified for settlement. In fact, similar data breach cases have  
15 been certified on a national basis, including, most recently, the record-breaking settlement in *In*  
16 *re Equifax*. See *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT  
17 (N.D. Ga. July 25, 2019); see also, e.g., *In re Target Corp. Customer Data Sec. Breach Litig.*,  
18 309 F.R.D. 482 (D. Minn. 2015); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach*  
19 *Litig.*, 851 F. Supp. 2d 1040 (S.D. Tex. 2012). This case is no different. Because the proposed  
20 Settlement Class meets all of Washington’s class action requirements, this Court should certify  
21 the Class for purposes of settlement.

22 i. The Proposed Class is Sufficiently Numerous.

23 While there is no fixed point where the numerosity requirement is met, as a general rule  
24 where a class contains at least forty (40) individuals, courts have recognized a rebuttable  
25 presumption that joinder is impracticable. *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821  
26 (2003) (collecting cases). Numbering approximately 16,466 individuals, the proposed Settlement

1 Class easily satisfies Rule 23’s numerosity requirement. Joinder of the 16,466 individuals whose  
2 personal information was impacted by the Ransomware Attack is clearly impracticable—thus the  
3 numerosity prong is satisfied.

4 ii. Questions of Law and Fact are Common to the Class.

5 The threshold for meeting the commonality requirement of Superior Court Civil Rule 23  
6 is a low one. “The commonality test is qualitative rather than quantitative, that is, there need be  
7 only a single issue common to all members of the class. *Smith v. Behr Process Corp.*, 113 Wn.  
8 App. 306, 320 (2002) (internal quotations omitted). Here, Plaintiffs can demonstrate numerous  
9 common issues exist. Defendant’s data security safeguards at the time of the breach were common  
10 across the Class, and those applied to one Class Member did not differ from those safeguards  
11 applied to another.

12 Other common questions at issue include: (1) whether Defendant timely provided  
13 notification of the Ransomware Attack; (2) whether Defendant maintained reasonable security  
14 procedures and practices appropriate to the nature and scope of information compromised in the  
15 breach; and (3) whether Defendant’s conduct rose to the level of negligence.

16 These common questions, and others alleged by Plaintiffs in the Class Action Complaint,  
17 are central to the causes of action brought here and can be addressed on a class-wide basis. Thus,  
18 Plaintiffs have met the commonality requirement of Civil Rule 23.

19 iii. Plaintiffs’ Claims and Defenses Are Typical to Those of the Settlement Class.

20 A plaintiff will satisfy the typicality requirement of Civil Rule 23 if the claim or claims at  
21 issue arise from “the same event or practice or course of conduct that gives rise to the claims of  
22 other class members, and if his or her claims are based on the same legal theory.” *Pellino v.*  
23 *Brink’s Inc.*, 164 Wn. App. 668, 684 (2011) (quoting *Smith v. Behr Process Corp.*, 113 Wn. App.  
24 at 320.

25 Plaintiffs’ claims are typical of those of other Class Members because they and the other  
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1 Class Members allege their PII was misused, disclosed, and/or inadequately safeguarded by  
2 Defendant. Plaintiffs allege that in not taking reasonable measures to prevent the Ransomware  
3 Attack, Defendant caused them and other Class Members to live with the anxiety of not knowing  
4 if and when their private information could be made public. These claims arise out of the same  
5 legal theory and are typical of those of other Class Members, who were also subject to and notified  
6 of the Ransomware Attack.

7 iv. Plaintiffs Will Adequately Protect the Interests of the Class.

8 The adequacy requirement of Civil Rule 23 is satisfied where (1) there are no antagonistic  
9 or conflicting interests between named plaintiffs and their counsel and the absent class members;  
10 and (2) the named plaintiffs and their counsel will vigorously prosecute the action on behalf of  
11 the class. CR 23(a)(4); *see also Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash.  
12 2003). Here, Plaintiffs are members of the Class who allege the same injuries and seek, like other  
13 Class Members, both reimbursement for costs incurred due to the Ransomware Attack and  
14 assurances that the PII that Defendant holds is and will remain better safeguarded than it was at  
15 the time of the Ransomware Attack. As such, their interests and the interests of their counsel are  
16 not inconsistent with those of other Class Members.

17 Further, counsel for Plaintiffs have decades of combined experience as vigorous class  
18 action litigators and are well suited to advocate on behalf of the Class. *See Emery Decl.* ¶¶ 2-3,  
19 11-12.

20 v. Because Common Issues Predominate Over Individualized Ones, Class Treatment  
21 is Superior.

22 Common questions of law and fact predominate here because the most significant aspects  
23 of the case arise out of a common nucleus of operative facts and can be resolved for all Settlement  
24 Class Members. *See CR 23(b)(3); see also Pellino*, 164 Wn. App. 668, 683, n. 5. By the very class  
25 definition, each of the Settlement Class Members' private information was potentially impacted  
26 by the same Ransomware Attack for which Defendant sent notice. As such, any claims of Class

1 Members arise out of the same common nucleus of operative facts—the Ransomware Attack and  
2 the circumstances that both allowed it to happen and led to the delay in notice.

3 To meet the superiority prong for class certification, a plaintiff must demonstrate that a  
4 class action is superior to other available methods for fairly and efficiently adjudicating this  
5 controversy. CR 23(b)(3). Here, because all claims on behalf of Plaintiffs and approximately  
6 16,466 Class Members arise out of the same single Ransomware Attack, a class action is vastly  
7 superior to attempting to litigate each Class Member’s claims individually.

8 **B. The Settlement Terms are Fair, Adequate, and Reasonable.**

9 Although Superior Court Civil Rule 23 is silent in guiding courts in their review of class  
10 settlements, it is universally stated that a proposed class settlement may be approved by the trial  
11 court if it is determined to be “fair, adequate, and reasonable.” *Pickett*, 145 Wn.2d 178 (2001)  
12 (citing *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993) (additional citations  
13 omitted)). Factors considered by courts in making this determination at final approval typically  
14 include: the likelihood of success by plaintiffs; the amount of discovery or evidence; the  
15 settlement terms and conditions; recommendation and experience of counsel; future expense and  
16 likely duration of litigation; recommendation of neutral parties, if any; number of objectors and  
17 nature of objections; and the presence of good faith and the absence of collusion. *Pickett*, 145  
18 Wn. 2d 178, 192 (2001). The purpose of preliminary approval is to determine whether the  
19 settlement is within the range of possible approval, and to determine whether notice of the  
20 settlement should be provided to the class. *Newberg* § 13:13. The settlement reached by Plaintiffs  
21 here falls firmly within the range of potential approval.

22 i. The Settlement Agreement was the Result of Arm’s-Length Negotiations Between  
23 the Parties.

24 Courts recognize that arm’s-length negotiations conducted by competent counsel are  
25 prima facie evidence of fair settlements. The court’s role is to ensure “the agreement is not the  
26 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the

1 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v.*  
2 *Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (internal quotations omitted). Courts will  
3 approve class action settlements entered into after good-faith, arm’s-length negotiations. *See*  
4 *Hughes v. Microsoft Corp.*, No. C98-1646C, 2001 WL 34089697, at \*7 (W.D. Wash. 2001); *In*  
5 *re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 227 F.R.D. 553, 567 (W.D. Wash 2004).

6 The settlement here is the result of intensive arm’s-length negotiations between attorneys  
7 experienced in both class actions generally, and data breach cases in particular. Emery Decl. ¶¶  
8 2-3, 11-12, and Ex. 1.

9 ii. The Settlement Guarantees Class Members Relief for Real Harms and Assurance  
10 That They Are Less Likely to Be Subject to Similar Breaches Due to Defendant’s  
11 Data Security Systems in the Future.

12 Although trial courts are not required to decide the ultimate merits of class members’  
13 claims before approving a proposed settlement, an informed evaluation should include an  
14 understanding of the likelihood of success by plaintiffs—the strength of the merits of the case,  
15 the available defenses, the amount in controversy, and the realistic range of outcomes of the  
16 litigation. *See Pickett*, 145 Wash. 2d at 193.

17 The Settlement Agreement provides real relief for Plaintiffs and Settlement Class  
18 Members. Not only can Plaintiffs and Class Members be reimbursed for costs they incurred  
19 related to the Ransomware Attack, but they can also be assured that Defendant will have increased  
20 ability to protect their PII from the risk of similar data incidents in the future. Expense  
21 reimbursement will run up to \$250.00 per person for standard expenses delineated in the  
22 Settlement Agreement and up to \$2,500.00 per person for other extraordinary expense  
23 reimbursements also described in the Settlement Agreement. Emery Decl. Ex. 1, at ¶¶ 2.1-2.2.

24 Further, Defendant has spent at least \$32,646.00 in improved information security  
25 enhancements since the Ransomware Attack, and Defendant will commit to continuing security  
26 enhancements in each of years 2022, 2023, and 2024. *Id.* at ¶ 2.12. The information security  
enhancements that Defendant has or will be implementing are described in Section IV(B) above.

*Id.*

1 This Settlement Agreement includes terms within the range of those approved by other  
2 courts for similar data incidents. *See, e.g.*, Final Order and Judgment Granting Final Approval of  
3 the Class Action Settlement, *Bailey v. Grays Harbor Cnty. Hosp. Dist. No. 2*, No. 20-2-00217-14  
4 (Wash. Super. Ct. Sept. 21, 2021) (granting approval of data incident class action settlement  
5 providing for up to \$210.00 per valid claimant for ordinary expense reimbursements, up to  
6 \$1,500.00 per valid claimant for extraordinary expense reimbursements, and increased  
7 cybersecurity measures valued at \$480,000.00); Order Granting Final Approval, *Fulton-Green v.*  
8 *Accolade, Inc.*, No. 2:18- cv-00274 (E.D. Pa. Sept. 24, 2019), ECF No. 39 (granting approval of  
9 data incident class action settlement providing for expense reimbursement up to \$1,500.00 per  
10 class member, and increased cyber security measures of undisclosed worth for two years  
11 following the data incident).

12 This proposed settlement provides full, fair, and adequate compensation for any actual  
13 injuries sustained as a consequence of the Ransomware Attack. Moreover, the substantial and  
14 immediate benefits achieved by the settlement avoid the risks, uncertainties, and delays of  
15 continued litigation. Emery Decl. ¶¶ 14-16. If this lawsuit were to continue, Plaintiffs and Class  
16 Members would face a number of difficult challenges, including surviving a motion to dismiss,  
17 obtaining class certification, and maintaining certification through trial and likely motions for  
18 summary judgment. *Id.* Thus, absent a settlement, Plaintiffs face serious obstacles in this lawsuit.  
19 *Id.* This is another indication that the proposed settlement is fair, reasonable, and adequate, and  
20 should be approved.

21 iii. The Proposed Claims Administrator Will Provide Adequate Notice.

22 To satisfy due process, notice to Class Members must be the best practicable, and  
23 reasonably calculated under all the circumstances to apprise interested parties of the pendency of  
24 the action and afford them an opportunity to present their objections. CR 23(c)(2); *Phillips*  
25 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Class Settlement Notices must present  
26 information about a proposed settlement simply, neutrally, and understandably. *In re Hyundai &*

1 *Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019). Notice is adequate if it generally  
2 describes the terms of the class action settlement in sufficient detail to alert those with adverse  
3 viewpoints to investigate and to come forward and be heard. *Id.*

4 The Notice and Claim Forms negotiated by the Parties are clear and concise, and inform  
5 Settlement Class Members of their rights and options under the settlement, including detailed  
6 instructions on how to make a claim, object to the settlement, or opt-out of the settlement. Emery  
7 Decl. Ex. 1, at ¶ 3.2 and Exs. A, B, and C thereto. Settlement Class Members will receive direct  
8 and individual notice of the settlement. After receiving addresses for all Class Members, the  
9 Claims Administrator will direct mail a Postcard Summary Notice to each of the approximate  
10 16,466 Class Members. *Id.* at ¶ 3.2. Where postcard are returned undeliverable, the Claims  
11 Administrator will process the undeliverable mail and run a skip trace to find updated addresses.  
12 The Claims Administrator will also maintain a settlement website on which Class Members can  
13 obtain additional information regarding the case, access case documents, review answers to  
14 frequently asked questions, access Notice documents, and submit Claim Forms. *Id.* Additionally,  
15 the Claims Administrator will maintain a toll-free telephone line to handle any inquiries and fulfill  
16 all additional Notice Packet requests. *Id.*

17 Plaintiffs have negotiated a notice program that is reasonably calculated under all the  
18 circumstances to apprise Class Members of the pendency of the action and afford them an  
19 opportunity to present their objections. The combination of the direct mailing to each and every  
20 Class Member as well as the 90 days provided to make a claim ensures maximum participation.  
21 As such, this Court should approve the notice program.

22 iv. The Requested Service Awards are Justified and Reasonable.

23 The Settlement Agreement provides for service awards to the named Plaintiffs in the  
24 following amounts: Gary Steve Clopp – \$2,333.33, Shlon Smithson – \$2,333.33, and LeeAnn  
25 Crawford – \$2,333.33. Emery Decl. Ex. 1, at ¶ 7.3. The rationale for making service or incentive  
26 awards to named plaintiffs is that he or she should be compensated for the expense or risk he has

1 incurred in conferring a benefit on other members of the class. *Rodriguez v. West Publ'g Corp.*,  
2 563 F.3d 948, 958 (9th Cir. 2009). They serve as premiums in addition to any claims-based  
3 recovery and promote the public policy of representative lawsuits. *Id.* at 958–59. The modest  
4 service awards here serve the purpose of compensating Plaintiffs for their efforts, which include  
5 maintaining contact with their counsel, assisting in the investigation of the case, and answering  
6 counsel's many questions. Emery Decl. ¶ 19. It is further justified by the benefits conferred on  
7 the Class due to Plaintiffs' willingness to serve as representatives. Because of Plaintiffs' desire to  
8 file suit here, Class Members are able to make a claim for up to \$250.00 of standard expense  
9 reimbursements, \$2,500.00 of extraordinary expense reimbursements, and may gain the benefit  
10 of 12 months of credit monitoring. Emery Decl. Ex. 1, at ¶¶ 2.1-2.3. As such, the service awards  
11 requested for Plaintiffs are reasonable.

12 v. The Requested Attorneys' Fees and Costs are Justified and Reasonable.

13 After agreeing to the terms of the settlement on behalf of the Class, counsel for Plaintiffs  
14 negotiated their fees and costs separate from the benefit to Class Members, in the amount of  
15 \$146,000.00. Emery Decl. ¶ 20 and Ex. 1 ¶¶ 7.1-7.2. Under Washington law, the percentage-of-  
16 recovery approach is used in calculating fees in common fund/common benefit cases. *Vizcaino v.*  
17 *Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002); *Bowles v. Dep't of Ret. Sys.*, 121 Wn.2d 52, 72  
18 (1993). Acceptable fees in Washington often range between 20% to 30% of a common fund.  
19 *Bowles* at 72.

20 When compared to the value of the gross settlement amount, the requested attorney's fee  
21 award is far less than one third of the gross settlement amount, the standard percentage recovery  
22 in Washington. Along with up to \$250,000.00 in standard and extraordinary expense  
23 reimbursements, hard costs in connection with administering the settlement will total  
24 approximately \$20,000.00, class representative payments will total \$7,000.00, and the retail value  
25 of credit monitoring for the Class Members is \$119.88 (12 months at a retail value of \$9.99 per  
26 month), up to a potential \$1,973,944.08 total retail value to a population of 16,466 people

1 (\$119.88 x 16,466).<sup>1</sup> Emery Decl. ¶ 20. Simply put, the amount of requested attorney’s fees are a  
2 mere fraction of the gross settlement amount.

3 It is well established that a lawyer who recovers a common fund for the benefit of persons  
4 other than himself or his client (i.e., for a class) is entitled to a reasonable attorneys’ fee from the  
5 recovery as a whole. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S.Ct. 745, 62 L.Ed.2d  
6 676 (1980). Compensating attorneys from the common fund “rest[s] on the perception that a  
7 person who obtains the benefit of a lawsuit without contributing to its cost is unjustly enriched at  
8 the successful litigant’s expense.” *Id.* Common fund fee awards essentially function as “an  
9 equitable substitute for private fee agreements where a class benefits from an attorney’s work.”  
10 *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003).

11 The percent of fund assessment is instructive in a case such as this, that provides, for the  
12 benefit of the class, a gross settlement amount in addition to certain services. The typical range  
13 of attorney’s fees awarded from common fund recoveries in class action cases is between 20%  
14 and 33%. *See Bowles*, 121 Wn.2d 52, 72-73 (1993) (citing *Newberg on Class Actions* § 14.03  
15 (3rd ed.) for the proposition that 20 to 30 percent is the usual range for common fund fee awards);  
16 *Newberg on Class Actions* § 14.6 (4th ed. online) (“common fee awards fall in the 20 to 33 percent  
17 range” and “empirical studies show that, regardless whether the percentage method or the lodestar  
18 method is used, fee awards in class actions average around one-third of the recovery”); *Six (6)*  
19 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1304 (9th Cir. 1990); *Staton*, 327  
20 F.3d at 968. *See also Harpham v. Am. Family Mut. Ins. Co.*, 2:13-CV-00352-RAJ, 2013 WL  
21 12116348, at \*2 (W.D. Wash. May 30, 2013) (33%), *Nessmith v. Huxley Wallace Collective*, 16-  
22 2-30175-4 (30%), *Brown v. Consumer Law Associates, LLC*, 11-CV-0194-TOR (30%), and *Hill*  
23 *v. Garda CL Northwest, Inc.*, 2015 WL 13540731 (2015) (30%, plus statutory attorney fees); *See*  
24 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002) (28%).

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<sup>1</sup> Those Class Members who already redeemed their credit monitoring codes would not be eligible for this benefit, however.

1 Furthermore, Plaintiffs' Counsel has a standard fee agreement with the named Plaintiffs  
2 calling for 33-40% of the recovery to be paid as attorney's fees, plus costs. Emery Decl. ¶ 4. *See*  
3 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049-50 (9th Cir. 2002) (what the named plaintiffs  
4 agreed to as percentage for fees may be relevant to common fund percentage); *In re Washington*  
5 *Public Power Supply System Securities Litig.*, 779 F.Supp. 1063, 1086 (D.Ariz. 1990) (citing  
6 *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268 (9th Cir. 1989) and *Kirkorian v. Borelli*,  
7 695 F.Supp. 446, 456 (N.D. Cal. 1988)).

8 Here, the requested fee amount of \$146,000.00 is a mere fraction of the gross settlement  
9 amount and includes of all Plaintiffs' Counsel's costs and expenses in connection with this  
10 litigation. These fees and costs are the product of months of labor and costs expended by a  
11 litigation team to analyze and document its claims, and then engage in extensive settlement  
12 discussions with Defendant's Counsel. Emery Decl. ¶ 21. Ultimately, through these extensive  
13 negotiations, the Parties reached a resolution which is favorable to the Class, provides certainty,  
14 and ensures payment to the Class within a reasonable time period. *Id.* at ¶ 22.

15 There was a high degree of risk and uncertainty in accepting and litigating this case. The  
16 present matter is a high-stakes class action and Plaintiffs' Counsel will not be paid any amount of  
17 their fees absent prevailing on behalf of their clients and the Class. *Id.* at ¶ 14. Moreover,  
18 Plaintiffs' Counsel advanced significant costs in this litigation, which will not be recovered if the  
19 Class does not prevail. *Id.*

20 Finally, the experienced views of all counsel involved further support preliminary  
21 approval. As reflected in the Declaration of Timothy Emery filed herewith, counsel for both  
22 Plaintiffs and Defendant have substantial experience prosecuting and defending class actions. *Id.*  
23 at ¶ 12. Both parties believe they would ultimately prevail; however, litigating the case would be  
24 time-consuming, expensive, and, like most all class actions, risky. *Id.* Based on his experience,  
25 Plaintiffs' Counsel evaluated these various issues, including the strengths and weaknesses of the  
26 case, and the consequences of not settling, and concluded that the settlement is in the best interest

1 of Class Members. *Id.* at ¶ 16. Defendant, who is represented by equally competent counsel,  
2 agrees with this assessment and supports the settlement. *Id.*

3 **VII. CONCLUSION**

4 Plaintiffs have negotiated a fair, adequate, and reasonable settlement that will provide  
5 Class Members with both significant monetary and equitable relief. For and the above reasons,  
6 Plaintiffs respectfully request this Court grant the Unopposed Motion for Preliminary Approval  
7 of Class Action Settlement.

8 I certify that this motion contains 6,755 words.

9 Dated January 5, 2022.

10 EMERY REDDY, PLLC

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