JUDGE KRISTIN RICHARDSON
Hearing Date: May 27, 2022
Hearing Time: 9:00 A.M.

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 FINAL APPROVAL OF CLASS SETTLEMENT, SERVICE AWARDS, AND ATTORNEYS' FEES AND COSTS

I. INTRODUCTION & RELIEF REQUESTED

On January 24, 2022, this Court preliminarily approved the Class Action Settlement between Plaintiffs Gary Steve Clopp, Shlon Smithson, and LeeAnn Crawford (collectively, "Plaintiffs") and Defendant Pacific Market Research LLC ("Defendant" or "PMR"). Notice was administered as directed by the Court. *See generally* Declaration of Settlement Administrator Ryan Aldridge ("Admin Decl."). As of the date of filing, there have been zero requests for exclusion and zero objections to the Settlement. *Id*. ¶¶ 14-15.

Plaintiffs now respectfully request that the Court: (1) grant final approval of the Settlement and Settlement Class; (2) find that the Notice complied with the Court's Preliminary Approval Order; (3) approve service awards for the Class Representatives; (4) approve attorneys' fees and costs for Class Counsel; (5) order the Settlement Administrator to implement the Settlement in

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the manner and timeframe set forth therein; (6) dismiss the matter with prejudice, except for this Court's jurisdiction over the consummation and enforcement of the Settlement; and (7) grant such other and further relief as the Court deems just and proper.

II. STATEMENT OF FACTS

A. Initial Investigation and Communications

Defendant is a data and consulting firm. Declaration of Timothy W. Emery in Support of Motion for Preliminary Approval ("Emery MPA Decl.") ¶ 8. As a contractor to L&I, Defendant's computer systems contained the full names, dates of birth, phone numbers, addresses, and workers' compensation claim numbers ("PII") of Washingtonians who had been injured and filed claims with L&I. Emery MPA Decl. Ex. 1, at Section I.

Plaintiffs allege the May 22, 2021 Ransomware Attack occurred when cybercriminals gained access to Defendant's computer systems, including the PII of Plaintiffs and the Class. *Id*. Defendant provided notice of the Ransomware Attack to L&I, who then notified affected individuals in July 2021. *Id*. An independent investigation determined approximately 16,466 individuals' information were potentially impacted. *Id*.

B. Procedural Posture and History of Negotiations

On July 2, 2021, Plaintiffs filed the Class Action Complaint, alleging causes of action for negligence and violation of the Washington Consumer Protection Act. *See generally* Compl.

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

On January 24, 2022, the Court granted preliminary approval of the Settlement. *See generally* Prelim. Approval Order.

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C. Summary of the Settlement

The Settlement Class includes 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 MPA Decl. Ex. 1, at ¶ 1.26.

The Settlement provides direct monetary relief, credit monitoring, and equitable relief to Class Members. The payments available to Class Members are divided into two separate categories: (1) expense reimbursement for out-of-pocket expenses up to $250 per Class Member that were incurred as a result of the Ransomware Attack; and (2) reimbursement of more extraordinary expenses up to $2,500 per Class Member for monetary out-of-pocket losses which the Class Member claims to have incurred more likely than not as a result of the Ransomware Attack. *Id*. ¶¶ 2.1-2.2.

Additionally, Defendant has provided, at its own expense, and in addition to all other payments and benefits listed herein, 12 months of credit monitoring to all Settlement Class Members who did not previously redeem now expired credit monitoring codes sent by L&I. *Id*. ¶ 2.3. Defendant will also provide equitable relief in the form of information security enhancements. Defendant has spent at least $32,646 in improved information security enhancements since the Ransomware Attack and will commit to continuing security enhancements in each of years 2022, 2023, and 2024. *Id*. ¶ 2.12.

D. The Notice and Claims Process

The Court appointed Postlewaite & Netterville ("Settlement Administrator") as the Notice Specialist and Claims Administrator in this case. Prelim. Approval Order ¶ 7. On February 10, 2022, the Settlement Administrator received an excel file with a total of 16,466 records ("Class Data"). Admin Decl. ¶ 5. After removing duplicates, the Class Member population consists of 16,236 unique records. *Id*. Of the 16,236 unique records, 16,171 contained name and address information that was sufficient to attempt to issue notice. *Id*.

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1. Direct Mail Notice

The Settlement Administrator coordinated and caused the Postcard Notice to be mailed via First-Class Mail to Settlement Class Members for which a mailing address was available from the Class Data. *Id*. ¶ 6. The Postcard Notice included (a) the web address to the case website for access to additional information, (b) rights and options as a Class Member and the dates by which to act on those options, and (c) the original date of the Final Approval Hearing.[1] *Id*. The Notice mailing was completed on February 23, 2022, in accordance with the Preliminary Approval Order. *Id*.

Prior to the mailing, all mailing addresses were checked against the National Change of Address database maintained by the United States Postal Service. *Id*. ¶ 7. The Settlement Administrator attempted Postcard Notice mailings to 16,171 Class Members and supplemental mailings for 821 Class Members for which an initial Postcard Notices was not deliverable but for which the Settlement Administrator was able to obtain an alternative mailing address. *Id*. The Settlement Administrator estimates that Notice reached 94.2% of Settlement Class Members. *Id*. ¶ 12.

2. Settlement Website, Toll-Free Number, E-Mail Address, and P.O. Box

In addition to the individual Notice, as part of the Notice Plan, the Settlement Administrator established a settlement website, toll-free number, e-mail address, and post office box. *Id*. ¶¶ 8-11. The settlement website, www.dataresearchsettlement.com, allows visitors to submit claims and supporting documentation, access important information regarding the Settlement, get answers to frequently asked questions, and to view and download relevant case documents. *Id*. ¶ 9. As of May 12, 2022, the Settlement Website has received 4,035 unique visitors and 9,160 page views. *Id*. The toll-free number, 1-833-540-2223, is available 24 hours a day, and allows callers to interact with an IVR system and/or leave a voicemail message to address specific requests or issues. *Id*. ¶ 10. As of May 12, 2022, the Settlement Administrator received 588 calls

[1] The Settlement Administrator provided notice of the revised Final Approval hearing date on the settlement website.

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to the telephone line, has received and responded to 21 e-mails from Settlement Class Members, and has received 60 requests to be mailed a Claim Form. *Id*. ¶¶ 10-11.

3. Settlement Class Member Response

As of May 13, 2022, the Settlement Administrator has received 186 claim submissions, zero objections, and zero requests for exclusion. *Id*. ¶¶ 13-15. The deadline for Settlement Class Members to object or request exclusion is May 24, 2022.

III. STATEMENT OF ISSUES

Should the Court: (i) grant final approval of the Settlement and Settlement Class; (ii) approve service awards for the Class Representatives; and (iii) award attorneys' fees and costs to Class Counsel?

IV. EVIDENCE RELIED ON

In support of their Motion for Final Approval, Plaintiffs rely on the Declaration of Timothy W. Emery submitted herewith; the Declaration of Settlement Administrator Ryan Aldridge submitted herewith; Plaintiffs' Motion for Preliminary Approval; the Declaration of Timothy W. Emery in Support of Plaintiffs' Motion for Preliminary Approval; and the Court's records and pleadings.

V. LEGAL AUTHORITY AND ARGUMENT

Civil Rule 23(e) provides that "[a] class action shall not be dismissed or compromised without 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." Washington's class action rule is nearly identical to its federal counterpart prior to the 2018 amendments, and thus, federal cases interpreting Federal Rule of Civil Procedure 23 are highly persuasive in state court. *Pickett v. Holland Am. Line–Westours, Inc*., 145 Wn.2d 178, 188 (2001) (citing *Brown v. Brown*, 6 Wn. App. 249, 252 (1971)).

In determining whether to approve a class action settlement under Civil Rule 23, the court's ultimate inquiry is whether the settlement is "fair, adequate, and reasonable." *Pickett*, 145

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Wn.2d at 188. Although courts examine the settlement under several well-established criteria, the list is not exhaustive, and not all factors are relevant in each case. *Id*. Regularly considered criteria include: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount of discovery or evidence; the settlement terms and conditions; recommendation and experience of counsel; recommendation of neutral parties, if any; number of objectors and nature of objections; and the presence of good faith and the absence of collusion. *Pickett*, 145 Wn.2d at 188; *see also Offs. for Just. v. Civ. Serv. Comm'n of S.F.*, 688 F.2d 615, 628 (9th Cir. 1982). The degree of importance attached to any particular factor depends upon the court's view of the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case. *Offs. for Just*., 688 F. 2d at 628.

A court is expected to limit its "intrusion upon what is otherwise a private consensual agreement negotiated between parties to a lawsuit" and tailor its evaluation to effectuate the objective of determining 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." *Pickett*, 145 Wn.2d at 188 (quoting *Offs. for Just*., 688 F.2d at 628)). Moreover, as the *Pickett* court observed, "it must not be overlooked that voluntary conciliation and settlement are the preferred means of dispute resolution." *Id*. at 190 (quoting *Offs. for Just*., 688 F.2d at 625).

A. The Court-Ordered Notice Program is Constitutionally Sound and Has Been Fully Implemented.

To satisfy due process, notice to class members must be the best practicable, and reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. CR 23(c)(2); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Class settlement notices must present information about a proposed settlement simply, neutrally, and understandably. *In re Hyundai & Kia Fuel Econ. Litig*., 926 F.3d 539, 567 (9th Cir. 2019). Notice is adequate if it generally describes the terms of

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the class action settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard. *Id*.

Here, the Notice program has been carried out as previously approved by the Court. *See generally* Admin Decl. The Settlement Administrator successfully provided individual direct mail notice to 99.6% of Settlement Class Members for which a mailing address was available. Admin Decl. ¶ 12. Individual, direct mail notice, sent to the last known addresses of Settlement Class Members, is the best notice practicable under the circumstances. *See Wright v. Jeckle*, 121 Wn. App. 624, 628 (2004) (finding similar direct mail notice to the last known addresses of class members obtained from patient records as the best practicable). As required, the Notice and Claim Forms were crafted in plain language and presented information about the proposed Settlement simply, neutrally, and understandably. *See In re Hyundai & Kia Fuel Econ. Litig*., 926 F.3d at 567; *see also* Admin Decl. Ex. A. Additionally, the Settlement Administrator maintains a toll-free hotline, settlement website, P.O. Box, and e-mail address by which Settlement Class Members can obtain additional information regarding the case, access case documents, review answers to frequently asked questions, submit Claim Forms, stay informed regarding deadlines. Admin Decl. ¶¶ 8-11. Thus, the Notice Program satisfies due process and the requirements of Rule 23(c)(2).

B. The Settlement is Fair, Adequate, and Reasonable, and Should be Approved.

Examination of the Settlement pursuant to the various criteria used by the *Pickett* Court and others demonstrates that the Settlement Agreement here is fair, adequate, and reasonable, and should be approved.

1. <u>The Settlement Agreement provides substantial relief to the Settlement Class, particularly in light of Plaintiffs' uncertainty of prevailing on the merits</u>.

The Settlement guarantees Class Members both real relief for harms and assurance that they are less likely to be subject to similar breaches due to Defendant's data security systems in the future. Under the terms of the Agreement, Settlement Class Members are eligible to receive up to $250 each in regular—and $2,500 each in extraordinary—expense reimbursements for both

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time spent, and monetary losses related to the breach. *See* Emery MPA Decl. Ex. 1, at ¶ 2.1. Moreover, Defendant has already spent $32,646 in improved information security enhancements and will commit to continuing security enhancements in each of years 2022, 2023, and 2024. *Id*. ¶ 2.2.

This is real relief for Settlement Class Members in a case where chances of prevailing on the merits are uncertain. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles, even just to make it past the pleading stage. *See Hammond v. Bank of N.Y. Mellon Corp*., No. 08 Civ. 6060(RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be met, and one that has been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig*., 293 F.R.D. 21 (D. Me. 2013).

Should litigation continue, Plaintiffs and Class Members would face a number of difficult challenges, including obtaining and maintaining class certification, and likely motions for summary judgment. Defendant has and will continue to assert a number of potentially case-dispositive defenses. Plaintiffs are confident of the merits of their claims, but their success at trial is far from certain. Through the Settlement, Plaintiffs and Settlement Class Members gain significant benefits without having to face the risk of not receiving anything at all.

2. <u>The duration, expense, risk, and complexity of further litigation weigh in favor of final approval of the Settlement</u>.

Another factor for the Court to consider in assessing the fairness, reasonableness, and adequacy of a settlement is the expense and likely duration of the litigation had the settlement not been reached. *Pickett*, 145 Wn.2d at 188; *Offs. for Just*., 688 F.2d at 625. In applying this factor, courts weigh the benefits of settlement against the expense and delay necessary to potentially achieve an equivalent or more favorable result at trial. *See Young v. Katz*, 447 F.2d 431, 434 (5th Cir. 1971).

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The costs, risks, and delay of continued litigation weigh in favor of Settlement approval. Although Plaintiffs are confident in the merits of their claims, the risks discussed above should not be disregarded. Aside from the potential that either side will lose at trial, Plaintiffs anticipate incurring substantial additional costs in pursuing this litigation further. Should litigation continue, Plaintiffs would likely need to counter a later motion for summary judgement, and both gain and maintain certification of the Class. As is apparent due to the nature of the litigation and as at least one court has expressly opined, because the "legal issues involved in [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues." *In re Target Corp. Customer Data Sec. Breach Litig*., MDL No. 14-2522 (PAM/JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015) (reversed and remanded on separate grounds).

Plaintiffs and Class Counsel here were able to complete an independent investigation of the facts and draw on their extensive experience to reach a full understanding of the value of the case, as well as the attendant risks of continued litigation. *See* Emery MPA Decl. ¶¶ 2-3, 6, 9-16. It is the strong opinion of Class Counsel that the Settlement presents a favorable result for the Class. *Id*. ¶¶ 15-16, 21-22.

3. The Settlement Agreement is the result of good faith arm's-length negotiations between experienced counsel.

In determining the fairness of a settlement, courts consider the presence of good faith and absence of collusion on the part of the parties to it. *Pickett*, 145 Wn.2d at 201. The Court's role is to ensure "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) (internal quotations omitted). "A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." *Hughes v. Microsoft Corp*., No. C98-1646C, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001) (citing *Manual for Complex Litigation (Third)* § 30.42 (1995)); *see also Ortiz v. Fibreboard*

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Corp., 527 U.S. 815, 852 (1999) ("[o]ne may take a settlement amount as good evidence of the maximum available if one can assume parties of equal knowledge and negotiating skill agreed upon a figure through arms' length bargaining . . . "). "When experienced and skilled class counsel support a settlement, their views are given great weight." *Pickett*, 145 Wn.2d at 200 (citing *Reed v. Gen. Motors Corp*., 703 F.2d 170, 175 (5th Cir. 1983)).

Here, there is no evidence of collusion or bad faith. The Settlement is the result of intensive, arm's-length negotiations between attorneys experienced in both class actions generally, and data breach cases in particular. *See* Emery MPA Decl. ¶¶ 2-3, 11-12. Class Counsel's years of experience in similar cases, combined with his investigation into the specific facts and circumstances involved in this case all contributed to an awareness of Plaintiffs' settlement leverage, as well as the needs of Plaintiffs and the Settlement Class. Class Counsel agrees that the Settlement provides significant relief to Settlement Class Members and should receive final approval. *Id*. ¶¶ 13, 15-16, 22. As such, this factor weighs in favor of final approval.

4. The complete absence of objections and exclusions demonstrates Class support for the Settlement.

In assessing the fairness, reasonableness, and adequacy of a class action settlement, courts consider the reaction of settlement class members, specifically the number and substance of objections made. *See Pickett*, 145 Wn.2d at 188.

Here, out of more than 16,000 Settlement Class Members, none have objected to or requested exclusion from the Settlement. Admin Decl. ¶¶ 14-15. The positive reaction of Settlement Class Members demonstrates their approval of the Settlement and weighs in favor of Court approval.

C. The Court Should Approve Service Awards to the Class Representatives.

The Settlement Agreement provides for a service award to each named Plaintiff in the amount of $2,333.33. Emery MPA Decl. Ex. 1, at ¶ 7.3. The rationale for making service awards to named plaintiffs is that he or she should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the Class. *Rodriguez v. W. Publ'g Corp*., 563 F.3d

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948, 958 (9th Cir. 2009). They serve as premiums in addition to any claims-based recovery, and promote the public policy of representative lawsuits. *Id*. at 958–59. The service awards sought here are in line with others regularly approved in Washington and Ninth Circuit Courts. *See, e.g., Bailey v. Grays Harbor Cnty. Pub. Hosp. Dist. No. 2*, No. 20-2-00217014 (Wash. Super. Ct. Sept. 21, 2020) (approving service awards in the amount of $2,500 to each class representative); *In re Online DVD-Rental Antitrust Litig.*, 77 F. 3d 934, 947–48 (9th Cir. 2015) (approving service payments to plaintiffs in the amount of $5,000 each).

The modest service awards here serve the purpose of compensating Plaintiffs for their efforts, which include maintaining contact with counsel, participating in client interviews, providing relevant documents, assisting in the investigation of the case, remaining available for consultation throughout mediation, reviewing relevant pleadings and the Settlement Agreement, and for answering counsel's many questions. Emery Decl. ¶ 6. It is further justified by the benefits conferred on the Class due to Plaintiffs' willingness to serve as representatives, including up to $2,750 of ordinary and extraordinary expense reimbursements, credit monitoring services, and the benefit of increased data protection measures to protect their PII that remains in Defendant's possession. As such, the requested service awards are reasonable.

D. The Court Should Approve an Award of Attorneys' Fees and Costs.

After agreeing to the terms of the Settlement on behalf of the Class, Class Counsel negotiated their fees and costs separate from the benefit to Class Members, in the amount of $146,000. Emery Decl. ¶ 19. Under Washington law, the percentage-of-recovery approach is used in calculating fees in common fund/common benefit cases. *Vizcaino v. Microsoft Corp*., 290 F.3d 1043 (9th Cir. 2002); *Bowles v. Wash. Dep't of Ret. Sys*., 121 Wn.2d 52, 72 (1993) (rejecting a lodestar critique in a common fund case and applying the percent-of-recovery approach). The common benefit doctrine stems from the premise that those who receive the benefit of a lawsuit without contributing to its costs are "unjustly enriched" at the expense of the successful litigant. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (noting that the preferred method in common

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fund cases has been to award a reasonable percentage of the fund). "Stated differently, the doctrine allows an attorney 'in equity to recover fees in the absence of a contract or statute when his services confer a substantial benefit for a group of people.'" *Dolan v. King Cnty.*, 13 Wn. App. 2d 1054 (May 12, 2020) (quoting *Lynch v. Deaconess Med. Ctr.*, 113 Wn.2d 162, 167–68 (1989)).

Acceptable fees often range between 20% to 30% of a common fund. *Bowles*, 121 Wn.2d at 72; *see also Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). In Washington, the benchmark is 25% percent of the fund, and courts allow for adjustments from this figure where appropriate. *Bowles*, 121 Wn.2d at 72. Washington courts, including those in King County, have regularly granted fees requests equal to 25% or more of the common fund. *See, e.g., Romatka v. Brinker Int'l Payroll Co.*, No. 132149371, 2014 WL 6778248 (Wash. Super. Ct. Oct. 24, 2014) (approving fees of 25% of the value of the common fund); *Barnett v. Wal-Mart Stores, Inc.*, No. 01-2-24553-8, 2009 WL 2377907 (Wash. Super. Ct. July 10, 2009) (approving $10.5 million in fees, equal to 30% of the common fund); *see also Bailey v. Grays Harbor Cnty. Pub. Hosp. Dist. No. 2*, No. 20-2-00217014 (Wash. Super. Ct. Sept. 21, 2020) (granting final approval of data breach class action settlement and awarding fees equal to 20% the total settlement value in claims made settlement).

As is true with all common fund cases, this Settlement provides guaranteed and ascertainable benefits to the class that will not revert back to Defendant. In addition to the guaranteed benefit of ensuring that Settlement Class Members' PII is better protected via increased data security safeguards, Settlement Class Members can also make a claim for expense reimbursements up to $2,750 per person. Even ignoring the claims-made portion of the Settlement completely, the fees provided amount to an insignificant percentage of the guaranteed benefit conferred on the Class—which is up to $1,973,944.08 total retail value for credit monitoring services and a minimum of $32,646 in information security enhancements.[2] In whole, the requested attorneys' fees and costs actually amount to less than 6% of the total benefit negotiated

[2] However, individuals who previously redeemed credit monitoring codes are not eligible for this benefit.

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by Class Counsel and provided for the Class, when considering the value of credit monitoring, payments to Settlement Class Members, security enhancements, attorney's fees and costs, service awards, and settlement administration costs. Emery Decl. ¶ 19. Thus, Plaintiffs' attorneys' fees and costs request is reasonable.

The fee requested is further justified based on the contingent nature of this case (*see* Emery Decl. ¶¶ 9-15)—and the risks involved with data breach cases in general. While almost all class actions involve a high level of risk, expense, and complexity, numerous courts have recognized that data breach cases are especially risky, expensive, and complex given the unsettled and evolving nature of the law. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig*., 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) ("Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable."); *In re Anthem, Inc. Data Breach Litig*., 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that "many of the legal issues presented in [] data-breach case[s] are novel"). This risk is highlighted by the fact that data breach cases have faced substantial hurdles in making it past the pleading stage—and more in obtaining and maintain certification. *See Hammond v. Bank of N.Y. Mellon Corp*., No. 08 Civ. 6060(RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage); *see also In re Hannaford Bros. Co. Customer Data Sec. Breach Litig*., 293 F.R.D. 21 (D. Me. 2013) (denying certification on the basis that plaintiffs in a data breach case could not show that common issues predominated). Accordingly, Class Counsel's request for attorneys' fees and costs is reasonable and should be approved.

VI. CONCLUSION

By all relevant measures, Plaintiffs have negotiated a fair, adequate, and reasonable Settlement that should be approved. The Settlement will provide Settlement Class Members with both monetary and equitable relief, and has been met with universal approval. For these and the above reasons, Plaintiffs respectfully request this Court grant Plaintiffs' Motion for Final

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Approval, Service Awards, and Attorneys' Fees and Costs, and enter the Proposed Order submitted herewith.

I certify that this memorandum contains 4,302 words, in compliance with the Local Civil Rules.

Dated: May 13, 2022.

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By: *s/ Timothy W. Emery*

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