

Hon. Tiffany M. Cartwright

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**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION**

SHAYNA MARIE LANDIN, on behalf
of herself individually and on behalf of
all others similarly situated,

Plaintiff,

v.

HI-SCHOOL PHARMACY SERVICES,
LLC, and HI-SCHOOL PHARMACY,
INC.,

Defendants.

Case No.: 3:24-cv-05115-TMC

**PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

NOTE ON MOTION CALENDAR:

February 10, 2025

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Manual for Complex Litigation (Fourth), § 21.632 7

1 **I. INTRODUCTION**

2 Plaintiff Shayna Marie Landin (“Plaintiff”) submits this Unopposed Motion for
3 Preliminary Approval of Class Action Settlement. Defendants Hi-School Pharmacy Services
4 LLC and Hi-School Pharmacy, Inc. (collectively “Defendant” or “Hi-School”) do not oppose
5 certification of the Settlement Class¹ solely for purposes of facilitating the settlement sought to
6 be approved in this motion, and do not oppose the relief sought in this motion. Plaintiff strongly
7 believes the Settlement is fair, reasonable, and adequate, and respectfully requests that the Court
8 grant preliminary approval and direct notice be distributed to Class Members.

9 **II. STATEMENT OF FACTS**

10 This matter is a putative class action arising out of a data breach of Hi-School’s computer
11 systems that Hi-School discovered on or about November 3, 2023 (the “Data Incident”). During
12 the Data Incident, an unauthorized actor gained access to certain files on Hi-School’s network;
13 those files contained information related to certain individuals, their names, Social Security
14 numbers, and dates of birth (personal identifiable information or “PII”).

15 After Hi-School learned of the Data Incident, it notified approximately 17,662 current
16 and former customers and employees that their PII may have been impacted by the Data Incident.
17 Plaintiff brought this action on behalf of all persons whose PII may have been compromised,
18 alleging claims based on Hi-School’s failure to: (i) adequately protect PII; (ii) warn of its
19 inadequate information security practices; and (iii) effectively monitor its network for security
20 vulnerabilities and incidents. Plaintiff asserted claims for (i) negligence, (ii) breach of implied
21 contract, (iii) unjust enrichment, and (iv) violation of the Washington State Consumer Protection
22 Act, RCW 19.86.010, *et seq.*

23 Hi-School denies each and all of the claims and contentions alleged against it in the
24 Litigation. Hi-School denies all wrongdoing or liability associated with the Data Incident that
25 Plaintiff alleged, or which could be alleged, in the Litigation. Nonetheless, Hi-School has
26

27 ¹ Unless otherwise indicated, all capitalized terms used herein have the same meaning as those used in the Settlement Agreement (“S.A.”), attached as Exhibit 1 to the Declaration of Gary M. Klinger, filed in support of this motion.

1 concluded that further conduct of the Litigation would be protracted and expensive, and that it is
2 desirable that the Litigation be fully and finally settled in the manner and upon the terms and
3 conditions set forth in this Settlement Agreement.

4 **III. PROCEDURAL HISTORY**

5 After Hi-School sent its notice, on February 12, 2024 Plaintiff filed a putative class action
6 lawsuit against Hi-School concerning the Data Incident. Defendant answered the Complaint on
7 April 11, 2024, and the Court entered a scheduling order on June 18, 2024. Over the course of
8 several months, the parties engaged in settlement negotiations. The parties then agreed to
9 participate in early mediation and prior to doing so, informally exchanged discovery sufficient
10 to inform the parties' negotiations. On October 18, 2024, the parties participated in an arm's-
11 length, full-day, mediation session with experienced mediator Jill Sperber of Judicate West.
12 Through the assistance of Ms. Sperber, the parties reached a settlement in principle.

13 In the months following the mediation, the Settling Parties continued to discuss the finer
14 points of the Settlement and draft and finalize the Settlement and Settlement Agreement for
15 which Plaintiff seeks preliminary approval today.

16 **IV. THE SETTLEMENT TERMS**

17 **A. Proposed Settlement Class**

18 The Proposed Settlement will provide substantial relief for the Settlement Class, which
19 is defined as: "all U.S. residents whose Personal Information was compromised in the Data
20 Incident disclosed by Defendant, on or about December 5, 2023." S.A. ¶ 41. The Settlement
21 Class contains approximately 17,662 individuals. Declaration of Gary M. Klinger in Support of
22 Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Klinger
23 Dec.") ¶ 26.

24 **B. Settlement Benefits – Monetary Relief**

25 Within twenty-one days of an order granting preliminary approval of the Settlement,
26 Defendant will fund a non-reversionary cash settlement fund in the amount of \$600,000.00 S.A. ¶
27 49. Settlement Class Members may claim: (a) Documented Out-of-Pocket Losses of up to \$5,000

1 upon submission of a claim and supporting documentation; (b) in lieu of Documented Out-of-
2 Pocket Losses or Identity Theft Protection and Credit Monitoring, Settlement Class Members may
3 submit a claim for a pro rata cash payment from the Settlement Fund; and/or (c) in addition to
4 Documented Out-of-Pocket Losses, or in lieu of a Pro Rata Cash Payment, Settlement Class
5 Members may submit a Claim to accept two years of free identity theft and credit monitoring
6 services. *Id.* ¶¶ 50-52.

7 1. Documented Out-of-Pocket Losses.

8 The first category of payments is designed to provide reimbursement for out-of-pocket
9 monetary losses incurred as a result of the Incident, including, without limitation, unreimbursed
10 losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants'
11 fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with
12 any credit reporting agency; credit monitoring costs that were incurred on or after the Incident
13 through the date of claim submission; and miscellaneous expenses such as notary, fax, postage,
14 copying, mileage, and long-distance telephone charges. To receive reimbursement for out-of-
15 pocket losses, Settlement Class Members must submit a Valid Claim, including supporting
16 documentation, to the Settlement Administrator. *Id.* ¶ 50.

17 2. Pro Rata Cash Payment.

18 Settlement Class Members are separately eligible to make a claim for a pro rata share of
19 the Settlement Fund. *Id.* ¶ 51. The amount of the Pro Rata Cash Payment shall be calculated using
20 the net remainder of the Settlement Fund following payment of any Attorneys' Fees, Costs, and
21 Expenses, any Service Award, the Settlement Administration Costs, Documented Out-of-Pocket
22 Losses, and Identity Theft Protection and Credit Monitoring. *Id.* Settlement Class Members who
23 make a claim for the Pro Rata Cash Payment may not also make a claim for Documented Out-
24 of-Pocket Losses, and Identity Theft Protection and Credit Monitoring. *Id.*

25 3. Identity Theft Protection and Credit Monitoring.

26 In addition to Documented Out-of-Pocket Losses, or in lieu of a Pro Rata Cash Payment,
27 Settlement Class Members may submit a Claim to accept two years of three-bureau free identity

1 theft and credit monitoring services. *Id.* ¶ 52. Settlement Class Members who elect to receive a
2 Pro Rata Cash Payment are not eligible to claim Credit Monitoring and Identity Theft Protection.
3 *Id.*

4 **C. Class Notice and Settlement Administration**

5 The Settlement Administration Costs will be paid from the \$600,000 Settlement Fund.
6 *Id.* ¶¶ 49, 71. Notice will be given to the Settlement Class via individual notice, which will be
7 given by mailing the Short-Form notice (Exhibit C to the Settlement Agreement) to the last
8 known mailing address for Settlement Class Members. *Id.* ¶ 62(a). A Long Notice, attached to
9 the Settlement Agreement as Exhibit B, will also be posted on the settlement website, which will
10 be established by the Settlement Administrator within 30 days of the entry of the Preliminary
11 Approval Order (the “Notice Deadline”), along with other important documents such as the
12 Settlement Agreement and the motions for final approval and for attorneys’ fees and expenses.
13 *Id.* ¶ 62(b). The notice documents are clear and concise and directly apprise Class Members of
14 all the information they need to know to make a claim or to opt-out or object to the Settlement.
15 Furthermore, a toll-free help line staffed with a reasonable number of live operators shall be made
16 available to address Settlement Class Members’ inquiries. *Id.* ¶ 62(c), Exs. B-C.

17 Moreover, the parties have agreed to use Simpluris, a nationally recognized and well-
18 regarded class action settlement administrator, to serve as Settlement Administrator, subject to
19 the Court’s approval. Klinger Dec. ¶ 33.

20 **D. Attorneys’ Fees and Expenses**

21 If the Settlement is preliminarily approved, proposed Class Counsel plan to petition the
22 Court for an award of reasonable attorneys’ fees and costs after the Settlement Class has received
23 notice of the Settlement. Fourteen (14) days before the Opt-Out and Objection Deadlines Plaintiff
24 will file a motion seeking an award of reasonable attorneys’ fees as well as reimbursement of
25 their reasonable costs and litigation expenses incurred of up to thirty-three (33%) of the
26 Settlement Fund. S.A. ¶ 83. As will be further explained in that motion, Class Counsel’s fee
27 request is well within the range of reasonableness for Settlements of this nature and size.

1 **E. Service Award to Named Plaintiff**

2 Plaintiff in this case has been vital to litigating this matter and has stayed in regular
3 contact with counsel, provided important information and documents regarding the action,
4 regularly communicated with Class Counsel, and reviewed documents and assisted with
5 settlement efforts. Plaintiff also took a risk by serving as the Representative Plaintiff and using
6 her name on public pleadings. Plaintiff has been personally involved in the case and supports the
7 Settlement. *Klinger Dec.*, ¶ 39. Plaintiff will separately petition the Court for a Service Award of
8 \$3,000 in recognition of the time, effort, and expense she incurred pursuing claims that benefited
9 the Settlement Class. S.A. ¶ 81.

10 The amount requested here is presumptively reasonable and commonly awarded in settled
11 class action cases. *See, e.g., Pauley v. CF Entertainment*, No. 2:13-CV-08011-RGK-CW, 2020
12 WL 5809953, at *4 (C.D. Cal.) (granting “class representative enhancement fees in the amount
13 of \$5,000 each to Plaintiffs,” and finding that amount to be “presumptively reasonable”); *Yahoo*
14 *Mail Litig.*, No. 13-CV-4980, 2016 WL 4474612, at *11 (N.D. Cal. Aug. 25, 2016) (“The Ninth
15 Circuit has established \$5,000.00 as a reasonable benchmark [for service awards].”).

16 **F. Release**

17 In exchange for the benefits described above and upon entry of the Final Approval Order,
18 Plaintiff and the Settlement Class will be deemed to have “fully, finally, and forever released,
19 relinquished, and discharged all Released Claims.” S.A. ¶ 77. “Released Claims” are defined as:

20 any and all claims or causes of action of every kind and description, including any
21 causes of action in law, claims in equity, complaints, suits or petitions, and any
22 allegations of wrongdoing, demands for legal, equitable or administrative relief
23 (including, but not limited to, any claims for injunction, rescission, reformation,
24 restitution, disgorgement, constructive trust, declaratory relief, compensatory
25 damages, consequential damages, penalties, exemplary damages, punitive
26 damages, attorneys’ fees, costs, interest or expenses) that the Releasing Parties had,
27 have or may claim now or in the future to have (including, but not limited to,
assigned claims and any and all “Unknown Claims” as defined below) that were or
could have been asserted or alleged arising out of the same nucleus of operative
facts as any of the claims alleged or asserted in the Action, including but not limited
to the facts, transactions, occurrences, events, acts, omissions, or failures to act that
were alleged, argued, raised or asserted in any pleading or court filing in the Action.

1 S.A. ¶ 34.

2 **V. LEGAL AUTHORITY**

3 Plaintiff brings this motion pursuant to Federal Rule Civil Procedure 23(e), under which
4 court approval is required to finalize a class action settlement. Courts, including those in this
5 Circuit, endorse a three-step procedure for approval of class action settlements: (1) preliminary
6 approval of the proposed settlement followed by (2) dissemination of court-approved notice to
7 the class and (3) a final fairness hearing at which class members may be heard regarding the
8 settlement and at which evidence may be heard regarding the fairness, adequacy, and
9 reasonableness of the settlement. *Manual for Complex Litigation* (Fourth) (2004) § 21.63.

10 Here, Plaintiff requests that the Court take the first step and grant preliminary approval
11 of the proposed Settlement Agreement.

12 **VI. ARGUMENT**

13 Federal courts strongly favor and encourage settlements, particularly in class actions and
14 other complex matters where the inherent costs, delays, and risks of continued litigation might
15 otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v.*
16 *City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong judicial policy that favors
17 settlements, particularly where complex class action litigation is concerned”); 4 Newberg on
18 Class Actions § 11.41 (4th ed. 2002) (citing cases). Forcing claims like those at issue here to be
19 handled through individual litigation would unduly tax the court system, require massive
20 expenditures of resources, and would be impracticable given the relatively small value of the
21 claims of the individual class members. Thus, the Settlement provides the best vehicle for
22 Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient
23 manner.

24 The Manual for Complex Litigation (Fourth) advises that in cases presented for both
25 preliminary approval and class certification, the “judge should make a preliminary determination
26 that the proposed class satisfies the criteria.” § 21.632. Because a court evaluating certification
27 of a class action that settled is considering certification only in the context of settlement, the

1 court's evaluation is somewhat different than in a case that has not yet settled. *See Amchem*
2 *Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In some ways, the court's review of
3 certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only
4 class case, the case management issues inherent in the ascertainable class determination need not
5 be confronted. *See id.* Other certification issues, however, such as “those designed to protect
6 absentees by blocking unwarranted or overbroad class definitions,” require heightened scrutiny
7 in the settlement-only class context “for a court asked to certify a settlement class will lack the
8 opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as
9 they unfold.” *Id.*

10 Plaintiff here seeks certification of a Settlement Class consisting of: “all U.S. residents
11 whose Personal Information was compromised in the Data Incident disclosed by Defendant, on
12 or about December 5, 2023.” S.A. ¶ 41. The Settlement Class specifically excludes: (i) Hi-School,
13 and its officers and directors; (ii) all Settlement Class Members who timely and validly request
14 exclusion from the Settlement Class; (iii) the presiding judge, and his or her staff and family; and
15 (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law
16 of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or
17 who pleads *nolo contendere* to any such charge. *Id.* The Settlement Class contains approximately
18 17,662 individuals.

19 For the reasons set forth below, the Court should certify the Class for settlement purposes
20 and preliminarily approve the Settlement.

21 **A. The Settlement Satisfies Rule 23(a).**

22 Before assessing the parties' settlement, the Court should first confirm the underlying
23 settlement class meets the requirements of Rule 23(a). *See Amchem*, 521 U.S. at 620; Manual for
24 Complex Litigation (Fourth), § 21.632. These requirements are: numerosity, commonality,
25 typicality, and adequacy—each of which is met here. Fed. R. Civ. P. 23(a); *Ellis v. Costco*
26 *Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011).

1 1. The proposed Class is sufficiently numerous.

2 While there is no fixed point at which the numerosity requirement is met, Courts find
3 numerosity where there are so many class members as to make joinder impracticable. *See Fed.*
4 *R. Civ. P. 23(a)(1)*. “Where the exact size of the class is unknown but general knowledge and
5 common sense indicate that it is large, the numerosity requirement is satisfied.” *Orantes-*
6 *Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982). Generally, Courts will find
7 numerosity is satisfied where a class includes at least 40 members. *See Rannis v. Recchia*, 380
8 Fed. App’x 646, 651 (9th Cir. 2010). Numbering approximately 17,662 individuals, the proposed
9 settlement class easily satisfies Rule 23’s numerosity requirement. Joinder of so many individuals
10 is clearly impracticable—thus the numerosity prong is satisfied.

11 2. The Settlement Class Satisfies the Commonality Requirement.

12 The Settlement Class also satisfies the commonality requirement, which requires that
13 class members’ claims “depend upon a common contention,” of such a nature that “determination
14 of its truth or falsity will resolve an issue that is central to the validity of each [claim] in one
15 stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, as in most data breach
16 cases, “[t]hese common issues all center on [Defendant’s] conduct, satisfying the commonality
17 requirement.” *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-
18 02583-TWT, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016). For the same reason, Plaintiff
19 alleges that predominance is readily met here “where the class is a ‘cohesive group of individuals
20 [who] suffered the same harm in the same way because of the [defendant's] conduct.’” *In re*
21 *Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 559 (9th Cir. 2019)). Thus, common
22 questions include, *inter alia*, whether Hi-School engaged in the wrongful conduct alleged;
23 whether Class Members’ PII was compromised in the Data Incident; whether Hi-School owed a
24 duty to Plaintiff and Class Members; whether Hi-School breached its duties; and whether Hi-
25 School unreasonably delayed in notifying Plaintiff and Class Members of the material facts of
26 the Data Incident.

27 Thus, Plaintiff has met the commonality requirement of Rule 23(a).

1 3. Plaintiff's claims and defenses are typical to those of the Settlement Class.

2 Plaintiff satisfies the typicality requirement of Rule 23 because Plaintiff's claims, which
3 are based on Defendant's alleged failure to protect the PII of Plaintiff and all members of the
4 Class, are "reasonably coextensive with those of the absent class members." *See* Fed. R. Civ. P.
5 23(a)(3); *Meyer v Portfolio Recovery Associates*, 707 F.3d 943, 1041-42 (9th Cir. 2012)
6 (upholding typicality finding). Plaintiff alleges her PII was compromised, and that she was
7 therefore impacted by the same allegedly inadequate data security that she alleges harmed the
8 rest of the Settlement Class. *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017)
9 ("[I]t is sufficient for typicality if the plaintiff endured a course of conduct directed against the
10 class."). Thus, typicality has been met.

11 4. Plaintiff will adequately protect the interests of the Class.

12 The adequacy requirement of Rule 23 is satisfied where (1) there are no antagonistic or
13 conflicting interests between named plaintiffs and their counsel and the absent class members;
14 and (2) the named plaintiffs and their counsel will vigorously prosecute the action on behalf of
15 the class. Fed. R. Civ. P. 23(a)(4); *see also Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985
16 (9th Cir. 2011) (*citing Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

17 Here, Plaintiff has no conflicts of interest with other Class Members, is subject to no
18 unique defenses, and she and her counsel have and continue to vigorously prosecute this case on
19 behalf of the class. Plaintiff is a member of the Class who experienced the same injuries and
20 seeks, like other Class Members, compensation for Hi-School's data security shortcomings. As
21 such, her interests and the interests of her counsel are not inconsistent with those of other Class
22 Members.

23 Further, Settlement Class Counsel have years of experience as vigorous class action
24 litigators and are well suited to advocate on behalf of the Class. *See* Klinger Dec. ¶¶ 3–24, and
25 Exhibit 2, firm resume of Settlement Class Counsel. Thus, Plaintiff satisfies the requirement of
26 adequacy.

1 **B. The Requirements of Rule 23(b)(3) Are Met for Purposes of Settlement.**

2 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class
3 certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or
4 (3).” *Hanlon*, 150 F.3d at 1022. Here, Plaintiff alleges that the Settlement Class is maintainable
5 for purposes of settlement under Rule 23(b)(3), as common questions predominate over any
6 questions affecting only individual members and class resolution is superior to other available
7 methods for a fair and efficient resolution of the controversy. *Id.*

8 Rule 23(b)(3) requires that a district court determine that “a class action is superior to
9 other available methods for the fair and efficient adjudication of the controversy.” In determining
10 whether the “superiority” requirement is satisfied, a court may consider: (1) the interest of
11 members of the class in individually controlling the prosecution or defense of separate actions;
12 (2) the extent and nature of any litigation concerning the controversy already commenced by or
13 against members of the class; (3) the desirability or undesirability of concentrating the litigation
14 of the claims in the particular forum; and (4) the difficulties likely to be encountered in the
15 management of a class action. Fed. R. Civ. P. 23(b)(3).

16 The predominance requirement “tests whether proposed classes are sufficiently cohesive
17 to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623 (citing Wright, et al., Fed.
18 Prac. and Proc. § 1777, p. 518-19 (2d ed. 1986)). “If common questions ‘present a significant
19 aspect of the case and they can be resolved for all members of the class in a single adjudication,’
20 then ‘there is clear justification for handling the dispute on a representative rather than on an
21 individual basis,’ and the predominance test is satisfied.” *See Hanlon*, 150 F.3d at 1022. To
22 satisfy this requirement, “common issues need only predominate, not outnumber individual
23 issues.” *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) (quotations omitted).

24 Plaintiff’s claims depend, first and foremost, on whether Hi-School used reasonable data
25 security measures to protect employees’ and consumers’ PII. That question can be resolved, for
26 purposes of settlement, using the same evidence for all Class Members, and thus is precisely the
27 type of predominant question that makes a class-wide settlement worthwhile. *See, e.g., Tyson*

1 *Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (“When ‘one or more of the central
2 issues in the action are common to the class and can be said to predominate, the action may be
3 considered proper under Rule 23(b)(3)’”) (citation omitted).

4 Class certification here is also “superior to other available methods for . . . fairly and
5 efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(a)(4). Classwide resolution is the
6 only practical method of addressing the alleged violations at issue in this case. Adjudicating
7 individual actions here is impracticable: the amount in dispute for individual class members is
8 too small, the technical issues involved are too complex, and the required expert testimony and
9 document review too costly. *See Just Film*, 847 F.3d at 1123; *Local Joint Exec. Bd. of Culinary/
10 Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases
11 involving “multiple claims for relatively small individual sums” are particularly well suited to
12 class treatment); *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th
13 Cir. 2010) (“Where recovery on an individual basis would be dwarfed by the cost of litigating on
14 an individual basis, this factor weighs in favor of class certification.”).

15 Because Plaintiff seeks to certify a class in the context of a settlement, this Court need
16 not consider any possible management-related problems as it otherwise would. *See Amchem
17 Prods.*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a
18 district court need not inquire whether the case, if tried, would present intractable management
19 problems, *see* Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.”).

20 In any event, no one member of the Class has an interest in controlling the prosecution of
21 this action because Plaintiff’s claims and the claims of the members of the Class are the same.
22 Alternatives to a class action are either no recourse for thousands of individuals, or a multiplicity
23 of suits resulting in an inefficient and possibly disparate administration of justice. Classwide
24 resolution is the only practical method of addressing the alleged violations at issue in this case.
25 There are thousands of class members with modest individual claims, most of whom likely lack
26 the resources necessary to seek individual legal redress. *See Local Joint Exec. Bd. of Culinary/
27 Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases

1 involving “multiple claims for relatively small individual sums” are particularly well suited to
2 class treatment); *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th
3 Cir. 2010) (“Where recovery on an individual basis would be dwarfed by the cost of litigating on
4 an individual basis, this factor weighs in favor of class certification.”); *Valentino v. Carter-*
5 *Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (The class action method is considered to be
6 superior if “classwide litigation of common issues will reduce litigation costs and promote greater
7 efficiency.”). A class action is therefore superior to other methods for the fair and efficient
8 adjudication of the claims of Plaintiff and the Class.

9 **C. The Settlement Should Be Preliminarily Approved Pursuant to Rule 23(e).**

10 In order for the court to preliminarily approve a class settlement and to direct that notice
11 be sent to class members, the parties must show that the court “will likely be able to (i) approve
12 the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the
13 proposal.” Fed. R. Civ. P. 23(e)(1)(B). *Tuttle v. Audiophile Music Direct Inc.*, No.C22-1081JLR,
14 2023 WL 3318699, at *3 (W.D. Wash. May 9, 2023). Rule 23(e) provides that a proposed class
15 action may be “settled, voluntarily dismissed, or compromised only with the court’s approval.”
16 Moreover, “[t]he parties must provide the court with information sufficient to enable it to
17 determine whether to give notice of the proposal to the class.” If the parties make a sufficient
18 showing that the Court will likely be able to “approve the proposal” and “certify the class for
19 purposes of judgment on the proposal,” “[t]he court must direct notice in a reasonable manner to
20 all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e). Thus, notice
21 should be given to the class, and hence preliminary approval should be granted, where the Court
22 “will likely be able to” finally approve the settlement under Rule 23(e)(2) and certify the class
23 for settlement purposes. *Id.*

24 As a general matter, preliminary approval is appropriate if the settlement falls within the
25 range of possible approval. *Hunichen v. Antonomi LLC*, No. C19-0615-RAJ-SKV, 2021 WL
26 5854964 at *4 (W.D. Wash. Nov. 12, 2021). In sum, “the purpose of the preliminary approval
27 process is to determine whether there is any reason not to notify the class members of the

1 proposed settlement and to proceed with a fairness hearing.” *Lucas v. Kmart Corp.*, 234 F.R.D.
2 688, 693 (D. Colo. 2006). In any event, while a complete fairness evaluation is unnecessary at
3 this early juncture, Plaintiff and her counsel strongly believe that the resolution reached here is
4 in the Settlement Class’s best interests.

5 To that end, the Ninth Circuit has identified nine factors to consider in analyzing the
6 fairness, reasonableness, and adequacy of a class settlement: (1) the strength of the plaintiff’s
7 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of
8 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the
9 extent of discovery completed and the stage of the proceedings; (6) the views of counsel; (7) the
10 presence of a governmental participant; (8) the reaction of the class members to the proposed
11 settlement and; (9) whether the settlement is a product of collusion among the parties. *In re*
12 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011); *see also Hanlon*, 150
13 F.3d at 1026. Rule 23(e) requires a court to consider several additional factors, including that the
14 class representative and class counsel have adequately represented the class, and that the
15 settlement treats class members equitably relative to one another. Fed. R. Civ. P. 23(e).

16 In applying these factors, this Court should be guided foremost by the general principle
17 that settlements of class actions are favored by federal courts. *See Franklin v. Kaypro Corp.*, 884
18 F.2d 1222, 1229 (9th Cir. 1989) (“It hardly seems necessary to point out that there is an overriding
19 public interest in settling and quieting litigation. This is particularly true in class action suits”).
20 Here, the relevant factors support the conclusion that the negotiated settlement is fundamentally
21 fair, reasonable, and adequate, and should be preliminarily approved.

22 1. The Strength of Plaintiff’s Case

23 Plaintiff believes she has built a strong case for liability. *Klinger Dec.*, ¶ 29. Plaintiff
24 contends that Hi-School is liable for its negligent, unfair, and unlawful conduct under multiple
25 causes of action. *See, e.g., Huynh v. Quora, Inc.*, 508 F. Supp. 3d 633, 650 (N.D. Cal. 2020)
26 (“[T]ime and money [plaintiff] spent on credit monitoring in response to the Data Breach is
27 cognizable harm to support her negligence claim”); *Wallace v. Health Quest Sys., Inc.*, No. 20

1 CV 545 (VB), 2021 WL 1109727, at *8–15 (S.D.N.Y. Mar. 23, 2021) (upholding data breach
2 claims for negligence, breach of implied contract, breach of confidence and violations of New
3 York General Business Law); *Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800-UU,
4 2012 WL 9391827, at *6 (S.D. Fla. Oct. 18, 2012) (upholding data sharing claims for violations
5 of Florida Deceptive and Unfair Trade Practices Act).

6 While Plaintiff believes she has strong claims, she also understands that her success is
7 not guaranteed. The chances of prevailing on the merits are uncertain—especially where
8 significant unsettled questions of law and fact exist, which is common in data breach litigation.
9 “Data breach litigation is evolving; there is no guarantee of the ultimate result.” *Fox v. Iowa*
10 *Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) (citing
11 *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1
12 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are particularly risky, expensive, and
13 complex.”)). Although nearly all class actions involve a high level of risk, expense, and
14 complexity, this is a particularly complex class action litigation. Given the obstacles and inherent
15 risks Plaintiff faces with respect to the novel claims in data breach class actions, including class
16 certification, summary judgment, and trial, the substantial benefits the Settlement provides favors
17 preliminary approval of the Settlement. Klinger Dec. ¶¶ 29-30.

18 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

19 While Plaintiff believes her case is a strong one, all cases, including this one, are subject
20 to substantial risk. This case involves a proposed class of approximately 17,662 individuals; a
21 complicated and technical factual overlay; and a motivated Defendant that has every reason to
22 vigorously defend against Plaintiff’s claims.

23 Although nearly all class actions involve a high level of risk, expense, and complexity—
24 undergirding the strong judicial policy favoring amicable resolutions, *Linney v. Cellular Alaska*
25 *P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)—this is an especially complex class. Historically,
26 data breach cases face substantial hurdles in surviving even the pleading stage. *See, e.g.*,
27 *Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB) (RLE), 2010 WL

1 2643307, at *2-4 (S.D.N.Y. June 25, 2010) (collecting cases). Even cases of similar wide-spread
2 notoriety and implicating data far more sensitive than at issue here have been found wanting at
3 the district court level. *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d
4 1, 19 (D.D.C. 2017) (“The Court is not persuaded that the factual allegations in the complaints
5 are sufficient to establish . . . standing.”), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019)
6 (holding that plaintiff had standing to bring a data breach lawsuit).

7 To the extent the law has gradually accepted this relatively new type of litigation, the path
8 to a class-wide monetary judgment remains unforged, particularly in the area of damages. For
9 now, data breach cases are among the most uncertain of all class action litigation, making
10 settlement the more prudent course when a reasonable one can be reached. The damages
11 methodologies, while sound in Plaintiff’s view, remain untested in a disputed class certification
12 setting and unproven in front of a jury. And as in any data breach case, establishing causation on
13 a class-wide basis is rife with uncertainty.

14 Each risk, by itself, could impede the successful prosecution of these claims at trial and
15 in an eventual appeal—which could result in zero recovery to the class. “Regardless of the risk,
16 litigation is always expensive, and both sides would bear those costs if the litigation continued.”
17 *Paz v. AG Adriano Goldschmeid, Inc.*, No. 14CV1372DMS(DHB), 2016 WL 4427439, at *5
18 (S.D. Cal. Feb. 29, 2016). Thus, this factor favors approval.

19 3. The Risk of Maintaining Class Action Status Through Trial

20 While Plaintiff’s case is still in the pleadings stage, the parties have not briefed and the
21 Court has not yet certified, any class treatment of this case. If she were to proceed to litigate her
22 claims through trial, Plaintiff would encounter risks in obtaining and maintaining certification of
23 the class Defendant will certainly oppose certification if the case proceeds. Thus, Plaintiff
24 “necessarily risk[s] losing class action status.” *Grimm v. American Eagle Airlines, Inc.*, No. LA
25 CV 11-00406 JAK(MANx), 2014 WL 1274376, at *10 (C.D. Cal. Sept. 24, 2014). While Plaintiff
26 is confident that this case is well suited for class certification, numerous obstacles to certification
27 remain. Few data breach cases have proceeded forward to obtain a ruling certifying a contested

1 class. The first to obtain certification was *Smith v. Triad of Ala., LLC*, No. 1:14-CV-324-WKW,
 2 2017 WL 1044692, at *16 (M.D. Ala. Mar. 17, 2017), and a more recent certified contested class,
 3 *In re Marriott International Customer Data Securities Breach Litigation*, 341 F.R.D. 128 (D.
 4 Md. 2022), was recently decertified on appeal, *see In re Marriott Int'l, Inc.*, 78 F.4th 677, 680
 5 (4th Cir. 2023) and later recertified. Thus, the dearth of direct precedent adds to the risks posed
 6 by continued litigation.

7 4. The Amount Offered in Settlement

8 In light of the risks and uncertainties presented by data breach litigation, the value of the
 9 Settlement favors approval. The Settlement makes significant relief available to Settlement Class
 10 Members. Each Class Member is eligible to make a claim up to \$5,000 in Out-of-Pocket Losses
 11 and Credit Monitoring and Identity Theft Protection Services OR (b) a Pro Rata Cash Payment.
 12 This Settlement is a strong result for the Class, and as discussed below is in line with other
 13 settlements in cases involving data breaches of similar scope. Because the settlement amount
 14 here is similar to other settlements reached and approved in similar cases, this factor reflects that
 15 the Settlement is fair. *See Calderon v. Wolf Firm*, No. SACV 16-1622-JLS(KESx), 2018 WL
 16 6843723, at *7-8 (C.D. Cal. Mar. 13, 2018) (comparing class settlement with other settlements
 17 in similar cases). In light of the difficulties and expenses Class Members would face pursuing
 18 individual claims, and the likelihood that they might be unaware of their claims, this Settlement
 19 Amount is appropriate. *See id.* Accordingly, this factor favors approval.

20 The Settlement value of 33.97 per class member here is on par with or exceeds that in
 21 other exemplary data breach settlements.² Plaintiff has achieved an excellent resolution for the

22 ² *See, e.g., Dickey's Barbeque Restaurants, Inc.*, Case No. 20-cv-3424 (N.D. Tex.), Dkt. 62 (data breach class action
 23 involving more than 3 million people that settled for \$2.3 million); *In re: Capital One Consumer Data Breach*
 24 *Litigation*, MDL No. 1:19md2915 (AJT/JFA) Doc. 2251 (Memo in Support of Final Approval), 1 (\$190 million
 25 common fund settlement for a class of approximately 98 million); *Cochran v. Accellion, Inc., et al.*, No. 5:21-cv-
 26 01887-EJD (N.D. Cal.), ECF No. 32 (June 30, 2021) (\$5 million settlement fund for 3.82 million class members);
 27 *Adlouni v. UCLA Health Systems Auxiliary, et al.*, No. BC 589243 (Cal. Super. Ct. June 28, 2019) (\$2 million
 settlement in medical information data breach for approximately 4,500,000 Class Members); *In re Anthem, Inc. Data*
Breach Litig., No. 5:15-md-02617 (N.D. Cal. Aug. 15, 2018) (\$115 million settlement in medical information data
 breach for 79,200,000 Class Members); *In re The Home Depot, Inc. Customer Data Sec. Breach Litig.*, No. 1:14-
 MD02583, 2016 WL 6902351, at *7 (N.D. Ga. Aug. 23, 2016) and ECF No. 181-2, ¶¶ 22, 38 (\$13 million settlement
 for approximately 40 million class members); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 14-

1 Settlement Class.

2 5. The Extent of Discovery Completed and the Stage of Proceedings

3 Before entering into settlement discussions on behalf of class members, counsel should
 4 have “sufficient information to make an informed decision.” *Linney*, 151 F.3d at 1239. Here,
 5 Plaintiff vigorously and aggressively gathered information that was available regarding Hi-
 6 School and the Data Incident—including publicly-available documents concerning
 7 announcements of the Data Incident and notice of the Data Incident to Plaintiff and the Settlement
 8 Class. *Klinger Dec.*, ¶ 26. The parties also informally exchanged non-public information
 9 concerning the Data Incident including the means by which the cyberattack was effected, the data
 10 elements at issue, and the size of the Class in preparation for a successful mediation. *Id.*

11 Although the parties have not engaged in formal discovery, Class Counsel’s collective
 12 decades of experience in similar types of privacy and data protection cases provided substantive
 13 knowledge to enable Class Counsel to represent Plaintiff’s and Class Members’ interests without
 14 expending hundreds of hours and enormous financial resources to come up to speed on the
 15 subject area. *Id.* ¶ 27. “[T]he efficiency with which the Parties were able to reach an agreement
 16 need not prevent this Court from granting . . . approval.” *Hillman v. Lexicon Consulting, Inc.*,
 17 No. EDCV 16-01186-VAP(SP_x), 2017 WL 10433869, at *8 (C.D. Cal. April 27, 2017).
 18 Accordingly, Plaintiff is well informed about the strengths and weaknesses of this case.

19 6. The Experience and Views of Counsel

20 Class Counsel has substantial experience litigating complex class cases of various types,
 21 including data breach cases such as this one. *See Klinger Dec.* ¶¶ 3–23 & Ex. 2 thereto. Having
 22 worked on behalf of the putative class since the Data Incident was first announced, evaluated the
 23 legal and factual disputes, and dedicated significant time and monetary resources to this
 24 litigation, proposed Class Counsel endorse the Settlement without reservation. *Id.* ¶ 30. A great
 25 deal of weight is accorded to the recommendation of counsel, who are most closely acquainted

26 _____
 27 2522, 2017 WL 2178306, at *1–2 (D. Minn. May 17, 2017) (\$10 million settlement for nearly 100 million Class
 Members); *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 582 (N.D. Cal. 2015) (\$1.25 million settlement for
 approximately 6.4 million Class Members).

1 with the facts of the underlying litigation. *See, e.g., Norton v. Maximus, Inc.*, 2017 WL 1424636,
2 at *6 (D. Idaho Apr. 17, 2017); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523,
3 528 (C.D. Cal. 2004). Thus, this factor supports approval.

4 7. Governmental Participants.

5 There is no governmental participant in this matter. This factor is neutral.

6 8. The Reaction of the Class Members to the Proposed Settlement

7 Because notice has not yet been given, this factor is not yet implicated; however, the
8 named Plaintiff supports the Settlement. Klinger Dec., ¶ 39.

9 9. Lack of Collusion Among the Parties

10 The parties negotiated a substantial Settlement, as outlined above. The parties did not
11 commence discussion of fees until agreement on all substantive portions of the class resolution
12 had been reached, and both the class portion of the resolution and the fees were negotiated at
13 arm's-length under the direction of a third party neutral mediator, the Hon. Ron B. Leighton, who
14 has extensive experience in handling class action cases and data breach class action cases.
15 Therefore, the Court can be assured that the negotiations were not collusive. *See G. F. v. Contra*
16 *Costa Cty.*, No. 13-cv-03667-MEJ, 2015 WL 4606078, at *43 (N.D. Cal. July 30, 2015) (“[T]he
17 assistance of an experienced mediator in the settlement process confirms that the settlement is
18 non-collusive.”) (internal quotation marks and citation omitted); *see also Cohorst v. BRE Props.*,
19 No. 3:10-CV-2666-JM-BGS, 2011 WL 7061923, at *12 (S.D. Cal. Nov. 9, 2011) (“[V]oluntary
20 mediation before a retired judge in which the parties reached an agreement-in-principle to settle
21 the claims in the litigation are highly indicative of fairness We put a good deal of stock in
22 the product of arms-length, non-collusive, negotiated resolution.”).

23 10. The Settlement Treats Settlement Class Members Equitably

24 Finally, Rule 23(e)(2)(D) requires that this Court confirm that the settlement treats all
25 class members equitably. The Advisory Committee’s Note to Rule 23(e)(2)(D) advises that
26 courts should consider “whether the apportionment of relief among class members takes
27 appropriate account of differences among their claims, and whether the scope of the release may

1 affect class members in different ways that bear on the apportionment of relief.” Fed. R. Civ. P.
2 23(e), advisory comm.’s note (2018).

3 In determining whether this factor weighs in favor of approval, a Court must determine
4 whether the Settlement “improperly grant[s] preferential treatment to class representatives or
5 segments of the class.” *Paredes Garcia v. Harborstone Credit Union*, No. 3:21-CV-05148-LK,
6 2023 WL 4315117 (W.D. Wash. July 3, 2023) (quoting *In re Tableware Antitrust Litig.*, 484 F.
7 Supp. 2d 1078, 1079 (N.D. Cal. 2007)).

8 Here, the Settlement does not improperly discriminate between any segments of the class,
9 as all class members are entitled to the same relief. While Plaintiff has been permitted to seek
10 approval of a service award from this Court, as will be explained in detail in Plaintiff’s Fee
11 Motion, the award of \$3,000 is in line with awards granted in similar cases, is presumptively
12 reasonable, and does not call into question Plaintiff’s adequacy or the validity of the Settlement.
13 *See, e.g., Roe v. Frito-Lay, Inc.*, No. 14-cv-00751, 2017 WL 1315626, at *8 (N.D. Cal. Apr. 7,
14 2017) (noting a \$5,000 Service Award is presumptively reasonable in the Ninth Circuit); *In re*
15 *Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015) (approving service
16 awards of \$5,000).

17 **D. The Court Should Approve the Proposed Notice Program**

18 Rule 23 requires that prior to final approval, the “court must direct notice in a reasonable
19 manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B).
20 For classes certified under Rule 23(b)(3), “the court must direct to class members the best notice
21 that is practicable under the circumstances, including individual notice to all members who can
22 be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “The notice may be by one
23 or more of the following: United States mail, electronic means, or other appropriate means.” *Id.*

24 Such notice must be the “best notice practicable,” *see* Fed. R. Civ. P. 23(c)(2)(B), which
25 means “individual notice to all members who can be identified through reasonable effort.” *Eisen*
26 *v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). To satisfy due process, notice to class
27 members must be the best practicable, and reasonably calculated under all the circumstances to

1 apprise interested parties of the pendency of the action and afford them an opportunity to present
 2 their objections. Fed. R. Civ. P. 23(c)(2); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812
 3 (1985). Class settlement notices must present information about a proposed settlement simply,
 4 neutrally, and understandably. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th
 5 Cir. 2019). Notice is adequate if it generally describes the terms of the class action settlement in
 6 sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be
 7 heard. *Id.*

8 Here, the parties have agreed to a robust notice program to be administered by a well-
 9 respected third-party class administrator—Simpluris—which will use all reasonable efforts to
 10 provide direct and individual notice to each potential Settlement Class Member. Prior to sending
 11 the Postcard Notice, Simpluris will check all mailing addresses against the National Change of
 12 Address (“NCOA”) database maintained by the USPS to ensure all address information is up-to-
 13 date and accurately formatted for mailing.³ S.A. ¶ 62(a). The Notice and Claim Forms negotiated
 14 by the parties are clear and concise and inform Settlement Class Members of their rights and
 15 options under the Settlement, including detailed instructions on how to make a claim, object to
 16 the Settlement, or opt-out of the Settlement. *Id.*, Exs. A-C. The Declaration of Settlement
 17 Administrator Simpluris Inc. in support of Plaintiffs’ Motion for Preliminary Approval of Class
 18 Action Settlement, attached to the Klinger Decl. as Exhibit 3, outlines the notice program.

19 In addition to the direct notice, the Administrator will also establish a dedicated
 20 Settlement Website. *Id.* ¶ 62(b). The Settlement Website will provide the ability for Settlement
 21 Class Members to file an online Claim Form. *Id.* The Settlement Website also includes links to
 22 relevant filings including but not limited to the Settlement Agreement, the publicly filed motion
 23 for preliminary approval, motion for final approval and for attorneys’ fees and expenses (when
 24 they become available), the signed preliminary approval order, and a downloadable and online
 25

26 ³ The NCOA database is maintained by the USPS and consists of approximately 160 million permanent change-of-
 27 address (COA) records consisting of names and addresses of individuals, families, and businesses who have filed a
 change-of-address with the Postal Service. The address information is maintained on the database for 48 months and
 reduces undeliverable mail by providing the most current address information, including standardized and delivery-
 point-coded addresses, for matches made to the NCOA file for individual, family, and business moves.

1 version of the Claim Form and Long-Form Notice. *Id.* The Settlement Website shall provide for
2 secure online submission of Claim Forms and supporting documents. *Id.* The Settlement
3 Administrator will also make a toll-free help line with an option for the caller to request a call
4 back from a live individual to address Settlement Class Members’ inquiries. *Id.* ¶ 62(c).

5 Plaintiff has negotiated a notice program that is reasonably calculated under all the
6 circumstances to apprise Class Members of the pendency of the action and afford them an
7 opportunity to present their objections. Because this notice plan ensures that Settlement Class
8 Members’ due process rights are amply protected, it should be approved. *See Hartranft v. TVI,*
9 *Inc.*, No. 15-01081-CJC-DFM, 2019 WL 1746137, at *3 (C.D. Cal. Apr. 18, 2019) (“The Court
10 finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above
11 and Section VIII of the Agreement constitutes the best practicable notice under the circumstances
12 and is reasonably calculated, under all the circumstances, to apprise Settlement Class Members
13 of the pendency of this action, the terms of the Agreement, and their right to object to or exclude
14 themselves from the Settlement Class.”); *see also Spencer v. #1 A LifeSafer of Ariz., LLC*, No.
15 CV-18-02225-PHX-BSB, 2019 WL 1034451, at *3 (D. Ariz. Mar. 4, 2019) (preliminarily
16 approving class action settlement and finding “that the proposed notice program is clearly
17 designed to advise the Class Members of their rights.”).

18 **E. Appointment of the Settlement Administrator**

19 In connection with implementation of the Notice Program and administration of the
20 settlement benefits, the Parties request the Court appoint Simpluris to serve as the Settlement
21 Administrator. Simpluris is a well-respected third-party administrator with a trusted and proven
22 track record of supporting class action administrations. Klinger Dec. ¶ 33.

23 **F. Appointment of Settlement Class Counsel**

24 Under Rule 23, “a court that certifies a class must appoint class counsel [who must] fairly
25 and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). In making this
26 determination, courts generally consider the following attributes: the proposed class counsel’s
27 (1) work in identifying or investigating potential claims, (2) experience in handling class actions

1 or other complex litigation, and the types of claims asserted in the case, (3) knowledge of the
2 applicable law, and (4) resources committed to representing the class. Fed. R. Civ. P.
3 23(g)(1)(A)(i-iv).

4 Here, proposed Class Counsel has extensive experience prosecuting class actions and
5 other complex cases, and specifically data breach cases. *See* Klinger Dec. ¶ 3-23, Ex. 2 (firm
6 resume). Accordingly, the Court should appoint Gary M. Klinger of Milberg Coleman Bryson
7 Phillips Grossman, PLLC as Class Counsel.

8 **VII. CONCLUSION**

9 Plaintiff has negotiated a fair, adequate, and reasonable Settlement that will provide Class
10 Members with both significant monetary and equitable relief. The Settlement should be approved
11 and Notice should be ordered to issue to the Class. For all the above reasons, Plaintiff respectfully
12 requests this Court to grant Plaintiff's Unopposed Motion for Preliminary Approval of Class
13 Action Settlement.

14
15 I certify that this memorandum contains 7,911 words, in compliance with the Local Civil
16 Rules.

17 Date: February 10, 2025

Respectfully submitted,

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