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IN THE SUPERIOR COURT
FOR THE COUNTY OF MONTEREY

KEVIN HEALY and APRIL HERNANDEZ, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

REITER AFFILIATED COMPANIES, LLC,

Defendant.

Case No. 22CV003056

Assigned to: Hon. Carrie Panetta

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[Notice of Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement; Joint Decl., and (Proposed) Order filed concurrently herewith]

Hearing Date: July 14, 2023
Time: 8:30 A.M.
Dept. 14

Complaint Filed: October 6, 2022
Trial Date: None

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I. INTRODUCTION

Plaintiffs Kevin Healy and April Hernandez ("Plaintiffs") move the Court to preliminarily approve a class action settlement with defendant, Reiter Affiliated Companies, LLC ("Defendant" or "Reiter"), under California Rule of Court 3.769(c). In October 2022, Plaintiffs sued Defendant, alleging it failed to protect their and the class's private information, leading to a data breach by cybercriminals. After receiving Plaintiffs' Complaint and evaluating their claims, the parties agreed to mediate the case on a class-wide basis, with Defendant providing Plaintiffs discoverable information on the breach in advance. Armed with the information needed to evaluate the claims, Plaintiffs secured a settlement with Defendant ("Agreement" or "Settlement") after an arm's length mediation with an experienced, professional class mediator.

If approved, the Agreement will deliver four benefits to the class. First, class members will receive credit monitoring for two years, guarding class members against identity theft. Second, the settlement will reimburse class members' losses related to the data breach up to $4,000, addressing members' out-of-pocket losses. Third, class members who are California residents will be eligible to receive up to a $75 cash payment. And fourth, class members who are not California residents will be eligible for reimbursement for time spent dealing with the effects of the breach, at an amount of $20 per hour up to a total of three hours. As a result, the Agreement secures relief that meets or exceeds relief in data breach settlements across the country.

As described below, the Agreement meets California law's requirements for preliminary approval. As a result, the Court should preliminarily approve this settlement, appoint Plaintiffs as class representatives, appoint Plaintiffs' counsel as class counsel, order the Parties to notify the class members about the settlement, issue a stay of litigation pending final approval, and schedule the final approval hearing.

II. SUMMARY OF THE LITIGATION

A. Plaintiffs' Allegations

This is a data breach case alleging that Defendant failed to protect Plaintiffs' and the class's private information from cybercriminals. Defendant is an employer that maintains

"personally identifiable information" ("PII") from its employees and former employees, including "Plan member names, Social Security numbers, and dates of birth." First Amended Compl., ¶¶1, 2. Plaintiffs and the class are those individuals whose information was compromised, consisting primarily of current and former employees of the Defendant ("Settlement Class"). *Id.* ¶ 10, 24. Plaintiffs allege that on or about June 25, 2022, hackers breached Defendant's systems and accessed "Plan member names, Social Security numbers, and dates of birth." (the "Data Incident"). *Id.* ¶ 2. Plaintiffs discovered that their PII was taken in a notice to affected individuals issued more two months after the breach, depriving them of the earliest opportunity to guard themselves against identity theft. *Id*. ¶¶ 36-38. Defendant contends that it has been diligently proceeding towards individually notifying all persons affected by the Data Incident since the time the Data Incident was discovered.

On liability, Plaintiffs alleged that Defendant failed to protect employees' PII, which resulted in the Data Incident and harmed Plaintiff and the Settlement Class. *Id.* ¶ 31. Plaintiffs also allege that Defendant delayed notice to the Settlement Class about the Data Incident, preventing them from protecting themselves and mitigating the data breach's impact on them. *Id.* ¶¶ 25-26. As a result, Plaintiff asserted five claims: (i) negligence; (ii) negligence *per se*; (iii) CRA violations under Cal. Civ. Code § 1798.80; (iv) UCL violations under Bus. & Prof. Code § 17200; (v) and violations under the CCPA under Cal. Civ. Code § 1798.150. *See id.* ¶¶ 71-123. In so doing, Plaintiffs' Complaint sought damages; a declaration that Defendant's conduct was wrongful, unfair, unconscionable, and violated California law; an order enjoining Defendant's wrongful conduct; and attorneys' fees and costs. *Id.* at Prayer for Relief.

B. Procedural History

On October 6, 2022, Plaintiffs filed this Complaint, then serving Defendant in November 2022. Joint Decl. Supp. Mot. For Prelim. Approval, ¶ 8 ("Joint Decl."). Beginning in December 2022, the Parties discussed mediating Plaintiffs' claims, seeking to resolve them on a class-wide basis. *Id.* ¶ 10. In advance, Defendant disclosed to Plaintiffs information necessary to evaluate their and the Settlement Class's claims, including how the Data Incident happened, how many

individuals it affected, what PII were involved, and Defendant's insurance coverage and limits. *Id.* ¶¶ 11-12. Plaintiffs then agreed to mediate their claims with Defendant. *Id.* ¶ 14.

On February 7, 2023, the Parties mediated the case with Rodney Max, a private mediator in Miami with decades of experience. *Id.* ¶ 15. At mediation, the Parties evaluated the risks, uncertainties, costs, and delays that continued litigation posed, including that Plaintiffs risked recovering nothing if they did not secure relief for the class at settlement. *Id.* ¶ 20. Considering those factors under Mr. Max's guidance, on February 9, 2023, the Parties agreed to the key terms of a class settlement, which delivered relief to the class and avoided the uncertainty that continued litigation posed. Om May 19, 2023the Parties signed the Agreement described below. *Id.* ¶ 17. The Agreement attaches the notice forms, claim forms, and a proposed order. Ex. A ("Settlement Agreement").

III. SUMMARY OF SETTLEMENT

A. Settlement Negotiations

As noted above, the Parties negotiated the Settlement with Mr. Max, a well-respected mediator who presided over an arm's length mediation between capable and experienced class action counsel. *Id.* ¶ 15. Relevant here, the Parties did not discuss attorneys' fees and costs or service awards until after they had agreed on the Settlement's material terms, including the Class definition, how to notify the Class, class benefits, and the release's scope. *Id*. ¶ 19. Moreover, the amount of attorneys' fees and costs are not a condition of the settlement.

B. The Proposed Settlement

The Agreement addresses the Data Incident's harms by providing free credit monitoring and identity restoration services, compensating class members' documented economic losses up to $4,000, an up to $75 benefit for California residents, and a benefit of up to $60 for non-California residents. Settlement Agreement § 2. Specifically, the Agreement provides the following:

1. Class Certification

The Agreement defines the Settlement Class as: "the approximately 92,236 persons who

were sent written notification [by Reiter] that their PII was potentially compromised as a result of the Data Incident that [Reiter] discovered on or about July 4, 2022. . .” *Id*. § 1.27. The Agreement defines the California Settlement Class as: “the approximately 87,148 persons residing in California as of July 4, 2022, who were sent written notification [by Reiter] that their PII was potentially compromised as a result of the Data Incident that [Reiter] discovered on or about July 4, 2022. . .” *Id*. § 1.2. Excluded from both classes are “any Judge who adjudicates this case, as well as their staff and immediate family members.” *Id*. §§ 1.2, 1.27.

The Agreement treats California and non-California residents differently because California residents have access to remedies under the California Consumer Privacy Act. Under the CCPA, a “consumer” is defined as “a natural person who is a California resident. . . ” Cal. Civ. Code § 1798.140(i). Such “consumers” are entitled to recover a statutory damages remedy of between $100 and $750. Cal. Civ. Code § 1798.150(a)(1)(A). Thus, in the event of a judgment in this matter, California residents—and only California residents—would be able to recover even if the California resident could not prove any actual damages. As set forth below, for this reason the Settlement provides a recovery for California residents without requiring the California resident to provide any indicia of actual loss.

2. Class Benefits

The Agreement requires Defendant to provide four benefits for the Settlement Class: the availability of two years of credit monitoring and identity restoration services, reimbursement of documented economic losses up to $4,000 per class member, up to $75 to each member of the California Class who makes a claim, and up to $60 in compensation for lost time for each non-California resident who makes a claim:

Credit Monitoring

The settlement will fund two years of free credit monitoring for all class members that make a Valid Claim. *Id*. § 2.1. The credit monitoring service will monitor all three major credit bureaus and will provide up to “$1,000,000 [in] reimbursement insurance and identity-restoration services from Equifax, TransUnion, or a similar provider of credit-monitoring

services." *Id*.

Economic Loss Reimbursement

Under the Agreement, Defendant will reimburse class members for their out-of-pocket unreimbursed monetary losses related to the data breach. *Id*. § 2.2. The Agreement caps claims at $4,000 per member but requires only that they submit a claim form where they attest to their losses and attach documents establishing them. *Id*. § 2.2(a)-(g). All losses must have occurred after July 4, 2022 (the date of the discovery of the breach), be "more likely than not caused by the Data Incident," and the Class Member must have "made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit-monitoring insurance, identity-theft insurance, or any other insurance available to them" *Id*. § 2.2(b)-(d). The Agreement gives the administrator the authority to adjudicate claims according to the process outlined in the Agreement, allowing the claimant opportunities to prove disputed claims to the Parties and a neutral third party. *Id*. §§ 2.2(g); 2.6.

California Resident Statutory Benefit

In addition to the economic loss benefits described above, the Agreement also provides that each member of the California Class (which is the overwhelming majority of the total class members) who makes a Valid Claim receives a payment of up to $75. *Id*. § 2.3. No documentation of any kind is required to receive this payment other than submitting the claim form itself. The total amount paid by Defendant under statutory benefits provisions is capped at $196,050. Members of the California Class will receive $75, or a pro-rated amount of $196,050. *Id*. This provision would be triggered if the number of claims made by members of the California Class is 2,615 or greater.[1]

Non-Economic Loss Reimbursement

For those members of the Settlement Class who are not California residents (which the Parties estimate to represent 5,088 individuals), in addition to the economic loss benefits described above, those that make a Valid Claim are eligible to receive $20 in compensation for

[1] $196,050 divided by $75 = 2,614.

every hour spent dealing with issues relating to the Data Incident, up to a maximum of three hours, for a total of $60. *Id*. § 2.4. To obtain this benefit, non-California Class Members must attest that they spent this time in tasks relating to the Data Incident and provide a written narrative of how that time was spent, but claimants are not required to provide any other supporting documentation. *Id*.

3. Class Notice

As soon as practicable, but not later than 30 days after the Claims Administrator has received confirmation that it has the Class Member Information from Reiter, Epiq will notify the class using mail, and online means. *Id.* at §§ 3.2-3.4. Specifically, the administrator will notify class members by mail and by posting the short-form notice long-form notice on a settlement website. *Id.* at § 3.2. The Agreement requires Defendant to send the Claims Administrator "the name, and last known physical address of each Settlement Class Member . . . that Reiter possesses." *Id*. § 3.2(a). After receiving Defendant's data, the administrator must verify and update the mailing addresses through the National Change of Address database or similar service. *Id*. § 3.2(c). Altogether, the notice program will aim to notify through direct mail means as many class members as reasonably possible about the settlement and its benefits.

The notices will include "a fair summary of the parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing." *Id*. § 3.1(f).

4. Service Award for Named Plaintiff and Attorneys' Fees and Costs

Subject to Court approval, Defendant agrees Plaintiffs and their attorneys may apply for attorney fees, inclusive of any costs, up to $200,000, and a service award of $2,500 for each named Plaintiff's services. *Id*. §§ 7.2, 7.3. These amounts, if approved by the Court, will be paid by Defendant. § 7.4. The Agreement is clear that neither award will affect whether the Court can approve the Agreement's remaining terms. *Id*. § 7.5.

C. Settlement Administration, Opt-Outs, Objections, and Termination

Plaintiffs request that the Court appoint Epiq as the settlement administrator ("Claims Administrator"), which will administer the Agreement's notice and claims program. *Id.* § 1.5. The Agreement outlines how Class Members may opt-out and object to the settlement. *Id.* §§ 4, 5. First, Class Members can opt-out by sending written notice to the administrator at the address in the notice, requiring only that the class member "clearly manifest" their intent to opt-out of the Settlement Class and sign their notice. *Id*. § 4.1. The Claims Administrator will maintain a list of members who opt-out and provide it to the Parties. *Id.* § 9.3. Second, Class Members can object to the settlement by filing and serving their objection with the information outlined in the Agreement § 5.1, including their bases for objecting. *Id*. § 5.1. Under the Agreement, all objectors must follow the provisions outlined in § 5.1 or waive their right to object to the Agreement. *Id*. § 5.5.

IV. ARGUMENT IN FAVOR OF PRELIMINARY SETTLEMENT APPROVAL

The Court should preliminarily approve the Settlement because it secures an excellent result for the Settlement Class and is well-within the range of probable final approval. In doing so, the Court should certify the Settlement Class because it meets the requirements for certification under California law, and the Court should approve the form and manner of notice to the Settlement Class informing members of their Settlement rights, including the right to object or opt out of the Settlement before the Court holds a final approval hearing

A. Legal Standard.

A class action settlement requires court approval, after notifying the class about settlement. *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal. App. 3d 573, 578-79 (1980) (citing *La Sala v. Am. Sav. & Loan Assn.*, 5 Cal. 3d 864, 871 (1971)). California courts often look to Federal Rule of Civil Procedure 23 and federal caselaw to guide them when resolving review and approval issues. *E.g.*, *Vasquez v. Superior Court*, 4 Cal. 3d 800, 820 (1971).

Under California law and Rule of Court ("Rule") 3.769, any party may file a Motion for Preliminary Approval of a settlement. *See* Cal. Ct. R. 3.769(c). Rule 3.769 settlement approval

proceeds in two steps. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009). First, "the court preliminarily approves the settlement and the class members are notified as directed by the court." *Id*. The notice must explain the proposed settlement and how class members may object to it in writing and at hearing. Cal. Ct. R. 3.769(c). Second, "the court conducts a final approval hearing to inquire into the fairness of the proposed settlement." *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118. In so doing, the court considers whether the settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1795 (1996), as modified (Sept. 30, 1996).

In other words, "preliminary approval" under Rule 3.769 does not require the Court to first determine whether the settlement is fair, reasonable, and adequate—although the Settlement here is all three. Rather, preliminary approval requires only an "initial evaluation" of the proposed settlement's fairness based on written submissions and, if desired, an informal presentation by the settling parties. Herbert B. Newberg & Alba Conte, *Newberg on Class Actions ("Newberg*") § 11.25 (4th ed. 2002). Indeed, preliminary approval means only that the parties may notify the class about the settlement, which the court will either finally approve or deny after deciding any objections. *See Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014); *United States v. State of Or.*, 913 F.2d 576, 580 (9th Cir. 1990).

At final approval, the key factors California courts use to assess a settlement are:

> [i] the strength of the plaintiffs' case; [ii] the risk, expense, complexity, and likely duration of further litigation; [iii] the risk of maintaining class action status throughout the trial; [iv] the amount offered in settlement; the extent of discovery completed and the state of the proceedings; [v] the experience and views of counsel; the presence of a governmental participant;[2] [vi] and the reaction of the class members to the proposed settlement.

Deatrick v. Securitas Sec. Servs. USA, Inc., No. 13-CV-05016-JST, 2016 WL 1394275, at *4 (N.D. Cal. Apr. 7, 2016) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009).

The Agreement satisfies those factors. Indeed, Plaintiffs and the Class faced significant

[2] There is no governmental participant here, and thus Plaintiff need not discuss that factor.

legal risks in this case. Though plaintiffs around the country have often survived demurrers or motions to dismiss in data breach cases, winning class certification and an eventual jury verdict is far from certain. *Adkins v. Facebook, Inc.*, 424 F. Supp. 3d 686, 691 (N.D. Cal. 2019) (granting motion to certify injunctive only class but denying motion to certify damages and issues classes in data breach class action); *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013) (denying class certification in data breach action); *In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. 389 (D. Mass. 2007) (same); *In re Brinker Data Incident Litig.*, No. 3:18-cv-686-TJC-MCR, 2021 WL 1405508, at *14, 2021 U.S. Dist. LEXIS 71965 at *40 (M.D. Fla. Apr. 14, 2021) ("The Court acknowledges it may be the first to certify a Rule 23(b)(3) class involving individual consumers complaining of a data breach involving payment cards ....")

Thus, genuine risks exist that Plaintiffs might not prevail at class certification, trial, or on appeal. Given these risks, this Settlement—which provides the Settlement Class with monetary relief and two years of credit monitoring—falls within the range of possible approval. *Cheryl Gaston v. FabFitFun, Inc.*, No. 2:20-CV-09534-RGK-E, 2021 WL 6496734, at *3 (C.D. Cal. Dec. 9, 2021) (monetary and non-monetary relief support settlement approval). Indeed, there are no grounds to doubt the Agreement's fairness. Thus, the Court should preliminarily approve the Settlement so that counsel may notify the Settlement Class about its terms, then setting this matter for final approval.

1. A Presumption of Fairness Applies to this Settlement.

There is a presumption of fairness that a proposed settlement is fair and reasonable when: (i) it follows arm's length negotiations; (ii) there has been sufficient investigation and discovery to permit counsel and the Court to act intelligently; and (iii) counsel are experienced in similar litigation. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008); 2 Newberg *et al.*, *Newberg on Class Actions* § 11.41 at 11-88 (3d ed. 1992).

The Court should presume the Agreement is fair because it satisfies all three factors. First, the Agreement stems from a successful mediation under Rodney Max, a highly experienced mediator, meaning the Agreement resulted from "arm's length negotiations." Second, Defendant

provided to Plaintiffs information on the Data Incident's scope, including the types of PII compromised, which means that counsel had the information necessary to "act intelligently." *See* Joint Decl. ¶¶ 11-12.

Third, Plaintiff is represented by experienced Class Counsel. Class Counsel has, collectively, decades of experience in class action litigation and has successfully handled national, regional, and statewide class actions throughout the United States, in both state and federal courts, including data breach class actions. *See* Joint Decl. ¶¶ 2-7. Thus, the Court should presume the Settlement is fair.

2. The Settlement Falls Within the Range of Possible Approval.

The Agreement recognizes the inherent risks, costs, and delay that come with prosecuting complex cases like this one. If the matter were to proceed, Defendant could manage to dismiss Plaintiffs' claims, defeat class certification, win on summary judgment or at trial, or succeed on appeal. And even if Plaintiffs won at trial, the jury's award may be less than what the Settlement would provide the class. Indeed, the only certainty is that if this case proceeds in litigation, the Class Members will have to wait longer for any recovery, and both parties will incur more fees and costs—neither of which benefits the class.

a. Strength of Plaintiff's Case Compared to Settlement Amount.

The "most important factor" the court considers on preliminary approval is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar*, 168 Cal. App. 4th at 130. The "legal uncertainty" of the claims at issue "supports approval of a settlement," and courts have noted that the law surrounding "threshold issues" in data breach cases is still being developed. *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 317 (N.D. Cal. 2018). This weighs in favor of settlement approval here.

Additionally, the Settlement delivers four benefits to the Settlement Class, including: (i) protecting the Settlement Class's identities with two years' free credit monitoring; (ii) reimbursing them for out-of-pocket losses; (iii) up to $75 in cash payments to California residents; and (iv) up to $60 for non-California residents to compensate them for time lost as a result of the breach.

These settlement terms are "within the range of reasonableness" for a data breach case. For example, in *In re Solara Med. Supplies Data Breach Litig.*, No. 3:19-CV-02284-H-KSC, 2022 WL 1174102 (S.D. Cal. Apr. 20, 2022), the court preliminarily approved a data breach settlement that provided for cash payments to all class members without a need to show actual loss. *Id.* at *7. Here, the benefits to the Settlement Class exceed that, including cash payments without proof of loss, two years of credit monitoring, *and* reimbursement for any documented Economic Losses up to $4,0000. Agreement § 2. Thus, this factor warrants preliminary approval.

b. The Risk, Expense, Complexity, and Likely Duration of Further Litigation and Risk of Maintaining Class Action Through Trial.

The relief the Settlement Agreement affords to the class must be considered against the costs, risks, and delay of prosecuting this action through a trial and possible appeal. The Court should find that the result Plaintiffs achieved is particularly favorable given the risks of continued litigation. Joint Decl., ¶ 20. Plaintiff faced serious risks prevailing on the merits, including proving injury and causation, certifying a class, and surviving a trial and potential appeal. *See, e.g. In re TD Ameritrade Acct. Holder Litig.*, No. C 07-2852 SBA, 2011 WL 4079226, at *5 (N.D. Cal. Sept. 13, 2011); *In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. at 397 (refusing to certify a class of banks alleging damages resulting from a retailer's data breach because of individual issues relating to causation); S*tollenwerk v. TriWest Healthcare All.*, No. CV–03–0185–PHX–SRB, Slip Op. at 5–6 (D. Ariz. June 10, 2008) (individualized issues relating to proof of causation would predominate over common questions in a class action case involving theft of computer equipment containing personal information). This "uncertain state of the law" supports preliminary approval. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 411 (2010).

The Parties' Agreement not only avoids these risks, but also provides benefits the Settlement Class *now* rather than after years of risky litigation. This is particularly important considering the Settlement's credit monitoring component, which will protect the Settlement

Class against the Data Incident's immediate effects. *See In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 317 (considering preliminary approval in a data breach case and finding that the "negative effects of delay are especially acute" in the data breach context). The Settlement benefits provide a favorable result to the members of the Settlement Class, placing the Settlement well within the range of possible final approval; thus, the Court should preliminarily approve the Settlement.

c. The Amount Offered in Settlement.

As discussed above, the proposed Settlement provides significant benefits to the Settlement Class, including up to $4,000 in reimbursement for economic losses, up to $75 for California residents without requiring any documentation other than submitting a claim form, and up to $60 for non-California residents for lost time spent dealing with the breach. Agreement § 2. There is no reason to believe that Plaintiff could have recovered more at trial, nor would that possibility undermine the Parties' Settlement: "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *In* re *Mego Fin. Corp.*, 213 F.3d 454, 459 (9th Cir. 2000); *In re Premera Blue Cross Customer Data Sec. Breach Litig.*, No. 3:15-MD-2633-SI, 2019 WL 3410382, at *23 (D. Or. July 29, 2019) ("credit monitoring and insurance benefit is an additional valuable benefit to Class Members."); *see also Giroux v. Essex Prop. Tr., Inc.*, No. 16-CV-01722-HSG, 2019 WL 2106587, at *4 (N.D. Cal. May 14, 2019). As a result, this factor supports approving the Settlement.

d. The Extent of Discovery Completed and the State of the Proceedings.

Although this data breach case has not proceeded past the pleadings stage, the parties engaged in informal discovery. Moreover, some of the factual issues are public and well-known. The parties agree that the Data Incident happened, and that an unauthorized party accessed the Settlement Class's PII. *See* Compl. ¶ 58; *see also* Joint Decl., ¶ 13, Ex. 3 (Notice of Data Privacy Incident). The parties also informally shared information throughout the mediation process about

the scope of the Data Incident and the PII that was compromised. Joint Decl. ¶¶ 11-12.

Given these undisputed facts, significant additional discovery was unnecessary to determine the appropriate scope of the Settlement. "[I]n the context of class action settlements, formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (cleaned up); *see also Hart v. Colvin*, No. 15-CV-00623-JST, 2016 WL 6611002, at *8 (N.D. Cal. Nov. 9, 2016) (granting preliminary approval to a pre-discovery settlement where "the parties exchanged some documents and information" that allowed them to reach the settlement). Because Plaintiffs ensured they had the facts necessary to mediate and settle their claims, the Court should preliminarily approve the Settlement.

e. The Experience and Views of Counsel.

Because "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation," the "recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *In re Linkedin User Priv. Litig.*, 309 F.R.D. 573, 588 (N.D. Cal. 2015) (cleaned up). Class Counsel is experienced in litigating class actions, complex litigation, and data breach cases, giving them confidence that the Settlement provides significant benefits for the Settlement Class. Joint Decl. ¶¶ 2-7. And the Settlement was reached after counsel analyzed the relevant facts and law and mediated Plaintiffs' case at arm's length with an experienced class action mediator in Rodney Max. *Id.*, ¶15; *see* 2 Herbert B. Newberg and Alba Conte, *Newberg on Class Actions*, §11.41, at 11-88 (3d ed. 1992) ("There is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval."). At all times, Plaintiffs and their counsel acted in the interests of the Settlement Class as a whole. The arm's length nature of the Settlement and support of experienced Class Counsel favors preliminary approval.

B. The Class Should be Preliminarily Certified.

Courts often certify classes when preliminarily approving a settlement. *E.g.*, *Hernandez*

v. Vitamin Shoppe Indus., Inc., 174 Cal. App. 4th 1441, 1457 (2009). In California, there are two prerequisites to certification: (1) the existence of an ascertainable class, and (2) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." *Daar v. Yellow Cab Co.* 67 Cal. 2d 695, 704 (1967) (citation omitted). Whether a class is ascertainable depends on: (1) the class definition, (2) the size of the class, and (3) the means available for identifying the Class Members. *Vasquez*, 4 Cal. 3d at 821-822. California courts also use the procedures prescribed by the Federal Rules of Civil Procedure for class actions. *See Dean Witter Reynolds, Inc. v. Superior Court*, 211 Cal. App. 3d 758, 773 (1989). In sum, "[t]he party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." *Carter*, 224 Cal. App. 4th at 817 (citation omitted).

Plaintiffs ask that the Court certify—for settlement purposes only—the following Settlement Classes:

> All persons who were sent written notification by Reiter Affiliated Companies, LLC ('Reiter') that their personally identifying information ('PII') was potentially compromised as a result of the Cyber-Attack that Reiter discovered on or about July 4, 2022. ("The Class").
>
> All persons residing in California as of July 4, 2022 who were sent written notification by Reiter that their PII was potentially compromised as a result of the Cyber-Attack that Reiter discovered on or about July 4, 2022. ("The California Class").

This Settlement Class satisfies the requirements under California law for class certification and should be preliminarily certified for Settlement purposes.

1. The Class is Numerous and Ascertainable.

California law requires the class to be so numerous that joinder is impractical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 470 (1981). Relatedly, California courts require the class to be ascertainable such that it is defined "in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary." *See Franchise Tax Bd. Ltd. Liab. Corp. Tax Refund Cases*,

25 Cal. App. 5th 369, 393 (2018) (citation omitted). "In determining whether a class is ascertainable, the trial court examines the class definition, the size of the class and *the means of identifying class members*." *Id.* (emphasis in original) (citation omitted).

Here, the proposed Settlement Class is defined as Defendant's employees who were sent notifications that their PII may have been exposed in the Data Incident. Before discovery, Defendant identified each person whose PII was compromised, and it found that the class includes 92,236 current and former employees. *See* Joint Decl. ¶ 12. In addition, based on the same data set, Defendant has identified that 87,148 of the 92,236 individuals were California residents as of the date of the Data Incident. Thus, Settlement Class members can, and have been, identified, meeting the "ascertainability" requirement. The Class is also numerous enough that joinder is impractical. *See Franchise Tax Bd. Ltd. Liab. Corp. Tax Refund Cases*, 25 Cal. App. 5th at 393 (numerosity satisfied where the proposed class was in the tens of thousands). As a result, the Court should find that the class meets the numerosity and ascertainability requirements.

2. Common Questions of Law and Fact Predominate.

California law requires settling parties to show "predominant common questions of law or fact" among class members. *Dunk*, 48 Cal. App. 4th at 1806. Issues "predominate" when they are "the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance." *Vasquez*, 4 Cal. 3d at 810. This does not mean that class members share the *same* fact and legal issues; rather, the "existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon*, 150 F.3d at 1019. *See also Collins v. Rocha*, 7 Cal.3d 232, 238 (1972). As a result, alleging a common legal theory is enough to establish "predominance." *Morgan v. Labs. Pension Trust Fund*, 81 F.R.D. 669, 676 (N.D. Cal. 1979).

Plaintiffs and the Settlement Class share the same facts and legal theories, satisfying the "predominance" requirement. Indeed, Plaintiffs and the Settlement Class's claims rise and fall on the same Data Incident, events leading to it, and liability theories under California law. As with other data breach cases, "[t]he extensiveness and adequacy of [defendant's] security measures lie

at the heart of every claim." *In re Anthem, Inc. Data Breach Litig*., 327 F.R.D. at, 308. There are no apparent differences among the Settlement Class, nor would any minor differences defeat their "common core of salient facts" and shared legal issues. Thus, the Court should find that Plaintiffs' motion meets the "predominance" requirement.

3. Plaintiffs' Claims are Typical of Those of the Classes.

"Typicality" requires that the named plaintiff's interests in the action be like those of other class members. *See Fireside Bank v. Superior Court*, 40 Cal. 5th 1069, 1090 (2007). But the class representative need not have interests *identical* to those of the other class members. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal. App. 3d 1341, 1347 (1987). Instead, a class representative's claims are "typical" if they arise from the same fact pattern that gives rise to the claims of other class members and are based on the same legal theories. *See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983). As described above, Plaintiffs share the same facts and legal theories as the Settlement Class, meaning their claims are "typical." Indeed, Plaintiffs' interests do not conflict with the Settlement Class's, nor are any potential conflicts apparent. As a result, the Court should find that Plaintiffs' motion meets the typicality requirement.

4. Plaintiffs and Class Counsel Will Vigorously Protect the Classes' Interests.

The representative plaintiff must adequately protect the class's interests. This requires that (1) there be no disabling conflicts of interest between the class representative and the class, and (2) that class counsel be competent and experienced. *McGhee v. Bank of Am.* 60 Cal. App. 3d 442, 450 (1976).

Plaintiffs' claims do not conflict with the class's claims—they are the same—nor does Plaintiffs have any "disabling conflicts." First, Plaintiffs are pursuing the same legal theories as the Settlement Class relating to the same course of Defendant's conduct. Those claims then turn on the same alleged Data Incident and events leading to it. And for remedies, Plaintiffs seek the same relief applicable and beneficial to the class.

Second, class counsel, Meyer Wilson Co., LPA and Turke & Strauss LLP, have extensive

experience litigating complex cases and consumer class actions, have been appointed class counsel in prior and similar privacy cases, and have the resources necessary to prosecute this action to its conclusion. *See* Joint Decl., ¶¶ 2-7. In so doing, they have recovered hundreds of millions of dollars for classes they represented. Thus, class counsel is qualified to represent the class and will, along with Plaintiffs, vigorously protect the class's interests, meaning the Court should find Plaintiffs and class counsel "adequate."

5. A Class Action is the Superior Method of Adjudication.

A class action is the superior method of adjudicating this case, a factor for the Court to consider in certifying a class. *See Blue Chip Stamps v. Superior Court,* 18 Cal. 3d 381, 385 (1976). The class device resolves all claims at once, with binding effect. The alternative is for each class member to sue separately. But in this case, it would be impracticable to bring each class member's claim individually, and those small claims would not be economically feasible or practical to bring individually. Thus, absent certification, most members of the Classes would not seek recovery, which would be unjust. "The class action is a product of the court of equity. It . . . [was] adopted to prevent a failure of justice." *City of San Jose v. Superior Court*, 12 Cal. 3d 447, 458 (1974). As a result, class certification is the best way to "achieve economies of time, effort and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 615 (1997).

Those principles apply here, where Plaintiffs and the Class suffered the same harms that the Settlement can resolve at once. Individual lawsuits would defeat efficiency and dissuade class members from seeking relief, meaning Plaintiffs' class action is "superior." Thus, Plaintiffs' motion meets all certification criteria, and the Settlement Class should be provisionally certified. *Dean Witter Reynolds, Inc.*, 211 Cal. App. 3d at 765 (if the necessary factors are found, "a trial court is under a duty to certify the class and is vested with no discretion to deny certification based upon other considerations").

C. The Proposed Notices Are Adequate.

The proposed notices are accurate, informative, neutral, and readable by the average

person. Settlement Agreement at Exs. A, B, D. They are written in plain, simple language, providing the key information about the Agreement so that members of the Classes can choose what to do, including: the settlement benefits; the fact that the Settlement Class will be bound by the judgment; the right to opt out or object and the method for doing so; and the time, date, and place of the final approval hearing.

In other words, the Notices are "adequate to fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000) (citation omitted). Thus, the Court should approve the Parties' notice program and allow their settlement administrator to notify the Settlement Class according to its terms.

V. PROPOSED SCHEDULE OF EVENTS

The Court's entry of the Preliminary Approval/Notice Order would: (i) approve the Agreement as "within the range of fair, adequate, and reasonable"; (ii) certify the Settlement Class for settlement purposes under Ca. Code. Civ. P. § 382; (iii) appoint Plaintiff as class representative and his attorneys as class counsel; (iv) approve the notice forms and direct notice of the settlement to the Settlement Class; (v) approve the opt out and objection procedures in §§ 4 and 5 of the Agreement; (vi) find that the Court retains jurisdiction over all claims related to the Agreement; (vii) stay the action and related actions pending final approval; (viii) schedule a hearing to consider whether the settlement should be approved as fair, reasonable, and adequate; (ix) provide that the Settlement Class will be bound by final approval; and (x) Set the dates for the Parties to file final approval papers. *Id*. § 5.

Thus, the Parties request that the Preliminary Approval/Notice Order and set these deadlines:

- **Deadline to Send Notice to the Class:** As soon as practicable, but no later than thirty (30) days after the Claims Administrator has received confirmation that it has the Class Member Information from Reiter.

- **Claims Deadline**: 90 days after the deadline to send Notice to the Class.
- **Objection Deadline**: 60 days after the deadline to send Notice to the Class.
- **Opt-Out Deadline**: 60 days after the deadline to send Notice to the Class.
- **Deadline to File Fee Application**: 14 days before the Objection Deadline.
- **Deadline to Respond to Objections and Move for Final Approval:** 14 days before the Final Approval Hearing.
- **Final Approval Hearing Date:** No earlier than 30 days after the deadline to submit claims, opt-out, or object.

VI. CONCLUSION

Plaintiffs ask the Court to grant preliminary approval of the Agreement and enter the proposed Preliminary Approval/Notice Order attached to the Settlement Agreement as **Exhibit C**.

Respectfully submitted,

Dated: June 8, 2023 By: /s/ Michael J. Boyle, Jr.

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