THE HONORABLE WILLIAM DIXON
Hearing: October 15, 2024
Without Oral Argument

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

HEATHER LOSCHEN, Individually and on behalf of all other similarly situated,

Plaintiff,

v.

SHORELINE COMMUNITY COLLEGE, an agency of the State of Washington,

Defendant.

No. 24-2-00597-8 SEA

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Plaintiff Heather Loschen, on behalf of herself and the other members of the Proposed Settlement Class, respectfully moves the Court for an order: (1) granting preliminary approval of the settlement reached in this action, as set out in the Settlement Agreement ("Settlement Agreement" or "S.A.") attached to the Declaration of Kaleigh N. Boyd as Exhibit 1[1]; (2) approving the proposed Notices to Settlement Class Members of the settlement and the hearing on objections to the proposed settlement and final approval of the settlement in the forms attached to the Settlement Agreement as Exhibits B and C; (3) directing issuance of Notice to Settlement Class Members; (4) determining that the Court will likely be able to approve the Settlement Agreement under the Superior Court Civil Rules, and determining that the Court will likely be able to certify

[1] Any capitalized terms used in this Motion have the same meaning as they are used in the Settlement Agreement.

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the Settlement Class for purposes of judgment, consistent with all material provisions of the Settlement Agreement; and (5) setting a schedule for the filing of objections to the proposed settlement and hearing on final approval of the settlement. Defendant Shoreline Community College (hereinafter "SCC" or "Defendant" and collectively with the Plaintiff, the "Parties") does not oppose this Motion.

I. INTRODUCTION

This action relates to a data breach impacting SCC on or about March 20, 2022 (the "Data Breach"). In the Data Breach, an unauthorized third party accessed personal and private data of approximately 400,000 current and former staff and students, including their names, Social Security numbers, dates of birth, and driver's license numbers.

Following extensive arms-length negotiations, which included a day-long formal mediation and continued negotiations in the weeks that followed, the Parties reached an agreement to resolve the claims in this class action. The settlement is, undeniably, an outstanding result for the Class. It consists of a non-reversionary common fund of $2,300,000.00. The additional terms and conditions are set forth in the Settlement Agreement. If approved, this settlement will resolve the claims asserted in this putative class action lawsuit arising from the Data Breach and bring substantial and meaningful relief to the Proposed Settlement Class.

II. BACKGROUND

A. Defendant Shoreline Community College

SCC is a Washington State community college that offers academic and professional degrees to about 8,000 students each year. *See* Compl. (Dkt. 1) ¶ 1. To work or enroll at SCC, SCC requires individuals to provide SCC with their confidential and sensitive information. *Id.* ¶ 2. This information includes, but is not limited to, an individual's full name, address, phone

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number, date of birth, Social Security number, individual taxpayer identification number (ITIN), citizenship status, and immigration status (collectively, "Private Information"). *Id.* ¶ 12.

B. The Data Breach

On March 20, 2023, SCC learned it had been the subject of a ransomware incident that affected the school's computer systems. *Id.* ¶ 15. On April 5, 2023, SCC confirmed data accessed by the unauthorized third party included the Private Information of some students, staff, and faculty. *Id.* SCC notified approximately 400,000 individuals, including current and former students, staff, and faculty of the cybersecurity attack that may have involved some of their Private Information. *Id.* ¶ 18.

C. Litigation Background, Plaintiff's Claims, and Relief Sought

On January 09, 2024, Plaintiff Heather Loschen filed this Action for Negligence against SCC in the Superior Court of the State of Washington in and for the County of King, alleging, among other things, that SCC failed to properly protect Private Information in accordance with its duties and that it had inadequate security. *See id.* Defendant denies (i) the allegations and all liability with respect to facts and claims alleged in the Action; (ii) that the class representative in the Action and the class she purports to represent have suffered any damage; and (iii) that the Action satisfies the requirements to be certified or tried as a class action under CR 23. S.A. ¶ 2. Nonetheless, Defendant has concluded that further litigation would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. *Id.* Neither this Settlement Agreement nor any negotiation or act performed, or document created in relation to the Settlement Agreement or negotiation or discussion thereof, is or may be deemed to be, or may be used, as an admission of, any wrongdoing or liability. *Id.*

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D. Settlement Negotiations

The parties participated in formal mediation, followed by weeks of arms-length settlement negotiations overseen by well-respected mediator Jill Sperber. *Id.* ¶ 4. Prior to mediation, parties exchanged informal discovery. Decl. Boyd, ¶3. This included Plaintiff providing SCC informal discovery related to her experience with the Data Breach, and SCC providing information related to the breach and the notice it provided to putative class members about the breach. *Id.* During the settlement negotiations, Parties discussed SCC's potential defenses, as well as the Parties' respective positions on the merits of the claims and class certification. *Id.* The protracted settlement negotiations culminated in the Parties agreeing on the form of a CR 2A Agreement on or about July 31, 2024. *Id.* The Parties thereafter finalized all the terms of the Settlement Agreement on October 10, 2024. *Id.* ¶5.

III. STATEMENT OF FACTS

A. Proposed Settlement Class

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

> All U.S. residents whose Personal Information was compromised in the data breach disclosed by Shoreline Community College ("Shoreline" or "Defendant"), on or about April 5, 2023. All members of the Settlement Class that do not opt-out of the settlement shall be referred to as Settlement Class Members.

S.A. ¶ 42.

B. Settlement Fund and Out-of-Pocket Losses

The settlement requires SCC to pay $2.3 million into a non-reversionary common settlement fund set up by Settlement Administrator and funded by SCC (the "Settlement Fund"). This fund will be used to fund (a) Settlement Payments, (b) identity theft protection and credit monitoring service, (c) Settlement Administration Costs, (d) Service Awards to the Class Representatives, and (e) Attorney's Fees, Costs, and Expenses. S.A. ¶¶ 27, 49, 52, 83.

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Settlement Class Members who submit a timely Valid Claim using an approved Claim Form, along with necessary supporting documentation, are eligible to receive compensation for unreimbursed out-of-pocket losses, up to a total of $7,500 per person, subject to the limits of the Settlement Fund. *Id.* ¶ 50. Claims will be subject to review for timeliness, completeness, and validity by a Settlement Administrator; expenses eligible for reimbursement, as well as the requirements for a claim, include the following:

- Documented Out-of-Pocket Losses including, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. Settlement Class Members with Monetary Losses must submit documentation supporting their claims. This can include receipts or other documentation not "self-prepared" by the claimant that document the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.
- Attested Time to compensate for lost time Settlement Class Members reasonably spent responding to the Data Breach. Settlement Class Members may claim up to four (4) hours of time compensated at the rate of $35 per hour. All such lost time must be fairly traceable to the Data Breach, reasonably described by type of lost time incurred,

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and supported by an attestation that the time spent was reasonably incurred dealing with the Data Breach.

Id. ¶ 50, 51.

C. Credit Monitoring Services

Settlement Class Members are also eligible to accept two years of free identity theft and credit monitoring services. ¶ 52. The services shall provide three-bureau monitoring for all Valid Claims. Settlement Class Members will need to enroll to receive this benefit. *Id.*

D. Class Notice and Settlement Administration

Subject to the Court's approval, the Parties have agreed to retain CPT Group ("Settlement Administrator"), a nationally recognized class action settlement administrator, as the Settlement Administrator. Decl. Boyd, ¶ 6. Subject to Court approval, the Settlement Administrator will provide the Class Notice to all Class Members as described in the Settlement Agreement. Within 10 days of the Preliminary Approval Order, SCC will provide the Settlement Class List to the Settlement Administrator. S.A. ¶ 42. Within 30 days after the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate Notice to the members of the Settlement Class. *Id.* ¶ 62. As soon as practicable but starting no later than 30 days from the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Short Form Notice via USPS First Class Mail to all Settlement Class Members for which it has mailing addresses. *Id.* Before mailing the Short Form Notice, the Settlement Administrator will update the addresses provided by Defendant with the National Change of Address (NCOA) database. *Id.* It shall be presumed that the intended recipients received the Short Form Notice if the mailed Short Form Notices have not been returned to the Settlement Administrator as undeliverable within 15 days of mailing. *Id.* The Short-Form Notice will direct the recipients to the Settlement Website

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and inform Settlement Class Members, among other things, of the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys' fees, and the date of the Final Approval Hearing. *Id.* ¶ 47.

The Settlement Administrator will also establish a dedicated settlement website (and will maintain and update the website throughout the claim period) with the Long Notice and Claim Form approved by the Court, as well as the Settlement Agreement. *Id.* ¶ 46, ¶ 68(b). The Settlement Administrator will also make a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within 2 business days via live operator. *Id.* ¶ 68(e). Additionally, no later than 14 days before the Claims Deadline, a Reminder Notice will be made to the Class. *Id.* ¶ 35. After approval of Valid Claims, the Settlement Administrator will be responsible for processing and transmitting Settlement Payments to Settlement Class Members. *Id.* ¶ 68 (i).

E. Class Representatives' Service Award, Attorneys' Fees, and Costs

The Parties have agreed that Plaintiff will separately petition the Court to award the Class Representative a service award up to $5,000 in recognition of the time, effort, and expense she incurred pursuing claims that benefited the entire class. *Id.* ¶ 81. This payment will be made from the Settlement Fund and shall be separate and apart from any other benefits available to the Class Representatives and Participating Settlement Class Members under the terms of the Settlement Agreement. *Id.*

Plaintiff will also separately seek an award of attorneys' fees and reimbursement of litigation costs and expenses. Subject to Court approval, Class Counsel will ask the Court to

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approve, and SCC does not oppose, an award of attorneys' fees of up to 30 percent of the Settlement Fund, plus litigation costs and expenses, to be paid from the Settlement Fund. *Id*. ¶ 83. The Parties did not discuss the payment of attorneys' fees, costs, expenses, and/or service awards to the Class Representatives until after the substantive terms of the settlement had been agreed upon. Boyd Decl. ¶ 14.

F. Reductions and Residual Funds

Plaintiff believes the $2.3 million fund will be more than ample to accommodate the amounts drawn from it, (Boyd Decl. ¶ 10), but, in the unlikely event it is not, the total cost to SCC will not exceed $2.3 million and all claims drawn from it will be reduced pro rata. S.A. ¶ 53.

In the event that Compensation for Out-of-Pocket Losses, Attested Time, Identity Theft Protection and Credit Monitoring Services, Claims Administration Costs, Service Awards to Class Representatives, and Attorney's Fees and Litigation Expenses exceed the Settlement Fund, all class member payments will be reduced on a *pro rata* basis such that Defendant's maximum amount to be paid does not exceed the non-reversionary Settlement Fund. *Id.* If Compensation for Out of Pocket Losses, Attested Time, Identity Theft Protection and Credit Monitoring Services, Claims Administration Costs, Service Awards to Class Representatives, and Attorney's Fees and Litigation Expenses do not exceed the Settlement Fund, all remaining funds will be distributed on a per class member basis, up to an additional $300 for each claimant, to all Settlement Class Members who submitted a Valid Claim. *Id.* Any portion of the settlement fund that remains after all of the above have been paid shall be distributed *cy pres* to the Legal Foundation of Washington. *Id.*

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G. Class Release

Settlement Class Members who do not affirmatively opt out will release any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys' fees, costs, interest or expenses) that the Releasing Parties had, 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. *Id.* ¶ 34.

A. LEGAL AUTHORITY

As a matter of "express public policy" Washington courts strongly favor and encourage settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258 (1997); *see also Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 190 (2001), *petition denied sub nom. Bebchick v. Holland Am. Line-Westours, Inc.*, 536 U.S. 941 (2002) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution." (citation omitted)). This is particularly true in class actions and other complex matters where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 555–56 (9th Cir. 2019) (*en banc*); *Allen v.*

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Bedolla, 787 F.3d 1218, 1223 (9th Cir. 2015). Nonetheless, the settlement of a class action requires the Court's approval in order to ensure that the settlement is fair, reasonable, and adequate. This inquiry requires that the reviewing court decide whether the settling parties have shown that the Court likely will be able both (i) to approve the proposal and, if it has not previously certified a class, (ii) to certify the class for purposes of judgment on the proposal. This requirement has been characterized as "a preliminary determination that the settlement 'is fair, reasonable, and adequate'" when considering the factors set out in Rule 23. *Rollins v. Dignity Health*, 336 F.R.D. 456, 461 (N.D. Cal. 2020). The decision to approve or reject a proposed settlement is committed to the Court's sound discretion. *See Pickett*, 145 Wn.2d at 190 (an appellate court will "intervene in a judicially approved settlement of a class action only when the objectors to that settlement have made a clear showing that the [trial court] has abused its discretion.").

The requirements of Washington Civil Rule 23 are procedural and require that notice of the settlement be given to the class. Washington Civil Rule 23 is nearly identical to its federal counterpart, Federal Rule of Civil Procedure 23. Consequently, Washington courts look to the more numerous federal cases for guidance, finding such cases to be highly persuasive. *Pickett*, 145 Wn.2d at 188; *Brown v. Brown*, 6 Wn. App. 249, 252 (1971).

The purpose of the Court's preliminary evaluation of the settlement is to determine whether it falls "within the range of possible approval," Rollins, 336 F.R.D. at 461 (citing *In re Tableware Antitrust Litig*., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007)), and thus whether notice to the class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are worthwhile. *Pickett*, 145 Wn.2d at 188; William Rubenstein et al., *Newberg on Class Actions* § 11.25 *et seq*., and § 13.64 (4th ed. 2002 and Supp. 2004) ("*Newberg*").

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

Preliminary approval of a class action settlement, and proceeding to class notice stage, is appropriate if "the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *Rollins*, 336 F.R.D. at 461 (citing *In re Tableware*, 484 F. Supp. 2d at 1079).

"The initial decision to approve or reject a settlement proposal is committed to the sound discretion of the trial judge." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). However, courts must give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion

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between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1027 (9th Cir. 1998).

A. The Settlement Class Should Be Certified.

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

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

a. Numerosity

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

Here, the class definition includes all individuals whose Private Information was impacted by the SCC Data Breach. This proposed Settlement Class encompasses approximately 400,000 individuals, which is enough to surpass the threshold required to establish numerosity. This figure is based on the amount of current and former students, staff, and employees who were notified their Private Information may have been accessed during the Data Breach. Accordingly, the Settlement Class is sufficiently numerous to justify certification.

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b. Commonality

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

Here, Plaintiff contends that there are a number of key common questions of law and fact arising out of SCC's practices. These include (but are not limited to):

- Whether SCC had a duty to protect the Private Information compromised in the data breach;
- Whether SCC failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the Private Information compromised in the data breach;
- Whether SCC's failures were the direct and proximate cause of the data breach;
- Whether SCC's conduct was negligent; and
- Whether Plaintiff and Class are entitled to damages, attorney's fees, and/or injunctive relief.

The resolution of those inquiries revolves around evidence that does not vary from Settlement Class Member to Class Member, and so can be fairly resolved—whether through litigation or settlement—for all Class Members at once. In the absence of settlement class certification and settlement, each individual Class Member would be required to litigate

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numerous common issues of fact that can be readily, objectively, and accurately resolved in a single action. In addition, the application of Washington law, which governs in this case, is uniform and creates common issues that arise out of a nucleus of operative facts. For these reasons, the commonality requirement is satisfied for purposes of settlement class certification.

c. Typicality

The typicality requirement asks whether "the claims or defenses of the representative parties are typical of the claims or defenses of the class." CR 23(a)(3). "[A] plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Behr Process*, 113 Wn. App. at 320 (citation omitted). "Where the same unlawful conduct is alleged to have affected both named plaintiffs and the class members, varying fact patterns in the individual claims will not defeat the typicality requirement." *Id.*; *see also State v Oda*, 111 Wn. App. 79, 89 (2002), *review denied*, 147 Wn.2d 1018 (2002).

Here, Plaintiff's and Settlement Class Members' claims all stem from the same course of conduct and pattern of alleged wrongdoing (namely, collecting, storing, and maintaining confidential, sensitive Private Information allegedly without implementing appropriate cybersecurity measures). Additionally, Plaintiff's and Settlement Class Members' claims all stem from the same event—the hacker's attack on SCC's computers and servers—and the cybersecurity protocols that SCC had (or did not have) in place to protect Plaintiff's and Settlement Class Members' data. Thus, Plaintiff's claims are typical of the Settlement Class Members' and the typicality requirement is satisfied.

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d. Adequacy

The fourth prerequisite for class certification is a finding that the named plaintiffs will "fairly and adequately protect the interest of the class." CR 23(a)(4). This test is satisfied if (1) the named plaintiffs are able to prosecute the action vigorously through qualified counsel, and (2) the named plaintiffs do not have interests that are antagonistic to those of absent class members. *See De Funis v. Odegaard*, 84 Wn.2d 617 (1974); *Marquardt v. Fein*, 25 Wn. App. 651, 656–57 (1980); *Hansen v. Ticket Track, Inc*., 213 F.R.D. 412, 415 (W.D. Wash. 2003).

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

Further, Class Counsel are experienced vigorous class action litigators and are well suited to advocate on behalf of the class. *See* Boyd Decl. ¶¶ 22-25. Class Counsel has significant experience litigating and settling class actions, including consumer and data breach class actions, and numerous courts have previously approved them as class counsel in data breach cases due to their qualifications, experience, and commitment to the prosecution of cases. Moreover, Class Counsel has put their experience to use in negotiating an early-stage settlement that guarantees immediate relief to Settlement Class Members. Thus, the requirements of CR 23(a) are satisfied.

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

"In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under 23(b)(1), (2) or (3)." *Hanlon*, 150 F.3d at 1022. Plaintiff seeks certification of the class under Washington Civil Rule 23(b)(3), which requires a finding that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." CR 23(b)(3). The predominance and superiority requirements of CR 23(b)(3) are satisfied "whenever the actual interests of the parties can be served best by settling their differences in a single action." *Cottle*, 340 F.R.D. at 371 (quoting *Hanlon*, 150 F.3d at 1022). This "inquiry focuses on 'the relationship between the common and individual issues' and 'tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Stromberg v. Qualcomm Inc.*, 14 F.4th 1059, 1067 (9th Cir. 2021) (quoting *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir. 2009)).

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

a. Common Questions Predominate

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The predominance requirement "is not a rigid test, but rather contemplates a review of many factors, the central question being whether 'adjudication of the common issues in the particular suit has important and desirable advantages of judicial economy compared to all other issues, or when viewed by themselves.'" *Sitton v. State Farm Mut. Auto. Ins. Co*., 116 Wn. App. 245, 254 (2003) (quoting 2 Newberg § 4:25). "[A] single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions." *Id*. (quoting 2 *Newberg* § 4.25); *see also Miller*, 115 Wn. App. at 825. In deciding whether common issues predominate, the Court "is engaged in a pragmatic inquiry into whether there is a common nucleus of operative facts to each class member's claim." *Behr Process*, 113 Wn. App. at 323 (citations and internal marks omitted). Common questions predominate here because the claims of Plaintiff and Settlement Class Members arise out of the common and uniform conduct of SCC. Moreover, these common questions present a significant aspect of the case and can be resolved in one settlement proceeding for all Settlement Class Members.

Next, Class Counsel has conducted a thorough and realistic assessment of liability, including the risks involved in proceeding with litigation, and the risk that the case would not be certified as a class action. Class Counsel has conferred on separate occasions with SCC's Counsel to discuss the potential for settlement, and after extensive arm's-length settlement negotiations, including an at-first unsuccessful day-long mediation, the Parties reached a resolution only after several weeks of additional negotiation resulting in a Settlement Agreement that—if approved—will resolve all pending litigation and provide outstanding relief. Here, "[t]he Class Members do not have a strong interest in bringing individual cases, as the maximum amount of recovery for an individual class member would likely be a fraction of the cost of bringing a lawsuit." *Cottle*, 340 F.R.D. at 372.

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Other courts have recognized that the types of common issues arising from data breaches predominate over any individualized issues. *See, e.g.*, *In re Heartland Pmt. Sys.*, 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) (finding predominance satisfied in data breach case despite variations in state laws at issue, concluding such variations went only to trial management, which was inapplicable for settlement class); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312–315 (N.D. Cal. 2018) (finding predominance was satisfied because "Plaintiffs' case for liability depend[ed], first and foremost, on whether [the defendant] used reasonable data security to protect Plaintiffs' personal information," such that "the claims rise or fall on whether [the defendant] properly secured the stolen personal information"); *see also Hapka v. CareCentrix, Inc.*, 2018 WL 1871449, at *2 (D. Kan. Feb. 15, 2018) (finding predominance was satisfied in a data breach case, stating "[t]he many common questions of fact and law that arise from the E-mail Security Incident and [defendant's] alleged conduct predominate over any individualized issues"); *In re The Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding common predominating questions included whether Home Depot failed to reasonably protect class members' personal and financial information, whether it had a legal duty to do so, and whether it failed to timely notify class members of the data breach).

b. Superiority

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

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Here, the resolution of approximately 400,000 claims in one action is far superior to litigation via individual lawsuits. Additionally, settlement class certification—and class resolution—provide an increase in judicial efficiency and conservation of resources over the alternative of individually litigating tens of thousands of individual data breach cases arising out of the same data breach. *See Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (class litigation is superior when it will reduce costs and conserve judicial resources); *Zinser v. Accufix Rsch. Inst.*, 253 F.3d 1180, 1190 (9th Cir. 2001) ("Where damages suffered by each putative class member are not large, this factor weighs in favor of certifying a class action."); *id*. at 1191 (class litigation is superior when "a group composed of consumers or small investors typically will be unable to pursue their claims on an individual basis because the cost of doing so exceeds any recovery they might secure." (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Fed. Prac. and Proc*. § 1779, at 557 (2d ed. 1986))); *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1096 (10th Cir. 2014).

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

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

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

1. Lead Plaintiff and Its Counsel Have Adequately Represented the Class.

As set forth above, Counsel for the Plaintiff are experienced class action litigators and are well suited to advocate on behalf of the class. *See* Boyd Decl. ¶¶ 22-25. They and their firm have significant experience litigating, trying, and settling class actions, including consumer and data

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breach class actions, and numerous courts have previously approved them as class counsel in data breach cases due to their qualifications, experience, and commitment to the prosecution of cases. *Id*. Moreover, Class Counsel has put its experience to use in negotiating an early-stage settlement that guarantees substantial and near-term relief to Settlement Class Members.

2. The Proposed Settlement is the Result of Good Faith, Arm's-Length Negotiations by Informed, Experienced Counsel Who Were Aware of the Risks of the Litigation.

Courts recognize that arm's-length negotiations conducted by competent counsel are prima facie evidence of fair settlements, as are settlements achieved with the help of a mediator. *See* 2 *McLaughlin on Class Actions* § 6:7 (8th ed. 2011) ("A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion."). This deference reflects the understanding that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness consideration of Washington Civil Rule 23(e). As the United States Supreme Court has held, "[o]ne may take a settlement amount as good evidence of the maximum available if one can assume that parties of equal knowledge and negotiating skill agreed upon the figure through arms-length [sic] bargaining . . . ." *Ortiz v. Fibreboard Corp*., 527 U.S. 815, 852 (1999); *see also Hughes v. Microsoft Corp*., No. C98-1646C, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001) ("A presumption of correctness is said to attach to a class settlement reached in arms-length [sic] negotiations between experienced capable counsel after meaningful discovery."); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig*., 227 F.R.D. 553, 567 (W.D. Wash. 2004) (approving settlement entered into in good faith, following arm's-length and non-collusive negotiations). The settlement here is the result of intensive, arm's-length negotiations between experienced attorneys who are highly familiar with class action litigation in general and with the legal and factual issues of this case in particular.

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Particularly, in this case, the Parties reached an agreement only after Parties exchanged informal discovery and the Parties discussed their respective positions on the merits of the claims and class certification. Boyd Decl. ¶¶ 3-5. The Parties agreed to engage Jill Sperber as a mediator to oversee settlement negotiations in the action. *Id*. ¶ 4. Prior to mediation, the Parties submitted mediation briefs addressing the strengths and weaknesses of their respective claims. Following extensive arm's-length settlement negotiations conducted through Mr. Sperber that included an unsuccessful formal mediation session, followed by weeks of continued negotiations, the Parties reached a resolution that—if approved—will resolve all pending litigation and provide outstanding relief. *Id*. ¶¶ 4-5. The arm's-length nature of the settlement negotiations and the involvement of an experienced mediator like Ms. Sperber support the conclusion that the settlement was achieved free of collusion, and it should be preliminarily approved.

3. The Settlement Provides Adequate Relief to the Class.

a. The Substantial Benefits for the Class, Weighed Against the Costs, Risks, and Delay of Trial and Appeal, Support Preliminary Approval.

As discussed above, SCC denies: (i) the allegations and all liability with respect to facts and claims alleged; (ii) that the Class Representative and the Class she purports to represent have suffered any damage; and (iii) that the action satisfies the requirements to be certified or tried as a class action under CR 23. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain—especially where questions of law and fact exist, which is common in data breach litigation. Data breach litigation is evolving; and there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc*., No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases . . . are particularly risky, expensive, and complex." (citation omitted)). While Plaintiff strongly believes

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in the merits of her case, she also understands that SCC asserts a number of potentially case-dispositive defenses.

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

b. The Proposed Method for Distributing Relief is Effective.

The settlement negotiated on behalf of the Class provides for a $2.3 million non-reversionary Settlement Fund where Settlement Class Members can easily submit a claim for monetary benefits. To do so, Settlement Class Members need only confirm that they incurred some cost or expense, including, but not limited to, lost time. Participating Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via a claims website or physically by USPS mail to the Settlement Administrator. S.A. ¶ 60.

4. The Proposal is Designed to Treat Class Members Equitably.

The proposed settlement is a non-reversionary common fund that does not provide any preferential treatment to any segments of the Settlement Class. Settlement Class Members are able to recover damages for injuries caused by the Data Breach. The reimbursement for out-of-pocket expenses, as well as time spent, allows Settlement Class Members to obtain relief based upon the specific types of damages they incurred and treats every claimant in those categories equally.

The proposed Class Representative intends to apply for a service award. These awards "are fairly typical in class action cases" and are intended to compensate class representatives for

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participation in the litigation. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). A Service Award to the named Plaintiff is appropriate given the efforts and participation of Plaintiff in the litigation and does not constitute preferential treatment.

D. Other Factors Considered By Courts in Washington and the Ninth Circuit are Also Satisfied.

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

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

Kim v. Allison, 8 F.4th 1170 (9th Cir. 2021) (citing *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). Washington Civil Rule 23 also requires the court to consider "the terms of any proposed award of attorney's fees" and scrutinize the settlement for evidence of collusion or conflicts of interest before approving the settlement as fair. *Id.* at 1179 (citing *Briseño v. Henderson*, 998 F.3d 1014, 1024–25 (9th Cir. 2021)).

Here, all of the relevant factors support preliminary approval. Factors 1–4 and 6 are discussed above, and all overwhelmingly support settlement. In respect to the fifth factor—the extent of discovery completed—the Parties reached a settlement only after exchanging informal discovery, including the Plaintiff providing discovery regarding their own experience with the Data Breach and her ability to serve as Class Representative, and SCC providing discovery about the nature and extent of the data breach; and the Parties discussed their respective positions on the merits of the claims and class certification. In addition, prior to mediation, the Parties submitted

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lengthy mediation briefs addressing the strengths and weaknesses of their respective claims. Boyd Decl. ¶ 4. This factor therefore weighs in favor of approval, too.

E. Approval of the Proposed Class Notice is Warranted.

Washington Civil Rule 23(e)(1) requires the Court to "direct reasonable notice to all class members who would be bound by" a proposed settlement. For classes certified under Washington Civil Rule 23(b)(3), parties must provide "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through effort." CR 23(c)(2). The best practicable notice is that which "is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Notice provided under the Settlement Agreement meets all the criteria set forth by Washington Civil Rule 23 and the Manual for Complex Litigation. *See* S.A., Exs. B and C. Here, the settlement provides for direct and individual notice to be sent via first class mail to each Settlement Class Member. Not only has SCC agreed to provide Settlement Class Members with individualized notice via direct mail, but all versions of the settlement notice will be available to Settlement Class Members on the Settlement Website, along with all relevant filings. S.A. ¶ 62. The Settlement Administrator will also make a toll-free telephone number available by which Settlement Class Members can seek answers to questions about the settlement. *Id*.

The notices themselves are clear and straightforward. They define the Settlement Class; clearly describe the options available to Settlement Class Members and the deadlines for taking action; describe the essential terms of the settlement; disclose the requested service award for the Settlement Class Representative as well as the amount that proposed Settlement Class Counsel

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intends to seek in fees and costs; explain procedures for making claims, objections, or requesting exclusion; provide information that will enable Settlement Class Members to calculate their individual recovery; describe the date, time, and place of the Final Approval Hearing; and prominently display the address and phone number of Class Counsel. *See* S.A., at Exs. B and C.

The direct mail Notice proposed here is the gold standard, and it exceeds Notice programs approved by other courts. *See Stott v. Capital Fin. Servs*., 277 F.R.D. 316, 342 (N.D. Tex. 2011) (approving notice sent to all class members by first class mail); *Billittri v. Secs. Am., Inc*., Nos. 3:09-cv-01568-F, 3:10-cv-01833-F, 2011 WL 3586217, *9 (N.D. Tex. Aug. 4, 2011) (same). The Notice is designed to be the best practicable under the circumstances, apprises Settlement Class members of the pendency of the action, and gives them an opportunity to object or exclude themselves from the settlement. Additionally, the Settlement Agreement provides for a Reminder Notice to be issued to Settlement Class Members no later than 14 days before the Claims Deadline, if determined to be necessary. S.A. ¶ 62(e). Accordingly, the Notice process should be approved by this Court.

IV. CONCLUSION

Plaintiff has negotiated a fair, adequate, and reasonable settlement that guarantees Settlement Class Members significant relief in monetary payments and identity theft protections. The settlement is well within the range of reasonable results, and an assessment of factors required for final approval favors preliminary approval. Plaintiff respectfully requests this Court certify the Class for settlement purposes and grant the Motion for Preliminary Approval.

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Dated: October 11, 2024

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CERTIFICATE OF SERVICE

I, Madison R. Peterson, declare and say that I am a citizen of the United States and resident of the state of Washington, over the age of 18 years, not a party to the above-entitled action, and am competent to be a witness herein. My business address and telephone number are 1200 Fifth Avenue, Suite 1700, Seattle, Washington 98101, telephone 206.682.5600.

On October 11, 2024, I caused to be served the foregoing document on the individual named below via King County E-Service:

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Special Assistant Attorney General
Representing Defendant Shoreline Community College

I declare under penalty of perjury under the laws of the state of Washington and the United States that the foregoing is true and correct.

Executed this 11th day of October, 2024, at Seattle, Washington.

/s/ *Madison R. Peterson*
Madison R. Peterson, Legal Assistant