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13  
14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF OREGON**  
16 **(PORTLAND DIVISION)**

17 LISA UNSWORTH, MICHAEL RAMONE,  
CHRISTOPHER POTTER, THERESE COOPER,  
18 and CHARLES SANDERSON, individually and  
19 on behalf of all others similarly situated,

20 Plaintiffs,

21 v.

22 LEWIS AND CLARK COLLEGE

23 Defendant.  
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**Case No.: 3:24-cv-00614-SB**

**PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

1 **I. INTRODUCTION**

2 Plaintiffs Lisa Unsworth, Dr. Michael Ramone, Christopher Potter, Therese Cooper, and  
3 Charles Sanderson (collectively, “Plaintiffs”) submit this Unopposed Motion for Preliminary  
4 Approval of Class Action Settlement as set forth in the Settlement Agreement<sup>1</sup> attached to the  
5 Declaration of Nickolas J. Hagman in Support of Motion for Preliminary Approval of Class Action  
6 Settlement (“Hagman Decl.”). Defendant Lewis and Clark College (“Defendant”) does not oppose  
7 certification of the Settlement Class solely for purposes of facilitating the settlement sought to be  
8 approved in this motion. As described below, Plaintiffs strongly believe the Settlement, which  
9 establishes a \$500,000.00 non-reversionary common fund settlement, is fair, reasonable, and  
10 adequate, and that the Court should grant preliminary approval and notice should be distributed to  
11 Class Members.  
12

13 **II. STATEMENT OF FACTS**

14 This is a putative class action arising out of a data security incident of Defendant’s  
15 information systems and databases (the “Data Breach”). *See* First Amended Complaint (“FAC”) ¶ 3.  
16 During the Data Breach, cybercriminals accessed or acquired Plaintiffs’ and Class Members’  
17 Personal Information including their names, dates of birth, Social Security numbers, driver’s license  
18 or state identification numbers, passports, medical and health insurance information, and financial  
19 account numbers and financial account routing numbers (collectively, “Private Information”). *Id.*  
20 ¶¶ 2–3. In April 2024, Defendant issued notice of the Data Breach to impacted individuals, totaling  
21 approximately 48,799 proposed Class Members. *Id.* ¶ 4.  
22

23 Plaintiffs filed a Class Action Complaint (ECF No. 1) on April 10, 2024, on behalf of all  
24 persons whose Private Information may have been compromised, alleging claims based on  
25

26 <sup>1</sup> Unless otherwise indicated, all capitalized terms used herein have the same meaning as those used in the Settlement  
27 Agreement. *See* Hagman Decl., Ex. 1.

1 Defendant's failure to: (i) adequately protect Private Information; (ii) warn of its inadequate  
2 information security practices; and (iii) effectively monitor its network for security vulnerabilities  
3 and incidents. Plaintiffs allege that Defendant failed to comply with industry standards and FTC  
4 Guidelines, amounting to negligence and violations of federal and state statutes. Plaintiffs and Class  
5 Members allege that they suffered injury as a result of Defendant's conduct. These injuries include:  
6 (i) the continued and increased risk of identity theft and fraud; (ii) the loss of time to mitigate the  
7 risk of identity theft and fraud; (iii) the diminution of value of their Private Information; and (iv) the  
8 future cost of credit and identity theft monitoring. On June 28, 2024, Plaintiffs filed the operative  
9 FAC (ECF No. 12), which added Plaintiffs Charles Sanderson, Dr. Michael Ramone, Christopher  
10 Potter, and Therese Cooper. The Amended Complaint alleges three separate classes: (i) all persons  
11 in the United States whose Private Information was accessed in the Data Breach (*id.* ¶ 110); (ii) all  
12 persons who are residents in the State of Oregon whose Private Information was accessed in the  
13 Data Breach (¶ 111); and (iii) all persons who are residents in the State of Washington whose  
14 Private Information was accessed in the Data Breach (¶ 112). The Complaint also alleges the  
15 following causes of action: negligence, negligence *per se*, breach of implied contract, unjust  
16 enrichment, intrusion upon seclusion, violations of the Oregon Unlawful Trade Practices Act (Or.  
17 Rev. Stat. § 646.638), and violations of the Washington Consumer Protection Act (RCW  
18 19.86.020). Defendant denies all claims and contentions alleged against it.

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22 Cognizant of the risks associated with protracted litigation, the Parties agreed to explore  
23 resolution via mediation with respected-mediator Bruce Friedman. Following an intense, full-day  
24 mediation, and as a result of a mediator's proposal, the Parties were able to reach the Settlement  
25 Agreement currently before the Court. It provides excellent and timely benefits to the Settlement  
26

1 Class and is fair, reasonable, and adequate. Accordingly, Plaintiffs respectfully request that the  
2 Court preliminarily approve the Settlement.

### 3 **III. PROCEDURAL HISTORY**

4 Following the filing of the FAC, the Parties agreed to explore the potential for early  
5 resolution of this matter. The Parties exchanged informal discovery and, through this process, were  
6 able to evaluate the collective strengths and weaknesses of their positions. On September 23, 2024,  
7 the parties participated in a formal mediation moderated by Bruce A. Friedman of JAMS (“Mr.  
8 Friedman”). The mediation was hotly contested and was resolved through only Mr. Friedman’s  
9 extensive efforts and mediator’s proposal. *See* Hagman Decl. ¶ 7.

10 Following the mediation, the Parties spent several weeks drafting the Settlement Agreement  
11 and negotiating the details of the settlement terms and exhibits (“Hagman Decl.”), ¶ 8. Additionally,  
12 Plaintiffs’ counsel solicited and reviewed competitive bids for notice and claims administration. *Id.*  
13 Finally, Plaintiffs’ counsel drafted this motion for preliminary approval and the supporting  
14 declaration. *Id.* Ultimately, the Settlement accomplishes what Plaintiffs set out to achieve by  
15 initiating this Litigation: it obtains compensation for victims of the Data Breach for the harm  
16 incurred as a result of the Data Breach.

### 17 **IV. THE SETTLEMENT TERMS**

#### 18 **A. Proposed Settlement Class**

19 The Proposed Settlement will provide substantial relief for the Settlement Class, which is  
20 defined as: “all individuals whose Personal Information may have been involved in the Data  
21 Breach.” Settlement Agreement (“S.A.”) ¶ 41. Excluded from the Settlement Class are: (1) the  
22 judges presiding over this Action, and members of their direct families; (2) Defendant, its  
23 subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its  
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1 parents have a controlling interest and their current or former officers, directors, and employees;  
2 and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out  
3 Deadline.

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

5 The Settlement negotiated on behalf of the Class consists of a \$500,000.00 non-reversionary  
6 common fund settlement from which class members may make a claim for: (1) reimbursement of  
7 Out-of-Pocket Losses or Cash Award and (2) credit monitoring.  
8

9 **1. Documented Out-of-Pocket Losses Reimbursement**

10 The first category of relief provides reimbursement for documented costs or expenditures  
11 incurred by a Settlement Class Member that are fairly traceable to the Data Breach. *Id.* ¶ 51.  
12 Specifically, this category of reimbursements includes: (i) unreimbursed losses relating to fraud or  
13 identity theft; (ii) professional fees including attorneys’ fees, accountants’ fees, and fees for credit  
14 repair services; (iii) costs associated with freezing or unfreezing credit with any credit reporting  
15 agency; (iv) credit monitoring costs that were incurred on or after the Data Incident through the date  
16 of claim submission; and (v) miscellaneous expenses such as notary, fax, postage, copying, mileage,  
17 and long-distance telephone charges. *Id.*  
18

19 **2. Cash Award**

20 The second category provides a *pro rata* cash award to Settlement Class Members who  
21 submit a valid and timely Claim Form. *Id.* ¶ 52. The amount of the cash award depends on the  
22 number of valid claims submitted.  
23

24 **C. Settlement Benefits – Credit Monitoring**

25 All Settlement Class Members are eligible to enroll in two (2) years of three-bureau Credit  
26 Monitoring Services, regardless of whether the Settlement Class Member submits a claim for  
27

1 reimbursement of Out-of-Pocket Losses or a Cash Award. *Id.* All claimants who timely activate the  
2 credit monitoring service will receive it for a period of two (2) years from the date of activation,  
3 including daily three-bureau credit monitoring, identity restoration services, and \$1 million in  
4 identity theft insurance, among other features. *Id.* ¶ 53.

5  
6 **D. Pro-Rata Contingencies and Residual Distributions**

7 The Settlement provides for prioritization of distribution of funds to approved claims,  
8 starting with Out-of-Pocket Losses, then Credit Monitoring Services, then Cash Awards. *Id.* ¶ 54.  
9 Based on the value of approved claims and the amount of the Net Settlement Fund (which is the  
10 amount available after payment for notice and claims administration, attorneys' fees and costs, and  
11 plaintiff service awards), there may be *pro rata* decreases in the amount of approved claims. *Id.*

12 **E. Class Notice and Settlement Administration**

13 Notice will be paid from the Settlement Fund and has been designed to reach the greatest  
14 number of Settlement Class Members practicable. *Id.* ¶ 27. Within ten (10) days after the date of the  
15 Preliminary Approval Order, Defendant will provide the Settlement Class List to the Settlement  
16 Administrator. *Id.* ¶ 62. Within thirty (30) days of the Preliminary Approval Order, a Short Form  
17 Notice will be sent to Settlement Class Members via email where applicable, and via U.S. Mail  
18 where no email is available. *Id.* ¶ 63(a). A Long Form Notice and Claim Form will be available to  
19 Settlement Class Members on the Settlement Website, which will be established as soon as  
20 practicable following entry of the Preliminary Approval Order. *Id.* ¶¶ 24, 63(b).

21  
22 **F. Attorneys' Fees and Expenses**

23 Upon preliminary approval of the Settlement, and at least 14 days before the Opt-Out and  
24 objection deadlines, proposed Class Counsel will file a motion for an award of attorneys' fees and  
25 costs not to exceed one-third of the Settlement Fund. *Id.* ¶ 84.  
26

1           **G. Service Awards to Named Plaintiffs**

2           Plaintiffs in this case have been crucial to the litigation of this matter, sacrificing their  
3 privacy and time and providing important information about the impact of the Data Incident to  
4 proposed Settlement Class Counsel. Upon preliminary approval, and along with their motion for an  
5 award of attorneys' fees and costs, Class Counsel will seek service award payments not to exceed  
6 \$2,000 for each of the Class Representatives in recognition for their contributions to the Action,  
7 subject to Court approval. *Id.* ¶¶ 37, 82. The Service Award Payments will be made from the  
8 Settlement Fund, paid by the Settlement Administrator. *Id.* ¶ 54.

10           **H. Release**

11           Upon entry of the Final Approval Order, Plaintiffs and the Settlement Class will be deemed  
12 to have “released, acquitted, relinquished, and forever discharged any and all Released Claims  
13 against Defendant and its present and former departments or divisions, and any and all of their  
14 respective past, present, and future officers, directors, employees, partners, servants, agents,  
15 successors, attorneys, advisors, consultants, contractors, vendors, service providers, representatives,  
16 insurers, reinsurers, subrogees, and the predecessors, successors, and assigns of any of the  
17 foregoing[.]” *Id.* ¶ 79. “Released Claims” are defined as “any and all claims or causes of action of  
18 every kind and description, including causes of action in law, claims in equity, complaints, suits or  
19 petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative  
20 relief . . . that the Releasing Parties had, have or may claim now or in the future to have . . . that  
21 were or could have been asserted or alleged arising out of the same nucleus of operative facts as any  
22 of the claims alleged or asserted in the Action[.]” *Id.* ¶ 34.  
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1 **V. THE COURT SHOULD CERTIFY THE PUTATIVE CLASS FOR THE PURPOSE**  
2 **OF SETTLEMENT AND PRELIMINARY APPROVE THE SETTLEMENT**

3 Plaintiffs bring this motion pursuant to Federal Rule Civil Procedure 23(e), under which  
4 court approval is required to finalize a class action settlement. Courts, including those in this  
5 Circuit, endorse a three-step procedure for approval of class action settlements: (1) preliminary  
6 approval of the proposed settlement followed by (2) dissemination of court-approved notice to the  
7 class and (3) a final fairness hearing at which class members may be heard regarding the settlement  
8 and at which evidence may be heard regarding the fairness, adequacy, and reasonableness of the  
9 settlement. *Manual for Complex Litigation* (Fourth) (2004) § 21.63.  
10

11 Here, Plaintiffs request the Court grant preliminary approval of the proposed Settlement.

12 **A. Rule 23 Class Certification of the Settlement Class is Warranted**

13 Federal courts strongly favor and encourage settlements, particularly in class actions where  
14 the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential  
15 benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276  
16 (9th Cir. 1992) (noting the “strong judicial policy that favors settlements, particularly where  
17 complex class action litigation is concerned”); 4 Newberg on Class Actions § 11.41 (4th ed. 2002)  
18 (citing cases); *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020) (“The Ninth Circuit  
19 adheres to a ‘strong judicial policy that favors settlements, particularly where complex class action  
20 litigation is concerned.’”). Forcing claims like those at issue here to be handled through individual  
21 litigation would unduly tax the court system, require massive expenditures of resources, and would  
22 be impracticable given the relatively small value of the claims of the individual class members.  
23 Thus, the Settlement provides the best vehicle for Settlement Class Members to receive the relief to  
24 which they are entitled in a prompt and efficient manner.  
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1 The *Manual for Complex Litigation* (Fourth) advises that in cases presented for both  
2 preliminary approval and class certification, the “judge should make a preliminary determination  
3 that the proposed class satisfies the criteria.” *Id.* § 21.632. The court’s evaluation of certification in  
4 the context of a settlement is somewhat different than in a case that has not yet settled. *Amchem*  
5 *Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In some ways, the court’s review of certification  
6 of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the  
7 case management issues inherent in the ascertainable class determination need not be confronted.  
8 *See id.* Other certification issues, however, such as “those designed to protect absentees by blocking  
9 unwarranted or overbroad class definitions,” require heightened scrutiny in the settlement-only class  
10 context “for a court asked to certify a settlement class will lack the opportunity, present when a case  
11 is litigated, to adjust the class, informed by the proceedings as they unfold.” *Id.*  
12

13  
14 Plaintiffs here seek certification of a Settlement Class consisting of: “all individuals whose  
15 Personal Information may have been involved in the Data Breach.” S.A. ¶ 41. The Settlement Class  
16 contains 48,799 individuals. For the reasons set forth below, the Court should certify the Class for  
17 settlement purposes and preliminarily approve the Settlement.

### 18 **1. The Settlement Satisfies Rule 23(a)**

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

2 While there is no fixed point at which the numerosity requirement is met, Courts find  
3 numerosity where there are so many class members as to make joinder impracticable. *See* Fed. R.  
4 Civ. P. 23(a)(1). “Where the exact size of the class is unknown but general knowledge and common  
5 sense indicate that it is large, the numerosity requirement is satisfied.” *Orantes-Hernandez v. Smith*,  
6 541 F. Supp. 351, 370 (C.D. Cal. 1982). Generally, Courts will find numerosity is satisfied where a  
7 class includes at least 40 members. *Rannis v. Recchia*, 380 Fed. App’x 646, 651 (9th Cir. 2010).  
8 The proposed Settlement Class, numbering over 48,799 individuals, easily satisfies Rule 23’s  
9 numerosity requirement. Joinder of so many individuals is impracticable, therefore the numerosity  
10 prong is satisfied.  
11

12 b. The Settlement Class satisfies the commonality requirement.

13 The Settlement Class also satisfies the commonality requirement, which requires that class  
14 members’ claims “depend upon a common contention,” of such a nature that “determination of its  
15 truth or falsity will resolve an issue that is central to the validity of each [claim] in one stroke.” *Wal-*  
16 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, as in most data breach cases, “[t]hese  
17 common issues all center on [Defendant’s] conduct, satisfying the commonality requirement.” *In re*  
18 *the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at \*2 (N.D. Ga. Aug.  
19 23, 2016). For the same reason, Plaintiffs allege that predominance is readily met here “where the  
20 class is a ‘cohesive group of individuals [who] suffered the same harm in the same way because of  
21 the [defendant’s] conduct.’” *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 559 (9th Cir.  
22 2019). Thus, common questions include whether Defendant engaged in the wrongful conduct  
23 alleged; whether Settlement Class members’ Private Information was compromised in the Data  
24 Incident; whether Defendant owed a duty to Plaintiffs and Settlement Class members; whether  
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1 Defendant breached its duties; and whether Defendant unreasonably delayed in notifying Plaintiffs  
2 and Settlement Class members of the material facts of the Data Incident.

3 Determining the truth of the common questions will resolve the issues of both the named  
4 Plaintiffs and the Settlement Class, therefore the Settlement Class has met the commonality  
5 requirement of Rule 23(a).  
6

7 c. Plaintiffs’ claims are typical of those of the Settlement Class

8 Plaintiffs satisfy the typicality requirement of Rule 23 because their claims, which are based  
9 on Defendant’s alleged failure to protect Plaintiffs’ and Settlement Class members’ Private  
10 Information, are “reasonably coextensive with those of the absent class members.” *See* Fed. R. Civ.  
11 P. 23(a)(3); *Meyer v Portfolio Recovery Assoc.*, 707 F.3d 1036, 1041–42 (9th Cir. 2012) (upholding  
12 typicality finding). Plaintiffs allege their Private Information was compromised, and that they were  
13 therefore impacted by the same allegedly inadequate data security that they allege harmed the rest  
14 of the Settlement Class. *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) (“[I]t is  
15 sufficient for typicality if the plaintiff endured a course of conduct directed against the class.”).  
16 Therefore, typicality has been met for the Settlement Class.  
17

18 d. Plaintiffs have and will continue to adequately protect the interests of the Class

19 The adequacy requirement of Rule 23 is satisfied where (1) there are no antagonistic or  
20 conflicting interests between named plaintiffs and their counsel and the absent class members; and  
21 (2) the named plaintiffs and their counsel will vigorously prosecute the action on behalf of the class.  
22 Fed. R. Civ. P. 23(a)(4); *see also Ellis v. Costco Wholesale Corp.*, 657 F.3d at 985 (citing *Hanlon v.*  
23 *Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).  
24

25 Here, Plaintiffs have no conflicts of interest with other Settlement Class members, they are  
26 subject to no unique defenses, and they and their counsel have and will continue to vigorously  
27

1 prosecute this case on behalf of the Settlement Class. Plaintiffs are members of the Settlement Class  
2 who experienced the same injuries and seek, like other Settlement Class members, compensation for  
3 Defendant’s data security shortcomings that led to the Data Breach and caused them injury. As  
4 such, their interests and the interests of their counsel are not inconsistent with those of other  
5 Settlement Class members.  
6

7 Further, counsel for Plaintiffs are qualified, experienced, and able to prosecute this  
8 litigation. Settlement Class Counsel have a wealth of experience in litigating complex class action  
9 lawsuits similar to this one and have extensive knowledge of the applicable law and sufficient  
10 resources to commit to the Settlement Class. The experience of Proposed Settlement Class Counsel  
11 is more fully set forth in Hagman Decl. ¶¶ 2-4.  
12

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

14 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class  
15 certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or  
16 (3).” *Hanlon*, 150 F.3d at 1022. Here, Plaintiffs allege that the Settlement Class is maintainable for  
17 purposes of settlement under Rule 23(b)(3), as common questions predominate over any questions  
18 affecting only individual members and class resolution is superior to other available methods for a  
19 fair and efficient resolution of the controversy. *Id.*  
20

21 Rule 23(b)(3) requires that a district court determine that “a class action is superior to other  
22 available methods for the fair and efficient adjudication of the controversy.” In determining whether  
23 the “superiority” requirement is satisfied, a court may consider: (1) the interest of members of the  
24 class in individually controlling the prosecution or defense of separate actions; (2) the extent and  
25 nature of any litigation concerning the controversy already commenced by or against members of  
26 the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the  
27

1 particular forum; and (4) the difficulties likely to be encountered in the management of a class  
2 action. Fed. R. Civ. P. 23(b)(3).

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

11 Here, the Plaintiffs’ claims depend on whether Defendant owed and breached a duty to  
12 adequately safeguard their Private Information. This question can be determined, for settlement  
13 purposes, using the same evidence for all Settlement Class Members. This is precisely the type of  
14 predominant question that makes a class-wide settlement worthwhile. *See, e.g., Tyson Foods, Inc. v.*  
15 *Bouaphakeo*, 577 U.S. 442, 453–54 (2016) (“When one or more of the central issues in the action  
16 are common to the class and can be said to predominate, the action may be considered proper under  
17 Rule 23(b)(3)” (citation omitted)).

18 Class certification here is also “superior to other available methods for . . . fairly and  
19 efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(a)(4). Class-wide resolution is the only  
20 practical method of addressing the alleged violations at issue in this case. Adjudicating individual  
21 actions here is impractical: the likely recovery for individual class members is small, the technical  
22 issues involved are complex, and the required expert testimony and document review is costly. *See*  
23 *Just Film*, 847 F.3d at 1123; *Local Joint Exec. Bd. of Culinary/ Bartender Trust Fund v. Las Vegas*  
24  
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1 *Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases involving “multiple claims for relatively  
2 small individual sums” are particularly well suited to class treatment); *see also Wolin v. Jaguar*  
3 *Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (“Where recovery on an individual  
4 basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of  
5 class certification.”).

6  
7 Because Plaintiffs seek to certify a class in the context of a settlement, this Court need not  
8 consider any possible management-related problems as it otherwise would. *See Amchem Prods.*,  
9 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court  
10 need not inquire whether the case, if tried, would present intractable management problems, *see*  
11 Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.”).

12  
13 In any event, no one member of the class has an interest in controlling the prosecution of  
14 this action because Plaintiffs’ and Settlement Class members’ claims are the same. Alternatives to a  
15 class action are either no recourse for millions of individuals, or a multiplicity of suits resulting in  
16 an inefficient and possibly disparate administration of justice. Class-wide resolution is the only  
17 practical method of addressing the alleged violations at issue in this case. There are millions of class  
18 members with modest individual claims, most of whom likely lack the resources necessary to seek  
19 individual legal redress. *See Las Vegas Sands, Inc.*, 244 F.3d at 1163; *Wolin*, 617 F.3d at 1175;  
20 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (The class action method is  
21 considered to be superior if “classwide litigation of common issues will reduce litigation costs and  
22 promote greater efficiency”). A class action is therefore superior to other methods for the fair and  
23 efficient adjudication of the claims of Plaintiffs and the Settlement Class.  
24

**B. The Settlement Should be Preliminarily Approved Pursuant to Rule 23(e)**

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

As a general matter, preliminary approval is appropriate if the settlement falls within the range of possible approval. *Hunichen v. Antonomi LLC*, No. C19-0615-RAJ-SKV, 2021 WL 5854964, at \*4 (W.D. Wash. Nov. 12, 2021). In sum, “the purpose of the preliminary approval process is to determine whether there is any reason not to notify the class members of the proposed settlement and to proceed with a fairness hearing.” *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). In any event, while a complete fairness evaluation is unnecessary at this early juncture, Plaintiffs’ and their counsel strongly believe that the resolution reached here is in the Settlement Class’s best interests and fully endorse the Settlement.

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

13  
14 In applying these factors, this Court should be guided foremost by the general principle that  
15 settlements of class actions are favored by federal courts. *See Franklin v. Kaypro Corp.*, 884 F.2d  
16 1222, 1229 (9th Cir. 1989) (“It hardly seems necessary to point out that there is an overriding public  
17 interest in settling and quieting litigation. This is particularly true in class action suits . . .”). Here,  
18 the relevant factors support the conclusion that the negotiated settlement—overseen by a respected  
19 neutral mediator—is fundamentally fair, reasonable, and adequate, and should be preliminarily  
20 approved.  
21

### 22 **1. The Strength of Plaintiffs’ Case**

23 Plaintiffs maintain they have established a strong case for Defendant’s liability, such that  
24 Defendant had a duty to protect the Private Information of Plaintiffs and the Settlement Class,  
25 breached that duty by failing to adequately safeguard it, and caused cognizable harms. *See, e.g.,*  
26 *Huynh v. Quora, Inc.*, 508 F. Supp. 3d 633, 650 (N.D. Cal. 2020) (“[T]ime and money [plaintiff]  
27



1 spent on credit monitoring in response to the Data Breach is cognizable harm to support her  
2 negligence claim”); *Krefting v. Kaye-Smith Enter. Inc.*, 2023 WL 4846850 (W.D. Wash. July 28,  
3 2023) (denying motion to dismiss claims for negligence and under the Washington Consumer  
4 Protection Act arising out of a data breach); *Guy v. Convergent Outsourcing, Inc.*, 2023 WL  
5 4637318 (W.D. Wash. July 20, 2023) (same); *Wallace v. Health Quest Sys., Inc.*, 2021 WL  
6 1109727, at \*8–15 (S.D.N.Y. Mar. 23, 2021) (upholding data breach claims for negligence, breach  
7 of implied contract, breach of confidence, and violations of New York General Business Law);  
8 *Burrows v. Purchasing Power, LLC*, 2012 WL 9391827, at \*6 (S.D. Fla. Oct. 18, 2012) (upholding  
9 data sharing claims for violations of Florida Deceptive and Unfair Trade Practices Act).  
10

11 However, data breach litigation remains uncertain and is still evolving, meaning there is no  
12 guarantee that Plaintiffs will prevail on the merits. *See Fox v. Iowa Health Sys.*, 2021 WL 826741,  
13 at \*5 (W.D. Wis. Mar. 4, 2021) (citing *Gordon v. Chipotle Mexican Grill, Inc.*, 2019 WL 6972701,  
14 at \*1 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are particularly risky, expensive, and  
15 complex.”)). Plaintiffs recognize that while data breach litigation is turning in their favor as courts  
16 observe the concrete impacts that data breaches have, it remains lengthy, complex, and difficult, and  
17 the novel claims that they bring do not have certain outcomes. Given these uncertainties, the  
18 benefits provided herein favor preliminary approval of the Settlement.  
19  
20

## 21 **2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

22 Although Plaintiffs believe their case is strong, the inherent risks of complex litigation  
23 remain present. While nearly all class actions involve a high level of risk, expense, and  
24 complexity—undergirding the strong judicial policy favoring amicable resolutions, *Linney v.*  
25 *Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)—this is an especially complex class in  
26 an uncertain arena. Historically, data breach cases have faced substantial hurdles in surviving even  
27

1 the pleading stage. *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, 2010 WL 2643307, at  
2 \*1–2 (S.D.N.Y. June 25, 2010) (collecting cases). Even cases of similar, wide-spread notoriety have  
3 been found wanting by trial courts (albeit reversed by appellate courts). *In re U.S. Office of Pers.*  
4 *Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court is not persuaded  
5 that the factual allegations in the complaints are sufficient to establish . . . standing.”), *reversed in*  
6 *part*, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had standing to bring a data  
7 breach lawsuit).

8  
9 Although the Plaintiffs are confident that their damages methodologies are sound, the fact  
10 remains that the evolving field of data breach class actions leaves uncertainty when these facts are  
11 tried to a jury. Without settlement, Plaintiffs may recover nothing for the harms that they have  
12 suffered, as each of the risks associated with this form of complex litigation could prevent the case  
13 from proceeding. As with all litigation, it is “always expensive, and both sides would bear those  
14 costs if the litigation continued.” *Paz v. AG Adriano Goldschmeid, Inc.*, 2016 WL 4427439, at \*5  
15 (S.D. Cal. Feb. 29, 2016).

### 17 3. The Risk of Maintaining Class Action Status Through Trial

18 The Court has not yet certified any class treatment of this case, and if Plaintiffs were to  
19 proceed to litigate their claims through trial, Defendant will certainly oppose certification. Because  
20 of this, the Plaintiffs risk obtaining and maintaining certification of the class and “necessarily risk  
21 losing class action status.” *Grimm v. American Eagle Airlines, Inc.*, 2014 WL 12746376, at \*10  
22 (C.D. Cal. Sept. 24, 2014). While Plaintiffs are confident that this case is well suited for class  
23 certification, numerous obstacles to certification remain. Few data breach cases have proceeded  
24 forward to obtain a ruling certifying a contested class. The first to obtain certification was *Smith v.*  
25 *Triad of Ala., LLC*, 2017 WL 1044692, at \*16 (M.D. Ala. Mar. 17, 2017), and a more recent  
26

1 certified contested class, *In re Marriott International Customer Data Securities Breach Litigation*,  
2 341 F.R.D. 128 (D. Md. 2022), was recently decertified on appeal, *see In re Marriott Int'l, Inc.*, 78  
3 F.4th 677, 680 (4th Cir. 2023). The lack of direct precedent adds to the risks posed by continued  
4 litigation, therefore, this factor favors approval.

#### 5 **4. The Amount Offered in Settlement**

6  
7 In light of the risks and uncertainties presented by data breach litigation, the value of the  
8 Settlement favors approval, as it makes significant relief available to Settlement Class Members  
9 from a \$500,000.00 Settlement Fund. Each Class Member may submit a claim for reimbursement of  
10 Out-of-Pocket Losses that are fairly traceable to the Data Incident or a *pro rata* Cash Payment.  
11 Finally, all Settlement Class Members are eligible to enroll in two years of credit monitoring  
12 services, including benefits such as identity restoration services and \$1 million in identity theft  
13 insurance. This settlement is a strong result for the class, as it helps address Class Members' prior  
14 injury while helping them to secure their Private Information. It is also within the realm of  
15 reasonable, approved settlements in other data breach cases. *See, e.g.*, Motion for Preliminary  
16 Approval of Class Settlement, *Dickey's Barbeque Restaurants, Inc.*, No. 20-cv-3424 (N.D. Tex.),  
17 Dkt. 62 (data breach class action involving more than 3 million people that settled for \$2.3 million);  
18 *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318 (N.D. Cal. 2018) (79 million people that  
19 settled for \$115 million); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 2020 WL 4212811  
20 (N.D. Cal. July 22, 2020) (data breach class action involving more than 194 million people that  
21 settled for \$117.5 million).  
22  
23

24 Because of the difficulties that Settlement Class members would face litigating each of their  
25 claims individually, not to mention subsequent attempts to collect on those claims, and because this  
26 settlement is similar to other settlements reached in similar cases, this factor reflects that the  
27

1 Settlement is fair and favors approval. *See Calderon v. Wolf Firm*, 2018 WL 6843723, at \*7–8  
 2 (C.D. Cal. Mar. 13, 2018) (comparing class settlements). Therefore, this factor favors approval, as  
 3 the Settlement is an excellent result.

#### 4 **5. The Extent of Discovery Completed and the Stage of Proceedings**

5 Before entering into settlement discussions on behalf of class members, counsel should have  
 6 “sufficient information to make an informed decision.” *Linney*, 151 F.3d at 1239. Even where  
 7 formal discovery has not been conducted, this factor weighs in favor of approval where, “[p]rior to  
 8 engaging in settlement negotiations, the parties [] had full understanding of their positions and  
 9 views of the case, and were able assess the benefits of a potential settlement.” *Hanson v. MGM*  
 10 *Resorts Int’l*, 2018 WL 3630284, at \*5 (W.D. Wash. July 31, 2018). Similarly, where settlement  
 11 was reached “after several rounds of arm’s-length negotiations,” approval is warranted. *Id.* Here,  
 12 Plaintiffs’ counsel and Defendant engaged in significant pre-mediation discovery that allowed  
 13 Plaintiffs’ counsel to evaluate the strengths, potential weaknesses, and value of this case, as well as  
 14 Defendant’s ability to pay. Hagman Decl., ¶ 6. Additionally, Plaintiffs’ counsel conducted  
 15 significant investigation into the publicly available facts about the Data Incident and into the  
 16 Plaintiffs’ claims for purposes of drafting the FAC. *Id.* And finally, the Settlement was not reached  
 17 until after a full day mediation and time spent on negotiations. *Id.* ¶ 7.

#### 20 **6. The Experience and Views of Counsel**

21 Class Counsel have substantial experience litigating complex class cases of various types,  
 22 including data breach cases such as this one. *See Hagman Decl.*, ¶¶ 2-4 & Exs. B-D. Having worked  
 23 on behalf of the putative class since the Data Breach was first announced, evaluated the legal and  
 24 factual disputes, and dedicated significant time and monetary resources to this litigation, proposed  
 25 Settlement Class Counsel endorse the Settlement without reservation. *Id.* A great deal of weight is  
 26

1 accorded to the recommendation of counsel, who are most closely acquainted with the facts of the  
2 underlying litigation. *See, e.g., Norton v. Maximus, Inc.*, 2017 WL 1424636, at \*6 (D. Idaho Apr.  
3 17, 2017); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

4 Thus, this factor supports approval.

5  
6 **7. Governmental Participants**

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

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

9 Because notice has not yet been given, this factor is not yet implicated; however, Plaintiffs  
10 support the Settlement. Hagman Decl., ¶ 17.

11 **9. Lack of Collusion Among the Parties**

12 The parties did not reach the Settlement until after a full day mediation presided over by Mr.  
13 Friedman. The Settlement was also the result of a mediator's proposal, thus assuaging any concerns  
14 of collusion. *See G. F. v. Contra Costa Cty.*, 2015 WL 4606078, at \*13 (N.D. Cal. July 30, 2015)  
15 (“[T]he assistance of an experienced mediator in the settlement process confirms that the settlement  
16 is non-collusive.” (internal quotation marks and citation omitted)); *see also Cohorst v. BRE Props.*,  
17 2011 WL 7061923, at \*12 (S.D. Cal. Nov. 9, 2011) (“[V]oluntary mediation before a retired judge  
18 in which the parties reached an agreement-in-principle to settle the claims in the litigation are highly  
19 indicative of fairness . . . We put a good deal of stock in the product of arms-length, non-collusive,  
20 negotiated resolution.”).

21  
22 **10. The Settlement Treats Settlement Class Members Equitably**

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

1 differences among their claims, and whether the scope of the release may affect class members in  
2 different ways that bear on the apportionment of relief.” Fed. R. Civ. P. 23(e), advisory comm.’s  
3 note (2018).

4 In determining whether this factor weighs in favor of approval, a Court must determine  
5 whether the Settlement “improperly grant[s] preferential treatment to class representatives or  
6 segments of the class.” *Paredes Garcia v. Harborstone Credit Union*, 2023 WL 4315117, \*5 (W.D.  
7 Wash. July 3, 2023) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D.  
8 Cal. 2007)).

9 Here, the Settlement does not improperly discriminate between any segments of the class, as  
10 all class members are entitled to the same relief. Following preliminary approval, Class Counsel  
11 will file a motion seeking service award payments for Class Representatives for up to \$2,500. This  
12 payment is in line with awards granted in similar cases, is presumptively reasonable, and does not  
13 call into question Plaintiffs’ adequacy or the validity of the Settlement. *See, e.g., Roe v. Frito-Lay,*  
14 *Inc.*, 2017 WL 1315626, at \*8 (N.D. Cal. Apr. 7, 2017) (noting a \$5,000 Service Award is  
15 presumptively reasonable in the Ninth Circuit); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d  
16 934, 947–48 (9th Cir. 2015) (approving service awards of \$5,000).

17  
18  
19 **C. The Court Should Approve the Proposed Notice Program**

20 Rule 23 requires that prior to final approval, the “court must direct notice in a reasonable  
21 manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). For  
22 classes certified under Rule 23(b)(3), “the court must direct to class members the best notice that is  
23 practicable under the circumstances, including individual notice to all members who can be  
24 identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “The notice may be by one or  
25 more of the following: United States mail, electronic means, or other appropriate means.” *Id.*  
26

1 Such notice must be the “best notice practicable,” Fed. R. Civ. P. 23(c)(2)(B), which means  
2 “individual notice to all members who can be identified through reasonable effort.” *Eisen v.*  
3 *Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). To satisfy due process, notice to class members  
4 must be the best practicable, and reasonably calculated under all the circumstances to apprise  
5 interested parties of the pendency of the action and afford them an opportunity to present their  
6 objections. Fed. R. Civ. P. 23(c)(2); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).  
7 Class settlement notices must present information about a proposed settlement simply, neutrally,  
8 and understandably. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019).  
9 Notice is adequate if it generally describes the terms of the class action settlement in sufficient  
10 detail to alert those with adverse viewpoints to investigate and to come forward and be heard. *Id.*  
11

12 Following preliminary approval, Defendant will provide the Settlement Class List to the  
13 Settlement Administrator, who will in turn disseminate a Short Form Notice to the members of the  
14 Settlement Class via email where available and via U.S. Mail where no email is available S.A. ¶ 62;  
15 Hagman Decl. ¶¶ 20-34. A Long Form Notice and Claim Form will be made available to Settlement  
16 Class Members on the Settlement Website, which will be established by the Settlement  
17 Administrator as soon as practicable following entry of the Preliminary Approval order. S.A. ¶ 63;  
18 Hagman Decl. ¶¶ 20-34. The Settlement Website will also contain information including the  
19 Settlement Agreement, Plaintiffs’ Motion for preliminary approval, the Preliminary Approval  
20 Order, Plaintiffs’ motion for an award of attorneys’ fees, costs, and expenses, and/or service awards,  
21 the operative complaint, and other important documents like the Court-approved notices. *Id.* The  
22 Settlement Website will also include a toll-free telephone number, e-mail address, and mailing  
23 address through which Settlement Class Members may contact the Settlement Administrator  
24 directly. *Id.*  
25  
26

1 The notice plan ensures that Settlement Class Members’ due process rights are amply  
2 protected, and it should be approved. *See Hartranft v. TVI, Inc.*, 2019 WL 1746137, at \*3 (C.D. Cal.  
3 Apr. 18, 2019) (“The Court finds that the Class Notice and the manner of its  
4 dissemination . . . constitutes the best practicable notice under the circumstances and is reasonably  
5 calculated, under all the circumstances, to apprise Settlement Class Members of the pendency of  
6 this action, the terms of the Agreement, and their right to object to or exclude themselves from the  
7 Settlement Class.”); *see also Spencer v. #1 A LifeSafer of Ariz., LLC*, 2019 WL 1034451, at \*3 (D.  
8 Ariz. Mar. 4, 2019) (preliminarily approving class action settlement and finding “that the proposed  
9 notice program is clearly designed to advise the Class Members of their rights”).

11 **D. Appointment of the Settlement Administrator**

12 In connection with implementation of the Notice Program and administration of the  
13 settlement benefits, the Parties request the Court appoint EisnerAmper Gulf Cost, LLC (“EAG”) to  
14 serve as the Claims Administrator. S.A. ¶ 40. EAG is a well-respected third-party administrator  
15 with a trusted and proven track record of supporting class action administrations. *See* Declaration of  
16 Jordan Turner Regarding Administration, attached as Exhibit E to the Hagman Decl.

18 **E. Appointment of Settlement Class Counsel**

19 Under Rule 23, “a court that certifies a class must appoint class counsel [who must] fairly  
20 and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). In making this  
21 determination, courts generally consider the following attributes: the proposed class counsel’s  
22 (1) work in identifying or investigating potential claims, (2) experience in handling class actions or  
23 other complex litigation, and the types of claims asserted in the case, (3) knowledge of the  
24 applicable law, and (4) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i–  
25 iv).  
26



1 Here, proposed Class Counsel have extensive experience prosecuting class actions and other  
2 complex cases, and specifically data breach cases. *See* Hagman Dec., ¶¶ 2-4, Exs. B-D (firm  
3 resumes). Accordingly, the Court should appoint Kaleigh N. Boyd of Tousley Brain Stephens  
4 PLLC, Nickolas J. Hagman of Cafferty Clobes Meriwether & Sprengel LLP, and Philip J. Krzeski  
5 of Chestnut Cambronne PA as Class Counsel.  
6

7 **VI. CONCLUSION**

8 Plaintiffs have negotiated a fair, adequate, and reasonable Settlement that will provide Class  
9 Members with both significant monetary and equitable relief. The Settlement should be approved  
10 and Notice should be ordered to issue to the Settlement Class. For all the above reasons, Plaintiffs  
11 respectfully request this Court grant Plaintiffs' Motion. A proposed order is submitted herewith.  
12

13  
14 DATED this 20th day of December, 2024.

15 /s/ Kim D. Stephens

16 Kim D. Stephens, OSB #030635

17 Cecily C. Jordan

18 Kaleigh N. Boyd

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
(PORTLAND DIVISION)**

LISA UNSWORTH, MICHAEL RAMONE,  
CHRISTOPHER POTTER, THERESE  
COOPER, and CHARLES SANDERSON,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

LEWIS AND CLARK COLLEGE

Defendant.

**Case No.: 3:24-cv-00614-SB**

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

**WHEREAS**, the above-captioned class action is pending in this Court (the “Action”);

**WHEREAS**, Plaintiffs Lisa Unsworth, Michale Ramone, Christopher Potter, Therese Cooper, and Charles Sanderson (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, and Defendant Lewis and Clark College (“Defendant”) have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendant in the above-captioned action (the “Action”) on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

**WHEREAS**, Plaintiffs have made an application, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only, appointing Plaintiffs as Class Representatives, appointing Class Counsel as counsel for the

Settlement Class, appointing EisnerAmper as Settlement Administrator, and allowing notice to Settlement Class Members as more fully described herein;

**WHEREAS**, the Court has read and considered: (a) Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Notice Plan, and the papers filed, and arguments made in connection therewith; and (b) the Settlement Agreement and exhibits attached thereto; and

**WHEREAS**, unless otherwise defined herein, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. **Class Certification for Settlement Purposes Only**. For settlement purposes only and pursuant to Federal Rule of Civil Procedure 23(e), the Court certifies, solely for purposes of effectuating the proposed Settlement, a Settlement Class in this matter defined as follows:

All individuals whose Personal Information may have been compromised in the Data Breach. All members of the Settlement Class who do not opt-out of the settlement shall be referred to as Settlement Class Members.

The Settlement Class includes approximately 48,799 people. The Settlement Class specifically excludes: (i) all Persons who timely and validly request exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this settlement (including any members of the Court's staff assigned to this case); (iii) Defendant's officers and directors, and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

2. **Class Findings**: The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims

of the Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Class Representatives have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

3. **Class Representatives and Settlement Class Counsel:** Lisa Unsworth, Michael Ramone, Christopher Potter, Therese Cooper, and Charles Sanderson are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members and therefore typical of the Settlement Class and that they will be adequate Class Representatives. The Court further finds that Kaleigh N. Boyd of Tousley Brain Stephens PLLC, Nickolas J. Hagman of Cafferty Clobes Meriwether & Sprengel LLP, and Philip J. Krzeski of Chestnut Cambronne PA are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel.

4. **Preliminary Settlement Approval.** The Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable, and adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below. For the purposes of preliminary approval, the Court finds the proposed settlement is fair, reasonable, and adequate.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held at \_\_\_\_\_: \_\_\_\_\_ .m. on \_\_\_\_\_, 2025, in the United States District Court, District of

Oregon, located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ for the following purposes:

- a. To determine whether the proposed Settlement is fair, reasonable, and adequate to the Class and should be approved by the Court;
- b. To determine whether to grant Final Approval, as defined in the Settlement Agreement;
- c. To determine whether the notice plan conducted was appropriate;
- d. To determine whether the claims process under the Settlement is fair, reasonable and adequate and should be approved by the Court;
- e. To determine whether the requested Class Representatives Service Awards in the amount of \$2,000 to each Class Representative, and Class Counsel's attorneys' fees in the amount of \$166,666.67 should be approved by the Court;
- f. To determine whether the settlement benefits are fair, reasonable, and adequate; and
- g. To rule upon such other matters as the Court may deem appropriate.

6. **Retention of Claims Administrator and Manner of Giving Notice.** Class Counsel is hereby authorized to retain EisnerAmper ("EAG") (the "Settlement Administrator") to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims as set for more fully below.

7. **Approval of Form and Content of Notice.** The Court (a) approves, as to form and content, the Claim Form, Long Form Notice, Postcard Notice as Exhibits A, B and C, and (b) finds that the Notice provided to Settlement Class Members as set forth in the Settlement Agreement (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder), of Class Counsel's request for Fee Award and Costs, of Class Representatives' requests for Service Award Payments, of their right to object to the Settlement, Class Counsel's request for Fee Award and Costs, and/or Class Representatives' requests for Service Award

Payments, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the Notice before it is distributed so long as that date is known at the time of Notice.

8. **Participation in the Settlement.** Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form and must do so within ninety (90) days after Notice is mailed to the Settlement Class Members. If a Final Approval Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Approval Order and Judgment.

9. **Claims Process and Distribution and Allocation Plan.** The Settlement Agreement contemplates a process for the Settlement Administrator to assess and determine the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the claims process described in the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than **60 Days after the date Notice is mailed to the Settlement Class Members** (the “Opt-Out/Objection Deadline”). The written notification must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication.

Any Settlement Class Member who does not timely and validly exclude himself or herself from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final Approval Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Approval Order and Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Parties relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

11. **Objections and Appearances.** No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is mailed first-class postage prepaid to the Settlement Administrator at the address listed in the Notice, and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court,



the objection must also include all of the information set forth in Paragraph 64 of the Settlement Agreement, which is as follows: (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, telephone number, and email address; (iii) a written statement of the specific grounds for the objection, as well as any legal basis and documents supporting the objection; (iv) a written statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any and all attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) proof that the Settlement Class Member is a member of the Settlement Class (*e.g.*, copy of Data Breach notice); (viii) contain a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years; and (ix) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

12. Any Settlement Class Member who fails to comply with the provisions in Paragraph 11 may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if a Final Approval Order and Judgment is entered. If a Final Approval Order and Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this Action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the motion for Service Award Payments, or the motion for Fee Award and Costs.

13. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

14. **Use of Order.** This Order shall be of no force or effect if a Final Approval Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representatives or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

15. **Stay of Proceedings and Temporary Injunction.** Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released Claims against the Released Entities.

16. **Settlement Fund.** The contents of the Settlement Fund shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the

Court, until such time as funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the Court.

17. **Taxes.** The Settlement Administrator is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Settlement Agreement.

The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

18. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

<b><u>FROM DATE OF PRELIMINARY APPROVAL</u></b>	
Defendant provides Class List to the Settlement Administrator	+10 days
Defendant Pays Administrative Expenses	+20 days
Notice Date	+30 days
Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	+46 days
Opt-Out & Objection Deadline	+60 days after the Notice Date
Settlement Administrator Provide List of Objections/Exclusions to Counsel	+97 days
Claims Deadline	+90 days after the Notice Date
<b><u>Final Approval Hearing</u></b>	+135 days from Preliminary Approval (at least)
Motion for Final Approval	-14 days before Final Approval Hearing Date
Settlement Administrator Provide Notice of Opt-Outs and/or Objections	-14 days before Final Approval Hearing Date
Reply, if any, in Support of Final Approval	-5 days before Final Approval Hearing Date

<b><u>FROM ORDER GRANTING FINAL APPROVAL</u></b>	
Effective Date	+31 days (assuming no appeal)
Defendant Pays Balance of Settlement Fund	+3 days after Effective Date (assuming no appeal)
Payment of Fee Award and Expenses	+10 days after Effective Date (assuming no appeal)
Payment of Service Awards	+7 days after Effective Date (assuming no appeal)
Payment of Valid Claims	+30 days after Effective Date (assuming no appeal)
Settlement Website Deactivation	+120 days after Effective Date

**IT IS SO ORDERED** this \_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
 The Honorable Stacie F. Beckerman  
 United States District Court  
 District of Oregon