HEENAN & COOK
John Heenan
1631 Zimmerman Trail
Billings, MT 59102
Telephone: 406-839-9091
John@lawmontana.com

AHDOOT & WOLFSON, P.C.
Andrew W. Ferich (*pro hac vice*)
201 King of Prussia Road, Suite 650
Radnor, PA 19087
Phone: 310-474-9111
aferich@ahdootwolfson.com

PAOLI LAW FIRM, P.C.
David R. Paoli
257 West Front Street
PO Box 8131
Missoula, MT 59802
Telephone: (406) 542-3330
davidpaoli@paoli-law.com

MORGAN & MORGAN COMPLEX LITIGATION GROUP
John A. Yanchunis (*pro hac vice*)
201 North Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 223-5505
jyanchunis@forthepeople.com

Interim Co-Lead Class Counsel

MONTANA EIGHTH JUDICIAL DISTRICT COURT - CASCADE COUNTY

PATRICIA TAFELSKI, et. al., on behalf of themselves and all others similarly situated, Plaintiffs, v. LOGAN HEALTH MEDICAL CENTER, Defendant.	Case No. ADV-22-0108 Judge John W. Parker **PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS AND BRIEF IN SUPPORT**
ALLISON SMELTZ, on behalf of themselves and all others similarly situated, Plaintiffs, vs. LOGAN HEALTH and DOES I through X, Defendants.	Case No. ADV-22-0124 Judge John W. Parker

HEENAN & COOK
John Heenan
1631 Zimmerman Trail
Billings, MT 59102
Telephone: 406-839-9091
John@lawmontana.com

AHDOOT & WOLFSON, P.C.
Andrew W. Ferich (*pro hac vice*)
201 King of Prussia Road, Suite 650
Radnor, PA 19087
Phone: 310-474-9111
aferich@ahdootwolfson.com

PAOLI LAW FIRM, P.C.
David R. Paoli
257 West Front Street
PO Box 8131
Missoula, MT 59802
Telephone: (406) 542-3330
davidpaoli@paoli-law.com

MORGAN & MORGAN COMPLEX LITIGATION GROUP
John A. Yanchunis (*pro hac vice*)
201 North Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 223-5505
jyanchunis@forthepeople.com

Interim Co-Lead Class Counsel

MONTANA EIGHTH JUDICIAL DISTRICT COURT - CASCADE COUNTY

PATRICIA TAFELSKI, et. al., on behalf of themselves and all others similarly situated, Plaintiffs, v. LOGAN HEALTH MEDICAL CENTER, Defendant.	Case No. ADV-22-0108 Judge John W. Parker **PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS AND BRIEF IN SUPPORT**
ALLISON SMELTZ, on behalf of themselves and all others similarly situated, Plaintiffs, vs. LOGAN HEALTH and DOES I through X, Defendants.	Case No. ADV-22-0124 Judge John W. Parker

I. INTRODUCTION

Faced with the risks inherent to data breach lawsuits, Class Counsel secured an exceptional $4.3 million non-reversionary common fund Settlement[1] that compensates Class Members for their losses and provides meaningful prospective relief which enhances protection against future risks arising from the Data Security Incident. Class Counsel now respectfully request that the Court award $1,433,333 in attorneys' fees, as contingent compensation for their efforts in pursuing this litigation. Class Counsel's requested Fee Award amounts to 33.33% of the $4.3 million non-reversionary Settlement Fund and is justified given the exceptional monetary and non-monetary relief provided by the Settlement, consistent with the fee awards granted in other common fund cases in Montana, and reasonable given the considerable time and resources expended by Class Counsel. Class Counsel also request payment of $23,334.12 as reimbursement for the reasonable litigation expenses incurred, which were advanced for the Class's benefit.

In addition, Class Counsel respectfully request that the Court approve Service Awards in the amount of $3,500 to each of the Class Representatives in recognition of their significant time and effort in pursuing this litigation. The Class Representatives actively participated in the prosecution of the case in order to obtain a positive outcome for the Class and fulfilled all their duties. No Settlement or recovery would have been possible without their vital role.

For all of these reasons and those articulated below, the requested Fee Award, litigation expenses, and Service Awards are fair and reasonable, and should be approved.

---

[1] Unless otherwise noted, all capitalized terms share the same meaning as defined in the Settlement Agreement.

II. BACKGROUND

The Court is familiar with the factual background of this litigation. Defendant Logan Health is a non-profit corporation incorporated in and under the laws of Montana.

On or about November 22, 2021, Logan Health discovered that an unauthorized individual, or unauthorized individuals, gained access to Logan Health's network systems (the "Data Breach"). According to Logan Health's breach notice, the breach occurred on November 18, 2021 and on November 22, 2021, when Logan Health discovered suspicious activity including evidence of unauthorized access to a file server containing patient information. As a result of the Data Breach, over 200,000 individuals (including 174,761 Montanans) private and confidential PII/PHI was exposed to unauthorized persons.

Logan Health notified victims of the breach on February 22, 2022. In the breach notification letter that Logan Health sent to impacted victims, it confirmed the information accessed may vary from person to person, but included: "[N]ame, address, medical record number, date of birth, telephone number, email address, diagnosis and treatment codes, date(s) of service, treating/referring physician, medical bill account number and/or health insurance information."

III. CLASS COUNSEL'S EFFORTS ON BEHALF OF THE CLASS

After first announcing the Data Security Incident on February 18, 2022, two class action cases were filed against Logan Health. The first—the *Tafelski* Matter—was filed on March 2, 2022, and the second—the *Smeltz* Matter—was filed on March 11, 2022. On April 20, 2022, the *Tafelski* Matter and *Smeltz* Matter were consolidated, and John Heenan, Andrew Ferich, David Paoli, and John Yanchunis were appointed to serve as counsel in those matters and have since been preliminarily appointed to represent the settlement

class (collectively "Class Counsel"). On May 12, 2022, Logan Health filed a Motion to Dismiss the *Smeltz* Matter, which remains pending.

On March 21, 2022, Plaintiffs in the *Smeltz* Matter served Logan Health with a robust set of discovery requests, including fifteen interrogatories and fifty-one document requests. Declaration of Class Counsel ("Counsel Decl.") attached hereto as Exhibit 1, at ¶ 4. On March 29, 2022, the *Smeltz* Plaintiffs filed a comprehensive first amended complaint. *Id.* The *Tafelski* plaintiffs incorporated the *Smeltz* discovery and amended complaint once both cases were consolidated on April 20, 2022. *Id.*, ¶ 6.

Class Counsel have been diligent in and committed to investigating claims on behalf of the Class of victims impacted by the Logan Health data breach. *Id.*, ¶ 10. Prior to commencing this litigation, counsel diligently investigated potential legal claims (and potential defenses thereto) arising from Logan Health's alleged failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI. *Id.* Class Counsel have performed the following work on behalf of Plaintiffs and Class Members, among other things: investigated the circumstances surrounding the Data Breach; articulated the nature of the Data Breach in detailed complaints; stayed abreast of and analyzed reports, articles, and other public materials discussing the Data Breach and describing Logan Health's challenged conduct; reviewed public statements from Logan Health concerning the Data Breach, including the contents of the breach notification letter sent to impacted Class Members; researched Logan Health's corporate structure and potential co-defendants; fielded numerous contacts from potential Class Members inquiring about this matter; investigated the nature of the challenged conduct at issue here by interviewing multiple potential clients who contacted Class Counsel's firms; investigated the adequacy of the named Plaintiffs to represent the putative class;

drafted and filed initial complaints against Logan Health, and served those complaints; communicated with other plaintiffs' counsel who filed copycat actions and defeated their attempt to intervene and derail settlement negotiations; and successfully engaged in private ordering and self-organizing leadership in this litigation. *Id.*, ¶ 11.

Following coordination between the *Smeltz* Matter and *Tafelski* Matter, the parties began engaging in preliminary and then more formal settlement negotiations. Counsel Decl., ¶ 12. This included an exchange of information that Plaintiffs required in order to engage in informed, arm's-length settlement negotiations and the exchange of terms for global resolution of the claims of Plaintiffs and the class in advance of a mediation conducted by Judge Louis Meisinger (Ret.) of Signature Resolution. *Id.*

Class Counsel spent many hours preparing for the mediation, including reviewing of informal discovery, preparing a detailed mediation statement, and engaging in pre-mediation meet and confer discussions with counsel for Logan Health. *Id.*, ¶ 13. On July 19, 2022, the Parties attended an all-day mediation with Judge Meisinger. *Id.*, ¶ 14. The settlement negotiations were hard-fought throughout and the settlement process was conducted at arm's length. *Id.*, ¶ 15. At the end of the all-day mediation, the Parties were at an impasse as to the amount of the common fund, so the mediator proposed a double-blind mediator's proposal of $4.3 million for the common fund, which the Parties mutually accepted. *Id.*, ¶ 16. As a result of these negotiations, the Parties were able to reach an agreement on the substantive terms of the Settlement by the conclusion of the mediation. *Id.*, ¶ 17. The Parties, through their counsel, continued to negotiate and finalize the details of the Settlement over the following weeks, before signing the Settlement Agreement. *Id.*, ¶ 18.

Class Counsel also devoted many hours to negotiating the Settlement following the full-day mediation, including spending subsequent weeks to finalize the terms of the Settlement, identifying and selecting a settlement administrator to administer the Settlement, and developing the Class Notice Program. *Id.*, ¶ 19.

Class Counsel has committed appropriate, yet substantial, time and resources to organizing and working collaboratively toward the advancement of the litigation and will continue to do so. *Id.*, ¶¶ 10-19. As a result of these efforts, Class Counsel was able to bring about an excellent result for the Settlement Class. *Id.*, ¶ 20. Based on Class Counsel's independent investigation of the relevant facts and applicable law, experience with other data breach cases, and the information provided by Logan Health under the supervision of a respected neutral mediator, Class Counsel has determined that the Settlement is fair, reasonable, adequate, provides compensation to address the losses typically sustained following a data breach, and in the best interest of the Settlement Class. *Id.*, ¶ 21. Accordingly, the Parties worked together to prepare a comprehensive set of settlement documents, which are embodied in the Settlement Agreement and its exhibits.

IV. LEGAL STANDARD

M.R.Civ.P. 23(h)(1) provides for an award of attorney's fees to class counsel when a class action is resolved. "In a class action an award of attorney fees is contingent upon success, and upon the existence of a fund from which the fees can be paid, and that the evaluation of settlement must be fair, reasonable, and in the best interests of all affected." *Ass'n of Unit Owners of Deer Lodge Condominium v. Big Sky*, 242 Mont. 358, 362-63, 790 P.2d 967, 970 (1990).

V. THE COURT SHOULD APPROVE CLASS COUNSEL'S ATTORNEYS' FEES AND LITIGATION EXPENSES

A. The Requested Fee Award Is Reasonable Under the Percentage Method

The Montana Supreme Court recognizes "two primary methods of calculating reasonable fees: the 'lodestar method,' which involves multiplying the number of hours reasonably spent on the case by an appropriate hourly rate in the community for such work, and the 'percentage of the recovery method,' which authorizes fees to be paid from a percentage of a common fund or a contingency fee agreement." *Gendron v. Mont. Univ. Sys.*, 2020 MT 82, ¶ 12, 399 Mont. 470, 461 P.3d 115 (internal citations omitted.); *see also Wight v. Hughes Livestock Co.*, 204 Mont. 98, 110, 664 P.2d 303, 309-10 (1983) ("Ordinarily, when lawyers undertake a representation on a contingency basis, they bargain for a percentage of the recovery."); *Mt. W. Farm Bureau Mut. Ins. Co. v. Hall*, 2001 MT 314, ¶ 14, 308 Mont. 29, 38 P.3d 825 (providing that a party who creates or preserves a common fund benefiting ascertainable, non-participating beneficiaries of the litigation is generally entitled to reimbursement of his or her attorney fees from that common fund).

The Ninth Circuit has clarified that the "lodestar method" is most appropriate in class actions brought under fee-shifting statutes where the prevailing party is by statute entitled to recover attorney's fees. *In re Bluetooth Headset Prods. Liab. Litig.* 654 F.3d 935, 941 (9th Cir. 2011). In cases without a fee-shifting provision, such as this case, however, the lodestar method has been criticized widely and for a long period of time. In the *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 285 (1985), the Task Force concluded that the lodestar method was a "cumbersome, enervating, and often surrealistic process of preparing and evaluating fee petitions that

now plagues the Bench and Bar. . . ." The Ninth Circuit has likewise recognized that the lodestar method "creates incentives for counsel to spend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050, fn.5 (9th Cir. 2002).

In addition to its tendency to promote inefficiency and burden courts and their staffs, the use of the lodestar method often delays payments to class members with no real offsetting benefit to them—i.e., with no real reduction in fees. The Court in *In re Activision Securities Litig.*, 723 F. Supp. 1373, 1375-1379 (N.D. Cal. 1989) surveyed and compared fees awards from numerous cases using both the lodestar and the percentage of the fund methods and found that, regardless of which method is used, the fee "almost always hovers around 30% of the fund created by the settlement." *Id.* at 1375. Likewise, Newberg states: "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fees awards in class action average around one-third of the recovery." 4 NEWBERG ON CLASS ACTIONS §14:6 at 1-2 (4th Ed.)

Conversely, "[w]here both the class and its attorneys are paid in cash, this task [of awarding fees] is fairly effortless. The district court can assess the relative value of the attorneys' fees and the class relief simply by comparing the amount of cash paid to the attorneys with the amount of cash paid to the class. The more valuable the class recovery, the greater the fees award." *In re HP Inkjet Printer Litig.* 716 F.3d 1173, 1178 (9th Cir. 2013). Further, because it relies on incentives that promote efficiency and yokes together the interests of the class and its attorneys, the percentage of the fund method has been described as "self-regulatory" and "self-policing" and frees the courts to do other business. Coffee, John C. Jr., *Understanding the Plaintiff's Attorney: The Implications of*

Economic Theory for Private Enforcement of Law through Class and Derivative Actions, 86 Colum. L. Rev. 669, 724-25 (1986). Because of the burdens of the lodestar approach and the benefits of the percentage of the fund method, about 90% of all courts employ the percentage of the fund method when awarding fees from a common fund. This is the predominant practice in the Ninth Circuit as well. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) ("Use of the percentage method in common fund cases appears to be dominant"); *Vizcaino*, 209 F.3d at 1050 ("the primary basis of the fee award remains the percentage method."); *Elliot v. Rolling Frito-Lay Sales, LP*, No. SACV 11-01730, 2014 WL 2761316, at *9 (C.D. Cal. June 12, 2014) (percentage of the common fund method is the "typical" method of awarding fees in the Ninth Circuit).

For these reasons, Class Counsel submit that the Court should use the standard percentage-of-the-fund method to determine the award of attorney's fees in this action and they request a fee of 1/3 of the common fund-the percentage agreed to by the class representatives and consistently approved by courts-as fair and reasonable.

Class Counsel's request for 1/3 of the Settlement Fund is not only fair and reasonable, but also is the norm for common fund cases in Montana. *See, e.g., Henderson v. Kalispell Regional Healthcare*, No. CDV-19-0761 (Judge Best awarding 1/3 of $4.2 million common fund as reasonable fee); *Sones v. Rimrock Engineering, Inc.*, No. DV 19-0575 (Thirteenth Jud. Dist. Ct. 2020) (Judge Todd awarding 1/3 of $3.45 million common fund as reasonable fees); *Hageman v. AT&T Mobility*, No. CV-13-50-DLC-RWA (Magistrate Judge Anderson awarding 1/3 of $45 million fund as reasonable fees).

B. The Factors Considered in Determining Reasonable Attorneys' Fees Support Class Counsel's Fee Request

The Montana Supreme Court has articulated the following nonexclusive factors typically used to determine a reasonable fee award under the percentage of the recovery calculation: (1) The novelty and difficulty of the legal and factual issues involved; (2) The time and labor required to perform the legal service properly; (3) The character and importance of the litigation; (4) The result secured by the attorney; (5) The experience, skill, and reputation of the attorney; (6) The fees customarily charged for similar legal services at the time and place where the services were rendered; (7) The ability of the client to pay for the legal services rendered; and (8) The risk of no recovery. *Gendron*, 2020 MT 82 ¶ 14. All of those factors support the 1/3 fee requested by Class Counsel:

(1) Novelty and difficulty of issues involved.

This is a highly complicated data breach case. Logan Health adamantly denied liability and expressed an intention to defend itself through trial. Counsel Decl. ¶ 53. There were also complicating insurance coverage issues. *Id.*, ¶ 40. There are very few attorneys in this state and nationally who are willing and capable of taking on a complex privacy claim like this at all, much less with the added complexity of class action rules and pitfalls. Indeed, data breach cases are especially risky, expensive, and complex given the unsettled nature of the law. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) ("Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable."); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that "many of the legal issues presented in [] data-breach case[s] are novel"); *In re Equifax Inc. Customer Data Sec.*

Breach Litig., No. 1:17-MD-2800, 2020 WL 256132, at *32-33 (N.D. Ga. Mar. 17, 2020) (recognizing the complexity and novelty of issues in data breach class actions). Despite these risks, Class Counsel were able to obtain an excellent result for Class Members.

(2) Time and labor required to perform the legal service properly.

Class counsel is comprised of two small law firms and two large firms. Firms of small size face even greater risks in litigating large class actions with no guarantee of payment. *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561, 2014 WL 6473804, at *10 (C.D. Cal. Nov. 18, 2014) (awarding fee award of 1/3 finding heightened risk of small firm representation should be rewarded with larger percentage fee for good result); *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 750 (1987) (Delaware Valley II) ("[C]ontingent litigation may pose greater risks to a small firm or a solo practitioner because the risk of nonpayment may not be offset so easily by the presence of paying work."); *Davis v. Mutual Life Ins. Co.*, 6 F.3d 367, 382 (6th Cir. 1993) ("[T]he maintenance of comparatively large pieces of litigation prevents small firms from diversifying risk by taking on additional clients ..."). Here, all four of the firms comprising Class Counsel have expended a considerable amount of their time and resources prosecuting this case. Counsel Decl., ¶¶ 62, 75, 80, 88. Specifically, Class Counsel has spent a significant number of hours advancing the interest of, and seeking compensation for, the Class, including reviewing documents, communicating with opposing counsel, and researching and briefing a highly complex legal case. *Id.*, ¶¶ 10-11. They spent numerous additional hours negotiating and drafting settlement documents and explaining the terms of the Settlement to individual Class Members. *Id.*, ¶¶ 12-20.

As stated, this is a pure contingent fee case, and one which Class Counsel took on with high risk concerning not only the result of the case, but also how much time and

money would need to be invested to achieve a result. Class Counsel was far into the water before they could see the other side. *Id.*, ¶¶ 62, 75, 80, 88. Because hours and resources are necessarily limited, Class Counsel were required to defer or decline other work in order to properly prosecute this case. *Id.* Had the case been lost, they would have received no compensation for their significant investment of money, time and effort. Conversely, because Class Counsel's time and effort resulted in an outstanding result for the Class Members, they should receive the requested 1/3 contingency fee.

(3) The Character and Importance of this Litigation.

Given the complex legal issues in this case, it would have been virtually impossible to prosecute on individual bases. The cases would most likely not be brought because the net recovery to the Plaintiffs would not be worth the expense. This case is critically important to the affected Class Members. This case is more broadly important in the context of protecting patient information. The remedial measures that Defendant has committed to implementing as a result of this litigation will benefit not only Class Members, but also any future patients who provide their PII and PHI to Defendant for treatment and care by enhancing the protection of that PII and PHI.

(4) The Result Secured is Excellent.

Here, Class Counsel has secured the maximum remaining insurance proceeds under Defendant's policy. Counsel Decl., ¶ 40. In addition to the non-reversionary cash Settlement Fund, the Settlement also promises significant remedial measures that are narrowly tailored to help prevent a breach like this from occurring again. This is a phenomenal result and well in-line with any other national data breach cases settlement on record. The specific benefits provided by the Settlement compare favorably to the relief made available to victims of other data breaches of similar size in common fund cases that

recently received approval and provides for a significantly greater recovery on a per-person basis. *See* Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement filed on October 26, 2022, at 15.

(5) The Experience, Skill, and Reputation of the Attorneys Warrants the Requested Fee.

Heenan & Cook and Paoli Law Firm are known to the Court and in the community. Both firms are rated "AV Preeminent" by Martindale-Hubble and "Super Lawyers." Counsel Decl., ¶¶ 58, 76. David Paoli has been practicing law for over 30 years and has had numerous successful verdicts and settlements. *Id.*, ¶ 76. Germane to this case, David Paoli's practice includes mass torts cases including the DePuy hip cases, opioid cases and litigation against big tobacco. *Id.*, ¶ 77. John Heenan specializes in consumer cases, including consumer class actions, and is one of the few attorneys to have a data breach class action certified in Montana (*D.A. Davidson* and *Kalispell Regional Healthcare*). *Id.*, ¶¶ 58-59. He has been appointed lead counsel or co-lead counsel in numerous class action cases. *See, e.g., Hageman v. AT&T* (D. Mont.); *Byorth v. USAA* (D. Mont.); and *Cole v. Portfolio Recovery Associates* (D. Mont.). *Id.*, ¶ 60.

Andrew W. Ferich is a partner at Ahdoot & Wolfson, PC ("AW"), one of the nation's leading privacy class action law firms. *Id.*, ¶ 63 and at Exhibit B (AW Firm Resume). Mr. Ferich and AW are experienced litigators who have prosecuted and resolved numerous large consumer class actions and other complex matters, including data privacy class actions. *Id.*, ¶¶ 69-73; *see, e.g., Cochran, et al. v. The Kroger Co., et al.*, No. 5:21-cv-01887-EJD (N.D. Cal.), ECF No. 115 (granting final approval of nationwide settlement that provides $5 million non-reversionary fund, and appointing Ferich and his firm as class counsel with co-counsel); *In re Experian Data Breach Litig.*, No. 8:15-cv-01592-AG-

DFM (C.D. Cal. May 13, 2019), ECF No. 322 (AW appointed co-lead counsel; settlement conservatively valued at over $150 million); *In re Zoom Video Communications, Inc. Privacy Litig.*, No. 5:20-cv-02155-LB (N.D. Cal. Oct. 21, 2021) (AW appointed co-lead counsel; $85 million common fund settlement); *Rivera v. Google LLC,* No. 2019-CH-00990 (Ill Cir. Ct.) (AW as class counsel achieved a $100 million non-reversionary cash settlement, with meaningful prospective relief).

John Yanchunis leads Morgan & Morgan's class action group. Morgan & Morgan is the largest Plaintiff's, contingency-only law firm in the country, with over 800 lawyers in almost every state in the United States, including Montana. Counsel Decl., ¶ 81. Its depth as a trial firm, and its self-funded financial resources, allow it to undertake the largest and most significant cases throughout the country. *Id.* Mr. Yanchunis began his work in privacy litigation in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001), alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, he served as co-Lead Counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). *See Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.), and Fresco v. R.L. Polk, No. 07-cv-60695-JEM (S.D. Fla.). Subsequently, he also served as co-Lead Counsel in the DPPA class cases, *Davis v. Bank of America,* No. 05-cv-80806 (S.D. Fla.) ($10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and Trust,* No. 03-cv-80593 (S.D. Fla.) ($50 million class settlement). *Id.*, ¶ 82.

He has been appointed and served in leadership positions a number of multidistrict litigation in the area of privacy and data breaches: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.) (final judgment entered approving a $190,000,000.00 common fund settlement for approximately 98 million US residents); *In re Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.) (lead counsel) (Court approved $117,500,000.00 common fund settlement for approximately 194 million US residents and 270,000 Israeli citizens); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (co-lead counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with a common fund and other payments totaling $29,025,000); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs' Steering Committee) (final judgment entered approving $380.5 million fund for 145 million consumers, with additional payments resulting in $1.6 billion total); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) (member of the Executive Committee) (final approval entered approving a common fund of $63 million, plus an additional amount for attorneys' fees, costs and expenses to be awarded separately and paid by the government); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers). *Id.*, ¶ 83.

His court-appointed leadership experience in non-MDL, data breach class actions is likewise significant, and to name just a few of the many settlements: *Schmidt, et al., v. Facebook*, Inc., No. 3:18-cv-05982 (N.D. Cal.) (co-lead counsel) (contested injunctive

class certified with resulting settlement providing substantial business practice changes to enhance privacy of data collected by Facebook); *Walters v. Kimpton Hotel & Restaurant*, No. 3:16-cv-05387 (N.D. Cal.) (lead counsel) (class action settlement final approval order entered July 11, 2019); and *In re: Arby's Restaurant Group, Inc. Data Security Litigation*, Nos. 1:17-cv-514 and 1:17-cv-1035 (N.D. Ga.) (co-liaison counsel) (final approval of a class settlement entered June 6, 2019); *Jackson, et al., v. Wendy's International*, LLC, No. 6:16-cv-210-PGB (M.D. Fla.) (final approval of a class settlement entered February 26, 2019); *Henderson v. Kalispell Regional Healthcare*, No. CDV-19-0761 (Montana Eighth Judicial Court–Cascade County) (final approval of class settlement entered January 5, 2021). *Id.*, ¶ 86 and Exhibit C (Morgan & Morgan Firm Resume).

Mr. Yanchunis was recently recognized by Law360 for the second year in a row as one of four MVPs in the United States in the area of privacy and cybersecurity litigation. Similarly, in 2016, Mr. Yanchunis was recognized by the National Law Journal as its 2016 Trailblazer in the Area of Cybersecurity & Data Privacy. *Id.*

These four lawyers and law firms came together to prosecute this difficult case, and possess the experience, skill and reputation to warrant the requested fee.

(6) The fees customarily charged for similar legal services at the time and place where the services were rendered.

The Ninth Circuit has confirmed that a fair fee award must include consideration of the contingent nature of the fee. *See, e.g., Vizcaino*, 290 F.3d at 1050. Courts long have recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work. *See, e.g., In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) ("Contingent fees that may far

exceed the market value of the services if rendered on a non-contingent basis are accepted [. . .] as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.").

As stated, there is no fee-shifting provision in any of the claims asserted by the class. Thus, it is ordinary and custom that such cases would be taken on a standard one-third contingency fee arrangement. That was exactly the arrangement which class representatives agreed to here. A one-third contingency fee is customary for data breach cases such as this one. *See, e.g., Henderson v. Kalispell Regional Healthcare,* No. CDV-19-0761 (Judge Best awarding 1/3 of $4.2 million common fund as reasonable fee).

(7) The Ability of the Client to Pay for the Legal Services Rendered.

The undersigned all do exclusively plaintiff's work on a contingency fee basis. Counsel Decl., ¶¶ 62, 75, 80, 88. It would be cost-prohibitive for any individual class member to pay, out-of-pocket, for the time and costs expended by Class Counsel in the prosecution of this case.

(8) The Risk of No Recovery.

As stated, Defendant vigorously denied liability and is represented by highly competent counsel. There was a risk that Defendant could have defeated a motion for class certification, been granted summary judgment, or achieved a verdict in its favor at trial. Defendant also could have appealed any favorable order that Plaintiffs secured in this case. Conversely, there was a substantial risk that Plaintiffs would have secured a pyrrhic victory had they won at trial, only to force Defendant to expend all the money under the policies in defense of the claims and then left to pursue judgment against a non-profit healthcare provider. This Settlement reflects the practical realities of dealing with Defendant's applicable, wasting insurance policies. In view of these constrictions, this is

an excellent settlement for the Class which warrants the payment of the agreed and standard 1/3 contingency fee.

C. The Court Should Grant Reimbursement of Reasonable Litigation Expenses

Rule 23 further provides for reimbursement of incurred costs and expenses to Class Counsel from a common fund settlement. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (citation omitted) ("An attorney is entitled to "recover as part of the award of attorneys' fees those out of-pocket expenses that would normally be charged to a fee paying client."). Here, Class Counsel are also permitted to seek that additional recovery under the Settlement Agreement. *See* SA ¶ 91 (permitting recovery of up to $150,000 for costs and expenses in addition to attorneys' fees). Accordingly, Plaintiffs request payment of $23334.12 as reimbursement for reasonable litigation expenses incurred by Class Counsel in connection with this litigation, which were incurred for the benefit of the Class. *See* Counsel Decl., ¶¶ 56-57.

VI. THE COURT SHOULD APPROVE THE PLAINTIFF SERVICE AWARDS

Service awards to the named plaintiffs are typical in class action cases and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general. *See* Albert Conte and Herbert B. Newberg, 4 NEWBERG ON CLASS ACTIONS, §11.38 (4th ed). Service awards are generally sought after a settlement or verdict has been achieved. *Rodriguez v West Publishing* 563 F.3d 948, 958 (9th Cir. 2009).

Class Counsel request Class Representative Service Awards of $3,500 each in recognition for their services in this case (for a total of $35,000) to be paid from the

Settlement Fund. The requested awards are about 0.8% of the fund and are the same as those previously approved by Judge Best in *Henderson v. Kalispell Regional Healthcare*, No. CDV-19-0761. (*See* Jan. 8, 2021 Order and Judgment attached to the Counsel Declaration as Exhibit A, at 6.)

The Settlement would not have been possible without the time and effort of each of the Class Representatives, who stepped forward on behalf of other Class Members, accepting the risk of negative publicity and the responsibility of cooperating in the litigation. Counsel Decl., ¶ 44. Without these individuals' investment of time, and their courage to step forward and vindicate the Class's rights, the Class would not have obtained the substantial relief offered by the Settlement. *Id.*, ¶ 46. Class Counsel submit that the requested Service Awards are reasonable and should be approved. *Id.*, ¶¶ 43-46, 74.

VII. CONCLUSION

For all these reasons, Class Counsel respectfully request that the Court approve a Fee Award of 1/3 of the Settlement Fund (or $1,433,333) as attorneys' fees in this matter; payment of $23,334.12 as reimbursement for Class Counsel's reasonable litigation expenses; and Service Awards of $3,500 to each of the Class Representatives.

DATE: January 10, 2023

Respectfully submitted,

PAOLI LAW FIRM, P.C.

David R. Paoli
257 W. Front St., Suite A
Missoula, Montana 59802
Telephone: (406) 542-3330
Facsimile: (406) 542-3332
davidpaoli@paoli-law.com

HEENAN & COOK
John Heenan
Joseph P. Cook
1631 Zimmerman Trail
Billings, MT 59102
Telephone: (406) 839-9091
Facsimile: (406) 839-9092
john@lawmontana.com
joe@lawmontana.com

AHDOOT & WOLFSON, PC
Andrew Ferich (*pro hac vice*)
201 King of Prussia Road, Suite 650
Radnor, PA 19087
Telephone: (310) 474-9111
Facsimile: (310) 474-8585
aferich@ahdootwolfson.com

MORGAN & MORGAN
COMPLEX LITIGATION GROUP
John A. Yanchunis (*pro hac vice*)
201 North Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 223-5505
jyanchunis@forthepeople.com

Attorneys for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on this 10th day of January, 2023, by U.S. mail and email on the following:

Gary M. Zadick
UGRIN ALEXANDER ZADICK, P.C.
#2 Railroad Square, Suite B
P.O. Box 1746
Great Falls, MT 59403
gmz@uazh.com

PAOLI LAW FIRM, P.C.

HEENAN & COOK
John Heenan
1631 Zimmerman Trail
Billings, MT 59102
Telephone: (406) 839-9091
john@lawmontana.com

AHDOOT & WOLFSON, PC
Andrew W. Ferich (*pro hac vice*)
201 King of Prussia Road, Suite 650
Radnor, PA 19087
Telephone: (310) 474-9111
aferich@ahdootwolfson.com

PAOLI LAW FIRM, P.C.
David R. Paoli
257 West Front Street
PO Box 8131
Missoula, MT 59802
Telephone: (406) 542-3330
davidpaoli@paoli-law.com

MORGAN & MORGAN COMPLEX LITIGATION GROUP
John A. Yanchunis (*pro hac vice*)
201 North Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 223-5505
jyanchunis@forthepeople.com

Interim Co-Lead Class Counsel

MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY

PATRICIA TAFELSKI et. al., on behalf of themselves and all others similarly situated, Plaintiffs, vs LOGAN HEALTH MEDICAL CENTER, Defendant.	Cause No. ADV-22-0108 Honorable John W. Parker **DECLARATION OF SETTLEMENT CLASS COUNSEL IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**
ALLISON SMELTZ, on behalf of themselves and all others similarly situated, Plaintiffs, vs. LOGAN HEALTH and DOES I through X, Defendants.	Cause No. ADV-22-0124 Honorable John W. Parker

The undersigned appointed Settlement Class Counsel declare under oath as follows:

INTRODUCTION

1. The Settlement obtained with Logan Health on behalf of Settlement Class Members is fair, reasonable, and adequate, and in the best interests of Settlement Class Members.

2. Settlement Class Counsel submit this joint declaration in support of the requested attorneys' fees, litigation expenses, and Class Representative service awards.

HISTORY OF THE LITIGATION

3. On March 2, 2022, the action captioned *Tafelski v. Logan Health*, Case No. ADV-22-0108 was filed and assigned to this Court ("*Tafelski* Matter"). On March 11, 2022, the action captioned *Smeltz v. Logan Health*, Case No. ADV-22-0124 was filed and also assigned to this Court ("*Smeltz* Matter").

4. On March 21, 2022, Plaintiffs in the *Smeltz* Matter served Logan Health with a robust set of discovery requests, including fifteen interrogatories and fifty-one document requests. On March 29, 2022, the *Smeltz* Plaintiffs filed a comprehensive first amended complaint.

5. On March 31, 2022, this Court appointed John Heenan of Heenan & Cook and Andrew W. Ferich of Ahdoot & Wolfson, PC as interim co-lead counsel.

6. On April 20, 2022, this Court entered an order consolidating the *Tafelski* and *Smeltz* Matters under No. ADV-22-0108 ("Consolidated Action"). Upon consolidation, the *Tafelski* Plaintiffs incorporated the *Smeltz* discovery and amended complaint.

7. On June 24, 2022, this Court appointed David Paoli of Paoli Law Firm, PC and John Yanchunis of Morgan & Morgan as additional interim co-lead counsel in the Consolidated Action.

8. On December 2, 2022, this Court granted Plaintiffs' Motion for Preliminary Approval of Settlement, appointing as Settlement Class Counsel the attorneys John Heenan of Heenan & Cook, Andrew W. Ferich of Ahdoot & Wolfson, PC, David Paoli of Paoli Law Firm PC, and John Yanchunis of Morgan & Morgan Complex Litigation Group (collectively, "Settlement Class Counsel"), finding that for preliminary approval purposes, Settlement Class Counsel satisfied the requirements of Rule 23(a)(4) and Rule 23(g).

9. On December 2, 2022, the Court also appointed Plaintiffs as the Settlement Class Representatives, finding that for preliminary approval purposes, the Settlement Class Representatives satisfied the requirements of Rule 23(a)(4).

CLASS COUNSEL'S EFFORTS ON BEHALF OF THE CLASS

10. Settlement Class Counsel have been diligent in and committed to investigating claims on behalf of the Class. Prior to commencing this litigation, Settlement Class Counsel diligently investigated potential legal claims (and potential defenses thereto) arising from Logan Health's failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI.

11. Settlement Class Counsel have performed the following work on behalf of the Settlement Class Representatives and Class members:

a. Diligently investigated the circumstances surrounding the Data Breach;
b. Articulated the nature of the Data Breach in detailed complaints;
c. Stayed abreast of and analyzed voluminous reports, articles, and other public materials discussing the Data Breach and describing Logan Health's challenged conduct;
d. Reviewed public statements concerning the Data Breach, including the contents of the breach notification letter sent to impacted Class members;
e. Researched Logan Health's corporate structure and potential co-

defendants;

f. Fielded numerous contacts from victims and potential class members inquiring about this matter;

g. Investigated the nature of the challenged conduct at issue here by interviewing potential clients who contacted them;

h. Investigated the adequacy of the named Plaintiffs to represent the putative class;

i. Communicated and met and conferred internally amongst Plaintiffs' counsel regarding the most efficient manner to organize this litigation, successfully engaging in private ordering and self-organizing leadership in this litigation.

j. Served robust discovery requests on Logan Health;

k. Met and conferred with Logan Health about the possibility of attending mediation;

l. Obtained and analyzed pre-mediation discovery from Logan Health to focus settlement negotiations;

m. Drafted and served a detailed mediation statement;

n. Attended a full-day mediation with Logan Health;

o. Continued meet and confer and settlement negotiations beyond the mediation to finalize the terms of the Settlement; and

p. Filed a detailed motion for preliminary approval and all of the accompanying notices and forms, which were granted and approved by the Court.

SETTLEMENT NEGOTIATIONS AND MEDIATION

12. During the litigation, after the Consolidated Action was organized and Class Counsel had been appointed interim lead counsel, Settlement Class Counsel and Logan Health (the "Parties") began engaging in preliminary and then more formal settlement

negotiations. This included an exchange of information that was required in order to engage in settlement negotiations and the exchange of terms for global resolution of the claims of the Settlement Class Representatives and the Class in advance of a mediation conducted by Judge Louis Meisinger (Ret.) of Signature Resolution.

13. Settlement Class Counsel spent many hours preparing for the mediation, including reviewing of informal discovery, preparing a detailed mediation statement, and engaging in pre-mediation meet and confer discussions with counsel for Logan Health.

14. On July 19, 2022, the Parties attended an all-day mediation with Judge Meisinger.

15. The settlement negotiations were hard-fought throughout and the settlement process was conducted at arm's length.

16. At the end of the all-day mediation, the Parties were at an impasse as to the amount of the common fund, so the mediator proposed a double-blind mediator's proposal of $4.3 million for the common fund, which the Parties mutually accepted.

17. As a result of these negotiations, the Parties were able to reach an agreement on the substantive terms of the Settlement by the conclusion of the mediation.

18. The Parties, through their respective counsel, continued to negotiate and finalize the details of the Settlement over the following weeks, before signing the Settlement Agreement.

19. Settlement Class Counsel also devoted many hours to identifying and selecting a settlement administrator and developing the Class Notice Program.

20. The Settlement resulted from arm's-length negotiations between experienced counsel with an understanding of the strengths and weaknesses of their respective positions in this lawsuit.

THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

21. Based on Settlement Class Counsel's independent investigation of the relevant facts and applicable law, experience with other data breach cases, and the information provided by Logan Health, Settlement Class Counsel has determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class.

22. The settlement terms include reimbursement of out-of-pocket losses, reimbursement for attested time, and three (3) years of free, three-bureau credit monitoring available to every participating settlement class member who elects to enroll.

23. While the Parties were able to secure discounted pricing based on the size of the class, the actual market value of this settlement benefit can fairly be estimated at approximately $720 per class member ($19.99 per class member for 36 months), to the nearly 213,000 non-minor class members who are eligible to enroll.

24. As part of the Credit Monitoring Services benefit, Settlement Class members will be entitled to access identity restoration services offered through Pango for a period of three (3) years, regardless of whether they submit a claim under the Settlement. This coverage provides class members with access to fraud resolution specialists who can assist with important tasks such as placing fraud alerts with the credit bureaus, disputing inaccurate information on credit reports, scheduling calls with creditors and other service providers, and working with law enforcement and government agencies to dispute fraudulent information. Settlement benefit allows even those class members who do not submit a claim under the Settlement to have access to help in the case they experience fraud or identity theft in the future.

25. As part of the Settlement, a parent or legal guardian of a Settlement Class Member who is a minor at the time the settlement is final may enroll the minor in three (3) years of Pango's Minor Monitoring Services. These Minor Monitoring Services will be provided to qualifying minors without the need to file a claim under the Settlement. Minor Monitoring Services include Social Security Number tracing to determine whether someone has applied for credit in the minor's name along with alerts of all names, aliases

and addresses that become associated with the minor's credit file; internet surveillance that searches the web, chat rooms, and bulletin boards to identify trading or selling of the minor's Sensitive Information on the Dark Web; identity restoration and fraud resolution services; and $1,000,000 in identity theft insurance for material damages that may occur against a minor whose credit file is misused.

26. In lieu of Credit Monitoring Services, but in addition to the out-of-pocket losses and attested time benefits, Settlement Class members may elect to receive a cash payment in an amount equal to a *pro rata* distribution of the remaining settlement funds after payment is allocated for Credit Monitoring Services/Identity Restoration Services, payments for Out-of-Pocket Losses, Attested Time, notice and administration costs, and service awards, attorneys' fees and expenses, but in no event shall any class member receive more than $125 under this provision.

27. Given Settlement Class Counsel's experience studying claims rates and benefits selection in other data breach settlements, Settlement Class Counsel is confident the Settlement Fund will be sufficient to pay out all claims for Out-of-Pocket Losses, Attested Time, Credit Monitoring Services/Identity Restoration Services, and the costs and expenses of litigation and this settlement with funds remaining to make meaningful payments for Alternative Cash Payments. When a victim incurs out-of-pocket expenses relating to a data breach, it is typically associated with seeking advice about how to address the breach (e.g., paying for professional services), paying incidental costs associated with identity theft or fraud (e.g., overdraft fees or costs for sending documents by certified mail), or taking mitigative measures like paying for credit monitoring or credit restoration services. As such, the out-of-pocket expenses associated with a data breach are generally relatively low, and rarely exceed several hundred dollars for any individual class member with losses. When victims spend more than this amount, it is typically associated with paying for professional services such as accountant or attorneys' fees. Thus, while there are situations where a class member can incur thousands of dollars in

losses, which is accounted for in this Settlement, those instances are typically outliers.

28. Settlement Class Counsel compared submissions from multiple proposed claims administrators to ensure the approximate cost of notice and administration was competitive and fairly valued. After reviewing and comparing costs among the proposal, the Parties agreed to engage CPT Group to serve as the Settlement Administrator, which the Court approved.

29. Settlement Class Counsel has worked with CPT Group to effectuate the Court-approved Notice Program and will continue to expend time and resources to ensure the Notice Program is administered appropriately.

30. The record shows Settlement Class Counsel worked diligently to bring this case to resolution.

31. While the Parties settled relatively early in the litigation, the Parties had sufficient information to adequately evaluate the merits of the case. The Parties exchanged significant information in conjunction with settlement negotiations that included the class size and demographics, information regarding the technical aspects of the breach, discovery of the breach, and duration and circumstances of the breach.

32. Settlement Class Counsel relied on their experience presenting expert evidence and litigating the key legal issues in other major data breach cases to assist in evaluating the merits of this case.

33. Settlement Class Counsel, a collective group with extensive experience in leading major data breach class actions, believe that the relief is fair, reasonable, adequate, and superior to many comparable settlements on record.

34. Settlement Class Counsel are eminently qualified to represent the Settlement Class. They have extensive experience in prosecuting data breach cases, having represented data breach victims in numerous cases across the country. In this case, they have spent considerable time investigating Settlement Class Members' injuries and claims and negotiating a well-informed Settlement on behalf of the Settlement Class.

35. The Settlement Class Representatives (*i.e.*, Plaintiffs) are members of the Settlement Class and do not possess any interests antagonistic to the Settlement Class. Like Settlement Class Members, they provided their Sensitive Information to Logan Health and were harmed because of the Data Security Incident. The Settlement Class Representatives have the same interests as other class members as they are asserting the same claims and share the same injuries.

36. Additionally, the Settlement Class Representatives have vigorously prosecuted this case for the benefit of all Settlement Class Members by filing the underlying action, reviewing pleadings, conferring with Settlement Class Counsel, and providing input in crafting and approving the Settlement.

PRELIMINARY APPROVAL

37. Following the Parties' negotiations and resolutions of the benefits available to the Settlement Class, including valuable business practice changes that Logan Health implemented in response to this Litigation, on October 26, 2022, Plaintiffs moved the Court to preliminarily approve the Settlement, which was granted on December 2, 2022.

THE SETTLEMENT IS IN THE BEST INTERESTS OF THE CLASS

38. The undersigned Settlement Class Counsel agree that the Settlement is fair, reasonable, and adequate; the product of substantial investigation and arms'-length negotiation; and, most importantly, is in the best interests of the Settlement Class.

39. Despite our strong belief in the merits of this litigation and likelihood of success at trial, we nonetheless believe that the benefits to the Settlement Class Representatives and the Settlement Class pursuant to the agreed upon terms substantially outweigh the risks of continuing to litigate the claims—namely, the delay that would result before the Settlement Class Representatives and Settlement Class Members would receive any befits should the action proceed to trial; the possibility of a negative outcome at trial; and the possibility of a negative outcome post-trial should Logan Health appeal a

judgment in favor of the putative Class. This Settlement provides significant benefits now and is in the best interests of all Settlement Class Members.

40. Additionally, Logan Health informed Settlement Class Counsel that its insurer was potentially disputing coverage for the data breach, which would have left Logan Health potentially unable to satisfy any judgment obtained in litigation. Here, Class Counsel has secured the maximum remaining insurance proceeds under Defendant's policy.

41. When compared with other data breach cases, this Settlement is an excellent result of Settlement Class Members.

42. The Claims Deadline is April 3, 2023. Prior to the Final Approval Hearing, Class Counsel and the Settlement Administrator will provide then-current information about the claims rate and estimated value of the Settlement.

THE REQUESTED SERVICE AWARDS ARE TYPICAL

43. Settlement Class Counsel seek approval of $3,500 for each Settlement Class Representative in recognition for their services in this case (for a total of $35,000) to be paid from the Settlement Fund.

44. The Settlement would not have been possible without the time and effort of each of the Settlement Class Representatives, who stepped forward on behalf of other Settlement Class Members, accepting the risk of negative publicity and the responsibility of cooperating in the litigation. The Settlement Class Representatives have at all times been in control of this litigation.

45. The Settlement Class Representatives were kept fully apprised of the litigation at all times, were available during the mediation, and ultimately approved the Settlement. The subject of service awards was not raised nor negotiated until after the parties had reached a settlement of the underlying claims, and the Settlement Class Representatives' consent and agreement to those terms was not, nor is it in any way,

conditioned on receipt of service awards.

46. Without the Settlement Class Representatives' investment of time and their courage to step forward and vindicate the Settlement Class' rights, the Settlement Class would not have obtained the substantial relief offered by the Settlement.

THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

47. The parties to this litigation engaged in informal discovery before any mediation was held or settlement was discussed.

48. The negotiations in this case were hard-fought, at all times at arms'-length, and supervised by an independent neutral party—Judge Louis Meisinger (Ret.).

49. The Settlement is non-reversionary; none of the $4.3 million that Logan Health has committed to the Settlement will revert back to Logan Health.

50. The subject of attorneys' fees was not discussed until the Parties agreed to the material terms of the Settlement.

51. The attorneys' fees (but not expenses and costs, which are not being sought) that Class Counsel are submitting for the Court's consideration include time devoted to the efforts undertaken by Class Counsel, as discussed *supra*.

52. In addition to these tasks and the attendant resources already committed, Settlement Class Counsel will devote additional time and resources to this case, including:

a. Preparing for and attending the Final Approval hearing, including researching and drafting the motion for final approval and responses to any objectors;

b. Continuing to respond to myriad inquiries from Settlement Class Members;

c. Overseeing the Settlement through final approval of distribution of the common fund;

d. Overseeing the claims administration process, including addressing any

claim review issues; and

e. Defending any appeals to ensure the benefits of the Settlement are ultimately provided to the Settlement Class Members

53. The quality of the work performed by Settlement Class Counsel in obtaining the Settlement should also be evaluated in light of the quality of opposing counsel. Logan Health was represented by experienced counsel from Ugrin Alexander Zadick, P.C., and Mullen Coughlin—the latter of which is a nationally recognized litigation firm in the privacy sector. These firms vigorously and ably defended the action, including adamantly denying liability and expressing an intention to defend the action through trial and potential appeal. In facing this formidable defense team, Settlement Class Counsel were nevertheless able to develop a case that was sufficiently strong to persuade settlement on terms that are overwhelmingly favorable to the Settlement Class.

54. The amount of attorneys' fees requested compares favorably with that awarded in other data breach cases. For example, in *Henderson v. Kalispell Regional Healthcare*, CDV-19-0761 (Mont. Eighth Jud. Ct. 2020), a Montana state court approved a 1/3 fee award request, finding the requested fees and costs to be fair and reasonable given counsel's experience in data breach class actions, the relief obtained for the class, and the contingency nature of the case. A copy of the Jan. 8, 2021 Order and Judgment in *Henderson v. Kalispell Regional Healthcare*, CDV-19-0761 (Mont. Eighth Jud. Ct. 2020) is attached as Exhibit A. Messrs. Heenan, Paoli, and Yanchunis were appointed as Settlement Class Counsel in that matter.

CLASS COUNSEL SEEK REASONABLE LITIGATION EXPENSES

55. Pursuant to the Settlement Agreement, Settlement Class Counsel are permitted to seek reimbursement of up to $150,000.00 in costs and expenses.

56. Settlement Class Counsel seek only $23,728.78 as reimbursement for their necessary litigation expenses. These expenses are broken down by firm below:

Firm	Expenses
Ahdoot & Wolfson, PC	$2,233.71
Heenan & Cook	$19,495.07
Paoli Law Firm, P.C.	$1,052.86
Morgan and Morgan	$552.48
TOTAL	**$23,334.12**

57. Settlement Class Counsel agree and confirm that all of their expenses in this matter were reasonable, reasonably incurred, and were incurred for the benefit of the Settlement Class in this matter. Settlement Class Counsel can provide a more detailed breakdown of their necessary litigation expenses at the Court's request.

SETTLEMENT CLASS COUNSEL'S QUALIFICATIONS

Heenan & Cook

58. I, John Heenan, am a partner at Heenan & Cook, PLLC, a statewide consumer protection law firm. I have been practicing consumer protection law in Montana for over 20 years, including privacy and data breach matters. I am rated "AV Preeminent" according to Martindale-Hubbell and have been recognized by "Super Lawyers."

59. I am a board member of the National Association of Consumer Advocates, a nationwide group of consumer lawyers. As part of my consumer law practice, I have attended national continuing legal education seminars on consumer law, including data

and privacy litigation. I have also spoken about consumer and privacy law issues throughout Montana, including the Montana Trial Lawyer's Association, Montana Bar's Annual Convention, the Federal Bar Association, the Montana Bankruptcy law conference, and the National Business Institute. Each year, I present to the consumer law class at the University of Montana.

60. I have been appointed lead or co-lead counsel in numerous class action matters including *Hageman v. AT&T*, CV-13-50-DLC (D. Mont. 2015), which resulted in a $45 million settlement, which stands as one of the largest TCPA class action settlements. Specific to data breach/privacy actions, I was appointed lead counsel in the data breach case of *Pinter v. D.A. Davidson*, CV-09-59-RFC which resulted in a settlement fund and other relief for data breach victims. I, along with David Paoli and John Yanchunis, was appointed co-lead counsel by Judge Best in the case of *Henderson v. Kalispell Regional Healthcare*, CDV-19-0761 (Mont. Eighth Jud. Ct. 2020), which resulted in a $4.2 million settlement for data breach victims.

61. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members.

62. During the course of this litigation, I was required to devote attorney time and resources to this litigation, requiring me to decline other work in order to properly prosecute this case. Because this case was taken on pure contingency, I would not have received any compensation for the significant amount of money, time, and effort in resources I devoted from my firm.

Ahdoot & Wolfson, PC

63. I, Andrew W. Ferich, joined Ahdoot & Wolfson, PC ("AW") as a partner at the age of only 33, and already have extensive experience serving in leadership and support roles in data privacy class action cases and other complex actions. For example,

I have been at the forefront of the highly-publicized Accellion FTA data breach litigation announced in late 2020 and have zealously prosecuted cases against Accellion and three of its customers that were impacted by this massive breach. Due to my firm's efforts, settlements were reached in each of these litigations. In one of the Accellion cases, final approval of the settlement was recently granted, and I was appointed as class counsel. *See Cochran, et al. v. The Kroger Co., et al.*, No. 5:21-cv-01887-EJD (N.D. Cal.), ECF No. 115 (granting final approval of nationwide settlement that provides $5 million non-reversionary fund, and appointing Ferich and his firm as class counsel with co-counsel).

64. I was previously appointed as Interim Co-Lead Counsel in this litigation in *Smeltz, et al. v. Logan Health, et al.*, No. A-DV-22-0124 (8th Judicial District Court, Cascade County Mar. 31, 2022) (Grubich, J.).

65. I am serving as Class Counsel in *Leitermann et al v. Forefront Dermatology SC, et al.*, No. 1:21-cv-00887-LA (E.D. Wis.) where the Wisconsin federal district court recently granted preliminary approval of a settlement that included a $3.75 million non-reversionary common fund. ECF No. 33.

66. I also was recently appointed to the plaintiffs' executive steering committee in a ransomware class action lawsuit involving disclosure of sensitive medical information and other PII/PHI. *See In re: Eskenazi Health Data Incident Litig.*, No. 49D01-2111-PL-038870 (Ind. Comm. Ct. Jan. 24. 2022).

67. I was previously appointed as class counsel in *Perdue et al. v. Hy-Vee, Inc.*, No. 1:19-cv-01330 (C.D. Ill.), a payment card data breach that exposed the sensitive payment card information of millions of class members. *Id.*, ECF No. 62, at 3. My efforts on behalf of the class resulted in the creation of an uncapped claims settlement providing cash payments to class members, and Hy-Vee committing at least $20 million to data security improvements. *Id.*, ECF No. 58, at 4; *see also Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA (D. Colo.) (data breach case where millions of consumers' payment card data was exposed to hackers); *Bray, et al. v. GameStop Corp.*,

No. 1:17-cv-01365 (D. Del.) (data breach settlement involving exposure of payment card information through defendant's website).

68. I have also been appointed to leadership positions in numerous other privacy cases and other consumer class actions. For example, I was appointed as class counsel in *Udeen, et al. v. Subaru of America, Inc.*, No. 1:18-cv-17334-RBK-JS (D.N.J.), where I helped obtain a settlement valued at more than $6.25 million on behalf of owners and lessees of Subaru vehicles with allegedly defective infotainment systems. *See also McFadden v. Microsoft Corp.*, No. C20-0640-RSM-MAT, 2020 WL 5642822, at *3 (W.D. Wash. Sept. 22, 2020) (appointed as co-lead counsel).

69. In March 1998, Robert Ahdoot and Tina Wolfson founded AW, now a nationally recognized law firm that specializes in complex and class action litigation, with a focus on privacy rights, consumer fraud, anti-competitive business practices, employee rights, defective products, civil rights, and taxpayer rights. The attorneys at AW are experienced litigators who have often been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its successful existence, AW has successfully vindicated the rights of millions of class members in protracted, complex litigation, conferring hundreds of millions of dollars to the victims, and affecting real change in corporate behavior.

70. AW has been on the cutting-edge of privacy litigation since the late 1990s, when its attorneys successfully advocated for the privacy rights of millions of consumers against major financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without consumers' consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, they were novel and hidden from public scrutiny at the time AW was prosecuting them. Our work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW has been at the forefront of privacy-related litigation since then.

71. AW has been appointed lead counsel in numerous complex consumer class actions. The following are some examples of recent class actions that AW has litigated to conclusion or are currently litigating on behalf of clients – either as Class Counsel, proposed Class Counsel or members of a Court appointed Plaintiff Steering Committee:

- As co-lead counsel in *In re Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155-LHK (N.D. Cal.) (Hon. Lucy H. Koh), AW achieved an $85 million settlement that provides monetary relief to Zoom users who submit a claim for payment and comprehensive injunctive relief which addresses the privacy issues on which Plaintiffs' claims were based. This settlement was recently finally approved by the Northern District.

- In *Rivera v. Google LLC*, No. 2019-CH-00990 (Ill Cir. Ct.) (Hon. Anna M. Loftus), a class action arising from Google's alleged illegal collection, storage, and use of the biometrics of individuals who appear in photographs uploaded to Google Photos in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*, AW achieved a $100 million non-reversionary cash settlement, with meaningful prospective relief.

- As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over $150 million. Under that settlement, each class member was entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian also provided robust injunctive relief. Judge Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

- As a member of a five-firm Plaintiffs' Steering Committee ("PSC") in

the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-md-2633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at $74 million.

- In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a $29 million settlement and robust injunctive relief for the consumer class.

- As co-lead counsel in *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA-SKC (D. Colo.) (Hon. Christine M. Arguello), AW secured a settlement for the nationwide class that provided for up to $250 in claimed damages or $10,000 in extraordinary damages.

- In *Adlouni v. UCLA Health Sys. Auxiliary*, No. BC589243 (Cal. Super. Ct. Los Angeles Cnty.) (Hon. Daniel J. Buckley), AW, as a member of the PSC for patients impacted by a university medical data breach, achieved a settlement providing two years of credit monitoring, a $5,275,000 fund, and robust injunctive relief.

- AW's efforts have also shaped privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited routinely in briefing on Article III and data breach standing, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). The Seventh Circuit concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group,*

LLC, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

- Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), I was chosen by Judge Jackson to serve as a member of the Plaintiffs' Steering Committee. AW briefed and argued, in part, the granted motions to dismiss based on standing, and briefed in part the successful appeal to the D.C. Circuit. Judge Jackson recently issued her preliminary approval of a $60 million settlement in this Action.

- AW's other ongoing privacy class actions include *In re Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald) (serving as co-lead counsel), *In re Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila) (same), *In re Ambry Genetics Data Breach Litigation*, No. 8:20-cv-791-CJC-KES (C.D. Cal.) (Hon. Cormac J. Carney) (same), and *Acaley v. Vimeo, Inc.*, No. 1:19-cv-7164 (N.D. Ill.) (Hon. Matthew F. Kennelly).

- In addition, AW has served or is serving as plaintiffs' counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 ("TCPA"), such as *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in $10 million nationwide settlement) and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S.D.N.Y.) (Hon. Valerie E. Caproni) ($14.5 million nationwide settlement).

72. In sum, I and my firm have led and continue to lead many high-profile privacy cases, including those involving data privacy (e.g., *Zoom, Ring*), data breaches (e.g., *Experian, Premera, Home Depot, OPM, Chipotle, The Kroger Co., Forefront Dermatology*), geo-location tracking (e.g., *Google Location History Litigation*), collection and storing of biometric information (e.g., *Google, Shutterfly, Vimeo*), and TCPA violations (e.g., *Hollister, American Eagle*), as well as many other types of

consumer class actions (e.g., *Eck* - $295 million class settlement against City of Los Angeles for unlawful utility taxes).

73. AW has decades of experience in the prosecution of class actions, including data breach and privacy lawsuits such as this action. Given AW's proven track record of experience and results, and its specific expertise in data privacy class action litigation, it can more than adequately represent the Settlement Class. A copy of AW's firm resume is attached as Exhibit B.

74. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members, and that the requested attorneys' fees, litigation expenses, and Service Awards are reasonable.

75. During the course of this litigation, I was required to devote attorney time and resources to this litigation, requiring me to decline other work in order to properly prosecute this case. Because this case was taken on pure contingency, I would not have received any compensation for the significant amount of money, time, and effort in resources I devoted from my firm.

Paoli Law Firm

76. I, David R. Paoli, am the senior partner at Paoli Law Firm. I have been practicing law on behalf of Montana injury victims and consumers for nearly 40 years. I am a member of the National Association of Consumer Advocates. I am listed in The Best Lawyers in America and am formerly Designated Legal Counsel to the United Transportation Union. I have previously served as Chairman of the United States Magistrate Judge Selection Committee and as a Lawyer Representative to the Ninth Circuit Court of Appeals. Most recently, I taught the products liability class at the University of Montana School of Law as an adjunct professor. I am rated "AV Preeminent" according to Martindale-Hubbell and have been recognized by "Super Lawyers."

Doubleclick Inc. Privacy Litigation, No. 00 CIV 0641 NRB (S.D.N.Y.), an action alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, I served as co-Lead Counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). *See Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.); *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.).

83. I also served as Co-Lead Counsel in the DPPA class cases, *Davis v. Bank of Am.*, No. 05-cv-80806 (S.D. Fla.) ($10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and Trust*, No. 03-cv-80593 (S.D. Fla.) ($50 million class settlement). I have served in leadership positions in many of the largest data breach cases filed: *In Re: Capital One Consumer Data Sec. Breach Litig.*, No. 19-md-2915 (E.D. Va.) (Co-Lead Counsel) (final approval entered approving a $190,000,000.00 common fund settlement for approximately 98 million U.S. residents); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-02752-LHK (N.D. Cal.) (Lead Counsel) (final approval of a settlement with a common fund of $117,500,000 entered in May 2020 for approximately 194 million U.S. residents and 270,000 Israeli citizens); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 14-md-02583-TWT (N.D. Ga.) (Co-Lead Counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of $29,025,000); *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs' Steering Committee) (largest data breach settlement in history with $380.5 million common fund for 145 million consumers, with additional payments resulting in $1.6 billion total; affirmed by the Eleventh Circuit); *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, No. 15-mc-01394-ABJ (D.D.C.) (member of the Executive Committee) (final approval entered for common fund of $63 million, plus an additional amount of attorneys' fees,

costs, and expenses to be awarded separately and paid by the Government); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers upheld by the Eighth Circuit); *Adkins v. Facebook, Inc.*, No. 18-cv-5982-WHA (N.D. Cal.) (Co-Lead Counsel) (obtained one of the few contested certifications of a Rule 23(b)(2) injunction class, final approval of a class action settlement has been entered).

84. Aside from the cases identified above, I have litigated and settled a significant number of other data breach, data compromise, and privacy class cases. I have been recognized for my work in the area of class action litigation. In 2020 I was honored as Lawyer of the Year in the state of Florida by the Daily Business Review, an ALM publication. I was also recognized in 2020 as one of 4 lawyers nationally as an MVP in Privacy and Cyber Security, and in 2019 as one of 3 lawyers nationally as an MVP in Privacy and Cyber Security. In 2016 and in 2020, I was recognized by the National Law Journal as a Trailblazer in the areas of Cyber Security & Privacy.

85. I, along with John Heenan and David Paoli, was appointed co-lead counsel by Judge Best in the case of *Henderson v. Kalispell Regional Healthcare*, CDV-19-0761 (Mont. Eighth Jud. Ct. 2020), which resulted in a $4.2 million settlement for data breach victims.

86. A copy of Morgan & Morgan's firm resume is attached hereto as Exhibit C.

87. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members.

88. During the course of this litigation, I was required to devote attorney time and resources to this litigation, requiring me to decline other work in order to properly prosecute this case. Because this case was taken on pure contingency, I would not have

received any compensation for the significant amount of money, time, and effort in resources I devoted from my firm.

Dated this 10th day of January, 2023.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ John Heenan
John Heenan

I declare under penalty of perjury that the foregoing is true and correct.

/s/David R. Paoli
David R. Paoli

I declare under penalty of perjury that the foregoing is true and correct.

/s/Andrew W. Ferich
Andrew W. Ferich

I declare under penalty of perjury that the foregoing is true and correct.

/s/John A. Yanchunis
John A. Yanchunis

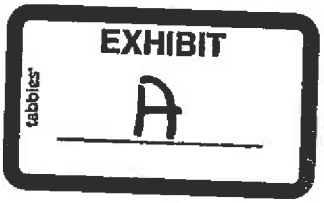
MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY

WILLIAM HENDERSON et. al., on behalf of themselves and all others similarly situated, Plaintiff, vs KALISPELL REGIONAL HEALTHCARE, Defendant.	Cause No. CDV-19-0761 Judge Elizabeth A. Best ORDER AND JUDGMENT

WHEREAS, on November 3, 2020, a Preliminary Approval Order was entered by the Court preliminarily approving the proposed Settlement pursuant to the terms of the Parties' Settlement Agreement, and directing that notice be given to the Settlement Class.

WHEREAS, pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement, of the right of members of the Settlement Class to opt-out, and of the right of members of the Settlement Class to be heard at a Final Approval Hearing to determine, inter alia: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this Action with prejudice;

WHEREAS, a Final Approval Hearing was held on January 5, 2021. Prior to the Final Approval Hearing, a declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as prescribed in the Preliminary Approval Order. Class Members were therefore notified of their right to appear at



5. The Court has carefully reviewed and considered the objections, as well as the arguments from Class Counsel, and overrules the objections in their entirety. The Court specifically finds that:

a. Mr. Heselwood excluded himself from the Settlement, and therefore has no standing to object. *Meta v. Manpower, Inc. / Cal. Peninsula*, No. 14-cv-03787-LHK, 2017 WL 7035754, at *4 (N.D. Cal. July 24, 2017). To the extent this Court could consider Mr. Heselwood's objection, he has failed to demonstrate how the Settlement is inadequate or unfair. *In re Google Referrer Header Priv. Litig.*, 87 F. Supp. 3d 1122, 1137 (N.D. Cal. 2015); *Schechter v. Crown Life Ins. Co.*, No. 13-cv-5596, 2014 WL 2094323, at *2 (C.D. Cal. May 19, 2014).

b. Ms. Creighton's objections are overruled. In approving a Settlement, the Court is not tasked with determining a defendant's culpability; stated differently, any objection to a litigant's culpability does not bear on the issue of whether the Settlement is fair and adequate. *In re Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 WL 4079226, *12 (N.D. Cal. Sep. 13, 2011). Additionally, Ms. Creighton has not carried her burden in demonstrating how, based on her objections, the Settlement is inadequate or unfair to Class Members. *In re Google*, 87 F. Supp. 3d at 1137; *Schechter*, 2014 WL 2094323, at *2.

c. Ms. Keeley's objections are overruled. Ms. Keeley has failed to demonstrate how the Settlement is inadequate or unfair. *Ibid.* The amount of monetary and injunctive relief available to Class Members is substantial, including three

years of credit monitoring, five years of identity theft restoration services, up to $15,000.00 for out-of-pocket expenses, and up to $75.00 for time spent remediating issues from the data breach. This relief is adequate and fair, especially considering the risks of trial. *In re TD Ameritrade*, 2011 WL 4079226, at *12.

d. Ms. Nelson's objection is overruled. Ms. Nelson has failed to demonstrate how the Settlement is inadequate or unfair. *Ibid.* The relief under the Settlement addresses the concerns Ms. Nelson raises—Class Members are entitled to three years of credit monitoring and five years of identity theft restoration services. Resulting from a settlement, where the parties balance the interests of relief with litigation risks, Ms. Nelson has not demonstrate how the Settlement is inadequate or unfair. *In re Google*, 87 F. Supp. 3d at 1137; *Schechter*, 2014 WL 2094323, at *2; *In re TD Ameritrade*, 2011 WL 4079226, at *2.

e. Ms. Wallace's objection is overruled. Like with the other objections, Ms. Wallace has failed to demonstrate how the Settlement is inadequate or unfair. *Ibid.* All Class Members are eligible for out-of-pocket damages up to $15,000.00, $75.00 for time spent, three years of credit monitoring, and five years of identity theft restoration services. There has been no showing of inadequacy or unfairness in reaching this Settlement.

6. The Settlement Class, which will be bound by this Final Approval Order and Judgment, shall include all members of the Settlement Class who did not submit timely and valid requests to be excluded from the Settlement Class.

7. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby certifies the following Settlement Class: the approximately 130,000 individuals who were sent notification by Kalispell that their Sensitive Information was or may have been compromised in the data breach disclosed by Kalispell in or about October 22, 2019.

8. All persons who have not made their objections to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

9. Within the time period set forth in Article III, section 3 of the Settlement Agreement, the cash distributions provided for in the Settlement Agreement shall be paid to the various Settlement Class members submitting Valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

10. Upon the Effective Date, members of the Settlement Class who did not validly and timely opt-out shall, by operation of this Final Approval Order and Judgment, have fully, finally and forever released, relinquished and discharged Defendant from all claims that were or could have been asserted in the Action. The Court finds that the following individuals have validly and timely excluded themselves from the Settlement:

a. George Bristol;

b. Janet Bristol;

c. Jessica Childress;

d. Duane Duff;

e. Jon Heselwood;

f. Peggy Ann Huber;

g. Irene Leib;

h. Karen L. McElvain;

i. Paul Valley;

j. Marian Valley;

k. Fred Walters; and

l. Arlene Walters.

11. All members of the Settlement Class who did not validly and timely opt-out are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims against Defendant released pursuant to the Settlement Agreement.

12. The terms of the Settlement Agreement and this Final Approval Order and Judgment shall have maximum res judicata, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could have been asserted in the Action or in any third party action.

13. The Final Approval Order and Judgment, the Settlement Agreement, the Settlement which it reflects and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, or used as an admission by or against Defendants of any fault, wrongdoing, or liability on the part of Defendant or of the validity or certifiability for litigation of any claims.

14. Class Counsel applied for an Incentive Award for class representatives of $3,500 per representative. The Court finds an incentive award of $3,500 per class representative is fair

and reasonable. These amounts are to be paid out of the Settlement Fund, in accordance with the Settlement Agreement.

15. Class Counsel requested an award of reasonable Attorney's Fees and Costs in the amount of $1,400,000. The Court finds the requested fees and costs to be fair and reasonable pursuant to the non-exclusive factors approved by the Montana Supreme Court to determine a reasonable fee under the percentage of the recovery calculation. Specifically, the Court finds:

a. The percentage of the fund formula is preferable over the lodestar formula in this case given that the case did not present fee-shifting claims, Class Counsel undertook the case on a 1/3 contingency fee basis and class representatives agreed to this fee structure, the percentage of the fund formula incentivized Class Counsel to be efficient with the prosecution of this case and in seeking maximum relief to the class, particularly given the cannibalizing/wasting insurance policies at issue.

b. A 1/3 contingency fee is the standard for plaintiff's cases in general and common fund class action cases specifically.

c. This was a novel and complex case involving data breach claims and law.

d. Class Counsel expended significant time and resources in the prosecution of this case, warranting a standard 1/3 contingency fee payment.

e. This settlement reflects a significant monetary recovery for the class which could not have occurred without the diligence and hard work of Class Counsel, and is an excellent result.

f. Class Counsel are experienced in the fields of class actions and data breach cases and possessed the experience, skills and reputations to achieve the results secured.

g. Class Counsel undertook the significant risk of no recovery, and had to forego other lucrative work to prosecute this case on behalf of the class.

16. Class Counsel's request for attorney's fees and costs in the amount of $1,400,000 is approved and awarded. These amounts are to be paid out of the Settlement Fund, in accordance with the Settlement Agreement.

17. The above-captioned Action is hereby dismissed against these Defendants in its entirety, with prejudice. Except as otherwise provided in this Final Approval Order and Judgment, the parties shall bear their own costs and attorney's fees. Without affecting the finality of the Judgment hereby entered, the Court reserves jurisdiction over the implementation of the Settlement, including enforcement and administration of the Settlement Agreement.

18. The Court hereby approves the distribution of the remaining value from the Settlement Fund to the Montana Justice Foundation pursuant to M.R.Civ.P. 23.

So Ordered this 5th day of January, 2020.

Elizabeth A. Best
District Court Judge

cc: John Heenan
David Paoli
John Yanchunis/Jonathan Cohen
Gary Zadick
Jon Kardassakis