Honorable Jason Holloway
Hearing: September 9, 2025
Without Oral Argument

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

NICOLE KERSEY, DANA GIBSON, XANDRA ABRAM, and CASEY SAPUTO, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

THERAPEUTIC HEALTH SERVICES,

Defendant.

NO. 24-2-17679-9 SEA

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Nicole Kersey, Dana Gibson, Xandra Abram, and Casey Saputo, on behalf of themselves and all other members of the Proposed Settlement Class, respectfully move the Court for an order: (1) granting preliminary approval of the settlement reached in this action, as set out in the Settlement Agreement ("Settlement Agreement" or "S.A.") attached to the Declaration of Joan M. Pradhan as Exhibit 1[1]; (2) approving the proposed Notices to Settlement Class Members of the settlement and the hearing on objections to the proposed settlement and final approval of the settlement in the forms attached to the Settlement Agreement as Exhibits B and C; (3) directing issuance of Notice to Settlement Class Members; (4) determining that the Court will

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

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likely be able to approve the Settlement Agreement under the Superior Court Civil Rules, and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment, consistent with all material provisions of the Settlement Agreement; and (5) setting a schedule for the filing of objections to the proposed settlement and hearing on final approval of the settlement.

I. INTRODUCTION

This action relates to a data breach impacting Defendant Therapeutic Health Services (hereinafter "THS" or "Defendant" and collectively with Plaintiffs, the "Parties") on or about February 26, 2024 (the "Data Incident"). In the Data Incident, an unauthorized third party accessed personal and private data of current and former patients as well as employees of Defendant, including their full names, Social Security numbers, dates of birth, health information and medical services information (collectively, "Personal Information").

Following extensive arm's-length negotiations, which included a day-long formal mediation, the Parties reached an agreement to resolve the claims in this class action. The settlement is, undeniably, an outstanding result for the Class. It consists of a non-reversionary common fund of $790,000. The additional terms and conditions are set forth in the Settlement Agreement. If approved, this settlement will resolve the claims asserted in this putative class action lawsuit arising from the Data Incident and bring substantial and meaningful relief to the Proposed Settlement Class.

II. BACKGROUND

A. Defendant Therapeutic Health Services

THS is a well-established nonprofit organization headquartered in Seattle, Washington. *See* Consolidated Class Action Compl. (Dkt. 14), ¶ 17. Founded in 1972, THS has grown to offer

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a wide range of services primarily focused on mental health and substance use disorders, using medications like methadone and buprenorphine to aid recovery. *Id.* THS also offers a variety of counseling and therapy options, including individual and group sessions, to address both substance use and co-occurring mental health disorders. *Id.* Its specialized programs for youth and families focus on prevention, early intervention, and treatment. *Id.* Additionally, THS provides case management services to help clients access essential social services such as housing, employment, and healthcare. *Id.* As a condition of service and/or employment, THS collects, aggregates, maintains, and stores personal and medical information belonging to its employees and patients. *Id.* ¶ 18. Most of this Personal Information is highly sensitive and immutable.

B. The Data Incident

On February 26, 2024, THS discovered that it had been the target of a ransomware incident. *Id.* ¶ 31. A subsequent investigation determined that the sensitive personal and medical information of approximately 42,000 individuals, consisting of patients and employees of THS, had been obtained by an unauthorized third party. *Id.* ¶ 32. The stolen information included current and former patients' and employees' full names, Social Security numbers, dates of birth, health information and medical services information. *Id.*

Despite knowing of the Data Incident since February 26, 2024, and though Washington law requires an entity to provide notification of a data breach within 30 days, *see* RCW 19.255.010, THS waited nearly *five months* before notifying those affected, eventually beginning to send notice letters in July 2024. *Id.* ¶ 33. Initially, Defendant reported that the Data Incident affected 14,164 individuals. *Id.* ¶ 34. However, Plaintiffs have since learned that Defendant estimates approximately 42,000 individuals were affected by the Data Incident. *Id.*

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C. Litigation Background, Plaintiffs' Claims, and Relief Sought

Plaintiffs Kersey, Gibson, and Saputo are former patients of THS, and Plaintiff Abram is a former employee. *Id.* ¶¶ 39, 53, 70, 84. As condition of their relationship with THS, each had entrusted THS with their Personal Information. *Id.* ¶¶ 40, 54, 71, 85. Consequently, in June 2024, they all received the same notice that their Personal Information had been compromised in the Data Incident. *Id.* ¶¶ 41, 55, 72, 86.

In August 2024, Plaintiffs each filed separate putative class actions in the Superior Court of the State of Washington for King County against THS[2], arising from the Data Incident. The Actions were consolidated on December 5, 2024, into *Kersey, et al., v. Therapeutic Health Services*, Case No. 24-2-17679-9.

Plaintiffs Kersey, Gibson, Saputo, and Abram allege, among other things, that THS failed to adequately protect their Personal Information in accordance with its duties and did not maintain reasonable data security measures as required by law. *Id.* ¶¶ 50, 67, 81, 96. Defendant denies: (i) the allegations and all liability with respect to facts and claims alleged in the Action; (ii) that the class representative in the Action and they purport to represent have suffered any damage; and (iii) that the Action satisfies the requirements to be certified or tried as a class action under CR 23. S.A. ¶ 2.

Nonetheless, Defendant has concluded that further litigation would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement. *Id.* Neither the Settlement

[2] *Kersey v. Therapeutic Health Services*, No. 24-2-17679-9 SEA, *Saputo v. Therapeutic Health Services*, No. 24-2-17796-5 SEA, *Abram v. Therapeutic Health Services*, No. 24-2-17995-0 SEA, *Reynolds v. Therapeutic Health Services*, No. 24-2-18090-7 SEA

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Agreement nor any negotiation or act performed, or document created in relation to the Settlement Agreement or negotiation or discussion thereof, is or may be deemed to be, or may be used, as an admission of any wrongdoing or liability. *Id.*

D. Settlement Negotiations

The parties participated in formal mediation, followed by weeks of arm's-length settlement negotiations overseen by well-respected mediator Hon. John W. Thornton, Jr. (Ret.). Decl. Pradhan, ¶ 6. Prior to mediation, parties exchanged informal discovery. *Id.* ¶ 5. This included THS providing information related to the breach and the notice it provided to putative class members about the breach. *Id.* During the settlement negotiations, the Parties discussed THS's potential defenses, as well as the Parties' respective positions on the merits of the claims and class certification. *Id.* ¶ 6. The mediation culminated in a mediator's proposal, which was accepted by the Parties and resulted in the Parties reaching an agreement on the essential terms of the settlement. *Id.* ¶ 7. The Parties thereafter finalized all the terms of the Settlement Agreement on August 26, 2025. *Id.* ¶ 7.

III. STATEMENT OF FACTS

A. Proposed Settlement Class

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

> All U.S. residents whose Personal Information was accessed and/or acquired in the Data Incident, as identified in the Settlement Class List to be provided by Defendant. Excluded from the Settlement Class are: (1) the Judge(s) presiding over the Action and members of their immediate families and their staff; (2) Defendant and its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant, has a controlling interest and their current and former officers and directors; (3) Settlement Class Members who properly execute and submit a valid Request for Exclusion prior to the Opt-Out Deadline; and (4) the successors or assigns of any such excluded natural person(s).

S.A. ¶ 45.

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B. Settlement Fund and Out-of-Pocket Losses

The settlement requires THS to pay $790,000 into a non-reversionary common settlement fund set up by the Settlement Administrator and funded by THS (the "Settlement Fund"). *Id.* ¶ 53. This fund will be used to fund: (i) Notice and Administration Expenses; (ii) Fee Award and Costs; (iii) Service Awards; (iv) Valid Claims for Out-of-Pocket Losses; (v) Valid Claims for Attested Time; and (vi) Valid Claims for Alternative Cash Payments. *Id*. ¶ 57.

Settlement Class Members who submit a timely Valid Claim using an approved Claim Form, along with necessary supporting documentation, are eligible to receive compensation for unreimbursed out-of-pocket losses, up to a total of $5,000 per person, subject to the limits of the Settlement Fund, and a cash payment of $100 (subject to pro-rata increase or decrease). *Id.* ¶¶ 59, 60. Claims will be subject to review for timeliness, completeness, and validity by a Settlement Administrator (*Id.* ¶ 83(h)); expenses eligible for reimbursement, as well as the requirements for a claim, include the following:

- Documented Out-of-Pocket Losses including, without limitation, (i) unreimbursed losses relating to fraud or identity theft; (ii) professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; (iii) costs associated with freezing or unfreezing credit with any credit reporting agency after February 26, 2024; (iv) credit monitoring costs that were incurred on or after February 26, 2024 through the date of claim submission; and (v) miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. This can include receipts or other documentation not "self-prepared" by the claimant that document the costs incurred. "Self-prepared" documents such as handwritten receipts are, by

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themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

Id. ¶ 59.

- Cash Payment of up to One Hundred Dollars ($100), subject to any residual increases up to additional One Hundred Dollars ($100), for Participating Settlement Class Members who submit a valid and timely Claim Form without supporting documentation.

Id. ¶ 60, 71.

C. Credit Monitoring Services

Settlement Class Members are also eligible to receive free credit monitoring services. *Id.* ¶ 61. Settlement Class Members will need to enroll to receive this benefit. *Id.*

D. Class Notice and Settlement Administration

Subject to the Court's approval, the Parties have agreed to retain Eisner Amper ("Settlement Administrator"), a nationally recognized class action settlement administrator, as the Settlement Administrator. *Id.* ¶ 44, *see also* Decl. Pradhan, ¶ 8. Subject to Court approval, the Settlement Administrator will provide the Class Notice to all Class Members as described in the Settlement Agreement. Within 10 days of the Preliminary Approval Order, THS will provide the Settlement Class List to the Settlement Administrator. S.A. ¶ 46. Within 30 days after the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate Notice to the members of the Settlement Class. *Id.* ¶ 28. As soon as practicable, but starting no later than 30 days from the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Short Form Notice via USPS First Class Mail to all Settlement Class Members for whom it has mailing addresses. *Id.* ¶ 74. Before mailing the Short Form Notice, the Settlement

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Administrator will update the addresses provided by Defendant using the National Change of Address (NCOA) database. *Id.* It shall be presumed that the intended recipients received the Short Form Notice if the mailed Short Form Notices have not been returned to the Settlement Administrator as undeliverable within 15 days of mailing. *Id.* The Short-Form Notice will direct the recipients to the Settlement Website and inform Settlement Class Members, among other things, of the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys' fees, and the date of the Final Approval Hearing. *Id.* ¶ 75.

The Settlement Administrator will also establish a dedicated settlement website (and will maintain and update the website throughout the claim period) with the Long Form Notice and Claim Form approved by the Court, as well as the Settlement Agreement. *Id*. The Settlement Administrator will also make a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries and will answer the questions of Settlement Class Members who call or otherwise communicate such inquiries within two business days via live operator. *Id*. ¶ 76. Additionally, no later than 30 days before the Claims Deadline, a Reminder Notice will be sent to the Class. *Id*. ¶ 78. After approval of Valid Claims, the Settlement Administrator will be responsible for processing and transmitting Settlement Payments to Settlement Class Members. *Id.* ¶ 83 (j).

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

The Parties have agreed that Plaintiffs will separately petition the Court to award a service award of up to $4,000 per Settlement Class Representative in recognition of the time, effort, and expense they incurred pursuing claims that benefited the entire class. *Id.* ¶ 42. This payment will be made from the Settlement Fund and shall be separate and apart from any other benefits

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available to the Class Representatives and Participating Settlement Class Members under the terms of the Settlement Agreement. *Id*. ¶ 98.

Plaintiffs will also separately seek an award of attorneys' fees and reimbursement of litigation costs and expenses. Subject to Court approval, Class Counsel will ask the Court to approve, and THS does not oppose, an award of attorneys' fees of up to 30 percent of the Settlement Fund, plus litigation costs and expenses, to be paid from the Settlement Fund. *Id*. ¶ 100.

The Parties did not discuss the payment of attorneys' fees, costs, expenses, and/or service awards to the Class Representatives until after the substantive terms of the settlement had been agreed upon. Pradhan Decl. ¶ 16.

F. Reductions and Residual Funds

Plaintiffs believe the $790,000 fund will be more than ample to accommodate the amounts drawn from it, (Pradhan Decl. ¶ 12), but, in the unlikely event it is not, the total cost to THS will not exceed $790,000 and all claims drawn from it will be reduced *pro rata*. S.A. ¶ 70.

In the event that Valid Claims for Out-of-Pocket Losses exceed the Net Settlement Fund, payments for those claims will be reduced on a pro rata basis so that the total payout does not exceed the non-reversionary Settlement Fund. In that event, no funds will be distributed for Credit Monitoring Services or Cash Payments. ¶ 70(a).

If funds remain after Out-of-Pocket Losses are paid, the Settlement Fund will next be used to compensate Valid Claims for Credit Monitoring Services. If such claims exceed the remaining balance of the Settlement Fund, they will be reduced on a pro rata basis so that the total payout does not exceed the Settlement Fund. ¶ 70(b).

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If funds remain after both Out-of-Pocket Losses and Credit Monitoring Services are paid, the Settlement Fund will then be used to compensate Valid Claims for Cash Payments. If such claims exceed the remaining balance, payments will be reduced on a pro rata basis so that the total payout does not exceed the Settlement Fund. ¶ 70(c).

Any portion of the settlement fund that remains after all of the above have been paid shall be distributed as required by state law or to the Legal Foundation of Washington. *Id.* ¶ 72.

G. Class Release

Settlement Class Members who do not affirmatively opt out will release any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys' fees, costs, interest or expenses) that the Releasing Parties had, have or may claim now or in the future to have (including, but not limited to, assigned claims and any and all "Unknown Claims" as defined below) that were or could have been asserted or alleged arising out of the same nucleus of operative facts as any of the claims alleged or asserted in the Action, including but not limited to the facts, transactions, occurrences, events, acts, omissions, or failures to act that were alleged, argued, raised or asserted in any pleading or court filing in the Action. *Id.* ¶ 80.

IV. LEGAL AUTHORITY

As a matter of "express public policy" Washington courts strongly favor and encourage settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258 (1997); *see also Pickett v. Holland*

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Am. Line-Westours, Inc., 145 Wn.2d 178, 190 (2001), *petition denied sub nom*. *Bebchick v. Holland Am. Line-Westours, Inc*., 536 U.S. 941 (2002) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution." (citation omitted)). This is particularly true in class actions and other complex matters where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See In re Hyundai & Kia Fuel Econ. Litig*., 926 F.3d 539, 555–56 (9th Cir. 2019) (*en banc*); *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015). Nonetheless, the settlement of a class action requires the Court's approval in order to ensure that the settlement is fair, reasonable, and adequate. This inquiry requires that the reviewing court decide whether the settling parties have shown that the Court likely will be able both (i) to approve the proposal and, (ii) if it has not previously certified a class, to certify the class for purposes of judgment on the proposal. This requirement has been characterized as "a preliminary determination that the settlement 'is fair, reasonable, and adequate'" when considering the factors set out in Rule 23(e)(2). *Rollins v. Dignity Health*, 336 F.R.D. 456, 461 (N.D. Cal. 2020) (citing Fed. R. Civ. P. 23(e)(2)). The decision to approve or reject a proposed settlement is committed to the Court's sound discretion. *See Pickett*, 145 Wn.2d at 190 (an appellate court will "intervene in a judicially approved settlement of a class action only when the objectors to that settlement have made a clear showing that the [trial court] has abused its discretion.").

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

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The purpose of the Court's preliminary evaluation of the settlement is to determine whether it falls "within the range of possible approval," *Rollins*, 336 F.R.D. at 461 (citing *In re Tableware Antitrust Litig*., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007)), and thus whether notice to the class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, is worthwhile. *Pickett*, 145 Wn.2d at 188; William Rubenstein et al., *Newberg on Class Actions* § 11.25 *et seq*., and § 13.64 (4th ed. 2002 and Supp. 2004) ("*Newberg*"). Preliminary approval does not require the Court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. *See* 5 James Wm. Moore, *Moore's Federal Practice* § 23.83[1], at 23-336.2 to 23-339 (3d ed. 2002). Thus, in considering a potential settlement, the Court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute, *West Va. v. Chas. Pfizer & Co*., 440 F.2d 1079, 1086 (2d Cir. 1971), and need not engage in a trial on the merits, *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Preliminary approval is merely the prerequisite to giving notice so that "the proposed settlement . . . may be submitted to members of the prospective class for their acceptance or rejection." *Philadelphia Hous. Auth*., 323 F. Supp. at 372.

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

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"The initial decision to approve or reject a settlement proposal is committed to the sound discretion of the trial judge." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). However, courts must give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1027 (9th Cir. 1998).

A. The Settlement Class Should Be Certified.

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

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

a. Numerosity

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

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Here, the class definition includes all individuals whose Personal Information was impacted by the THS Data Incident. This proposed Settlement Class encompasses approximately 42,000 individuals, which is enough to surpass the threshold required to establish numerosity. This figure is based on the amount of current and former patients who were notified their Personal Information may have been accessed during the Data Incident. Accordingly, the Settlement Class is sufficiently numerous to justify certification.

b. Commonality

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

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

- Whether THS had a duty to protect the Personal Information compromised in the Data Incident;
- Whether THS failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the Personal Information compromised in the Data Incident;
- Whether THS's failures were the direct and proximate cause of the Data Incident;
- Whether THS's conduct was negligent; and

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- Whether Plaintiffs and Class are entitled to damages, attorney's fees, and/or injunctive relief.

The resolution of those inquiries revolves around evidence that does not vary between Settlement Class Member and so can be fairly resolved—whether through litigation or settlement—for all Class Members at once. In the absence of settlement class certification and settlement, each individual Class Member would be required to litigate numerous common issues of fact that can be readily, objectively, and accurately resolved in a single action. In addition, the application of Washington law, which governs in this case, is uniform and creates common issues that arise out of a nucleus of operative facts. For these reasons, the commonality requirement is satisfied for purposes of settlement class certification.

c. Typicality

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

Here, Plaintiffs' and Settlement Class Members' claims all stem from the same course of conduct and pattern of alleged wrongdoing (namely, collecting, storing, and maintaining confidential, sensitive Personal Information allegedly without implementing appropriate cybersecurity measures). Additionally, Plaintiffs' and Settlement Class Members' claims all stem

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from the same event—the hacker's attack on THS's computers and servers—and the cybersecurity protocols that THS had (or did not have) in place to protect Plaintiffs' and Settlement Class Members' data. Thus, Plaintiffs' claims are typical of the Settlement Class Members' and the typicality requirement is satisfied.

d. Adequacy

The fourth prerequisite for class certification is a finding that the named plaintiffs will "fairly and adequately protect the interest of the class." CR 23(a)(4). This test is satisfied if (1) the named plaintiffs are able to prosecute the action vigorously through qualified counsel, and (2) the named plaintiffs do not have interests that are antagonistic to those of absent class members. *See De Funis v. Odegaard*, 84 Wn.2d 617, 622 (1974); *Marquardt v. Fein*, 25 Wn. App. 651, 656–57 (1980); *Hansen v. Ticket Track, Inc*., 213 F.R.D. 412, 415 (W.D. Wash. 2003).

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

Further, Class Counsel are experienced vigorous class action litigators and are well suited to advocate on behalf of the class. *See* Pradhan Decl. ¶ 22. Class Counsel have significant experience litigating and settling class actions, including consumer and data breach class actions,

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and numerous courts have previously approved them as class counsel in data breach cases due to their qualifications, experience, and commitment to the prosecution of cases. Moreover, Class Counsel have put their experience to use in negotiating an early-stage settlement that guarantees immediate relief to Settlement Class Members. Thus, the requirements of CR 23(a) are satisfied.

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

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

The proposed Settlement Class is well-suited for certification under Washington Civil Rule 23(b)(3) because questions common to the Settlement Class Members predominate over questions affecting only individual Settlement Class Members, and the class action device provides the best method for the fair and efficient resolution of the Settlement Class Members' claims against THS. When addressing the propriety of settlement class certification, courts take

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into account the fact that a trial will be unnecessary and manageability, therefore, is not an issue. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

a. Common Questions Predominate

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

Next, Class Counsel have conducted a thorough and realistic assessment of liability, including the risks involved in proceeding with litigation, and the risk that the case would not be certified as a class action. Class Counsel have conferred on separate occasions with THS's Counsel to discuss the potential for settlement, and after extensive arm's-length settlement negotiations, including an at-first unsuccessful day-long mediation, the Parties reached a resolution only after a mediator's proposal, which was accepted by the Parties. The Settlement—if approved—will resolve all pending litigation and provide outstanding relief. Here, "[t]he Class

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Members do not have a strong interest in bringing individual cases, as the maximum amount of recovery for an individual class member would likely be a fraction of the cost of bringing a lawsuit." *Cottle*, 340 F.R.D. at 372.

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

b. Superiority

"[A] primary function of the class suit is to provide a procedure for vindicating claims which, taken individually, are too small to justify individual legal action but which are of significant size and importance if taken as a group." *Behr Process*, 113 Wn. App. at 318–19

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(quoting *Brown*, 6 Wn. App. at 253). Courts recognize that data breach litigation often has an impact on large numbers of consumers in ways that are sufficiently similar to make class-based resolution appropriate and efficient.

Here, the resolution of approximately 42,000 claims in one action is far superior to litigation via individual lawsuits. Additionally, settlement class certification—and class resolution—provide an increase in judicial efficiency and conservation of resources over the alternative of individually litigating tens of thousands of individual data breach cases arising out of the same data breach. *See Valentino v. Carter-Wallace, Inc*., 97 F.3d 1227, 1234 (9th Cir. 1996) (class litigation is superior when it will reduce costs and conserve judicial resources); *Zinser v. Accufix Rsch. Inst*., 253 F.3d 1180, 1190 (9th Cir. 2001) ("Where damages suffered by each putative class member are not large, this factor weighs in favor of certifying a class action."); *id*. at 1191 (class litigation is superior when "a group composed of consumers or small investors typically will be unable to pursue their claims on an individual basis because the cost of doing so exceeds any recovery they might secure." (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Fed. Prac. and Proc*. § 1779, at 557 (2d ed. 1986))); *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1096 (10th Cir. 2014).

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

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

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

1. Lead Plaintiffs and Their Counsel Have Adequately Represented the Class.

As set forth above, Counsel for the Plaintiffs are experienced class action litigators and are well suited to advocate on behalf of the class. *See* Pradhan Decl. ¶ 22. They and their firm have significant experience litigating, trying, and settling class actions, including consumer and data breach class actions, and numerous courts have previously approved them as class counsel in data breach cases due to their qualifications, experience, and commitment to the prosecution of cases. *Id*. Moreover, Class Counsel have put its experience to use in negotiating an early-stage settlement that guarantees substantial and near-term relief to Settlement Class Members.

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

Courts recognize that arm's-length negotiations conducted by competent counsel are *prima facie* evidence of fair settlements, as are settlements achieved with the help of a mediator. *See* 2 *McLaughlin on Class Actions* § 6:7 (8th ed. 2011) ("A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion."). This deference reflects the understanding that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness consideration of Washington Civil Rule 23(e). As the United States Supreme Court has held, "[o]ne may take a settlement amount as good evidence of the maximum available if one can assume that parties of equal knowledge and negotiating skill agreed upon the figure through arm's-length [sic] bargaining . . . ."*Ortiz v. Fibreboard Corp*., 527 U.S. 815, 852 (1999); *see also Hughes v. Microsoft Corp*., No. C98-1646C, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001) ("A presumption of correctness is said to attach to a class settlement reached in arm's-length [sic] negotiations between experienced capable

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counsel after meaningful discovery."); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 227 F.R.D. 553, 567 (W.D. Wash. 2004) (approving settlement entered into in good faith, following arm's-length and non-collusive negotiations). The settlement here is the result of mediation with an experienced mediator, Judge Thornton, Jr. (Ret.) and intensive, arm's-length negotiations between experienced attorneys who are highly familiar with class action litigation in general and with the legal and factual issues of this case in particular.

Particularly, in this case, the Parties reached an agreement only after the Parties exchanged informal discovery and discussed their respective positions on the merits of the claims and class certification. Pradhan Decl. ¶ 3. The Parties agreed to engage Honorable John W. Thornton, Jr. (Ret.) as a mediator to oversee settlement negotiations in the action. *Id*. ¶ 6. Prior to mediation, the Parties submitted mediation briefs addressing the strengths and weaknesses of their respective claims. Following extensive arm's-length settlement negotiations conducted through Judge Thornton that included an unsuccessful formal mediation session, followed by weeks of continued negotiations, the Parties reached a resolution that—if approved—will resolve all pending litigation and provide outstanding relief. *Id*. The arm's-length nature of the settlement negotiations and the involvement of an experienced mediator like Judge Thornton support the conclusion that the settlement was achieved free of collusion, and it should be preliminarily approved.

3. The Settlement Provides Adequate Relief to the Class.

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

As discussed above, THS denies: (i) the allegations and all liability with respect to facts and claims alleged; (ii) that the Class Representative and the Class she purports to represent have

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suffered any damage; and (iii) that the action satisfies the requirements to be certified or tried as a class action under CR 23. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain—especially where questions of law and fact exist, which is common in data breach litigation. Data breach litigation is evolving; and there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc*., No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) ("Data breach cases . . . are particularly risky, expensive, and complex." (citation omitted)). While Plaintiffs strongly believe in the merits of their case, they also understands that THS asserts a number of potentially case-dispositive defenses.

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

b. The Proposed Method for Distributing Relief is Effective.

The settlement negotiated on behalf of the Class provides for a $790,000 non-reversionary Settlement Fund where Settlement Class Members can easily submit a claim for monetary benefits. To do so, Settlement Class Members need only confirm that they incurred some cost or expense, including, but not limited to, lost time. Participating Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via a claims website or physically by USPS mail to the Settlement Administrator. S.A. ¶ 74.

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

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

The proposed Class Representatives intend to apply for a service award. These awards "are fairly typical in class action cases" and are intended to compensate class representatives for participation in the litigation. *See Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 958–59 (9th Cir. 2009). Service Awards to the named Plaintiffs are appropriate, given the efforts and participation of Plaintiffs in the litigation, and do not constitute preferential treatment. *See Stahl v. Accellion USA LLC*, Case No. 21-2-01439-5 SEA (awarding $7,500 per each named Plaintiff for a total of $37,500); *Loschen v. Shoreline Comty. Coll.*, No. 24-2-00597 SEA (awarding $5,000 to named Plaintiff); *Garcia v. Wash. State Dep't of Licensing*, No. 24-206283-1 SEA (awarding $6,000 to each named Plaintiff).

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

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

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

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Kim v. Allison, 8 F.4th 1170, 1178 (9th Cir. 2021) (citing *In re Bluetooth Headset Prod. Liab. Litig*., 654 F.3d 935, 946 (9th Cir. 2011)). Washington Civil Rule 23 also requires the court to consider "the terms of any proposed award of attorney's fees" and scrutinize the settlement for evidence of collusion or conflicts of interest before approving the settlement as fair. *Id*. at 1179 (citing *Briseño v. Henderson*, 998 F.3d 1014, 1024–25 (9th Cir. 2021)).

Here, all of the relevant factors support preliminary approval. Factors 1–4 and 6 are discussed above, and all overwhelmingly support settlement. In respect to the fifth factor—the extent of discovery completed—the Parties reached a settlement only after exchanging informal discovery, including Plaintiffs providing discovery regarding their own experience with the Data Incident and her ability to serve as Class Representative, and THS providing discovery about the nature and extent of the data breach; and the Parties discussed their respective positions on the merits of the claims and class certification. In addition, prior to mediation, the Parties submitted lengthy mediation statements addressing the strengths and weaknesses of their respective claims. Pradhan Decl. ¶ 6. This factor therefore weighs in favor of approval, too.

E. Approval of the Proposed Class Notice is Warranted.

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

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The Notice provided under the Settlement Agreement meets all the criteria set forth by Washington Civil Rule 23 and the Manual for Complex Litigation. *See* S.A., Exs. B and C. Here, the settlement provides for direct and individual notice to be sent via first class mail to each Settlement Class Member. Not only has THS agreed to provide Settlement Class Members with individualized notice via direct mail, but all versions of the settlement notice will be available to Settlement Class Members on the Settlement Website, along with all relevant filings. S.A. ¶ 50. The Settlement Administrator will also make a toll-free telephone number available by which Settlement Class Members can seek answers to questions about the settlement. *Id*.

The notices themselves are clear and straightforward. They define the Settlement Class; clearly describe the options available to Settlement Class Members and the deadlines for taking action; describe the essential terms of the settlement; disclose the requested service award for the Settlement Class Representative as well as the amount that proposed Settlement Class Counsel intend to seek in fees and costs; explain procedures for making claims, objections, or requesting exclusion; provide information that will enable Settlement Class Members to calculate their individual recovery; describe the date, time, and place of the Final Approval Hearing; and prominently display the address and phone number of Class Counsel. *See* S.A., at Exs. B and C.

The direct mail Notice proposed here is the gold standard, and it exceeds Notice programs approved by other courts. *See Stott v. Capital Fin. Servs*., 277 F.R.D. 316, 342 (N.D. Tex. 2011) (approving notice sent to all class members by first class mail); *Billittri v. Secs. Am., Inc*., Nos. 3:09-cv-01568-F, 2011 WL 3586217, *9 (N.D. Tex. Aug. 4, 2011) (same). The Notice is designed to be the best practicable under the circumstances, apprises Settlement Class members to the pendency of the action, and gives them an opportunity to object or exclude themselves from the settlement. Additionally, the Settlement Agreement provides for a Reminder Notice to

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be issued to Settlement Class Members no later than 30 days before the Claims Deadline, if determined to be necessary. S.A. ¶ 78. Accordingly, the Notice process should be approved by this Court.

V. CONCLUSION

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

I certify that this memorandum contains 7,738 words, in compliance with the Local Civil Rules.

DATED this 26th day of August, 2025.

Respectfully submitted,

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**Pro Hac Vice* application forthcoming

Attorneys for Plaintiffs and the Proposed Settlement Class

CERTIFICATE OF SERVICE

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

On August 26, 2025, I caused to be served the foregoing document on the individuals named below via KC Script Portal E-Service:

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

Executed this 26th day of August, 2025, at Seattle, Washington.

Madison Peterson, Legal Assistant

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