

THE HONORABLE MAUREEN McKEE
Noted for Hearing: March 28, 2023
Without Oral Argument

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

MICHAEL BERGESON, individually and on
behalf of others similarly situated,

Plaintiff,

v.

VIRGINIA MASON MEDICAL CENTER,

Defendant.

Case No. 22-2-09089-8 SEA

**PLAINTIFF’S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
MEMORANDUM IN SUPPORT**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 Plaintiff Michael Bergeson (“Plaintiff”) submits this Unopposed Motion for Preliminary
2 Approval of Class Action Settlement and Memorandum in Support.

3 **I. INTRODUCTION**

4 This case arises from a cyberattack against Virginia Mason Medical Center (“VMMC” or
5 “Defendant”) from January 16, 2022 through January 20, 2022, in which an unauthorized third
6 party infiltrated Defendant’s computer network, and potentially accessed confidential files
7 containing the personal identifying information (“PII”) and personal health information (“PHI”)
8 of Plaintiff and approximately 1,523 Settlement Class Members,

9 After extensive arm’s length negotiations, the Parties reached a Settlement that is fair,
10 adequate, and reasonable. The Agreement provides for monetary relief up to \$500 and \$2,500 and
11 the ability to obtain credit monitoring. It further requires VMMC to adopt and implement
12 additional data security measures to strengthen their data security. Plaintiff strongly believes the
13 Settlement is favorable for the Settlement Class.

14 **II. STATEMENT OF ISSUES AND RELIEF REQUESTED**

15 Plaintiff respectfully requests the Court preliminarily approve the Parties’ Settlement
16 Agreement and enter an order that:

- 17 (1) Certifies the Settlement Class for purposes of settlement only;
18 (2) Preliminarily approves the Settlement Agreement;
19 (3) Appoints Proposed Settlement Class Counsel, David K. Lietz of Milberg Coleman
20 Bryson Phillips Grossman, PLLC as Class Counsel;
21 (4) Appoints Plaintiff Michael Bergeson as Class Representative;
22 (5) Approves the Notices to be mailed to Settlement Class Members;
23 (6) Approves a Long Form Notice (“Long Notice”) to be posted on the settlement
24 (7) Directs Notice to be sent to the Settlement Class in the form and manner proposed
25 as set forth in the Settlement Agreement and Exhibits B and C thereto;

- 1 (8) Appoints Postlethwaite & Netterville (“P&N”) to serve as the Notice Specialist and
2 Claims Administrator;
- 3 (9) Approves the use of a Claim Form substantially similar to that attached as Exhibit
4 A to the Settlement Agreement; and
- 5 (10) Sets a hearing date and schedule for Final Approval of the Settlement and
6 consideration of Settlement Class Counsel’s Motion for Award of Fees, Costs,
7 Expenses, and Service Awards.

8 **III. STATEMENT OF FACTS AND EVIDENCE RELIED ON¹**

9 **a. Initial Investigation and Communications**

10 VMMC is a health-care services provider and part of the larger Virginia Mason Franciscan
11 Health, which is one of the largest healthcare providers in the greater Seattle area. *See* Decl. of
12 David K. Lietz ¶ 30.b (“Lietz Decl.”), attached hereto as **Exhibit 1**. In the ordinary course of
13 receiving treatment and health care services from VMMC, patients are required to provide
14 sensitive personal and private information such as: dates of birth; demographic information; Social
15 Security numbers; medical history and treatment information; insurance information; photo
16 identification; employment information; and other information that may be deemed necessary to
17 provide care. *Id.* at ¶ 30.c.

18 Plaintiff alleges the Data Incident occurred between January 16, 2022, and January 20,
19 2022 when unauthorized person(s) accessed VMMC’s computer network. *Id.* at ¶ 30.d. The
20 information potentially accessed in the Data Breach included the Private Information of Plaintiff
21 and approximately 1,523 Class Members. *Id.* at ¶ 30.e.

22
23
24
25 ¹ The facts in this section are those set forth in the Complaint. Defendant does not make any admission as to the facts
26 alleged in the Complaint, and reserves its right to challenge the alleged facts should the Court deny this Motion, in
whole or in part.

1 **b. Procedural Posture**

2 After receiving notification of the Data Incident, Plaintiff filed his initial complaint on June
3 15, 2022, bringing causes of action for: (1) violation Washington State Uniform Health Care
4 Information Act (“UHCIA”); (2) violation of the Washington State Consumer Protection Act
5 (“CPA”); (3) Negligence; (4) Negligence per se; (5) Breach of Express Contract; (6) Breach of
6 Implied Contract; (7) Breach of Implied Covenant of Good Faith and Fair Dealing; (8) Breach of
7 Confidence; (9) Unjust Enrichment; (10) Breach of Fiduciary Duty. *Id.* at ¶ 32. Shortly after
8 Plaintiff filed his complaint, the Parties determined that this case could benefit from early
9 settlement discussions. *Id.* at ¶ 34. Over the next several months the parties engaged in arm’s-
10 length negotiations and reached an agreement. The Parties executed the Settlement Agreement in
11 March 2023 and now seek preliminary approval of the Settlement from this Court.

12 **IV. SUMMARY OF SETTLEMENT**

13 **a. Settlement Class**

14 The Settlement Class includes all persons who were sent written notification by Virginia
15 Mason Medical Center that their PII was potentially compromised as a result of the Data
16 Incident. *Id.* at ¶ 41.

17 **b. Settlement Benefits**

18 The Settlement negotiated on behalf of the Class provides for three separate forms of relief.
19 *Id.* at ¶ 40. First, VMMC will provide direct monetary relief to Class Members for reimbursement
20 of actual ordinary and extraordinary expenses stemming from the Data Incident, as well as for lost
21 time spent dealing with the Data Incident. *Id.* Second, all Settlement Class Members will have the
22 ability to claim two years of three bureau credit monitoring, and identity theft insurance provided
23 by TransUnion *myTrueIdentity*. *Id.* Finally, VMMC will provide equitable relief in the form of
24 information security enhancements. *Id.*

1 The payments available to Settlement Class Members are divided into three separate
2 categories. The first category is expense reimbursement for Ordinary Losses. This allows
3 Settlement Class Members to submit a claim for reimbursement out-of-pocket expenses, fairly
4 traceable to the Data Incident, up to \$500 per Class Member.

5 Settlement Class Members are also eligible to receive reimbursement for up to three hours
6 of documented lost time spent dealing with the Data Incident (calculated at the rate of \$20 per
7 hour). *Id.* at ¶ 42.a. Claims for lost time are included within the \$500.00 cap on Ordinary Losses.
8 *Id.*

9 Settlement Class Members may also seek reimbursement for Extraordinary Losses up to
10 \$2,500 per Class Member. This category allows Class Members to seek reimbursement for
11 monetary out-of-pocket losses incurred as a result of the Data Incident and not already covered by
12 one or more of the normal reimbursement categories. *Id.* at ¶ 42.b.

13 In addition to claims for reimbursement of expenses and lost time, Settlement Class
14 Members are eligible to claim two years of three bureau credit monitoring and identity theft
15 insurance, paid for by the Defendant. *Id.* at ¶ 40.

16 All Settlement Class Members will also benefit from the information security
17 enhancements VMMC has implemented since the Data Incident. *Id.* at ¶ 43. VMMC has committed
18 to producing confidential confirmatory discovery within thirty (30) days of the Preliminary
19 Approval Order being entered. *Id.* at ¶ 43.

20 **c. The Notice and Claims Process**

21 The Parties agreed to use Postlethwaite & Netterville (“P&N”) as the Notice Specialist and
22 Claims Administrator in this case. *Id.* at ¶ 45. VMMC has agreed to pay for providing Notice to
23 the Settlement Class. *Id.* at ¶ 46. The Notice Plan calls for Notice to be provided to Settlement
24 Class Members via mail to the most recent address VMMC has on record for each Settlement Class
25 Member. *Id.* at ¶ 48.

1 In addition to the mailed notice, the Claims Administrator will establish a dedicated
2 Settlement Website containing relevant case documents Settlement deadlines and answers to
3 frequently asked questions. *Id.* at ¶ 50. The Claims Administrator will also make a toll-free help
4 line available to provide Settlement Class Members with additional information about the
5 Settlement. *Id.* at ¶ 51.

6 The timing of the Claims Process is structured to ensure that all Class Members have
7 adequate time to review the terms of the Settlement Agreement, compile documents supporting
8 their claim, and decide if they would like to opt-out or object. *Id.* at ¶ 52. Class Members will have
9 90 days from the Notice Date to submit their Claim Form to the Claims Administrator, either by
10 mail or online. *Id.* at ¶ 53.

11 Any Class Member who wishes to opt-out of the Settlement will have 60 days from the
12 Notice Date to provide such Notice to the Claims Administrator. *Id.* at ¶ 55. Class Members who
13 wish to object to the terms of the Settlement Agreement must do so in writing within 60 days from
14 the Notice Date. *Id.* at ¶ 56. The written objection must be filed with the clerk of the Court and
15 must be concurrently served on Class Counsel. *Id.*

16 V. LEGAL AUTHORITY

17
18 As a matter of “express public policy,” Washington courts strongly favor and encourage
19 settlements. *City of Seattle v. Blume*, 134 Wn.2d 243, 258, 947 P.2d 223 (1997). This is particularly
20 true in class actions and other complex matters where the inherent costs, delays, and risks of
21 continued litigation might otherwise overwhelm any potential benefit the class could hope to
22 obtain. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 555–56 (9th Cir. 2019) (*en banc*).

23 The decision to approve or reject a proposed settlement is committed to the Court’s sound
24 discretion. *See Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 190, 35 P.3d 351 (2001).
25 Preliminary approval of a class action settlement, and subsequently proceeding to the class notice stage,

1 is appropriate if the settlement “is fair, reasonable, and adequate” under the Rule 23 factors, and “the
2 proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no
3 obvious deficiencies, does not improperly grant preferential treatment to class representatives or
4 segments of the class, and falls within the range of possible approval.” *Rollins v. Dignity Health*, 336
5 F.R.D. 456, 461 (N.D. Cal. 2020).

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

10 **i. Numerosity**

11 Washington Civil Rule 23(a)(1) requires the class to be “so numerous that joinder of all
12 members is impractical.” CR 23(a)(1). While there is no fixed rule with respect to the requisite
13 number of class members, more than 40 generally suffices. *Miller v. Farmer Bros. Co.*, 115 Wn.
14 App. 815, 822, 64 P.3d 49 (2003). This proposed class consists of 1,523 individuals, which is enough
15 to surpass the threshold required to establish numerosity.

16 **ii. Commonality**

17 The second prerequisite for class certification is the existence of “a single issue common
18 to all members of the class.” *Smith v. Behr Process*, 113 Wn. App. 306, 320, 54 P.3d 665 (2002);
19 *see also* CR 23(a)(2). As Washington courts have noted, “there is a low threshold to satisfy this
20 test.” *Behr Process*, 113 Wn. App. at 320. If a defendant has “engaged in a ‘common course of
21 conduct’ in relation to all potential class members,” class certification is appropriate regardless of
22 whether “different fact and perhaps different questions of law exist within the potential class.” *Brown*,
23 6 Wn. App. at 255; *accord Miller*, 115 Wn. App. at 825; *see also* 1 *Newberg* § 3:10.

24 Here there are a number of key common questions of law and fact arising out of VMMC’s
25 practices. These include (but are not limited to):
26

- 1 - Whether VMMC's security environment was adequate to protect Settlement Class
2 Member's Personal Information;
- 3 - Whether VMMC failed to implement and maintain reasonable security procedures and
4 practices appropriate to the nature and scope of information compromised in the Data
5 Incident;
- 6 - Whether VMMC's conduct rose to the level of negligence.

7 The resolution of that inquiry revolves around evidence that does not vary from class
8 member to class member, and so can be fairly resolved – whether through litigation or settlement
9 - for all class members at once. In addition, the application of Washington law, which governs this
10 case, is uniform and creates common issues that arise out of a nucleus of operative facts.

11 **iii. Typicality**

12 The typicality requirement asks whether “the claims or defenses of the representative
13 parties are typical of the claims or defenses of the class.” CR 23(a)(3). “[A] plaintiff’s claim is
14 typical if it arises from the same event or practice or course of conduct that gives rise to the claims
15 of other class members, and if his or her claims are based on the same legal theory.” *Behr Process*,
16 113 Wn. App. At 320 (citation omitted). Here, Plaintiff’s and Settlement Class Members’ claims
17 all stem from the same course of conduct and pattern of alleged wrongdoing (namely, failing to
18 implement appropriate cybersecurity measures). Additionally, Plaintiff and Settlement Class
19 Members’ claims all stem from the same event – the phishing scheme used to gain access to
20 VMMC employee emails – and the cybersecurity protocols that VMMC had (or did not have) in
21 place to protect Plaintiff’s and Settlement Class Members’ data.

22 **iv. Adequacy**

23 The adequacy requirement of Civil Rule 23 is satisfied where (1) there are no antagonistic
24 or conflicting interests between named plaintiffs and their counsel and the absent class members;

1 and (2) the named plaintiffs and their counsel will vigorously prosecute the action on behalf of the
2 class. CR 23(a)(4); *see also Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003).

3 Here, Plaintiff and Class Counsel are adequate representatives of the class. Plaintiff was
4 injured by the same course of conduct common to all class members. Plaintiff's and Settlement
5 Class Members' data was allegedly compromised by VMMC in the same manner. Under the terms
6 of the Settlement Agreement, Plaintiff and Settlement Class Members will all be eligible for the
7 same relief. Accordingly, Plaintiff's interest in this litigation is aligned with that of the class.

8 Further, counsel for Plaintiff have decades of combined experience as vigorous class action
9 litigators and are well suited to advocate on behalf of the Class. *See Lietz Decl.* ¶¶ 3-25. Class
10 Counsel has put their collective experience to use in negotiating an early-stage settlement in this
11 matter that guarantees relief to class members that would not be assured should litigation continue.
12 Accordingly, the requirements of CR 23(a) are satisfied.

13 **b. The Requirements of Washington Civil Rule 23(b) are satisfied**

14 "In addition to meeting the conditions imposed by [Washington Civil] Rule 23(a), the
15 parties seeking class certification must also show that the action is maintainable under
16 [Washington Civil Rule] 23(b)(1), (2) or (3)." *Hanlon*, 150 F.3d at 1022. Plaintiff seeks
17 certification of the class under Washington Civil Rule 23(b)(3), which requires a finding that
18 "questions of law or fact common to the members of the class predominate over any questions
19 affecting only individual members, and that a class action is superior to other available methods
20 for the fair and efficient adjudication of the controversy." CR 23(b)(3). The predominance and
21 superiority requirements of CR 23(b)(3) are satisfied "whenever the actual interests of the parties
22 can be served best by settling their differences in a single action." *Cottle*, 340 F.R.D. at 371
23 (quoting *Hanlon*, 150 F.3d at 1022).

24 **i. Predominance**

1 The predominance requirement “is not a rigid test, but rather contemplates a review of
2 many factors, the central question being whether ‘adjudication of the common issues in the
3 particular suit has important and desirable advantages of judicial economy compared to all other
4 issues, or when viewed by themselves.’” *Sitton v. State Farm Mut. Auto. Ins. Co.*, 116 Wn. App.
5 245, 254, 63 P.3d 198 (2003) (quoting 2 *Newberg* § 4:25). “[A] single common issue may be the
6 overriding one in the litigation, despite the fact that the suit also entails numerous remaining
7 individual questions.” *Id.* (quoting 2 *Newberg* § 4.25); *see also Miller*, 115 Wn. App. at 825. In
8 deciding whether common issues predominate, the Court “is engaged in a pragmatic inquiry into
9 whether there is a common nucleus of operative facts to each class member’s claim.” *Behr Process*,
10 113 Wn. App. at 323 (citations and internal marks omitted). Common questions predominate here
11 because the claims of Plaintiff and Class Members arise out of the common and uniform conduct
12 of VMMC. Moreover, these common questions present a significant aspect of the case and can be
13 resolved in one settlement proceeding for all Class Members.

14 **ii. Superiority**

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

21 Here, the resolution of more than a thousand claims in one action is far superior to litigation
22 via individual lawsuits. Additionally, class certification—and class resolution—provide an
23 increase in judicial efficiency and conservation of resources over the alternative of individually
24 litigating hundreds of individual data breach cases arising out of the same Data Breach. *See*
25 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (class litigation is superior
26

1 when it will reduce costs and conserve judicial resources); *Zinser v. Accufix Rsch. Inst.*, 253 F.3d
2 1180, 1190 (9th Cir. 2001) (“Where damages suffered by each putative class member are not large,
3 this factor weighs in favor of certifying a class action.”); *id.* at 1191 (class litigation is superior
4 when “a group composed of consumers or small investors typically will be unable to pursue their
5 claims on an individual basis because the cost of doing so exceeds any recovery they might
6 secure.” (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Fed. Prac. and*
7 *Proc.* § 1779, at 557 (2d ed. 1986))); *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076,
8 1096 (10th Cir. 2014) (“[C]lass treatment is superior [when] it will achieve economies of time,
9 effort, and expense, and promote uniformity of decision as to persons similarly situated, without
10 sacrificing procedural fairness or bringing about other undesirable results.”).

11 **c. The Settlement Terms are Fair, Adequate, and Reasonable**

12 Although Civil Rule 23 is silent in guiding courts in their review of class settlements, it is
13 universally stated that a proposed class settlement may be approved by the trial court if it is
14 determined to be “fair, adequate, and reasonable.” *Pickett v. Holland Am. Line-Westours, Inc.*, 145
15 Wn.2d 178 (2001) (citing *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)
16 (additional citations omitted)). Factors considered by courts in making this determination at final
17 approval typically include: the likelihood of success by plaintiffs; the amount of discovery or
18 evidence; the settlement terms and conditions; recommendation and experience of counsel; future
19 expense and likely duration of litigation; recommendation of neutral parties, if any; number of
20 objectors and nature of objections; and the presence of good faith and the absence of collusion.
21 *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn. 2d 178, 192 (2001). The purpose of
22 preliminary approval is to determine whether the settlement is within the range of possible
23 approval, and to determine whether notice of the settlement should be provided to the class.
24 *Newberg* § 13:13. The Agreement reached by Plaintiff here falls firmly within the range of
25 potential approval.

1 i. **The Settlement Agreement was the result of arm’s length negotiations**
2 **between the Parties.**

3 Courts recognize that arm's-length negotiations conducted by competent counsel are prima
4 facie evidence of fair settlements. The Court's role is to ensure “the agreement is not the product
5 of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,
6 taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150
7 F.3d 1011, 1027 (9th Cir. 1998) (internal quotations omitted). Courts will approve class action
8 settlements entered into after good-faith, arm’s-length negotiations. *See Hughes v. Microsoft*
9 *Corp.*, No. C98-1646C, 2001 WL 34089697, at *7 (W.D. Wash. 2001); *In re*
10 *Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 227 F.R.D. 553, 567 (W.D. Wash 2004).

11 The Settlement here is the result of intensive arm’s-length negotiations between attorneys
12 experienced in both class actions generally, and data breach cases in particular. *See Lietz Decl.* ¶¶
13 3-27.

14 ii. **The Settlement guarantees Class Members relief for real harms and**
15 **assurance that they are less likely to be subject to similar breaches due to**
16 **Virginia Mason’s data security systems in the future.**

17 Although trial courts are not required to decide the ultimate merits of class members’
18 claims before approving a proposed settlement, an informed evaluation should include an
19 understanding of the likelihood of success by plaintiffs—the strength of the merits of the case, the
20 available defenses, the amount in controversy, and the realistic range of outcomes of the litigation.
21 *See Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wash. 2d at 193.

22 The Settlement Agreement provides real relief for Plaintiff and Settlement Class Members.
23 Not only can Plaintiff and Class Members be made whole through reimbursements for costs they
24 incurred related to the Data Incident, but they can also be assured that VMCM has increased its
25 data security protocols to better protect Plaintiff’s and Class Members Personal Information from
26

1 the risk of similar data incidents in the future. Expense reimbursement will run up to \$500 per
2 person for standard expenses delineated in the Settlement agreement, including reimbursement for
3 up to three hours of lost time, reimbursed at a rate of \$20.00 per hour, and up to \$2,500 per person
4 for other extraordinary expense reimbursements also described in the Settlement Agreement. *See*
5 Lietz Decl. ¶ 40; Moreover, VMCC will implement various increased data security measures. *Id.*

6 This Settlement Agreement includes terms within the range of those approved by other
7 courts for similar data breaches. *See, e.g.,* Final Order and Judgment Granting Final Approval of
8 the Class Action Settlement, *Bailey v. Grays Harbor Cnty. Hosp. Dist. No. 2*, No. 20-2-00217-14
9 (Wash. Super. Ct. Sept. 21, 2021) (granting approval of data breach class action settlement
10 providing for up to \$210 per valid claimant for ordinary expense reimbursements, up to \$1,500 per
11 valid claimant for extraordinary expense reimbursements, and increased cybersecurity measures
12 valued at \$480,000); Order Granting Final Approval, *Fulton-Green v. Accolade, Inc.*, No. 2:18-
13 cv-00274 (E.D. Pa. Sept. 24, 2019), ECF No. 39 (granting approval of data breach class action
14 settlement providing for expense reimbursement up to \$1500 per class member, and increased
15 cyber security measures of undisclosed worth for two years following the Data Incident).

16 This proposed Settlement provides full, fair, and adequate compensation for any actual
17 injuries sustained as a consequence of the Data Incident. Moreover, the substantial and immediate
18 benefits achieved by the Settlement avoid the risks, uncertainties, and delays of continued
19 litigation. If this lawsuit were to continue, Plaintiff and Class Members would face a number of
20 difficult challenges, including surviving a motion to dismiss, obtaining class certification, and
21 maintaining certification through trial and likely motions for summary judgment. Thus, absent a
22 settlement, Plaintiff faces serious obstacles in this Lawsuit. This is another indication that the
23 proposed Settlement is fair, reasonable, and adequate and should be approved.

24 **iii. The proposed Settlement Administrator will provide adequate Notice.**

1 To satisfy due process, Notice to Class Members must be the best practicable, and
2 reasonably calculated under all the circumstances to apprise interested parties of the pendency of
3 the action and afford them an opportunity to present their objections. CR 23(c)(2); *Phillips*
4 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Class Settlement Notices must present
5 information about a proposed Settlement simply, neutrally, and understandably. *In re Hyundai &*
6 *Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019). Notice is adequate if it generally describes
7 the terms of the class action settlement in sufficient detail to alert those with adverse viewpoints
8 to investigate and to come forward and be heard. *Id.*

9 The Notice and Claim Forms negotiated by the Parties are clear and concise, and inform
10 Settlement Class Members of their rights and options under the Settlement, including detailed
11 instructions on how to make a claim, object to the Settlement, or opt-out of the Settlement. Lietz
12 Decl. at ¶ 47, Exs. 1A, 1B, 1C. Settlement Class Members will receive direct Notice of the
13 Settlement via U.S. Mail.

14 Plaintiff has negotiated a notice program that is reasonably calculated under all the
15 circumstances to apprise Class Members of the pendency of the action and afford them an
16 opportunity to present their objections. Class Members here provided Defendant their contact info
17 in the process of receiving medical services: it is not known to be a particularly transient Class,
18 thus direct notice via mail is the best practicable. *Compare Roes 1-2 v. SFBSC Management LLC*,
19 944 F.3d 1035, 1046 (9th Cir. 2019). This Court should approve the notice program negotiated by
20 Plaintiff.

21 **iv. The requested attorneys' fees, costs, and service award are justified and**
22 **well within the range of reason.**

23 The Parties have agreed that Plaintiff will separately petition the Court to award Plaintiff a
24 service award of \$1,500 in recognition of the time, effort, and expense he incurred pursuing claims
25
26

1 that benefited the entire class. Defendant will pay any service award approved by the Court in
2 accordance with the Settlement Agreement. Agr. ¶ 36.

3 Plaintiffs will also separately seek an award of \$100,000 in combined attorneys' fees and
4 reimbursement of litigation costs and expenses Agr. ¶ 35.

5 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or
6 a service award to Plaintiff, until after the substantive terms of the settlement had been agreed
7 upon. Lietz Decl. ¶ 57.

8
9 **VI. CONCLUSION**

10 Plaintiff has negotiated a fair, adequate, and reasonable Settlement that will provide Class
11 Members with both significant monetary and equitable relief. Plaintiff respectfully requests this
12 Court grant this motion.

13 Dated this 15th day of March 2023.

14
15 **FRANK FREED SUBIT & THOMAS LLP**

16 By: /s/ Michael C. Subit
17 Michael C. Subit, WSBA No. 29189
18 705 Second Avenue, Suite 1200
19 Seattle, Washington 98104-1798
20 (206) 682-6711 (phone)
21 (206) 682-0401 (fax)
22 Email: msubit@frankfreed.com

23
24 **MILBERG COLEMAN BRYSON
25 PHILLIPS GROSSMAN, PLLC**

26 David K. Lietz (*pro hac vice* pending)
5335 Wisconsin Avenue NW, Suite 440
Washington, D.C. 20015-2052
Telephone: (866) 252-0878
Facsimile: (202) 686-2877
Email: dlietz@milberg.com

Counsel for Plaintiff and the Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WORD COUNT CERTIFICATION

I certify that this memorandum contains 4,188 words.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a true and correct copy of the foregoing document was served via King
3 County E-Service and/or email upon the following:
4

5
6 Kyle J. Rekofke
7 Amy P. Taylor
8 GORDON REES SCULLY MANSUKHANI, LLP
9 701 Fifth Avenue, Suite 2100
10 Seattle, WA 98104

11 *Attorneys for Defendant*

12 DATED this 15th day of March 2023.

13 */s/ Megan Grosse*
14 _____
15 Megan Grosse
16
17
18
19
20
21
22
23
24
25
26