

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**  
*(Electronically Filed)*

**MILDRED BALDWIN and** :  
**DOUGLAS DYRSSEN SR.,** :  
**On Behalf of Themselves and All Others** :  
**Similarly Situated,** :  
 :  
 :  
 **Plaintiffs,** :  
 :  
 :  
 v. :  
 :  
 **NATIONAL WESTERN LIFE INSURANCE** :  
**COMPANY,** :  
 :  
 :  
 **Defendant.** :  
 :  
 \_\_\_\_\_ :

**Case No, 2:21-cv-04066-WJE**

**SUGGESTIONS IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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## **I. INTRODUCTION**

On January 19, 2022, this Court preliminarily approved a proposed class action settlement between Plaintiffs Mildred Baldwin and Douglas Dyrssen (“Plaintiffs”) and Defendant National Western Life Insurance Company (“NWL” or “Defendant”). ECF 62. Class Counsel now moves for final approval. The settlement is fair, reasonable, and adequate. The Class overwhelmingly supports the settlement, with only 25 opt-outs out of over 810,000 class members, and **zero** objections.<sup>1</sup> The direct mail notice was the best practicable under the circumstances, reached 84.5% percent of the Settlement Class, and thus meets any due process concerns, far exceeding the Federal Judicial Guideline of 70%. *See Pollard v. Remington Arms Co., LLC*, 896 F.3d 900, 906 (8th Cir. 2018) (reach of 73.7%, or possibly as low as 49% of class members, satisfied due process).

This Court should grant final approval and also grant Plaintiffs’ Motion for Attorneys’ Fees and Service Awards (ECF 69) for the reasons stated in the Suggestions in Support (ECF 70), and because there is no opposition from the Class.

## **II. CASE SUMMARY**

### **A. The Litigation.**

This case arises from a ransomware attack and data breach at Defendant National Western Life Insurance Company (“Defendant” or “NWL”) that Plaintiffs allege compromised their private and protected health information and the private and protected health information of the thousands of members of the Settlement Class. Plaintiff Mildred Baldwin filed her original Complaint against NWL in the Missouri Circuit Court for the 18th Judicial Circuit (Pettis County), while Plaintiff Douglas Dyrssen, Sr. filed his class action complaint in the United States District Court for the

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<sup>1</sup> The objection period remains open until April 22, 2022. Plaintiffs will address any later-filed objections should any be received in a supplemental filing (if necessary).

Eastern District of California. On April 1, 2021, NWL removed Ms. Baldwin's case to this Court. On April 26, 2021, NWL filed a motion to dismiss Plaintiff Baldwin's complaint or to transfer the action to Texas.

After conferring, on May 21, 2021, the Parties filed a joint motion for leave to file an amended complaint, which added Plaintiff Dyrssen as a co-plaintiff in this case, and which the Court granted on May 23, 2021. On June 1, 2021, pursuant to the scheduling order, Plaintiffs Baldwin and Dyrssen ("Plaintiffs") filed their Amended Class Action Complaint ("Complaint"), the operative complaint in this matter.

NWL moved to dismiss Plaintiffs' Amended Complaint on July 16, 2021, arguing that Plaintiffs had failed to allege injuries sufficient to sustain any claim against NWL and that the Complaint contained additional fatal flaws. On September 15, 2021, this Court issued its Order denying NWL's motion to dismiss in its near entirety, granting the motion only with regard to Plaintiffs' claims for emotional distress.

**B. Mediation and Settlement.**

After meeting and conferring on multiple occasions regarding the potential for early settlement, the Parties agreed to mediate the case before the Hon. Wayne Andersen (Ret.). Judge Andersen (Ret.) is a retired federal judge and respected JAMS mediator with extensive experience in class action mediation generally and data breach mediations in particular. The mediation was held on October 12, 2021, and after a full day of arms-length negotiations and significant exchange of information through Judge Andersen, the Parties agreed to a memorandum of understanding describing the key terms of the settlement agreement. The Parties then diligently negotiated, drafted, and finalized the settlement agreement and notice forms and came to an agreement on a claims process and administrator. The Settlement Agreement was finalized and signed by the Parties in January 2022.

### **C. Settlement Benefits.**

The settlement negotiated on behalf of the Class provides for three separate forms of relief: (1) a settlement payment; (2) credit monitoring and identity theft restoration services; and (3) equitable relief in the form of information security enhancements. *See generally* ECF 61-1, Settlement Agreement at Lietz Decl. Ex. 1 (“Agr.”). The Settlement provides exceptional relief for the Settlement Class: it made available \$3,900,000 for monetary claims, attorneys’ fees and costs, costs of settlement administration and Plaintiffs’ service awards. Separate and apart from and in addition to the \$3,900,000, NWL is paying for Aura Financial Shield credit monitoring and identity protection services for any Settlement Class Member who redeems this automatic benefit, and NWL has been and will continue to implement extensive business practices changes and data security enhancements designed to safeguard the PII of Settlement Class Members.

More specifically, the Settlement Benefits include the following:

#### *1. Monetary Relief*

The monetary relief provided for by the Settlement Agreement consists of (a) compensation for lost time; (b) reimbursement for the cost of credit monitoring and/or identity theft protection services; (c) ordinary expense reimbursements; and (d) extraordinary expense reimbursement. Each Settlement Class Member can submit a claim for up to four hours of lost time with a simple attestation and up to eight hours of lost time with supporting documentation. Lost time is paid out at a rate of \$20 per hour. Class Members can also submit a claim for reimbursement of up to \$120 per person for credit monitoring services and/or identity theft protection services purchased prior to August 7, 2020, and February 11, 2022. Settlement Class Members can also submit a claim for up to an additional \$120 of documented, ordinary out-of-pocket losses.



In addition to the ordinary expense reimbursements, each Settlement Class Member may submit a claim for reimbursement of extraordinary expenses—expenses not included in ordinary expenses or other categories of reimbursement—in the amount of up to \$5,000.

Members of the California Subclass can submit a claim for an award of statutory damages of \$50 by simply providing their California address and claiming that money. The total amount of the Settlement Fund that can be claimed as California Statutory Benefits is capped at \$500,000, and each claim may be subject to *pro rata* reduction should the claims exceed the \$500,000 cap.

### 2. Credit Monitoring and Identity Theft Protections

All Settlement Class Members will be automatically eligible to activate one year of Aura Financial Shield credit monitoring and identity theft protection services whether or not they are eligible for a cash recovery. This is an automatic benefit, which all Settlement Class Members have already received without having to file a formal claim for this benefit (as the codes to activate this service after the Effective Date were sent on the notices mailed). The retail value of the Aura Financial Shield Product offered to Settlement Class Members is approximately \$135 per year to each Settlement Class Member. The value of this automatic benefit to the Settlement Class is astronomical – over \$110 million dollars (because that is what it would cost for each Class Member to go out and purchase these services on the open market). Even if only 2% of this class activated this benefit, this still provides over \$2.2 million in real benefits to Class Members.

### 3. Equitable and Prospective Relief

In addition to the monetary relief and credit monitoring services provided, NWL has also committed to providing equitable relief in the form of data security enhancements and changes to business practices that will be maintained for at least two years, subject to certain exceptions. This

equitable relief is laid out in more detail in the Suggestions in Support of the Unopposed Motion for Preliminary Approval. ECF 61 at 7; see also Settlement Agreement ¶ 47.

4. Value of the Settlement Benefits to Class

The Settlement Fund and retail cost of the credit monitoring and identity protection services is \$4,383,000. ECF 61 at 4-7, 11. This amount does not include the costs of the agreed upon business practice changes and data security enhancements, which is an added benefit to the Class that has substantial value.

5. Settlement Administration Costs

The Settlement also calls for the Defendant to pay the costs of settlement administration, estimated at \$450,613. This amount is included in the \$3,900,000 Settlement Fund and is also a benefit to the Class.

**D. Preliminary Approval and Notice.**

On January 19, 2022, this Court entered an Order granting preliminary approval to the Settlement. Doc. 62. The Court found, upon a preliminary review, that “the proposed Settlement is fair, reasonable, and adequate” and that “[t]he Settlement confers substantial benefits upon the Settlement Class, particularly in light of the damages that Settlement Class Representatives and Settlement Class Counsel believe are potentially recoverable or provable at trial, and does so without the costs, uncertainties, delays, and other risks associated with continued litigation.” *Id.* at 4–5. The Court appointed Plaintiffs Baldwin and Dyrssen as Settlement Class Representatives and appointed David Lietz and J. Gerard Stranch IV as Class Counsel. *Id.* at 4. The Court also approved the forms of notice, which state the amount of fees and service awards that will be requested, and approved the plan for disseminating notice to the Settlement Class. *Id.* On February 21, 2022, Court-approved notice was sent to the Settlement Class, and Class Members still have until April 22, 2022, to file objections, if any. As of April 4, 2022, the Settlement Administrator has received

25 requests for exclusion (out of a class of over 800,000), and *zero* objections. See Declaration of Settlement Administrator Postlethwaite & Netterville, APAC (“P&N”), attached as Ex. A, ¶ 16.

**E. The Notice and Claims Process**

The notice and claims process was implemented pursuant to the Court’s Preliminary Approval Order, as follows:

*1. CAFA Notice*

Pursuant to the federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715, on January 28, 2022, P&N, on behalf of the Defendant, caused notice of this settlement and related materials to be sent to the Attorneys General of all U.S. states, U.S. Territories and Puerto Rico as well as the Attorney General of the United States. As of April 4, 2022, P&N has not received any objection or any other response from any Attorney General. Ex. A. ¶ 5.

*2. Class Notice*

P&N received the class data for NWL on January 28, 2022, in one Excel file with a total of 818,556 records. Ex. A. ¶ 6. After removing duplicates, the Class Member population consisted of 810,768 unique records. P&N now maintains a database of 810,768 Settlement Class Members, which was used to effectuate the notice campaign pursuant to the Settlement Agreement. *Id.*

P&N then coordinated and caused the Postcard Notice to be mailed via First-Class Mail to Settlement Class Members for which a mailing address was available from the class data. *Id.* ¶ 7. The Postcard Notice included (a) the web address to the case website for access to additional information, (b) rights and options as a Class Member and the dates by which to act on those options, and (c) the date of the Final Approval Hearing. *Id.* The Notice mailing was completed on or before February 21, 2022, in accordance with the Preliminary Approval Order. *Id.*

Prior to the mailing, all mailing addresses were checked against the National Change of Address (NCOA) database maintained by the United States Postal Service (“USPS”). *Id.* ¶ 8. In

addition, the addresses were certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code and verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses. *Id.* Of the 810,768 Class Member records, 3,258 records did not successfully pass the address validation procedures noted above. *Id.*

In the initial mailing campaign, P&N executed Postcard Notice mailings to 807,510 Class Members that passed address validation. *Id.* ¶ 9. P&N executed skip tracing on the 3,258 records that did not pass address validation and was able to mail Postcard Notice to an additional 1,544 Class Members. *Id.* P&N also executed supplemental mailings for 82,789 Class Members for which an initial Postcard Notice was not deliverable but for which P&N was able to obtain an alternative mailing address through (1) forwarding addresses provided by the USPS, (2) skip trace searches using the LexisNexis third-party vendor database, or (3) requests received directly from Class Members. *Id.*

Through the Notice procedures outlined above, P&N attempted to send direct notice to 809,054 (99.8%) Settlement Class Members. *Id.* ¶ 14. As of April 4, 2022, the Notice Program reached a total of 685,042 Settlement Class Members (84.5%).

### 3. Settlement Post Office Box, Website, Toll-Free Number, and Email Support

In addition to the direct notice outlined above, P&N established a settlement post-office box, a settlement website ([www.natwestdatasettlement.com](http://www.natwestdatasettlement.com)), published on February 21, 2022), a toll-free number with an interactive voice response (“IVR”) system, and an email support mailbox at [info@NatWestDataSettlement.com](mailto:info@NatWestDataSettlement.com). *Id.* ¶¶ 10-13. Response to these additional class support options has been robust. As of April 4, 2022, the Settlement Website has received 14,812 unique visitors and 49,590 page views. *Id.* ¶ 11. As of April 4, 2022, P&N has received 9,927 calls to the toll-free number with 1,347 requests by class members to be mailed a settlement Claim Form or

Class Notice. *Id.* ¶ 12. And as of April 4, 2022, P&N has received and responded to 185 emails from Settlement Class Members. *Id.* ¶ 13.

#### 4. Class Response

Through the notice process, Settlement Class Members were given the means to make a claim, request exclusion, or object to the Settlement Agreement. As of April 4, 2022, P&N has received only 25 requests for exclusion and **zero** objections to the settlement. *Id.* at ¶¶ 16-17. Class Counsel have also received *zero* objections to the Settlement Agreement. Declaration of David Lietz in Support of Plaintiff’s Motion Final Approval, (“Lietz MFA Dec.”), filed herewith as Ex. B, ¶ 2. As of April 4, 2022, P&N has received 2,739 claim submissions. Ex. A ¶ 15. P&N will continue to intake and analyze claims through the claims filing deadline of May 23, 2022. *Id.*

### III. LEGAL STANDARD

In approving a class action settlement, a Court must consider whether it is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *Profl Firefighters Ass’n of Omaha, Local 385 v. Zalewski*, 678 F.3d 640, 648 (8th Cir. 2012). In the Eighth Circuit, in considering final approval, courts look to the four factors in *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988) (the “*Van Horn* factors”),<sup>2</sup> as well as the factors listed in Federal Rule of Civil Procedure 23(e)(2).<sup>3</sup> *See also Lee*

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<sup>2</sup> The four *Van Horn* factors are: (1) the merits of the plaintiffs’ case weighed against the terms of the settlement; (2) the defendants’ financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *Van Horn*, 840 F.2d at 607.

<sup>3</sup> Under Rule 23(e)(2), a Court may grant final approval

only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;

*v. Anthem Inc. Cos.*, 2015 WL 3645208, at \*1 (E.D. Mo. June 10, 2015) (quoting *In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013)).

Before a court can reach that analysis however, it must ensure that interested parties were adequately informed of the Settlement Agreement and provided an opportunity to voice their objections. *Grunin v. Int'l House of Pancakes*, 513 F. 2d 114, 123 (8th Cir. 1975). The purpose of the approval procedure is to ensure that the interests of absent class members are adequately protected. *Id.* The district court acts as a fiduciary who serves as guardian of the rights of the absent class members, and the court may approve a settlement only if the proponents of it show that the settlement is fair, reasonable, and adequate. *Id.*

#### IV. LEGAL ARGUMENT

##### A. The Individual Notice Provided to Settlement Class Members is the Best Practicable and Should be Approved.

Because an action maintained as a class suit under Rule 23 has *res judicata* effect on all members of the class, due process requires that notice of a proposed class settlement be provided to settlement class members. *Grunin*, 513 F.2d at 123. The notice provided must be “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. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In addition, the notice must convey the required information and allow a reasonable time for those interested in making an appearance to do so. *Grunin*, 513

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- (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

F.2d at 123. The mechanics of the notice process are left to the broad discretion of the court. *Id.*, citing Wright and A. Miller, *Federal Practice and Procedure*, at 237 (1972).

Here, P&N attempted to provide notice via direct U.S. mail to 809,054 Settlement Class Members. Ex. A ¶ 14. This notice was the best practicable under the circumstances. It was clear, concise, and pointed each Settlement Class Member to the resources necessary for them to get additional information, review pleadings, make a claim, request exclusion, object, or to reach class counsel should they have any additional questions. *See* Ex. B to P&N Decl. The U.S. Supreme Court has specifically held that individualized notice by mail to the last known address is the “best notice practicable” in a class action context. *Eisen v. Carlisle & Jaquelin*, 417 U.S. 156, 174-77 (1974). In contrast with notice via publication, providing individualized mail notice to Settlement Class Members—coupled with the Settlement Administrator’s efforts to search for, locate, and confirm current information for Settlement Class Members—*ensures* that Settlement Class Members are provided with the best practicable notice of the Settlement, and the opportunity to make a claim, opt-out, or object. Courts regularly approve the use of mail to directly notify potential class members of a class action settlement. *Petrovic v. Amoco Oil Co.*, 200 F.3D 1140, 1153 (8<sup>th</sup> Cir, 1999). The Settlement Website, toll-free phone number, and email box provide additional forums for Settlement Class Members to access information about the Settlement and relevant filings. The Notice program satisfies the requirements of both Rule 23 and due process.

**B. The Settlement Terms are Fair, Reasonable, and Adequate.**

The Settlement meets the criteria set forth by Rule 23(e)(2) and the Eighth Circuit’s *Van Horn* factors. The Settlement Agreement here was negotiated at arm’s length and is not the product of fraud or collusion. There are no objections from the Class. The Settlement provides the opportunity for Class Members to claim significant relief and provides automatic relief to all Class

Members in the form of the Aura Financial Shield. Final approval should be granted. *See Schoenbaum v. E. I. Dupont De Nemours Co.*, 2009 WL 4782082, at \*2 (E.D. Mo. Dec. 8, 2009).

*1. The Settlement Meets the Requirements of Rule 23.*

*a. Class Representatives and Counsel have Adequately Represented the Class.*

The adequacy inquiry examines whether (1) the class representatives have common interests with the members of the class and (2) whether class representatives will vigorously prosecute the interests of the class through qualified counsel. *Paxton v. Union Nat. Bank*, 688 F.2d 552, 562-563 (8th Cir. 1982). Here, the Class Representatives, like all Class Members, have been victims of the same Data Incident and thus have common interests with the Class. Moreover, they have ably represented the Class, maintaining contact with counsel, assisting in the investigation of the case, producing relevant documents, reviewing the material terms of the Settlement Agreement, remaining available for consultation throughout settlement negotiations, answering counsel's many questions, and reviewing the terms of the Settlement Agreement.

Proposed Class Counsel, too, have vigorously pursued the interests of the Class in securing a Settlement that brings immediate benefits to Class and Subclass Members while avoiding the risks of continued litigation. Their efforts resulted in the excellent Settlement before the Court, guaranteeing relief to Settlement Class that compares favorably to that approved in other data breach cases. As such, this factor warrants final approval.

*b. The Settlement is the product of good-faith arm's length negotiations and is absent of any collusion.*

As outlined above and set out more fulsomely in the Suggestions in Support of Plaintiffs' Motion for Preliminary Approval (ECF 61), this Settlement was reached as the result of arm's length negotiations presided over by Judge Andersen. As such, Plaintiffs have met this requirement for settlement approval set forth in Rule 23(e)(2)(B). *See White v. Nat'l Football*



*League*, 836 F. Supp. 1458, (D. Minn. Aug. 19, 1993) (finding no evidence of collusion and concluding settlement was the result of arm’s length negotiations); *Pollard v. Remington Arms Company, LLC*, 320 F.R.D. 198, 220 (W.D. Mo. March 14, 2017) (finding a settlement reached after extensive investigation and discovery by class counsel was reached in good faith).

*c. The Settlement Agreement provides substantial relief to the Settlement Class, particularly in light of the uncertainty of prevailing on the merits.*

As outlined above, the Settlement guarantees Class Members both real relief and protection against future data breaches. This third and most important factor weighs heavily in favor of final approval. Class Members will **automatically** receive 1-year of credit monitoring services at Defendant’s expense. Such protections will help ensure that should Plaintiffs’ and Class Members’ data be misused, they will have access to the means to mitigate any potential ill consequences.

Additionally, NWL will be implementing extensive security enhancement protocols that will guarantee that Settlement Class Members’ personal identifying will be better safeguarded in the future. Agr. ¶ 2.4. Such injunctive relief has real value and lends further weight in favor of Settlement approval. *In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 974 n.6, 978 (8th Cir. 2018) (finding injunctive relief in the form of data security measures “has value to all class members,” and the district court properly considered non-monetary relief when weighing the merits of the plaintiff’s case against the terms of the settlement); *see Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) (finding settlement to be fair, reasonable, and adequate in part because “class members ... will benefit from the additional injunctive relief that the settlement provides”); *Bezdek v. Vibram USA, Inc.*, 809 F.3d 78, 84 (1st Cir. 2015) (finding there was no abuse of discretion where a district court concluded that injunctive relief against continuation of the allegedly false advertising was ‘a valuable contribution to this settlement agreement.’ ”); *In re Bisphenol-A (BPA) Polycarbonate Plastic Prods. Liab. Litig.*, No. 08-1967-MD-W-ODS, 2011 WL

1790603, at \*3-4 (W.D. Mo. May 10, 2011) (noting the presence of injunctive relief as a factor indicating the fairness, adequacy, and reasonableness of the settlement).

*i. The costs, risks, and delay of trial and appeal*

The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain. While Plaintiffs strongly believe in the merits of their case, they also understand the risks of continued litigation. As a recent federal court decision noted:

Data breach litigation is evolving; 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.”). Plaintiffs also faced the risk that [defendant] would successfully oppose class certification, obtain summary judgment on one or more of their claims, or win at trial or on appeal. Also, the cost for [defendant] and Plaintiffs to maintain the lawsuit would be high, given the amount of documentary evidence as well as the expert costs both parties would incur in the context of class certification, summary judgment, and trial. As such, the current Settlement strikes an appropriate balance between Plaintiffs’ “likelihood of success on the merits” and “the amount and form of the relief offered in the settlement.” *See Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

*Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at \*5 (W.D. Wis. Mar. 4, 2021). Plaintiffs dispute the defenses NWL will likely assert—but it is obvious that their success at trial is far from certain. Through the Settlement, Plaintiffs and Class Members gain significant benefits without having to face further risk of not receiving any relief at all.

*ii. The effectiveness of the proposed method of distributing relief to the class, including the method of processing class-member claims*

All Class Members have until May 23, 2022, to submit a claim for ordinary and/or extraordinary expense reimbursements. The Aura Financial Shield activation codes have already been disseminated on the postcard notices, and these credit monitoring services will be automatically provided after the Effective Date. Ex. A ¶ 15. P&N is responsible for reviewing, determining the validity of, and processing all claims submitted by Class Members. After the

Settlement is approved and the time for any appeal has passed, the Settlement Administrator will also be responsible for processing and transmitting Class Member payments and providing email reminders for activating the Aura Financial Shield product. Checks for valid claims will be sent as soon as practicable after the funding of the Escrow Account pursuant to Paragraph 43 of the Settlement Agreement. The Settlement provides for effective processing and distribution of relief.

*iii. The terms of any proposed award of attorney's fees, including timing of payment*

On March 29, 2022, Plaintiffs moved for an award of attorneys' fees and costs, as well as service awards for the Plaintiffs. ECF 69. As shown extensively in the Suggestions in Support of that motion (ECF 70), the requested attorneys' fees, costs, and services awards are fair and reasonable, and fall within the range of awards approved by courts in the Eighth Circuit. Moreover, the motion for attorneys' fees, costs, and service awards was filed over three weeks prior to the objection deadline of April 20, 2022, giving Class Members ample opportunity to review the requested fees, costs, and service awards, and an opportunity to object. To date, no Class Members have objected to Plaintiffs' request for fees, costs, and service awards.

No attorneys' fees, costs, or service awards will be paid prior to the Effective Date, which is after the time for any appeal.

*iv. There are no additional agreements required to be identified under Rule 23(e)(3)*

There are no additional agreements that require identification and/or examination under Rule 23(e)(3).

*v. The proposed Settlement treats Settlement Class Members equitably.*

Here, the proposed Settlement does not improperly discriminate between any segments of the class, as all Settlement Class Members are entitled to the same relief respectively. All

Settlement Class Members are eligible to make a claim for the same amount of ordinary and extraordinary expense reimbursements. Any difference in recovery will be based purely on the actual expenses they have incurred and time they have spent to mitigate the effects of the Data Incident. Moreover, all Class Members *automatically* received a code for credit monitoring services. And, while Plaintiffs are seeking a \$3,000 award for their services on behalf of the class, this award is *less than* the \$5000 amount that any given Class Member can claim in reimbursements.

Importantly, direct notice was sent to Settlement Class Members, and all Settlement Class Members had equal opportunity to object to or exclude themselves from the Settlement. As of April 4, 2022, only 25 Class Members had requested exclusion, and none had objected. Thus, the settlement does not unfairly benefit the Class Representatives or any particular Class Member.

2. *The Van Horn factors weigh in favor of final approval.*

The *Van Horn* factors considered by Courts in this Circuit also weigh in favor of final approval.

*First*, the Settlement provides for significant relief in light of the risks of proceeding with further litigation. As discussed extensively *supra*, while Plaintiffs are confident in the merits of their claims, they face significant risk in further litigation due in part to the constantly evolving nature of data breach litigation. This factor weighs in favor of final approval.

*Second*, the Defendant's financial condition is not at issue here and thus does not weigh either for or against approval of the Settlement.

*Third*, continued litigation is likely to be complex, lengthy, and expensive. Although Plaintiffs are confident in the merits of their claims, the risks discussed above cannot be disregarded. Aside from the potential that either side will lose at trial, the Plaintiffs anticipate

incurring substantial additional costs in pursuing this litigation further. Should litigation continue, Plaintiffs would likely need to counter a motion for summary judgment, and both gain and maintain certification of the class. The level of additional costs would significantly increase as Plaintiffs began their preparations for the certification argument and, if successful, a near inevitable interlocutory appeal attempt. As at least one court has found in this Circuit, because the “legal issues involved in [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Sec. Breach Litig.*, 2015 WL 7253765, at \*2 (D. Minn. Nov. 17, 2015). This factor weighs in favor of final approval.

Fourth, there is no opposition to the settlement. The absence of any opposition to the settlement strongly supports final approval. *Petrovic*, 200 F.3d at 1152.

Thus, the *Van Horn* factors weigh in favor of approving a result exactly like that obtained by Plaintiffs and Class Counsel: significant cash reimbursements for all Class Members who submit valid claims, credit monitoring services automatically provided to all Class Members, and equitable relief in the form of increased data security safeguards, which will serve to better safeguard all Settlement Class Members’ PII.

## V. CONCLUSION

Settlement Class Counsel, with the help of Plaintiffs, have made significant benefits available to class members during a time where the law surrounding data breaches is evolving and uncertain. The Settlement Class Members were provided direct and individual notice of the Settlement, and given additional resources by which they can get more information about the Settlement Agreement. Zero Settlement Class Members have objected to either the Settlement or to Plaintiffs’ request for attorneys’ fees, costs, and service awards. For these reasons, for the

reasons for class certification and appointment of Class Representatives and Counsel set forth in Plaintiffs' Suggestions in Support of Motion for Preliminary Approval (ECF 61), and because the Settlement is fair, adequate, and reasonable, Plaintiffs request this Court grant their motion for final approval, and grant the motion for attorneys' fees, costs, and service awards (ECF 69).

Dated April 6, 2022

Respectfully submitted,

*/s/David K. Lietz*

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 6, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing by electronic mail to the attorneys and parties of record.

*/s/David K. Lietz*  
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