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Attorneys for Representative Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF TULARE**

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|---|---|
| In re HAPY BEAR SURGERY CENTER DATA SECURITY INCIDENT LITIGATION | Case No. VCU307987<br>(Assigned for all purposes to Hon. Gary M. Johnson, Dept. 7)<br><br>**PLAINTIFFS' NOTICE OF MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**<br><br>HEARING DATE: February 24, 2025<br>TIME: 08:30 a.m.<br>DEPT. 07<br><br>COMPLAINT FILED: April 15, 2024 |

TO THE CLERK OF COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 24, 2025, at 08:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Gary M. Johnson in Department 7 of the Superior Court of California, County of Tulare, located at 221 S. Mooney Blvd., Visalia, California 93291, Plaintiffs David Underwood and Duncan Meadows ("Plaintiffs") will and hereby do move the Court, pursuant to California Civil Procedure Code § 382 and California Rule of Court 3.769, for an order granting:

1. Final approval and certification of the Class as described in the Settlement Agreement and Release and confirm all terms of the Settlement Agreement ("Settlement Agreement" or "Settlement") (attached as Exhibit "1" to the Declaration of Daniel Srourian filed concurrently herewith ("Srourian Decl.")).

2. Final approval of David Underwood and Duncan Meadows as the representatives of the Settlement.

3. Final approval of Daniel Srourian of the Srourian Law Firm, P.C. and Jason Wucetich of the law firm Wucetich & Korovilas LLP as class counsel.

4. Final approval of the Settlement of claims as set forth in the Settlement Agreement.

5. Final approval of the Settlement Administration Costs in an amount not to exceed $99,600.00.

6. Final approval of the Service Awards in the amount of $5,000 each to David Underwood and Duncan Meadows.

7. Final approval of the application for Attorneys' Fees to Class Counsel in the amount of $312,500 and litigation costs actually incurred in an amount of $10,196.46 all from the Gross Settlement Amount.

8. Final approval of the Net Settlement Fund, which shall be distributed to Participating Class Members, according to the terms of the Settlement preliminarily approved by

the Court.

This motion is based upon this notice of motion and motion, the concurrently filed memorandum of points and authorities in support of the unopposed motion, the concurrently filed Declaration of Daniel Srourian (attaching as exhibits, *inter alia*, the parties' fully executed proposed Settlement Agreement and the proposed class notice), the declaration of the Proposed Claims Administrator, the concurrently filed Proposed Order, the records and files in this action, and such arguments as may be presented at the hearing on this motion.

Dated: January 29, 2025

By: 

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Since this Court granted Plaintiffs' Motion for Preliminary Approval, the reaction of the settlement class has been overwhelmingly positive. To date, of the nearly 108,083 settlement class members, **none** have opted out of the settlement and **none** have submitted objections. Plaintiffs, by and through their counsel of record, thus respectfully request the Court grant Plaintiffs' Motion for Final Approval of this Class Action Settlement so that Plaintiffs may begin the process of distributing benefits to those members of the settlement class who have submitted valid claims.

### II. STATEMENT OF FACTS

#### A. Factual Background

On or around April 11, 2024, Defendant Hapy Bear Surgery Center ("Defendant" or "HBSC") issued a Notice of Security Incident acknowledging that it was the victim of a cyberattack perpetrated against it on or around December 27, 2023. Thereafter, HBSC launched an investigation and determined that an unauthorized person accessed information on its systems on or around December 27, 2023. The investigation resulted in the determination that files containing individuals' Private Information had been potentially accessed in the Data Incident, including patients' names, information regarding their care with HBSC and health and medical related information. The Data Incident affected approximately 109,161 individuals, including Plaintiffs.

#### B. Procedural History, Discovery, and Settlement Negotiations

On April 15, 2024, Plaintiff David Underwood filed a class action complaint in the Superior County of the State of California, County of Tulare (the "Court") entitled, *Underwood v. Hapy Bear Surgery Center, LLC*, Case No. VCU307987. Srourian Decl., ¶ 2. On April 22,

2024, Plaintiff Duncan Meadows filed a putative class action against Defendant in the Tulare County Superior Court in California, Case No. VCU308221. *Id.* On June 24, 2024, the class actions filed by Representative Plaintiffs Underwood and Meadows were consolidated into the *Underwood* action and captioned the *In re Hapy Bear Surgery Center Data Security Incident Litigation. Id.*

Defendant denies all claims of wrongdoing or liability that Plaintiffs assert in the Complaint, and it contends that it has maintained, and continues to maintain, reasonable security information practices. Srourian Decl., ¶ 3. Recognizing the risks and continued costs of litigation, Plaintiffs and Defendant decided to engage in private, arms-length negotiations to resolve all matters associated with the litigation. *Id.* Ultimately, the Plaintiffs and Defendant participated in a full day mediation with retired Judge David E. Jones. *Id.* Through Judge Jones, the basic terms of a settlement were negotiated and finalized. *Id*. Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in this settlement and how best to serve the interests of the putative class in the Litigation. *Id*. Based on this investigation and the negotiations described above at the mediation, Class Counsel concluded that the risks, uncertainty and cost of further pursuit of this Litigation, and the benefits to be provided to the Settlement Class pursuant to the Settlement Agreement, that a settlement with Defendant on the terms set forth in the Agreement is fair, reasonable, adequate and in the best interests of the class. *Id*.

**C. Preliminary Approval**

On October 7, 2024, this Court granted preliminary approval of this class action settlement. The Court determined the Settlement Agreement was the result of arm's-length negotiations between the parties after contested litigation, that it had no obvious defects, and that it was within the range of reasonable settlement approval. The Court also affirmed the form and

content of the proposed notices to be mailed and posted on the internet, concluding they were adequate to provide notice of the Settlement Agreement to the Class, the requisite information regarding this settlement, and that the proposed plan for this notice was sufficient.

**D. Terms of the Proposed Settlement**

The Settlement Class has two components -- the nationwide class is defined as "all individuals residing in the United States whose personal identification information and data was stored in HBSC's systems at the time of the December 27, 2023 cybersecurity incident and who were impacted by the cybersecurity incident, including those to whom Defendant or its authorized representative sent a notice concerning the 2023 Data Security Incident announced by Defendant," and the California subclass is defined as "all members of the Nationwide Class who are also California residents at the time of the December 27, 2023 cybersecurity incident." SA at ¶ 48.

**a. Settlement Class Fund and Benefits**

The Settlement provides significant benefits to Settlement Class Members, including the creation of a settlement fund of $937,500, which is defined in the Settlement Agreement as being comprised of $607,500 in non-reversionary cash, as well as $330,000 in cyber security hardening measures. SA at ¶ 43.

i. Compensation for Ordinary Economic Losses

All Settlement Class Members are eligible to claim up to $500, which may be decreased based on the number of claims and available funds, in reimbursement for the following:

- Out of pocket expenses, namely, postage, copying, scanning, faxing, mileage and other travel-related charges, parking, notary charges, research charges, cell phone charges (only if charged by the minute), long distance phone charges, data charges (only if charged based on the amount of data used), text message charges (only if charged by the message), bank fees, accountant fees, credit monitoring fees, and attorneys' fees, all of which must be fairly traceable to the Data Security Incident and must not have been previously

reimbursed by a third party; and

- Up to 4 hours of lost time, at $25/hour for time spent dealing with the Data Security Incident. SA at ¶ 51.

ii. Compensation for Extraordinary Economic Losses

All Settlement Class Members are eligible to receive up to a total of $7,500.00 per person, to Settlement Class members, upon submission of an Approved Claim and supporting documentation for proven monetary loss associated with fraud or identity theft if:

- If the loss is actual, documented and an unreimbursed monetary loss;
- The loss was more than likely than not caused by and fairly traceable to the Data Security Incident; and
- The loss is not already covered by the Ordinary Expense Compensation defined above. SA at ¶ 52.

iii. Credit Monitoring Services

In addition to the benefits otherwise provided herein, all Settlement Class Members may obtain an additional 2 years of credit monitoring services. These services include three-bureau credit monitoring; dark web monitoring; real-time inquiry alerts; and $1 million in identity theft insurance, among other features. All Settlement Class members are eligible to enroll in two (2) years of Credit Monitoring Services, upon submission of a valid Claim Form regardless of whether the Settlement Class Member submits a claim for reimbursement of Unreimbursed Economic Losses or Lost Time. SA, at ¶ 53.

iv. California Residents

To account for California specific statutes alleged in the operative Complaint, Class Members with a California residential address are eligible to receive an additional payment of $50. SA at ¶ 50(b)(ii).

v. Business Practice Enhancements

Defendant has and will continue to undertake major steps to fundamentally enhance the security deployed to secure access to its data network in order to lessen the risk of data breach

like this occurring again. Defendant has undertaken the following steps, which Defendant estimates will cost Defendant $330,000:

- Managed Endpoint Detection & Response
- Managed Security Awareness Training & Phish Testing
- Managed Firewall Threat Detection
- Managed Threat Hunting
- Continuous Network Vulnerability Scanning & Oversight
- Business Email Compromise and Phishing Prevention
- Managed Endpoint Detection & Response
- Managed Security Awareness Training & Phish Testing
- Managed Firewall Threat Detection
- Managed Threat Hunting
- Continuous Network Vulnerability Scanning & Oversight
- Business Email Compromise and Phishing Prevention

**1. Results of the Notice and Claims Process**

The Parties implemented the Court-approved Notice Program in coordination with the approved Settlement Administrator, EAG Golf Coast, LLC ("EAG"). Using records provided by HBSC, EAG created a database list of Settlement Class Members and verified the addresses using multiple methods. Macfarland Decl. ¶¶ 5, 7. This resulted in mailable address records for 108,083 Settlement Class Members. *Id*. ¶ 5. EAG caused the Court-approved Notice and Claim Forms to be sent via USPS first-class mail on November 6, 2024. *Id*. ¶ 6.

Some notices were returned as undeliverable, and CPT was able to find new addresses and re-sent the Notices to 6,940 Settlement Class Members. *Id*. ¶ 8. CPT estimates that the Notice was successfully delivered to 89.76% percent of the Settlement Class. *Id*. ¶ 13.

With input from counsel for the Parties, EAG established a Settlement Website, operational as of November 5, 2024, where Settlement Class Members could obtain important information about the settlement and submit/upload Claim Forms electronically. *Id*. ¶ 10. As of January 29, 2025, the website has received 13,863 page hits. *Id*. EAG also established a toll-free

phone number to provide Settlement Class Members with additional information regarding the Settlement through both automated messages and live call center representatives. *Id*.

**2. Claims, Requests for Exclusion, and Objections to Date**

Under the schedule established by the Preliminary Approval Order, the deadline for Settlement Class Members to submit an objection to or request for exclusion from the settlement was January 5, 2025, and the deadline for Settlement Class Members to submit claims is February 4, 2025.

As of January 29, 2025, a total of 2,400 Claim Forms have been timely submitted by Settlement Class Members. Macfarland Decl. ¶ 14. This represents a claims rate of 2.47% percent, which falls within the average claims rate for this type of settlement, and here there is more than a month remaining in the claims period. As of the date of this filing, no objections or requests for exclusion have been made. *Id*. ¶¶ 15, 16.

## III. ARGUMENT

### A. The Settlement Warrants Final Approval.

Approval of a class action settlement "take[s] place over three stages. First, the parties present a proposed settlement asking the Court to provide preliminary approval for both (a) the settlement class and (b) the settlement terms." *In re Toys "R" Us-Del., Inc.-Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 448 (C.D. Cal. 2014).). "Second, if the court does preliminarily approve the settlement and class, (i) notice is sent to the class describing the terms of the proposed settlement, (ii) class members are given an opportunity to object or opt out, and (iii) the court holds a fairness hearing at which class members may appear and support or object to the settlement." *Id.* "Third, taking account of all of the information learned during the aforementioned processes, the court decides whether or not to give final approval to the settlement and class certification." *Id.*

When considering final approval of a class action settlement, a court determines whether the settlement is "fair, adequate, and reasonable." *Pickett v. Holland Am. Line-Westours, Inc*., 145 Wn.2d 178, 188, 35 P.3d 351 (2001) (*quoting Torrisi v. Tucson Elec. Power Co*., 8 F.3d 1370, 1375 (9th Cir. 1993)). This is a "largely un-intrusive inquiry." *Id*. at 189. Although the Court possesses some discretion in determining whether to approve a settlement,

> [T]he 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.

*Id.* (*quoting Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982)). Moreover, "it must not be overlooked that voluntary conciliation and settlement are the preferred means of dispute resolution." *Id*. at 190 (*quoting Officers for Justice*, 688 F.2d at 625).

In evaluating whether a class settlement is "fair, adequate, and reasonable," courts generally reference the following criteria, with differing degrees of emphasis: (1) the likelihood of success by plaintiffs; (2) the amount of discovery or evidence; (3) the settlement terms and conditions; (4) recommendation and experience of counsel; (5) future expense and likely duration of litigation; (6) recommendation of neutral parties, if any; (6) number of objectors and nature of objections; and (8) the presence of good faith and absence of collusion. *Id*. at 188–89 (citing 2 HERBERT B. NEWBERG & ALBA CONTE, NEWBERG ON CLASS ACTIONS § 11.43 (3d ed. 1992)). This list is "not exhaustive, nor will each factor be relevant in every case." *Id*. at 189 (*quoting Officers for Justice*, 688 F.2d at 625).

**B. The Settlement is Fair, Adequate, and Reasonable.**

This settlement provides virtually complete relief to the Class, gives closure for HBCS, fosters judicial efficiency, and furthers public policy. The Settlement Agreement is fair, adequate, and reasonable. Settlement Class Members were provided claims for: (i)

reimbursements will provide up to $500 per person and reimbursement for lost time up to four hours per individual at the rate of $25 per hour, and (ii) Extraordinary Losses up to $7,500 per person. SA at ¶ 5. All Settlement Class members are further eligible to enroll in two (2) years of Credit Monitoring Services, upon submission of a valid Claim Form regardless of whether the Settlement Class Member submits a claim for reimbursement of Unreimbursed Economic Losses or Lost Time. *Id*., at ¶ 53. And to account for California specific statutes alleged in the operative Complaint, Class Members with a California residential address are eligible to receive an additional payment of $50. *Id*., at ¶50(b)(ii). These amounts are similar to other data breach class action cases that resolved early. Srourian Dec. ¶ 4. Additionally, the Settlement requires HBCS to undertake certain reasonable steps to enhance its data security in order to secure Plaintiffs' and Settlement Class Members' Personal Information against a future breach. SA at ¶ 55.

The Settlement Fund will also be used to pay for (i) all settlement and administration expenses (estimated to be $99,600.00) (ii) a maximum of one-third of the fund as attorneys' fees, (iii) litigation costs and expenses of $10,196.46, and (iv) service awards of up to $5,000 for the class representatives. *Id.,* ¶ 72.

**1. <u>Plaintiffs' Likelihood of Success Supports Final Approval.</u>**

The existence of risk and uncertainty to the Plaintiffs and Class "weigh heavily in favor of a finding that the settlement was fair, adequate, and reasonable." *Pickett*, 145 Wn.2d at 192. Here, the Plaintiffs and Class sought to hold HBSC responsible for a data breach that was precipitated by the criminal actions of a third party. By litigation standards, data breach cases are still relatively new. Courts around the country are grappling with what legal principles apply to these types of claims. Similarly, with the numerous data breaches that have occurred, proving

a class member's Personal Information was compromised by a particular breach (as opposed to another) presents challenges for proving causation of damages.

Throughout this litigation and settlement process, HBCS maintained it was not liable for any alleged wrongdoing. Accordingly, although Plaintiffs are confident in the strength of their case against HBSC, the outcome is nonetheless uncertain. There was also a very real risk of a prolonged and expensive appeals process that HBSC was far more financially equipped to handle than Plaintiffs. While attorneys' fees and litigation costs would undoubtedly have increased as a result, the potential recovery for Settlement Class Members would likely not have exceeded the settlement, even with a win at trial.

Class Counsel understood and considered these risks when negotiating the Settlement Agreement, which eliminates these risks and provides substantial compensation to Class Members without further delay.

**2. <u>The Amount of Discovery and Evidence Supports Final Approval.</u>**

Where "extensive discovery" takes place before a class action settlement, final approval is favored. *See Pickett*, 145 Wn.2d at 199. This is to ensure the parties have "sufficient information to make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). This information can be obtained through formal or informal discovery. *See Clesceri v. Beach City Investigations & Protective Servs.*, *Inc.*, No. CV-10-3873-JLS (RZx), 2011 WL 320998, at *9 (C.D. Cal. Jan. 27, 2011).

Here, Plaintiffs obtained all available public records regarding the Data Security Incident, as well as informal discovery related to the merits of Plaintiffs' claims, potential defenses thereto, and class certification. Srourian Decl. ¶ 5. With this information, Class Counsel were prepared and were able to negotiate a settlement that provides substantial and certain relief for the Class that is greater relief than most settlements in this arena provide. *Id.*

**3. The Settlement Terms and Conditions Support Final Approval.**

The terms and conditions of the proposed Settlement Agreement support its final approval. All Class Members who submit a valid and timely Claim Form remain entitled to the cash compensation described above and two years of identity theft protection and credit monitoring services. The identity theft protection and credit monitoring service is designed to protect Class Members from the very harm alleged in this lawsuit. Specifically, it monitors a Class Member's credit profile and notifies them of any changes. Further, in the event a Class Member's Personal Information has been used improperly, there is $1 million in insurance benefits available to compensate them for their loss and assist in remedying the problem. S.A. at ¶ 53.

As for the cash benefits, Class Members are entitled to $25 per hour for up to four hours' worth of time investigating the Data Security Incident, enrolling in previous credit monitoring made available to them, checking their credit, and otherwise responding to the Data Security Incident. California residents are entitled to an additional $50 cash payment. Here, with six days remaining in the claims period, 2,354 Class Members submitted claims so far for lost time, totaling 7,092 hours. Macfarland Decl. ¶ 14. This amounts to $276,950 in cash benefits to participating Settlement Class Members. *Id*.

The settlement reached with HBSC covers all of the foregoing benefits. Accordingly, the settlement provides fair, reasonable and adequate recovery in light of the risks of further litigation.

**4. The Positive Recommendation and Extensive Experience of Counsel Support Final Approval.**

"When experienced and skilled class counsel support a settlement, their views are given great weight." *Pickett*, 145 Wn.2d at 200. Class counsel in the present matter, who are experienced and skilled in class action litigation, support the settlement as fair, reasonable, adequate in the best interests of the Class. Srourian Decl. ¶¶ 9-14. Class Counsel have significant

class action experience and have litigated the case aggressively and effectively. Given Class Counsel's knowledge and experience, Counsel believe the settlement is an excellent result that provides substantial benefits for Settlement Class Members.

**5. Future Expense and Likely Duration of Litigation Support Final Approval.**

Another factor the Court considers in assessing the fairness of a settlement is the expense and likely duration of the litigation had a settlement not been reached. *Pickett*, 145 Wn.2d at 188. This settlement guarantees substantial recovery and continued credit monitoring services for Class Members while obviating the need for lengthy, uncertain, and expensive litigation. Continued litigation of this matter would cause additional expense and delay. Although the Parties conducted significant informal discovery up to this point, substantial work would be necessary to prepare the case for trial. Expert discovery would be required to prepare for trial, which would have been expensive to conduct. Even if Plaintiffs had prevailed, justice would have been delayed. In contrast, the settlement makes substantial monetary relief available to Class Members in a prompt and efficient manner.

**C. The Reaction of the Class Supports Final Approval.**

A court may infer a class action settlement is fair, adequate, and reasonable when few, if any, class members object to it. *See Pickett*, 145 Wn.2d at 200-01 (approving settlement with almost fifty objections). Here, the deadline to opt out or object to settlement is still in the future, however, already, as of the date of this filing, no Class Members have formally objected opted out. This indicates strong support for the settlement by the Settlement Class Members and weighs heavily in favor of final approval. *See Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc*., 16-cv-3146 JKB, 2019 WL 3183651 at *5 (D. Md. Jul. 15, 2019) (finding opt-out rate of .026 percent indicated strong support for settlement of data breach action).

Thus far, 2.42% percent of the Class has submitted claims. Macfarland Decl. ¶ 14. This is within the average claims acceptance rate for data breach actions. In the *In re Anthem, Inc. Data Breach Litig*., for example, the claims rate was approximately 1.8 percent. 327 F.R.D. 299 (N.D. Cal. 2018) (also noting that class data breach settlements in *In re Home Depot* and *In re Target* had claims rates of 0.2 percent and 0.23 percent respectively).

**D. No Class Members Filed an Objection with the Court.**

No Class Members have filed an Objection with the Court. In similar situations, courts have typically deemed no objections or a small number of objections as affirmative support for settlement approval, as the number of objections suggests an overall favorable reaction from the class. *Rodriguez v. West Publishing Corp*., 563 F.3d 948, 967 (9th Cir. 2009) ("The court had discretion to find a favorable reaction to the settlement among class members given that, of 376,301 putative class members to whom notice of the settlement had been sent, 52,000 submitted claims forms and only fifty-four submitted objections."); *see also Churchill Vill. LLC v. Gen. Elec*., 361 F.3d 566, 577 (9th Cir. 2004) (affirming final approval where "only 45 of the approximately 90,000 notified class members objected to the settlement" and 500 class members opted out); *Hughes v. Microsoft Corp*., No. C98–1646C, C93–0178C, 2001 WL 34089697, at *8 (W.D. Wash. Mar. 26, 2001) ("Over 37,000 notices were sent and over 3,600 class members contacted class counsel wanting to participate. . . . [L]ess than 1% of the class opted out and only nine objections were submitted. In view of the widespread publicity about the settlement, these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23.").

**E. The Presence of Good Faith and Absence of Collusion Support Final Approval.**

In determining the fairness of a settlement, the Court should consider the presence of good faith and the absence of collusion. *Pickett*, 145 Wn.2d at 201. Here, there has been no collusion

or bad faith. The settlement is the result of extensive negotiations between experienced attorneys who are highly familiar with class action litigation and the legal and factual issues of this case. Emery Decl. ¶¶ 3-14. At all times, the negotiations leading to the settlement were adversarial, non-collusive, and at arm's length. *Id.* ¶ 14.

**F. Class Members Received the Best Notice Practicable.**

This Court has determined that the notice program meets the requirements of due process and applicable law, provides the best notice practicable under the circumstances, and constitutes due and sufficient notice of all individuals entitled thereto. The Settlement Administrator implemented the program with the help of Class Counsel. *See generally* Macfardland Decl.

To date, the Notice program has been successful. Nearly 108,000 postcards were mailed. *Id*. ¶ 13. The website itself had nearly 13,000 views, and more than 2,400 claims were made. *Id*. ¶ 14. All told, EAG was able to achieve direct notice to approximately 90% percent of the settlement class.

**G. The Requested Attorneys' Fees are Fair and Reasonable.**

By separate motion filed concurrently, Class Counsel will request a fee of $312,500 (33.33% percent of the Settlement Fund), and $10,196.46 in reasonable costs and expenses of all cases against HBSC. This amount was negotiated only after the Parties agreed to all substantive terms of the settlement. Srourian Decl. ¶¶ 4.

**H. The Requested Service Awards are Fair and Reasonable.**

HBSC agreed to pay a service award in the amount of $5,000 to each of the two Class Representatives. SA at ¶ 72. Plaintiffs request this Court award them the agreed-upon service awards in their concurrently-filed Motion for an Award of Attorneys' Fees and Costs and Service Awards.

"Service" awards "are intended to compensate class representatives for work undertaken on behalf of a class." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). Here, the requested service awards do not create a conflict of interest between the seventeen Class Representatives and the Class Members because the service awards are small compared to the overall settlement relief, there was no agreement between the Class Representatives and Class Counsel regarding the awards, and the awards are not conditioned on the Plaintiffs' support for the Settlement Agreement. The basis for the service awards is purely to compensate Plaintiffs for their time and efforts in initiating the lawsuit, staying abreast of all aspects of this litigation, cooperating in discovery, responding to discovery requests, participating in the settlement discussions, and fairly and adequately protecting the interests of the Class Members. Thus, the service awards do not constitute preferential treatment.

These factors support approval of the settlement.

**I. Final Certification of the Settlement Class is Appropriate.**

This Court provisionally certified the Settlement Class in the Preliminary Approval Order, finding that the requirements of California Code of Civil Procedure § 382. Since that time, there have been no developments that would alter this conclusion. The Settlement Class should now be finally certified.

**J. Certification Requirements are Satisfied.**

Court approval is required for any settlement of a class action. *See* California Rules of Court, Rule 3.769; *In re Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009). Trial courts have broad powers and discretion to determine whether proposed class settlements should be approved. *7-Eleven Owners for Fair Franchising v. Southland Corp.* 85 Cal. App. 4th 1135, 1146 (2000); *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1801 (1996); *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). The ultimate test for final court

approval of a class settlement is whether the agreement "is fair, reasonable, and adequate." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001). In this regard, the California Court of Appeal explains:

> The trial court must determine whether a class action settlement is fair and reasonable, and has broad discretion to do so. That discretion is to be exercised through the application of several well-recognized factors. The list, which 'is not exhaustive and should be tailored to each case, includes 'the strength of plaintiffs, case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement'…

*Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009) (internal citations omitted). See also *Chavez v. Netflix, Inc*., 162 Cal. App. 4th 43, 52 (2008). An informed evaluation of a proposed settlement also requires "an understanding of the amount in controversy and the realistic range of outcomes of the litigation." *Clark, supra* at 799 (citing *Kullar v. Foot Locker Retail, Inc*., 168 Cal. App. 4th 11 6, 120 (2008)).

As a threshold matter, a class settlement is presumed to be fair when '"(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."' *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146 (quoting *Dunk v. Ford Motor* 48 Cal. App. 4th 1794, 1802 (1996)). Additionally, in evaluating the fairness of a settlement, "[d]ue regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk*, 48 Cal. App. 4th at 1801. Accordingly, a court should take into account the informed recommendations of counsel and the parties. *Vulcan Soc'y of Westchester County, Inc. v. Fire Dep't of the City of White Plains*, 505 F. Supp. 955, 961 (S.D.N.Y. 1981). As explained below, this case has been handled by experienced class-action counsel on all sides, who conducted arms-length settlement negotiations and eventually reached an agreement on an overall amount that was fair and reasonable. Indeed, respective counsel and their clients all agree that the Settlement is fair, adequate, and reasonable, and that the chosen distribution mechanism ensures an appropriate allocation of the overall Settlement.

**1. The Class is So Numerous That Joinder of All Members is Impracticable.**

The numerosity requirement is satisfied where "the class is so numerous that joinder of

all members is impracticable." *Kavu, Inc. v. Omnipack Corp*., 246 F.R.D. 642, 647 (W.D. Wash. 2007) (court found that sending unsolicited faxes to at least 3,000 recipients satisfied numerosity). Although there is no specific number required to satisfy the numerosity requirement, courts generally find that numerosity is satisfied when there are at least 40 class members. *Our Lady of Lourdes*, 190 Wn.2d at 520; *Agne v. Papa John's Int'l, et al*., 286 F.R.D. 559, 567 (W.D. Wash. 2012). Here, the Parties estimate the Class to be comprised of 160,835 individuals. S.A., ¶ 1.8. It is impracticable to join the over a hundred and sixty thousand putative Class Members and the numerosity requirement is clearly satisfied.

**2. There Are Common Issues of Law and Fact.**

Commonality requires courts to "find that determination of a common contention's truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* (internal quotations omitted). In this way, "[w]hat matters to class certification . . . is not the raising of common 'questions' even in droves but, rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, the Parties have reached a resolution of the litigation, driven in large part by the common issues of law and fact that apply to the Class Members.

In this case, Class Members are all confronted with the same issue: they all allegedly had their personal information exposed in the Data Security Incident as a result of HBSC's failure to prevent the accessibility of their personal information. In the absence of class certification and settlement, Plaintiffs assert that each individual Class Member would be required to litigate a long list of common issues of law and fact, all relating to HBSC's alleged common course of conduct that allowed the Settlement Class Members' Personal Information to be accessible. The commonality requirement of California Code of Civil Procedure § 382 is satisfied for settlement

purposes. Numerous data breach cases have been certified across the country for settlement purposes.

**3. The Class Representatives' Claims are Typical.**

Representative claims are typical of the class claims if they are "reasonably coextensive with those of the absent class members." *Hanlon*, 150 F.3d at 1020; *see also Hansen v. Ticket Track, Inc*., 213 F.R.D. 412, 415 (W.D. Wash. 2003). The typicality element examines whether: (1) the case is based on conduct that is not unique to the plaintiff; (2) the class members have been injured by the same conduct as the plaintiff; and (3) the class members have the same or a similar injury to the plaintiff. *Agne*, 286 F.R.D. at 568. "When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually satisfied, irrespective of varying fact patterns which underlie individual claims." *Kavu*, 246 F.R.D. at 648 (citing *Smith v. University of Washington Law School*, 2 F.Supp.2d 1324, 1342 (W.D. Wash. 2007)). The plaintiffs' claims "need not be identical to the claims of other class members, but the class representative must be part of the class and possess the same interests and suffer the same injury as the class members." *Rodriguez v. Carlson*, 166 F.R.D. 465, 473 (E.D. Wash. 1996).

Here, Plaintiffs have the same claims as the Class, and must satisfy the same elements of every other Class Member. Supported by identical legal theories, Plaintiffs and all Class Members share claims based on the same course of conduct: HBSC's failure to prevent the accessibility of their Personal Information. Plaintiffs and all Class Members have allegedly been injured in the same manner by having their valuable personal information accessible.

**4. The Named Plaintiffs and their Counsel Adequately Represent the Class.**

The adequacy of representation requirement is satisfied if: (1) the class representative is represented by qualified and competent counsel; and (2) the class representative's interests do

not conflict with the interests of the proposed class members. *See Hanlon*, 150 F.3d at 1020; *see also Hansen*, 213 F.R.D. at 415; *Fernandez v. Dep't of Social & Health Svcs*., 232 F.R.D. 642, 645 (E.D. Wash. 2005). Plaintiffs satisfy both prongs of the adequacy requirement.

First, Plaintiffs and each Class Member allegedly have been injured in the same manner. *See, e.g.*, Amended Consolidated Class Action Complaint ("CAC"), ¶ 103. Plaintiffs assert the same legal claims and theories as those of all Class Members. Plaintiffs seek the identical relief that would be sought by all members of the Class. No known conflict exists between Plaintiffs and the proposed Class. Plaintiffs agreed to assume the responsibility of representing the Class, which includes responding to discovery requests and diligently pursuing this action in cooperation with counsel. Plaintiffs have taken their obligations to the Class seriously. Nothing more is required.

Second, proposed Class Counsel have extensive experience and expertise in prosecuting complex actions, including class and data breach actions. Srourian Decl. ¶¶ 8–12. In pursuing this litigation vigorously, Plaintiffs advanced and will continue to advance and fully protect the interests of the Class. Accordingly, the requirement of adequate representation is satisfied.

**5. The Settlement Class Meets the Predominance and Superiority Requirements**

This action is well-suited for certification under California Code of Civil Procedure § 382 in the context of settlement because questions common to the Class Members predominate over questions affecting only individual Class Members, and the class action device provides the best method for the fair and efficient resolution of the Class's claims. *Id.* Indeed, HBSC supports class certification for the purpose of effectuating the proposed settlement. When addressing the propriety of class certification, the Court should take into account the fact that, in light of the settlement, trial will now be unnecessary, and so manageability of the Class for trial purposes is not relevant to the Court's inquiry. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

(i) Common Questions Predominate.

A class action is appropriate under California Code of Civil Procedure § 382 if questions of law or fact common to the members of the class predominate over any questions affecting only individual members. The predominance requirement not demand unanimity of common questions; instead, it simply requires that common questions outweigh individual issues. *See Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc*., 244 F.3d 1152 (9th Cir. 2001). This inquiry addresses whether there is a common nucleus of operative facts in each class member's claim. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative basis rather than on an individual basis." *Id.*

Common questions predominate here for purposes of settlement. Plaintiffs assert that common questions include whether (1) HBSC acted properly in its storing of Class Members' personal information; (2) whether HBSC had appropriate security measures in place to prevent the Data Security Incident; and (3) whether the Class Members' personal information was accessed. Predominance is satisfied.

(ii) Class Treatment is Superior to Alternative Methods of Adjudication.

The Court should certify the Class under California Code of Civil Procedure § 382 if it finds that a class action is superior to other available methods for fair and efficient adjudication of the controversy. Factors of superiority include whether members of the class have an interest in individually controlling the litigation, the extent and nature of litigation concerning the controversy already commenced by other members of the class, the desirability of concentrating the litigation of the claims in the particular forum, and the difficulties likely to be encountered in the management of the class action.

Here, Class Members have not expressed an interest in individually controlling the litigation because no other lawsuits have been filed. This is likely due to the exorbitant costs associated with bringing data breach actions because of the document-intensive discovery and expenses of experts necessary to prove the claims. Judicial economy is enhanced by allowing these claims to be processed *en masse*. That is why a class action is superior. It is desirable to concentrate the claims in this forum, which is in the State of California where HBSC operates and the vast majority of Settlement Class Members reside. Concentrating the claims into one forum and certifying the class is likely the only way the Class Members' rights will be vindicated. The Parties have not encountered difficulties with the administration of this settlement that would rise to the level of preventing class treatment. Indeed, a class action is the superior method of adjudicating consumer claims arising from this Data Security Incident—just as in other, similar, data breach cases where class-wide settlements have been approved. *See, e.g.*, *In re LinkedIn User Privacy Litig*., 309 F.R.D. 573, 585 (N.D. Cal. 2015); *In re the Home Depot, Inc. Customer Data Sec. Breach Litig*., 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig*., 2009 WL 5184352, at *6–7 (W.D. Ky. Dec. 22, 2009). Class treatment is superior for settlement in this case.

**K. Plaintiffs Should be Confirmed as Class Representatives and Plaintiffs' Counsel Should be Confirmed as Class Counsel.**

Plaintiffs also request that the Court formally and finally designate them as the Settlement Class Representatives to implement the terms of the settlement. As detailed above, Plaintiffs will fairly and adequately represent and protect the interests of the Settlement Class. Plaintiffs' Counsel should be formally and finally appointed as Class Counsel. They have devoted significant time and resources to prosecuting this action on behalf of Plaintiffs and the proposed Settlement Class. Plaintiffs' Counsel have extensive experience in class actions, particularly those involving data breaches. Underwood Decl. ¶¶ 3–7; Meadows Decl. . ¶¶ 3–7. Accordingly,

Plaintiffs' Counsel have already and will continue to adequately represent the interests of the Settlement Class and should be appointed as Class Counsel.

## IV. CONCLUSION

The Settlement Agreement is fair, adequate, and reasonable in light of the potential obstacles to recovery in this case and the continued risk of litigation. For these reasons, Plaintiffs respectfully request the Court enter Plaintiffs' Proposed Order Granting Final Approval.

Dated January 29, 2025.

By: */s/ Daniel Srourian*

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF TULARE**

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| In re HAPY BEAR SURGERY CENTER DATA SECURITY INCIDENT LITIGATION<br><br>This Document Relates To: All Actions | Case No. VCU307987<br>(Assigned for all purposes to Hon. Gary M. Johnson, Dept. 7)<br><br>**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT** |

**[PROPOSED] ORDER**

WHEREAS, the Court held a Final Fairness Hearing and conditionally granted approval of this class action Settlement on February 24, 2024. The Court has considered the Settlement Agreement, all matters submitted to it at the Final Fairness Hearing, the relevant law, the supplemental evidence, and all other files, records, and proceedings in this Action.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

Plaintiff's Motion for Final Approval of Class Action Settlement Agreement is GRANTED.

This Order incorporates herein and makes a part hereof, the Settlement Agreement (including its exhibits) and the Preliminary Approval Order. Unless otherwise provided herein, the terms defined in the Settlement Agreement and Preliminary Approval Order shall have the same meanings for purposes of this Order.

The Court has subject matter jurisdiction over this matter including, without limitation, jurisdiction to approve the Settlement, confirm certification of the Settlement Class for settlement purposes only, to settle and release all claims released in the Settlement, and to enter final judgment.

## I. CERTIFICATION OF THE SETTLEMENT CLASS

Based on its review of the record, including the Settlement, all submissions in support of the Settlement, and all prior proceedings in the Action, the Court finally certifies and defines the following Settlement Class for settlement purposes only: A nationwide class defined as "all individuals residing in the United States whose personal identification information and data was stored in Defendant's systems at the time of the December 27, 2023 cybersecurity incident and who were impacted by the cybersecurity incident, including those to whom Defendant or its authorized representative sent a notice concerning the 2023 Data Security Incident announced by Defendant," and the California subclass defined as "all members of the Nationwide Class who are also California residents at the time of the December 27, 2023 cybersecurity incident."

Excluded from the Settlement Class are (1) the Judge(s) presiding over the Actions, and members of their families; (2) the Defendant, their subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or their parents have a controlling interest and their current or former officers, directors, and employees; (3) Persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded Persons.

For settlement purposes only, with respect to the Settlement Class, the Court confirms that the prerequisites for a class action pursuant to Cal. Code of Civil Proc. § 382 have been met, in that: (a) the Settlement Class is so numerous that joinder of all individual Settlement Class members in a single proceeding is impracticable; (b) questions of law and fact common to all Settlement Class Members predominate over any potential individual questions; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class; (d) Plaintiffs and proposed Class Counsel will fairly and adequately represent the interests of the Settlement Class; and (e) a class action is the superior method to fairly and efficiently adjudicate this controversy.

## II. NOTICE TO THE SETTLEMENT CLASS

The Court finds that Notice has been given to the Settlement Class in the manner directed by the Court in the Preliminary Approval Order. The Court finds that such Notice: (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the terms of the Settlement including its Releases, their right to exclude themselves from the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements

of the United States Constitution (including the Due Process Clause), and any other applicable law.

## III. FINAL APPROVAL OF THE SETTLEMENT

The Court finds that the Settlement resulted from arm's-length negotiations between Class Counsel and Defendant.

The Court hereby finally approves in all respects the Settlement as fair, reasonable, and adequate, and in the best interest of the Settlement Class, including the monetary benefits provided under the Settlement and the Business Practice Changes identified in the Settlement Agreement.

The Court finds that Plaintiffs and Class Counsel fairly and adequately represented the interests of Settlement Class Members in connection with the Settlement.

The Parties shall consummate the Settlement in accordance with the terms thereof. The Settlement, and each and every term and provision thereof, including its Releases, shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force and effect of an order of this Court.

## IV. SETTLEMENT AND RELEASE OF CLAIMS

The claims of the Class Representatives and the Settlement Class Members asserted in the Action have been settled and released per the Settlement Agreement. The Court shall retain jurisdiction of the Action and the Settlement Agreement.

Upon the Effective Date, the Class Representatives, any Person in the Settlement Class, including those submitting or not submitting a claim for a Settlement Benefit, and each of their respective spouses, children, heirs, associates, co-owners, attorneys, agents, administrators, executors, devisees, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, employees or affiliates, and any other person who is a Settlement Class Member that does timely and properly opt-out from the Settlement, shall be

deemed to have, and by operation of this Order shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims.

For purposes of this Order, "Released Claims" means all claims or causes of action, including causes of action in law, claims in equity, complaints, suits or petitions, and allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, breach of contract, breach of the duty to settle or indemnify, breach of the covenant of good faith and fair dealing, punitive damages, attorneys' fees, costs, interest, expenses, or other potential claim), regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or another source, that the Releasing Parties had or have (including, but not limited to, assigned claims) that have been or reasonably could have been asserted in the Action or in another action or proceeding before any court, arbitrator(s), tribunal or administrative body (including but not limited to any state, local or federal regulatory body) based on the same set of operative facts as alleged in the Complaint.

Upon the Effective Date and only after Defendant has fully funded the Gross Settlement Amount, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim(s) against any of the Released Parties in any court, arbitration, tribunal, forum or proceeding.

## V. ATTORNEYS' FEES AND COSTS, AND SERVICE AWARDS TO CLASS REPRESENTATIVES

The Court awards attorneys' fees of $312,500.00 and reimbursement of litigation costs and expenses in the amount of $10,196.46, payment of service awards in the amount of $5,000 to each Class Representative; and up to $99,600.00 for the Settlement Administrator's Administrative Expenses. The Court directs the Settlement Administrator to pay such amounts in accordance with the terms of the Settlement. Class Counsel, in their sole discretion to be

exercised reasonably, shall allocate and distribute the attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' counsel of record in the Action.

## VI. OTHER PROVISIONS

The Court retains continuing jurisdiction over the Parties and the Settlement Class for the administration, consummation, and enforcement of the terms of the Settlement Agreement. In the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any of the Administrative Expenses, or any expenses, including costs of notice and administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs.

**IT IS SO ORDERED.**

Dated: _____

_____
Hon. Gary Johnson