The Honorable Evan Jones

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

In re: Mt. Baker Imaging, LLC Data Security Litigation	Lead Case No. 25-2-00463-37 **REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

The non-reversionary $3,300,000 cash fund (the "Settlement Fund") in this case gives Settlement Class Members the right to seek substantial monetary relief, plus up to two (2) years of Medical Identify-Theft Protection and Monitoring, the costs of which will be paid out of the Settlement Fund. Defendants have also agreed to invest to improve their cybersecurity systems. Over 7% of the class has made a claim—an excellent result in a data breach settlement—and that number will only continue to climb closer to the deadline to submit a claim. Only thirteen (13) individuals out of the nearly 340,000 person Class have submitted timely requests for exclusion, and only one individual has timely objected, as set forth below. The response of the Class therefore continues to be overwhelmingly positive.

Because the proposed Settlement before the Court is fair, reasonable, and adequate, the Court should approve it. Accordingly, Plaintiffs request the Court finally approve the Parties' Settlement Agreement and enter an Order:

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(1) granting final approval of the Settlement Agreement;

(2) granting final certification of the Settlement Class;

(3) appointing Plaintiffs Genevieve Bardwell, Jeff Eberlein, Thomas Schumann, Daniel Uitdenhowen, Michael Barr, Leslie Swope, Marc Daniel, and Joanne Herman as Representative Plaintiffs;[1]

(4) appointing Elena A. Belov of Almedia Law Group LLC, M. Anderson Berry of Emery Reddy PC, and Kaleigh N. Boyd of McNaul Ebel PLLC as Class Counsel;

(5) finding that the Notice in this Action met the requirements of due process and CR 23(e);

(6) finding that the terms of the Settlement are fair, reasonable, and adequate;

(7) Overruling the objections;

(8) approving and directing the Settling Parties, their respective attorneys, and the Settlement Administrator to consummate the Settlement in accordance with the Proposed Final Approval Order and Judgment and the terms of the Settlement Agreement; and

(9) dismissing and resolving all claims against all parties in this Action and entering the Proposed Final Approval Order and Judgment.[2]

BACKGROUND

Plaintiffs provide the Court with the following updates on the notice and claims program since their opening Motion for Final Approval:

A. Claims, Exclusions, and Objections

1. Claims

As of August 13, 2026, EAG has received 25,542 Claim submissions. *See* Suppl. Decl. of Ryan Aldrige Regarding Implementation of Notice Program & Settlement Admin. ("Suppl. Admin

[1] Former Plaintiff Jeffrey Kahn passed away during the pendency of this Action, and is therefore no longer a Settlement Class Member. Further references in this Order to "Plaintiffs" or "Representative Plaintiffs" omits Mr. Kahn.

[2] Plaintiffs are submitting a [Proposed] Final Approval Order and Judgment with this Reply.

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Decl.") ¶ 5. EAG is still in the process of reviewing and validating Claim Forms, and the last day to submit claims is August 19, 2026. *Id.* As of today, the claims rate is approximately 7.51%, *id.*, which is an excellent result in a data breach class action. If the Court awards the requested attorneys' fees, costs, service awards, and administrative costs under the Settlement Agreement, the current estimated *pro rata* award (for those who selected the *Pro Rata* Cash Fund Payment option) is $76.00. *Id.*

2. Requests for Exclusions and Objections.

As of August 13, 2026, out of the 339,948 Settlement Class Members, EAG has only received thirteen timely Requests for Exclusion. *See id.* ¶ 6. EAG also received one timely objection, attached to the EAG Declaration as Exhibit B. *Id.* ¶ 7. EAG received six untimely objections—postmarked after the objection deadline of July 20, 2026—that are nearly identical in substance. *Id.* & Ex. B.

LEGAL AUTHORITY AND ARGUMENT

A. The Court should overrule the objections.

"A proposed settlement is not judged against a hypothetical or speculative measure of what might have been achieved. A possibility that the settlement could have been better does not mean it was not fair, reasonable, or adequate." *Summers v. Sea Mar Cmty. Health Ctrs.*, 29 Wn. App. 2d 476, 504 (2024) (internal citations omitted). "It is not the trial court's duty, nor place, to make sure that every party is content with the settlement. Indeed, this would contravene the very nature of consensual settlements." *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 189 (2001). What the court is to look for, rather, is "the possibility of inequitable treatment between class members." *Id.* "Due to the consensual nature of settlements, the trial court's inquiry is 'delicate' and 'largely unintrusive.'" *Deien v. Seattle City Light*, 26 Wn. App. 2d 57, 67 (2023) (citing *Pickett*, 145 Wn.2d at 189).

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i. The amount offered in settlement is fair, reasonable, and adequate.

The Settlement Administrator received one timely objection in this case, as well as six untimely (but substantively nearly identical) objections. While the Court may disregard the untimely objections under the terms of the Settlement Agreement, *see* S.A. ¶¶ 7.1–7.2, Plaintiffs will nevertheless address their substance, as collectively the objectors' primary concern appears to be that the amount offered in settlement is inadequate.

But in light of the risks and uncertainties presented by this litigation, the $3.3 million Settlement Fund achieved for the Settlement Class continues to be impressive. This amounts to an average of almost $9.70 per Class Member—an amount that exceeds recent data breach settlements, some by a significant margin:

- *Cooper v. Rebound Orthopedics & Neurosurgery, P.C.*, Case No. 25-2-00545-06 (Clark Cnty.) (court approved $2,500,000 common fund settlement for approximately 426,264 data breach class members (equal to $5.86 per class member));
- *In re Fred Hutchinson Cancer Center Data Breach Litig.*, Case No. 23-2-24266-1 (King Cnty. Super.) (court approved $11,500,000 common fund settlement for approximately 2,151,554 data breach class members (equal to $5.34 per class member);
- *McAuley v. Pierce College District*, No. 23-2-11064-7 (Pierce Cnty.) (court approved $1,200,000 common fund settlement for approximately 150,000 data breach class members (equal to $8 per class member));
- *Stone v. Accellion USA LLC*, Case No. 21-2-01439-5 SEA (King Cnty.) (court approved $3,085,152.73 common fund settlement with one defendant for approximately 1.6 million data breach class members (equal to $1.93 per class member)); and
- *Garcia v. Washington State Department of Licensing*, Case No. 22-2-05635-SEA (King Cnty.) (court approved $3,600,000 common fund settlement for approximately 650,000 individuals (equal to $5.53 per class member)).

These comparisons do not disparage the settlements achieved in those cases, but underscore the value Plaintiffs achieved for the class. The proposed Settlement allows Class Members to recover

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money for costs incurred from the Data Security Incident. Class Members who do not submit reimbursement for losses may request an alternative cash payment. Finally, the proposed settlement will also reduce the risk that the private information class members have entrusted to Defendants—and continue to entrust to Defendants—is compromised by future attacks. While the objectors may not like the amount offered in settlement, they present no information indicating that they or the Settlement Class would be entitled to recover significantly more were this case to go to trial. *See, e.g.*, *Summers*, 29 Wn. App. 2d at 503 (upholding final approval of data breach class action settlement that provided for approximately $3.66 per class member); *Pickett*, 145 Wn.2d at 190 ("This is not to say that a reviewing court should not look to the merits of the Plaintiffs' case, but that review should be limited to assessing rough probabilities of success as they existed at the time of the settlement.").

Since the objectors fail to demonstrate what additional amount of relief would be appropriate or how the Settlement achieved is unreasonable, the Court should overrule them. *See, e.g.*, *Schechter v. Crown Life Ins. Co.*, No. 13-cv-5596, 2014 WL 2094323, at *2 (C.D. Cal. May 19, 2014); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). "[I]t is the parties themselves, as opposed to the court or the objectors, who are in the best position to assess whether a settlement fairly reflects their expected outcome in litigation." *Edwards v. National Milk Producers Federation*, No. 11-cv-04766-JSW, 2017 WL 3616638, at *2 (N.D. Cal. June 26, 2017) (overruling objection to settlement despite a conflict in expert valuations). "[T]he possibility that a class settlement does not fully compensate each class member for the full amount of his or her loss is not *ipso facto* grounds for rejecting the settlement . . . . the risk of proceeding to trial—and possibly recovering nothing—must be weighed against the uncertainty of recovering something." *In re TD Ameritrade Account Holder Litig.*, No. C 07- 2852 SBA, 2011 WL 4079226, at *12 (N.D. Cal. Sep. 13, 2011). Plaintiffs respectfully request that the Court overrule the objection.

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ii. The Settlement does not suffer from any of the flaws set out in the timely objector's legal authority.

The timely objector's legal authority does not support his position here. In *In re Yahoo!*, the Court denied **preliminary** (not final) approval in part because the parties' proposed settlement notices did not disclose the full amount of the settlement fund. *See In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 2019 WL 387322, at *6 (N.D. Cal. Jan. 30, 2019) ("The proposed notice does not disclose the costs of credit monitoring services or costs for class notice and settlement administration, and does not disclose the total size of the settlement fund."). In this case, the notices plainly stated the full amount of the common fund settlement available to Settlement Class Members: $3,300,000. The *Yahoo!* court also rejected preliminary approval where some amount of the attorneys' fees would revert to the Defendant, which is not the case here. *Id.* at *7 ("Because attorneys' fees do not come from the Settlement Fund, any amount not awarded by the Court would effectively revert to Defendants rather than to the benefit of the class."). In this case, Plaintiffs' counsel's attorneys' fees will be paid from the common fund.

Further, this case is not like *In re California Pizza Kitchen* insofar as it is a common fund—not a claims made—settlement. *See In re California Pizza Kitchen Data Breach Litig.*, 129 F.4th 667, 670 (9th Cir. 2025) (noting that under the settlement, "CPK would only be required to make payments to class members who submitted valid claims (i.e., a claims-made settlement). Given the low redemption rate for claims, the monetary value of the class's claims is (at most) around $950,000—yet the attorneys sought $800,000 in fees."). Here, Defendants are funding a $3,300,000 non-reversionary settlement fund regardless of the number of claims that are ultimately submitted. And Class Counsel asks for 33.33% of that common fund in attorneys' fees, which—as set forth in Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards—is the norm in Washington state court. Regardless, the Court in *California Pizza Kitchen* affirmed the trial court's ruling finally approving the settlement as fair, reasonable, and adequate. *See id.*

Neiman Marcus Group also does not undermine the Court's conclusion at preliminary approval that the settlement is fair, reasonable, and adequate. In *Neiman Marcus*, the court denied

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preliminary (not final) approval because the proposed settlement class included individuals whose credit card information objectively could not have been impacted by the malware event at issue; namely, they did not make a purchase at Neiman Marcus until after the malware issue concluded—thus creating an intraclass conflict with individuals whose data *had* been impacted. *See Remijas v. Neiman Marcus Grp., LLC*, 341 F. Supp. 3d 823, 828 (N.D. Ill. 2018) ("The settlement class in this case thus includes individuals who the parties (and class representatives) knew from the outset could not have made their purchases at a time when the malware was active."). There is no such risk here: The settlement class definition includes only those individuals whose Private Information "was potentially or actually compromised in the Data Security Incident"—not anyone whose data appeared on Defendants' systems for the first time *after* the Data Security Incident.

The Court also preliminarily (not finally) rejected the proposed settlement in *Parsons v. Kimpton Hotel & Res. Grp.*, 2018 WL 4441268, at *1 (N.D. Cal. 2018) for defects not at issue here: namely, that while the proposed claims made settlement with a $600,000 cap was reasonable, capping reimbursement for lost time at a maximum of $15/hour and three hours was unreasonable. Here, the settlement is a common fund, and individuals are permitted to make claims not for lost time, but for documented out-of-pocket losses and a *pro rata* cash payment. Finally, the court preliminarily (not finally) rejected the proposed settlement in *Deats v. The Zalkin Law Firm, P.C.*, 2024 WL 1521421 (S.D. Cal. Apr. 8, 2024) for several structural flaws that are also not present here: First, that there was no explanation of the alleged discrepancy between the $5 million amount in controversy allegation for federal court jurisdiction and the $285,000 settlement amount, particularly where (unlike here) the breached data included medical information of sexual abuse and harassment victims; second, that the settlement notice would be sent only to 523 individuals, while the release purported to bind many more class members; and third, that the Parties had not explained their selection of a *cy pres* recipient. In this case, the settlement amount is not only comparable to, but in many cases much better than similar data breach class action settlements, as further set forth above; notice is being sent by direct mail to the full settlement class for whom

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contact information is available; and the Settlement Agreement is designed not to require a *cy pres* recipient, insofar as all money remaining in the settlement fund (after paying for approved claims for Out-of-Pocket Losses, Credit Monitoring, Notice and Administration Expenses, any Fee and Expenses Award, and Service Awards) will be distributed *pro rata* to individuals who make a valid claim for a *pro rata* cash fund payment. *See* S.A. ¶ 2.2.3. To the extent that an unforeseen circumstance arises where there is need for a *cy pres* recipient, CR 23 mandates that at least half go to the Legal Foundation of Washington, and the Parties can address that with the Court as appropriate.

iii. The proposed Medical Identify-Theft Protection and Monitoring settlement benefit is significant, as are Defendants' business practice commitments.

Though they provide no details in support, several of the untimely objectors complain that their credit has been damaged, and that the proposed credit monitoring benefit is insufficient to address that harm. As an initial matter, it is unclear what credit monitoring benefit the untimely objectors believe would be sufficient to address their adverse credit consequences (which is further compounded by their failure to detail what, exactly, has happened to their credit), nor what better credit monitoring benefit they believe would be an available remedy at trial. The product that is offered through the Settlement Agreement in this case—Medical Shield Complete from CyEx—is a service that monitors medical and healthcare data to determine whether consumers' private health information is at risk or has been exposed to medical fraud, and it comes with single-bureau credit monitoring. S.A. ¶ 2.2.4. Though it is likely not a remedy that would be available to Class Members were they to take their individual cases to trial, this benefit provides significant relief in addressing the very harm caused by the Data Security Incident.

Finally, several of the untimely objectors argue that the Settlement is unfair to the public. But it is Settlement Class Members, not the public, who are bound by the Settlement Agreement—the Settlement need only be fair, reasonable, and adequate as to them. Regardless, as part of the Settlement Agreement, Defendants have committed to undertaking five years' worth of data

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security enhancements that will cost Defendants more than $500,000. S.A. ¶¶ 1.29, 2.4. Those benefits are intended to safeguard private information in Defendants' possession from future cyberattacks, which is a benefit not only to the Settlement Class, but also to anyone in the future who may provide their Private Information to Defendants. *Id.*

B. The response of the Class continues to be overwhelmingly positive.

Courts will regularly grant final approval of settlements even where there are objectors. *Pickett*, 145 Wn.2d at 201 (citing court cases approving settlement for class of 5,683 where 370 objected, affirming approval of settlement where one class member out of 11 objected). Here, the fact that there was only one timely objection and only thirteen timely requested opt-outs is a testament to the strength of the Settlement and approval of the Class.

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval to the Settlement and enter the proposed order that accompanies this Reply.

DATED: August 14, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

On, I caused to be served a true and correct copy of the foregoing document upon counsel of record, at the address stated below, via the method of service indicated:

Jill Fertel Cipriani & Wetner PC 450 Sentry Parkway, Suite 200 Blue Bell, PA 19422 jfertel@c-wlaw.com tnalencz@c-wlaw.com	☐ ☐ ☐ ☐ ☑ ☑	Via Messenger Via U.S. Mail Via Overnight Delivery Via Facsimile Via Email Via Whatcom County eService

Attorneys for Defendants

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

DATED this 14th day of August, 2026, at Seattle, Washington.

By: *s/ Trang La*
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