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10
11 **THE UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 MYRON SCHELLHORN,
14 RODNEY ALLEN, TEDDA
15 ALLEN, LAUREN WATERS,
16 JEFF HARRINGTON, AND
17 DAVID THOMPSON,
18 INDIVIDUALLY AND ON
19 BEHALF OF ALL OTHERS
20 SIMILARLY SITUATED

21 Plaintiffs,

22 vs.

23 TIMIOS, INC.,

24 Defendant.

Case No.: 2:21-cv-08661-VAP-JC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: May 2, 2022
Time: 2:00 P.M.
Courtroom: 6A
Judge: Hon. Virginia A. Phillips

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1 **I. INTRODUCTION**

2 Plaintiffs Myron Schellhorn, Rodney Allen, Tedda Allen, Lauren Waters,
3 Jeff Harrington, and David Thompson (collectively, “Plaintiffs”) submit this
4 Unopposed Motion for Preliminary Approval of Class Action Settlement and
5 Memorandum in Support. Defendant Timios, Inc. (“Timios,” or “Defendant”) does
6 not oppose certification for Settlement purpose only and does not oppose Plaintiffs’
7 request for preliminary approval of class actions settlement. Plaintiffs strongly
8 believe the Settlement is fair, reasonable and adequate, and that the Court should
9 grant preliminary approval and notice should be distributed to Class Members.

10 **II. STATEMENT OF FACTS**

11 This matter concerns a putative class action arising out of an alleged Data
12 Incident (as defined below) suffered by Timios between July 19, 2021 and July 25,
13 2021. The cyber criminals responsible for the Data Incident uploaded a virus onto
14 Timios’s systems, encrypting Timios’s data, including personal identifiable
15 information (“PII”) of certain Timios customers and employees. Plaintiffs allege,
16 but Timios denies, that, as a result of the Data Incident, unauthorized users accessed
17 Representative Plaintiffs’ and Timios’s current and former customers’ and
18 employees’ PII including Social Security numbers, driver’s license numbers,
19 financial account information, medical information and/or health insurance
information.

20 On or about October 8, 2021, Timios notified approximately 74,755
21 individuals of the Data Incident. Timios offered these individuals one year of free
22 credit and identity monitoring services as a result of the Data Incident.

23 Plaintiffs brought this action on behalf of all persons whose PII Plaintiffs
24 allege was compromised as a result of Timios’s failure to: (i) adequately protect
25 PII; (ii) warn of its inadequate information security practices; and (iii) effectively
26 monitor its network for security vulnerabilities and incidents. Plaintiffs allege that
27 Timios’s conduct amounts to negligence and violates federal and state statutes.
28 Plaintiffs allege that they and Class Members have suffered injury as a result of

1 Timios’s conduct. These injuries include: (i) lost or diminished value of PII; (ii)
2 out-of-pocket expenses associated with the prevention, detection, and recovery
3 from identity theft, tax fraud, and/or unauthorized use of their PII; (iii) lost
4 opportunity costs associated with attempting to mitigate the actual consequences
5 of the Data Incident, including but not limited to lost time, (iv) deprivation of rights
6 they possess under the Illinois Consumer Fraud Act (815 Ill. Comp. Stat. § 505/1,
7 *et seq.*), Illinois Personal Information Protection Act (815 ILCS 530, *et seq.*),
8 Illinois Security Breach Notification Laws (815 ILCS 530/10), and (v) the
9 continued and certainly an increased risk to their PII, which remains in Timios’s
10 possession and is subject to further unauthorized disclosures so long as Timios fails
11 to undertake appropriate and adequate measures to protect the PII.

12 **III. PROCEDURAL HISTORY**

13 Plaintiffs Myron Schellhorn, Rodney Allen, and Tedda Allen filed this action
14 on November 3, 2021. The next day, November 4, 2021, a separate putative class
15 action involving the same Data Incident was filed in this Court by Plaintiffs Lauren
16 Waters, Jeff Harrington, and David Thompson. *See Waters, et al. v. Timios*, Case
17 No. 2:21-cv-08709-VAP-JC (C.D. Cal.) (“*Waters Action*”). Shortly thereafter,
18 counsel for Plaintiffs in the two actions decided it was appropriate to join together
19 in an effort to conserve the resources of the parties and Court. Accordingly,
20 pursuant to stipulation of the Parties and approval of the Court, on March 1, 2022,
21 the First Amended Class Action Complaint (“FAC”)” was filed in this action
22 naming the Plaintiffs from both this and the *Waters Action*. Then, on March 24,
23 2022, the *Waters Action* was voluntarily dismissed under Fed. R. Civ. P.
24 41(a)(1)(A)(i).

25 Over the course of several months, the Parties engaged in informal,
26 sometimes contentious, settlement negotiations. The parties then agreed to
27 participate in early mediation. The parties engaged Bennett Picker, Esq., a well-
28 regarded private mediator with considerable experience mediating data breach
class actions, to preside over the mediation. With the mediation date looming, the

1 parties continued to rigorously pursue settlement negotiations and were able to
2 reach a settlement in principle on almost all terms, except for attorneys’ fees and
3 expenses. The parties then took several weeks to finalize the full scope of the
4 settlement agreement including attorneys’ fees and expenses. The parties executed
5 the Settlement Agreement on March 31, 2022.

6 **IV. THE SETTLEMENT TERMS**

7 **A. Proposed Settlement Class**

8 The Settlement will provide relief for the following Settlement Class: “All
9 persons to whom Timios mailed notice that between July 19, 2021 and July 25,
10 2021, Timios was the target of a cyberattack in which third-party criminals gained
11 unauthorized access to Timios’ network, encrypted some of Timios’ systems, and
12 may have gained unauthorized access to the personal information of consumers.”
13 S.A. 1.27.

14 The Settlement Class contains approximately 74,755 individuals. In
15 addition, the Settlement creates a California Settlement Subclass, consisting of “all
16 persons residing in California between July 19, 2021 and July 25, 2021 to whom
17 Timios mailed notice that between July 19, 2021 and July 25, 2021, Timios was
18 the target of a cyberattack in which third-party criminals gained unauthorized
19 access to Timios’ network, encrypted some of Timios’ systems, and may have
20 gained unauthorized access to the personal information of consumers.” S.A. 1.2.

21 **B. Settlement Benefits – Monetary Relief**

22 The Settlement negotiated on behalf of the Class provides for three separate
23 forms of monetary relief: (1) reimbursement of ordinary expenses and lost time up
24 to \$500 per Class Member; (2) reimbursement of extraordinary expenses up to
25 \$3,000 per Class Member, and; (3) \$50 per California Settlement Subclass member
26 in recognition of the superior statutory rights afforded under California law. S.A.
27 ¶¶ 2.1-2.3.

28 1. Expense and Lost-Time Reimbursement.

The first category of payments is designed to provide reimbursement for

1 ordinary out-of-pocket expenses related to the Data Incident and to compensate
2 Class Members for time spent dealing with the effects of the Data Incident. S.A. ¶
3 2.1 Ordinary expense reimbursements can be claimed at up to \$500 per Class
4 Member. *Id.*

5 Notably, this category of reimbursements specifically includes up to three
6 hours of lost time spent dealing with any effects of the Data Incident, compensated
7 at \$20 per hour. *Id.* Reimbursable ordinary expenses also include:

- 8 (i) unreimbursed bank fees; (ii) unreimbursed card reissuance fees; (iii)
9 unreimbursed overdraft fees; (iv) unreimbursed charges related to
10 unavailability of funds; (v) unreimbursed late fees; (vi) unreimbursed
11 over-limit fees; (vii) long distance telephone charges; (viii) cell minutes
12 (if charged by minute), Internet usage charges (if charged by the minute
13 or by the amount of data usage and incurred solely as a result of the
14 Data Incident), and text messages (if charged by the message and
15 incurred solely as a result of the Data Incident); (ix) unreimbursed
16 charges from banks or credit card companies; (x) interest on payday
17 loans due to card cancellation or due to over-limit situation incurred
18 solely as a result of the Data Incident; (xi) costs of credit report(s),
19 credit monitoring, and/or other identity theft insurance products
20 purchased by members of the Settlement Class between October 11,
21 2021 and the date of the Claims Deadline; and (xii) other losses
22 incurred by Settlement Class Members determined by the Settlement
23 Administrator to be fairly traceable to the Data Incident, including, but
24 not limited to, the cost of postage and gas for local travel.

25 *Id.*

26 2. Other Extraordinary Expense Reimbursement.

27 The second category provides for reimbursement of extraordinary expenses,
28 up to \$3,000 per Settlement Class Member, incurred between July 19, 2021 through
and including the end of the Claims Deadline for documented, unreimbursed out-
of-pocket expenses incurred due to the Data Incident. S.A. ¶ 2.2.

3. California Subclass Benefits.

In addition to the above benefits, California Settlement Subclass Members
are eligible for a separate damages award. The amount awarded to California

1 Settlement Subclass Members who submit a Valid Claim shall be \$50, which can
2 be combined with a claim for ordinary out-of-pocket expenses, but is subject to the
3 \$500 per-Settlement-Class-Member cap on compensation. S.A. ¶ 2.3.

4 **C. Non-Monetary Settlement Benefits – Aura Financial Shield**

5 In addition to the potential cash benefits outlined above, all Settlement Class
6 members who make a Valid Claim for identity theft protection services will receive
7 a unique identification number and password through the notice program so that
8 they receive access to Aura’s Financial Shield Services (“Financial Shield”) for a
9 period of eighteen (18) months. S.A. 2.4.

10 The financial fraud coverage provided through Financial Shield includes the
11 following services,

- 12 a) Up to \$1 Million Dollars reimbursement insurance through AIG
13 covering losses due to identity theft and stolen funds;
- 14 b) Financial transaction monitoring, including monitoring of all
15 financial accounts registered by the Settlement Class Member,
16 such as credit card accounts, bank accounts (checking and
17 savings) and investment accounts, for transactions exceeding
18 selected thresholds;
- 19 c) Continuous monitoring for high-risk transactions, including
20 payday loans, wire transfers, and account openings, that involve
21 the Settlement Class Member’s personal information;
- 22 d) Notification of attempts to use the Settlement Class Member’s
23 Social Security Number as part of an identity verification event,
24 such as requesting a replacement credit or debit card; filing an
25 insurance claim; updating personal information on an existing
26 account; and/or opening a new account;

- 1 e) Fictitious identity monitoring, which notifies the Settlement
- 2 Class Member when his or her Social Security Number is being
- 3 used in association with someone else's name and/or address;
- 4 f) Online tax fraud monitoring and alerts, which monitors online
- 5 income tax filings through TurboTax and alerts the Settlement
- 6 Class Member if a tax return is filed using his or her Social
- 7 Security Number;
- 8 g) Home title monitoring, including monitoring properties
- 9 identified by a Settlement Class Member and notifying the
- 10 Settlement Class Member when an existing property title is
- 11 changed, removed, or new titles are added to his or her name;
- 12 h) Dark web monitoring, which continuously monitors the dark
- 13 web for the Settlement Class Member's personal information;
- 14 i) Public record monitoring, which monitors public records for
- 15 address changes, automotive tickets, and arrests associated with
- 16 the Settlement Class Member's name and Social Security
- 17 number;
- 18 j) Credit security freeze assistance, which provides the Settlement
- 19 Class Member a central location to link to one of ten different
- 20 consumer reporting agencies to freeze and unfreeze his or her
- 21 credit files; and,
- 22 k) Lost wallet protection, which provides a customer support line
- 23 where the Settlement Class Member can receive help in
- 24 canceling and replacing lost credit cards.

25 Financial Shield Services from Aura, like those provided for by the
26 Settlement Agreement, retail for \$135 per year per person. Declaration of M.
27 Anderson Berry ISO Ps' Unopposed Mot. for Preliminary App. Of Class Action
28 Settlement ¶ 21. Thus, the value of these services for 18 months is at least \$202.50

1 per person. *Id.* Because all 74,000+ Settlement Class Members who submit a Valid
2 Claim will receive this benefit in addition to any monetary recovery, the value of
3 this benefit obtained for the Class is valued at over \$15 million ($\$202.50 \times 74,755$
4 class members) given that is approximately what it would cost for each class
5 member to individually purchase this product on the open market. However, even
6 if only 5 percent of the Class (or approximately 3,738 class members) submit
7 claims for the Financial Shield Services, the value of that benefit equates to a
8 conservative value of \$756,945. *Id.* ¶ 39.

9 **D. Equitable Settlement Terms/Injunctive Relief**

10 In addition to the foregoing settlement benefits, Timios agrees to implement
11 and/or maintain certain reasonable steps to adequately secure its systems and
12 environments, including taking the steps listed in Exhibit 1 (filed herewith under
13 seal). S.A. ¶ 2.6. These changes will benefit those members of the Settlement Class
14 whose information remains in Timios's possession, and also other customers whose
15 information is provided to Timios in the future.

16 **E. Class Notice and Settlement Administration**

17 Notice will be paid for by Defendant, separate and apart from any funds
18 available to Settlement Class Members. Notice will be given to the Settlement
19 Class via individual notice, which will be given primarily by emailing the Short-
20 Form notice (attached at Exhibit 5) or mailing the Postcard Notice (attached as
21 Exhibit 6) to the email or postal addresses associated with the accounts of Class
22 Members. Decl., ¶¶ 25-26.

23 A Long Notice (attached as Exhibit 3), will also be posted on the settlement
24 website, www.Timiossettlement.com, along with other important documents such
25 as the Settlement Agreement and the motions for final approval and for attorneys'
26 fees and expenses. S.A. § 3.2(b), (d). The notice documents are clear and concise
27 and directly apprise Class Members of all the information they need to know to
28 make a claim or to opt-out or object to the Settlement. Fed. R. Civ. P. 23(c)(2)(B).

Furthermore, a toll-free number with interactive voice response, FAQs, and

1 an option to speak to a live operator will be made available to address Class
2 Members' inquiries. S.A, § 3.2(e).

3 Moreover, Defendant has retained Kroll Settlement Administration, a
4 nationally recognized and well-regarded class action settlement administrator, to
5 serve as Claims Administrator, subject to the Court's approval. *See* Decl., ¶ 23. The
6 Claims Administrator has estimated that notice and administration costs will total
7 approximately \$86,000.00. *Id.*, ¶ 36.

8 **F. Attorneys' Fees and Expenses**

9 Plaintiffs will also separately seek an award of attorneys' fees not to exceed
10 \$215,000.00, which includes reimbursement of their reasonable costs and litigation
11 expenses incurred. Using the conservative estimate set forth above about the value
12 of the automatic Aura Financial Shield benefit (\$756,945.00), the \$373,775 in
13 monetary settlement benefits, and the value of the equitable measures negotiated,
14 this amount is approximately 19 percent of the settlement value provided to the
15 Class. Defendant has agreed to take no position with regard to the fees motion.

16 Class Counsel's fee request is well within the range of reasonableness for
17 Settlements of this nature and size. This Court recently stated that "25% [is]
18 considered the benchmark" in the Ninth Circuit. *Pauley v. CF Entm't*, No. 2:13-
19 CV-08011-RGK-CW, 2020 WL 5809953, at *3 (C.D. Cal. July 23, 2020), *citing*
20 *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000). In fact, the Ninth Circuit
21 has found attorneys' fees awards of 1/3 of the fund to be reasonable. *See In re Mego*
22 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming award of one-
third of total recovery).

23 **G. Service Awards to Named Plaintiffs**

24 Plaintiffs in this case have been vital in litigating this matter, including
25 providing their personal information to proposed Settlement Class Counsel.
26 Plaintiffs have been personally involved in the case and support the Settlement.
27 Decl., ¶ 43. Plaintiffs will separately petition the Court for awards of \$2,500 each
28 in recognition of the time, effort, and expense they incurred pursuing claims that

1 benefited the Settlement Class. *See* S.A., § 7.3.

2 The amount requested here is presumptively reasonable and commonly
3 awarded in settled class action cases. *See, e.g., In re Pauley*, 2020 WL 5809953, at
4 *4 (This Court granted “class representative enhancement fees in the amount of
5 \$5,000 each to Plaintiffs,” finding that amount to be “presumptively reasonable”);
6 *Yahoo Mail Litig.*, No. 13-CV-4980, 2016 WL 4474612, at *11 (N.D. Cal. Aug.
7 25, 2016) (“The Ninth Circuit has established \$5,000.00 as a reasonable benchmark
8 [for service awards].”).

9 **H. Release**

10 Upon entry of the Final Approval Order, Plaintiffs and the Settlement Class
11 will be deemed to have “fully, finally, and forever released, relinquished, and
12 discharged all Released Claims.” S.A., § 6.1. “Released Claims” are defined, *inter*
13 *alia*, as:

14 Upon the Effective Date, each Settlement Class Member, including
15 Plaintiffs, shall be deemed to have, and by operation of the Judgment
16 shall have, fully, finally, and forever released, relinquished, and
17 discharged all Released Claims. Further, upon the Effective Date, and
18 to the fullest extent permitted by law, each Settlement Class
19 Member, including Plaintiffs, shall, either directly, indirectly,
20 representatively, as a member of or on behalf of the general public or
21 in any capacity, be permanently barred and enjoined from commencing,
22 prosecuting, or participating in any recovery in any action in this or any
23 other forum (other than participation in the settlement as provided
24 herein) in which any of the Released Claims is asserted.

25 S.A. ¶ 6.1. Released Claims shall include Unknown Claims as defined in ¶ 1.32 of
26 the Settlement Agreement. Released Claims shall not include the right of any
27 Settlement Class Member or any of the Released Persons to enforce the terms of
28 the settlement contained in this Settlement Agreement, and shall not include the
claims of Settlement Class Members who have timely excluded themselves from

1 the Settlement Class.

2 **V. LEGAL AUTHORITY**

3 Plaintiff brings this motion pursuant to Federal Rule Civil Procedure 23(e),
4 under which court approval is required to finalize a class action settlement. Courts,
5 including those in this Circuit, endorse a three-step procedure for approval of class
6 action settlements: (1) preliminary approval of the proposed settlement followed
7 by (2) dissemination of court-approved notice to the class and (3) a final fairness
8 hearing at which class members may be heard regarding the settlement and at which
9 evidence may be heard regarding the fairness, adequacy, and reasonableness of the
10 settlement. Manual for Complex Litigation (Fourth) (2004) § 21.63.

11 Here, Plaintiffs request the Court take the first step, and grant preliminary
12 approval of the proposed Settlement Agreement.

13 **VI. ARGUMENT**

14 Federal courts strongly favor and encourage settlements, particularly in class
15 actions and other complex matters where the inherent costs, delays, and risks of
16 continued litigation might otherwise overwhelm any potential benefit the class
17 could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276
18 (9th Cir. 1992) (noting the “strong judicial policy that favors settlements,
19 particularly where complex class action litigation is concerned”); 4 Newberg on
20 Class Actions § 11.41 (4th ed. 2002) (citing cases). More traditional means of
21 handling claims like those at issue here—individual litigation—would unduly tax
22 the court system, require massive expenditures of resources, and given the
23 relatively small value of the claims of the individual class members, would be
24 impracticable. Thus, a settlement—and specifically the Settlement Agreement
25 proposed here—provides the best vehicle for Settlement Class Members to receive
26 the relief to which they are entitled in a prompt and efficient manner.

27 The Manual for Complex Litigation (Fourth) advises that in cases presented
28 for both preliminary approval and class certification, the “judge should make a
preliminary determination that the proposed class satisfies the criteria.” § 21.632.

1 Because a court evaluating certification of a class action that settled is considering
2 certification only in the context of settlement, the court’s evaluation is somewhat
3 different than in a case that has not yet settled. *Amchem Prods., Inc. v. Windsor*,
4 521 U.S. 591, 620 (1997). In some ways, the court’s review of certification of a
5 settlement-only class is lessened: as no trial is anticipated in a settlement-only class
6 case, the case management issues inherent in the ascertainable class determination
7 need not be confronted. *See id.* Other certification issues, however, such as “those
8 designed to protect absentees by blocking unwarranted or overbroad class
9 definitions,” require heightened scrutiny in the settlement-only class context “for a
10 court asked to certify a settlement class will lack the opportunity, present when a
11 case is litigated, to adjust the class, informed by the proceedings as they unfold.”
12 *Id.*

13 Plaintiffs here seeks certification of a Settlement Class consisting of: “[A]ll
14 persons residing in the United States whose PII was potentially compromised in
15 the Data Incident first announced by Timios on or about January 26, 2021,
16 including but not limited to the California Settlement Subclass.” S.A. ¶ 1.27. The
17 Settlement Class contains approximately 75,000 individuals. In addition, the
18 Settlement creates a California Settlement Subclass, consisting of “all persons
19 whose PII was potentially compromised in the Data Incident first announced by
20 Timios on or about January 26, 2021, and who were residing in the State of
21 California at the time their PII was potentially compromised in the Data Incident.”
22 S.A. ¶ 1.3.

23 The Settlement Class is defined near identically to the class defined in
24 Plaintiffs’ First Amended Class Action Complaint, ¶¶ 154-55. For the reasons set
25 forth below, the Court should certify the Class for settlement purposes and
26 preliminarily approve the Settlement.

27 **A. The Settlement Satisfies Rule 23(a).**

28 Before assessing the parties’ settlement, the Court should first confirm the

1 underlying settlement class meets the requirements of Rule 23(a). *See Amchem*,
2 521 U.S. at 620; Manual for Complex Litigation (Fourth), § 21.632. The
3 requirements are well known: numerosity, commonality, typicality, and
4 adequacy—each of which is met here. Fed. R. Civ. P. 23(a); *Ellis v. Costco*
5 *Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011)

6 i. The proposed Class is sufficiently numerous.

7 While there is no fixed point where the numerosity requirement is met,
8 Courts find numerosity where there are so many class members as to make joinder
9 impracticable. *See* Fed. R. Civ. P. 23(a)(1). “Where the exact size of the class is
10 unknown but general knowledge and common sense indicate that it is large, the
11 numerosity requirement is satisfied.” *Orantes-Hernandez v. Smith*, 541 F. Supp.
12 351, 370 (C.D. Cal. 1982). Generally, Courts will find numerosity is satisfied where
13 a class includes at least 40 members. *Holly v. Alta Newport Hospital*, Case
14 No.2:19cv07496, 2020 WL 1853308, at *7 (April 10, 2020), *citing Rannis v.*
15 *Recchia*, 380 Fed. App’x 646, 651 (9th Cir. 2010). Numbering approximately 75,00
16 individuals, the proposed settlement class easily satisfies Rule 23’s numerosity
17 requirement. Joinder of the 75,000 individuals is clearly impracticable—thus the
18 numerosity prong is satisfied. *See, e.g. Celano v. Marriott Int’l Inc.*, 242 F.R.D.
19 544, 548-49 (N.D. Cal. 2007) (numerosity is generally satisfied when a class has at
20 least 40 members).

21 ii. The Settlement Class Satisfies the Commonality
22 Requirement.

23 The Settlement Class also satisfies the commonality requirement, which
24 requires that class members’ claims “depend upon a common contention,” of such
25 a nature that “determination of its truth or falsity will resolve an issue that is central
26 to the validity of each [claim] in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564
27 U.S. 338, 350 (2011). Here, as in most data breach cases, “[t]hese common issues
28 all center on [Defendant’s] conduct, satisfying the commonality requirement.” *In*
re the Home Depot, Inc., Customer Data Sec. Breach Litig., No. 1:14-MD-02583-

1 TWT, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016). For the same reason,
2 Plaintiffs allege that predominance is readily met here “where the class is a
3 ‘cohesive group of individuals [who] suffered the same harm in the same way
4 because of the [defendant's] conduct.’ *In re Google LLC St. View Elec. Commc'ns*
5 *Litig.*, No. 10-MD-02184-CRB, 2020 WL 1288377, at *5 (N.D. Cal. Mar. 18,
6 2020) (quoting *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 559 (9th
7 Cir. 2019)). Thus, common questions include, *inter alia*, whether Timios engaged
8 in the wrongful conduct alleged; whether Class Members’ PII was compromised in
9 the Data Incident; whether Timios owed a duty to Plaintiffs and Class members;
10 whether Timios breached its duties; whether Timios unreasonably delayed in
11 notifying Plaintiffs and class members of the material facts of the Data Incident;
12 and whether Timios violated the common law and statutory violations alleged in
13 the FAC.

14 Thus, Plaintiffs have met the commonality requirement of Rule 23(a).

15 iii. Plaintiffs’ claims and defenses are typical to those of the
16 Settlement Class.

17 Plaintiff satisfies the typicality requirement of Rule 23 because Plaintiff’s
18 claims, which are based on Defendant’s alleged failure to protect the PII and PHI
19 of Plaintiffs and all members of the Class, are “reasonably coextensive with those
20 of the absent class members.” *See* Fed. R. Civ. P. 23(a)(3); *Meyer v Portfolio*
21 *Recovery Associates*, 707 F.3d 943, 1041-42 (9th Cir. 2012) (upholding typicality
22 finding). Plaintiffs allege their PII and PHI was compromised, and that they were
23 therefore impacted by the same allegedly inadequate data security that they allege
24 harmed the rest of the Settlement Class. *See Just Film, Inc. v. Buono*, 847 F.3d
25 1108, 1118 (9th Cir. 2017) (“[I]t is sufficient for typicality if the plaintiff endured
26 a course of conduct directed against the class.”).

27 iv. Plaintiffs will adequately protect the interests of the
28 Class.

1 The adequacy requirement of Rule 23 is satisfied where (1) there are no
2 antagonistic or conflicting interests between named plaintiffs and their counsel and
3 the absent class members; and (2) the named plaintiffs and their counsel will
4 vigorously prosecute the action on behalf of the class. Fed. R. Civ. P. 23(a)(4); *see*
5 *also Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (*citing*
6 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); *Longest v. Green*
7 *Tree Servicing LLC*, 308 F.R.D. 310, 325 (C.D. Cal. 2015).

8 Here, Plaintiffs have no conflicts of interest with other class members, are
9 subject to no unique defenses, and they and their counsel have and continue to
10 vigorously prosecute this case on behalf of the class. Plaintiffs are members of the
11 Class who allegedly experienced the same injuries and seek, like other Class
12 Members, compensation for Timios’s data security shortcomings. As such, their
13 interests and the interests of their counsel are consistent with those of other Class
14 Members.

15 Further, counsel for Plaintiff have decades of combined experience as
16 vigorous class action litigators and are well suited to advocate on behalf of the
17 Class. *See* Dec. ¶ 46. Thus, Plaintiffs satisfy the requirement of adequacy.

18 v. Common issues predominate over individualized ones.

19 The predominance requirement “tests whether proposed classes are
20 sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S.
21 at 623 (citing *Wright, et al.*, Fed. Prac. and Proc. § 1777, p. 518-19 (2d ed. 1986)).
22 “If common questions ‘present a significant aspect of the case and they can be
23 resolved for all members of the class in a single adjudication,’ then ‘there is clear
24 justification for handling the dispute on a representative rather than on an individual
25 basis,’ and the predominance test is satisfied.” *See Keegan v. Am. Honda Motor*
26 *Co.*, 284 F.R.D. 504, 526 (C.D. Cal. 2012) (quoting *Hanlon*, 150 F.3d at 1022. To
27 satisfy this requirement, “common issues need only predominate, not outnumber
28 individual issues.” *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir.
2013) (quotations omitted).

1 As discussed above, Plaintiffs allege that common questions predominate
2 over any questions affecting only individual members here. Class certification here
3 is also “superior to other available methods for . . . fairly and efficiently
4 adjudicating the controversy.” Fed. R. Civ. P. 23(a)(4). Classwide resolution is the
5 only practical method of addressing the alleged violations at issue in this case.
6 There are thousands of class members with modest individual claims, most of
7 whom likely lack the resources necessary to seek individual legal redress. *See Local*
8 *Joint Exec. Bd. of Culinary/ Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244
9 F.3d 1152, 1163 (9th Cir. 2001) (cases involving “multiple claims for relatively
10 small individual sums” are particularly well suited to class treatment); *see also*
11 *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010)
12 (“Where recovery on an individual basis would be dwarfed by the cost of litigating
13 on an individual basis, this factor weighs in favor of class certification.”).

14 Because the claims are being certified for purposes of settlement, there are
15 no issues with manageability, and resolution of thousands of claims in one action
16 is far superior to individual lawsuits and promotes consistency and efficiency of
17 adjudication. *See* Fed. R. Civ. P. 23(b)(3); *Malta*, 2013 WL 444619, at *3
18 (superiority met where “considerations of judicial economy favor litigating a
19 predominant common issue once in a class action instead of many times in separate
20 lawsuits” and the “small individual claims of class members” made it “unlikely that
21 individual actions will be filed”). For these reasons, certification of the Settlement
22 Class for purposes of settlement only is appropriate.

23 **B. The Requirements of Rule 23(b)(3) Are Met for Purposes of**
24 **Settlement.**

25 “In addition to meeting the conditions imposed by Rule 23(a), the parties
26 seeking class certification must also show that the action is maintainable under Fed.
27 R. Civ. P. 23(b)(1), (2) or (3).” *Hanlon*, 150 F.3d at 1022. Here, Plaintiffs allege
28 that the Settlement Class is maintainable for purposes of settlement under Rule
23(b)(3), as common questions predominate over any questions affecting only

1 individual members and class resolution is superior to other available methods for
2 a fair and efficient resolution of the controversy. *Id.*

3 Rule 23(b)(3) requires that a district court determine that “a class action is
4 superior to other available methods for the fair and efficient adjudication of the
5 controversy.” In determining whether the “superiority” requirement is satisfied, a
6 court may consider: (1) the interest of members of the class in individually
7 controlling the prosecution or defense of separate actions; (2) the extent and nature
8 of any litigation concerning the controversy already commenced by or against
9 members of the class; (3) the desirability or undesirability of concentrating the
10 litigation of the claims in the particular forum; and (4) the difficulties likely to be
11 encountered in the management of a class action. Fed. R. Civ. P. 23(b)(3).

12 Plaintiffs’ claims depend, first and foremost, on whether Timios used
13 reasonable data security measures to protect consumers’ PII and PHI. That question
14 can be resolved, for purposes of settlement only, using the same evidence for all
15 Class Members, and thus is precisely the type of predominant question that makes
16 a class-wide settlement worthwhile. *See, e.g., Tyson Foods, Inc. v. Bouaphakeo*,
17 136 S. Ct. 1036, 1045 (2016) (“When ‘one or more of the central issues in the
18 action are common to the class and can be said to predominate, the action may be
19 considered proper under Rule 23(b)(3)’”) (citation omitted).

20 Additionally, for purposes of settlement, a class action is the superior method
21 of adjudicating consumer claims arising from the Security Incident—just as in
22 other data breach cases where class-wide settlements have been approved. *See, e.g.,*
23 *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 5:16-md-02752-LHK
24 (N.D. Cal. July 20, 2019); *Parsons v. Kimpton Hotel & Rest. Group, LLC*, No.
25 3:16-cv-05387-VC (N.D. Cal. Jan. 9, 2019); *In re Anthem, Inc. Data Breach Litig.*,
26 327 F.R.D. 299, 316-17 (N.D. Cal. 2018); *In re LinkedIn User Privacy Litig.*, 309
27 F.R.D. 573, 585 (N.D. Cal. 2015). Adjudicating individual actions here is
28 impracticable: the amount in dispute for individual class members is too small, the

1 technical issues involved are too complex, and the required expert testimony and
2 document review too costly. *See Just Film*, 847 F.3d at 1123.

3 Also, because Plaintiffs seek to certify a class in the context of a settlement
4 only, this Court need not consider any possible management-related problems as it
5 otherwise would. *See Amchem Prods.*, 521 U.S. at 620 (“Confronted with a request
6 for settlement-only class certification, a district court need not inquire whether the
7 case, if tried, would present intractable management problems, see Fed. R. Civ. P.
8 23(b)(3)(D), for the proposal is that there be no trial.”).

9 In any event, no one member of the class has an interest in controlling the
10 prosecution of this action because Plaintiffs’ claims and the claims of the members
11 of the class are the same. Alternatives to a class action are either no recourse for
12 thousands of individuals, or a multiplicity of suits resulting in an inefficient and
13 possibly disparate administration of justice. Classwide resolution is the only
14 practical method of addressing the alleged violations at issue in this case. There are
15 thousands of class members with modest individual claims, most of whom likely
16 lack the resources necessary to seek individual legal redress. *See Local Joint Exec.*
17 *Bd. of Culinary/ Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152,
18 1163 (9th Cir. 2001) (cases involving “multiple claims for relatively small
19 individual sums” are particularly well suited to class treatment); *see also Wolin v.*
20 *Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (“Where
21 recovery on an individual basis would be dwarfed by the cost of litigating on an
22 individual basis, this factor weighs in favor of class certification.”). A class action
23 is therefore superior to other methods for the fair and efficient adjudication of the
24 claims of Plaintiffs and the Class.

24 **C. The Settlement Should Be Preliminarily Approved Pursuant to Rule**
25 **23(e).**

26 “[U]nder Rule 23(e)(1), the issue at preliminary approval turns on whether
27 the Court ‘will likely be able to: (i) approve the proposal under Rule 23(e)(2); and
28 (ii) certify the class for purposes of judgment on the proposal.’” *Reyes v. Experian*

1 *Info. Sols., Inc.*, No. SACV1600563AGAFMX, 2020 WL 466638, at *1 (C.D. Cal.
2 Jan. 27, 2020). Rule 23(e) provides that a proposed class action may be “settled,
3 voluntarily dismissed, or compromised only with the court’s approval.” Moreover,
4 “[t]he parties must provide the court with information sufficient to enable it to
5 determine whether to give notice of the proposal to the class.” If the parties make
6 a sufficient showing that the Court will likely be able to “approve the proposal”
7 and “certify the class for purposes of judgment on the proposal,” “[t]he court must
8 direct notice in a reasonable manner to all class members who would be bound by
9 the proposal.” Fed. R. Civ. P. 23(e). Thus, notice should be given to the class, and
10 hence preliminary approval should be granted, where the Court “will likely be able
11 to” finally approve the settlement under Rule 23(e)(2) and certify the class for
12 settlement purposes. *Id.*

13 “In evaluating a proposed settlement at the preliminary approval stage, some
14 district courts . . . have stated that the relevant inquiry is whether the settlement
15 ‘falls within the range of possible approval’ or ‘within the range of
16 reasonableness.’” *Bykov v. DC Trans. Services, Inc.*, No. 2:18-cv-1692 DB, 2019
17 WL 1430984, at *2 (E.D. Cal. Mar. 29, 2019). That is, “preliminary approval of a
18 settlement has both a procedural and a substantive component.” *In re Tableware
19 Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

20 As to the procedural component, “a presumption of fairness applies when
21 settlements are negotiated at arm’s length, because of the decreased chance of
22 collusion between the negotiating parties.” *Gribble v. Cool Transports Inc.*, No.
23 CV 06-4863 GAF (SHx), 2008 WL 5281665, at *9 (C.D. Cal. Dec. 15, 2008).
24 Likewise, “participation in mediation tends to support the conclusion that the
25 settlement process was not collusive.” *Ogbuehi v. Comcast of Cal./Colo./Fla./Or.,
26 Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014).

27 With respect to the substantive component, “[a]t this preliminary approval
28 stage, the court need only ‘determine whether the proposed settlement is within the
range of possible approval.’” *Murillo v. Pacific Gas & Elec. Co.*, 266 F.R.D. 468,

1 479 (E.D. Cal. 2010) (*quoting Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
2 1982)).

3 In sum, “the purpose of the preliminary approval process is to determine
4 whether there is any reason not to notify the class members of the proposed
5 settlement and to proceed with a fairness hearing.” *Lucas v. Kmart Corp.*, 234
6 F.R.D. 688, 693 (D. Colo. 2006). In any event, while a complete fairness evaluation
7 is unnecessary at this early juncture, Plaintiffs’ and their counsel strongly believe
8 that the resolution reached here is in the Settlement Class’s best interests.

9 To that end, the Ninth Circuit has identified nine factors to consider in
10 analyzing the fairness, reasonableness, and adequacy of a class settlement: (1) the
11 strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration
12 of further litigation; (3) the risk of maintaining class action status throughout the
13 trial; (4) the amount offered in settlement; (5) the extent of discovery completed
14 and the stage of the proceedings; (6) the views of counsel; (7) the presence of a
15 governmental participant; (8) the reaction of the class members to the proposed
16 settlement and; (9) whether the settlement is a product of collusion among the
17 parties. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir.
18 2011); *see also Hanlon*, 150 F.3d at 1026. Rule 23(e) requires a court to consider
19 several additional factors, including that the class representative and class counsel
20 have adequately represented the class, and that the settlement treats class members
21 equitably relative to one another. Fed. R. Civ. P. 23(e).

22 In applying these factors, this Court should be guided foremost by the
23 general principle that settlements of class actions are favored by federal courts. *See*
24 *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) (“It hardly seems
25 necessary to point out that there is an overriding public interest in settling and
26 quieting litigation. This is particularly true in class action suits”). Here, the relevant
27 factors support the conclusion that the negotiated settlement is fundamentally fair,
28 reasonable, and adequate, and should be preliminarily approved.

1 **1. The Strength of Plaintiffs’ Case**

2 Plaintiffs believe they have built a strong case for liability. With respect to
3 Plaintiffs’ negligence claim, Plaintiffs believe they will ultimately be able to offer
4 evidence that Defendant was negligent in failing to maintain reasonable and current
5 data security programs and practices, which led directly to the loss of Plaintiffs’
6 and the Class’s PII and PHI. Decl., ¶ 47.

7 Plaintiffs believe their claims are viable and that they have a reasonably good
8 chance of proving that Timios’s data security was inadequate and that, if they
9 establish that central fact, Defendant is likely to be found liable under at least some
10 of the liability theories and statutory and common law Plaintiffs pled in their FAC.
11 While Plaintiffs believe they have strong claims and would be able to prevail, their
12 success is not guaranteed. It is “plainly reasonable for the parties at this stage to
13 agree that the actual recovery realized and risks avoided here outweigh the
14 opportunity to pursue potentially more favorable results through full adjudication.”
15 *Dennis v. Kellogg Co.*, No. 09-cv-1786-L(WMc), 2013 WL 6055326, at *3 (S.D.
16 Cal. Nov. 14, 2013). “Here, as with most class actions, there was risk to both sides
17 in continuing towards trial. The settlement avoids uncertainty for all parties
18 involved.” *Chester v. TJX Cos.*, No. 5:15-cv-01437-ODW(DTB), 2017 WL
19 6205788, at *6 (C.D. Cal. Dec. 5, 2017). Given the heavy obstacles and inherent
20 risks Plaintiffs face with respect to the novel claims in data breach class actions,
21 including class certification, summary judgment, and trial, the substantial benefits
22 the Settlement provides favors preliminary approval of the Settlement. Decl., ¶ 48.

23 **2. The Risk, Expense, Complexity, and Likely Duration of**
24 **Further Litigation**

25 While Plaintiffs believe their case is a strong one, all cases, including this
26 one, are subject to substantial risk. This case involves a proposed class of
27 approximately roughly 75,000 individuals (each of whom, Timios has argued,
28 would need to establish cognizable harm and causation); a complicated and

1 technical factual background; and a sympathetic and motivated Defendant that
2 already has provided some relief to its potentially affected customers.

3 Although nearly all class actions involve a high level of risk, expense, and
4 complexity—undergirding the strong judicial policy favoring amicable resolutions,
5 *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)—this is a
6 particularly complex class due the constant standing challenges plaintiffs face in
7 data breach class actions. Historically, data breach cases face substantial hurdles in
8 surviving even the pleading stage. *See, e.g., Hammond v. The Bank of N.Y. Mellon*
9 *Corp.*, No. 08 Civ. 6060 (RMB) (RLE), 2010 U.S. Dist. LEXIS 71996, at *2-4
10 (S.D.N.Y. June 25, 2010) (collecting cases). Even cases of similar wide-spread
11 notoriety and implicating data far more sensitive than at issue here have been found
12 wanting at the district court level. *In re U.S. Office of Pers. Mgmt. Data Sec. Breach*
13 *Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court is not persuaded that the
14 factual allegations in the complaints are sufficient to establish . . . standing.”),
15 *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had
16 standing to bring a data breach lawsuit).

17 To the extent the law has gradually accepted this relatively new type of
18 litigation, the path to a class-wide monetary judgment remains unforged,
19 particularly in the area of damages. For now, data breach cases are among the
20 riskiest and uncertain of all class action litigation, making settlement the more
21 prudent course when a reasonable one can be reached. The damages
22 methodologies, while theoretically sound in Plaintiffs’ view, remain untested in a
23 disputed class certification setting and unproven in front of a jury. And as in any
24 data breach case, establishing causation on a class-wide basis is rife with
25 uncertainty.

26 Each risk, by itself, could impede the successful prosecution of these claims
27 at trial and in an eventual appeal—which would result in zero recovery to the class.
28 “Regardless of the risk, litigation is always expensive, and both sides would bear
those costs if the litigation continued.” *Paz v. AG Adriano Goldschmeid, Inc.*, No.

1 14CV1372DMS(DHB), 2016 WL 4427439, at *5 (S.D. Cal. Feb. 29, 2016). Thus,
2 this factor favors approval.

3 **3. The Risk of Maintaining Class Action Status Through Trial**

4 While Plaintiffs' case is still in the pleadings stage, the parties have not
5 briefed and the Court has not yet certified any class treatment of this case. If they
6 were to proceed to litigate their claims through trial, Plaintiffs would encounter
7 risks in obtaining and maintaining certification of the class. The class has not yet
8 been certified, and Defendant will certainly oppose certification if the case
9 proceeds. Thus, Plaintiffs "necessarily risk losing class action status." *Grimm v.*
10 *American Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK(MANx), 2014 WL
11 1274376, at *10 (C.D. Cal. Sept. 24, 2014). Class certification in contested
12 consumer data breach cases is not common—first occurring in *Smith v. Triad of*
13 *Ala.*, LLC, No. 1:14-CV-324-WKW, 2017 U.S. Dist. LEXIS 38574, at *45-46
14 (M.D. Ala. Mar. 17, 2017), and most recently in *In re Brinker Data Incident Litig.*,
15 No. 3:18-CV-686-TJC-MCR, 2021 WL 1405508, at *1 (M.D. Fla. Apr. 14, 2021),
16 where a class was certified over objection to plaintiffs' damage calculation. Thus,
17 the dearth of direct precedent adds to the risks posed by continued litigation.

18 **4. The Amount Offered in Settlement**

19 In light of the risks and uncertainties presented by data breach litigation, the
20 value of the Settlement favors approval. The Settlement makes significant relief
21 available to Settlement Class Members. Each Class Member is eligible to make a
22 claim for up to \$500 in reimbursements for expenses and lost time, up to \$5,000 in
23 reimbursements for extraordinary expenses related to the Data Incident, and an
24 additional \$50 statutory damages award to California Settlement Subclass
25 Members. Moreover, all Settlement Class Members will be eligible to make a claim
26 for Aura's Financial Shield Services for a period of two years (a value of at
27 approximately \$270 per claimant). This settlement is a strong result for the Class,
28 and as discussed below is in line with other settlements in cases involving data
breaches of similar scope. Because the settlement amount here is similar to other

1 settlements reached and approved in similar cases, this factor reflects that the
2 Settlement is fair. *See Calderon v. Wolf Firm*, No. SACV 16-1622-JLS(KESx),
3 2018 WL 6843723, at *7-8 (C.D. Cal. Mar. 13, 2018) (comparing class settlement
4 with other settlements in similar cases). In light of the difficulties and expenses
5 Class Members would face to pursue individual claims, and the likelihood that they
6 might be unaware of their claims, this Settlement Amount is appropriate. *See id.*
7 Accordingly, this factor favors approval.

8 The Settlement value per class member here is on par with or exceeds that
9 in other exemplary data breach settlements. For example, the consideration paid by
10 Home Depot to settle a data breach class action was approximately \$0.51 per class
11 member. *See In re The Home Depot, Inc., Customer Data Sec. Breach Litig.*, No.
12 1:14-MD-02583-TWT, ECF No. 181-2 (March 7, 2016) (Settlement Agreement);
13 *id.*, 2017 U.S. Dist. LEXIS 221736, at *24 (N.D. Ga. Sept. 22, 2017) (order
14 approving settlement). And the Target data breach resolved with Target paying the
15 equivalent of \$0.17 per class member. *See In re Target Corp. Customer Data Sec.*
16 *Breach Litig.*, No. MDL 14-2522-PAM, ECF No. 358-1 (D. Minn. March 18, 2015)
17 (Settlement Agreement); *id.*, 2017 U.S. Dist. LEXIS 75455, at *27-29 (D. Minn.
18 May 17, 2017) (order certifying settlement class on remand from the 8th Circuit).
19 These comparisons are not intended to disparage the settlements achieved in those
20 cases, but to underscore that Plaintiffs have achieved a good resolution for the
21 Settlement Class.

22 **5. The Extent of Discovery Completed and the Stage of 23 Proceedings**

24 Before entering into settlement discussions on behalf of class members,
25 counsel should have “sufficient information to make an informed decision.”
26 *Linney*, 151 F.3d at 1239. Here, Plaintiffs vigorously and aggressively gathered all
27 of the information that was available regarding Timios and the Security Incident—
28 including publicly-available documents concerning announcements of the Security
Incident and notice of the Security Incident to its customers. Decl., ¶ 50. The parties

1 also informally exchanged non-public information concerning the Security
2 Incident and the size of the Class in preparation for a successful mediation. *Id.*

3 Although the parties have not engaged in formal discovery, Class Counsel’s
4 collective experience in similar types of privacy and data protection practices
5 provided substantive knowledge on the subject to enable Class Counsel to represent
6 Plaintiffs’ and Class Members’ interests without expending hundreds of hours and
7 substantial financial resources to come up to speed on the subject area. Decl., ¶ 46.
8 “[T]he efficiency with which the Parties were able to reach an agreement need not
9 prevent this Court from granting . . . approval.” *Hillman v. Lexicon Consulting,*
10 *Inc.*, No. EDCV 16-01186-VAP(SP_x), 2017 WL 10433869, at *8 (C.D. Cal. April
11 27, 2017). Accordingly, Plaintiffs are well informed about the strengths and
12 weaknesses of this case.

13 **6. The Experience and Views of Counsel**

14 Class Counsel initiated this lawsuit when Timios announced the Data
15 Incident, which, based upon publicly-available information, impacted
16 approximately 74,755 Timios customers. Class Counsel have substantial
17 experience litigating complex class cases of various types, including data breach
18 cases such as this one. *See* Decl., ¶ 45 & Exs. B-D thereto. Having worked on behalf
19 of the putative class since the Data Incident was first announced, evaluated the legal
20 and factual disputes, and dedicated significant time and monetary resources to this
21 litigation, proposed Class Counsel fully endorse the Settlement. *Id.*, ¶ 51. A great
22 deal of weight is accorded to the recommendation of counsel, who are most closely
23 acquainted with the facts of the underlying litigation. *See, e.g., Norton*, 2017 WL
24 1424636, at *6; *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523,
25 528 (C.D. Cal. 2004). Thus, this factor supports approval.

26 **7. Governmental Participants.**

27 There is no governmental participant in this matter. This factor is neutral.

28 **8. The Reaction of the Class Members to the Proposed Settlement**

1 Because notice has not yet been given, this factor is not yet implicated;
2 however, Representative Plaintiffs support the Settlement. Decl., ¶ 51.

3 **9. Lack of Collusion Among the Parties**

4 The parties negotiated a substantial, multifaceted Settlement, as described
5 above. The parties did not negotiate attorneys' fees until agreement on all
6 substantive portions of the class resolution had been reached, and both the class
7 portion of the resolution and the attorneys' fees were negotiated during periodic
8 arm's-length negotiations. Furthermore, Class Counsel and Timios's counsel are
9 well-versed in handling data breach class actions such as this one and fully
10 understand the values recovered in similar cases. Therefore, the Court can be
11 assured that the negotiations were not collusive.

12 **10. The Settlement Treats Settlement Class Members 13 Equitably**

14 Finally, Rule 23(e)(2)(D) requires that this Court confirm that the settlement
15 treats all class members as equitably as possible under the circumstances. The
16 Advisory Committee's Note to Rule 23(e)(2)(D) advises that courts should
17 consider "whether the apportionment of relief among class members takes
18 appropriate account of differences among their claims, and whether the scope of
19 the release may affect class members in different ways that bear on the
20 apportionment of relief." Fed. R. Civ. P. 23(e), advisory comm.'s note (2018).

21 In determining whether this factor weighs in favor of approval, a Court must
22 determine whether the Settlement "improperly grant[s] preferential treatment to
23 class representatives or segments of the class." *Hudson v. Libre Technology Inc.*,
24 No. 3:18-cv-1371-GPC-KSC, 2020 WL 2467060, *9 (S.D. Cal. May 13, 2020)
25 (*quoting In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal.
26 2007)).

27 Here, the Settlement "does not improperly discriminate between any
28 segments of the class, as all class members are entitled to the same relief. Each and
every Class Member has the opportunity to make a claim for up to \$500 in

1 reimbursements for expenses and time spent, up to \$5,000 in reimbursements for
2 extraordinary expenses, a \$50 statutory amount for California residents, and
3 Settlement Class Members are all eligible to make a claim for 18 months of Aura’s
4 Financial Shield. While Plaintiffs have been permitted to seek approval of a service
5 award from this Court, as will be explained in detail at Plaintiffs’ Fees Motion, the
6 award of \$2,500 per class representative is in line with awards granted in similar
7 cases, is presumptively reasonable, and does not call into question Plaintiffs’
8 adequacy or the validity of the Settlement. *See e.g. Roe v. Frito-Lay, Inc.*, No. 14-
9 cv-00751, 2017 WL 1315626, at *8 (N.D. Cal. Apr. 7, 2017) (noting a \$5,000
10 Service Award is presumptively reasonable in the Ninth Circuit); *In re Online*
11 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015) (approving
12 service awards of \$5,000); *Presley v. Carter Hawley Hale Profit Sharing Plan*, No.
13 C9704316SC, 2000 WL 16437, at *2 (N.D. Cal. 2000) (approving \$25,000 service
14 awards); *In re McKesson HBOC, Inc. ERISA Litig.*, 391 F. Supp. 2d 844, 851 (N.D.
15 Cal. 2005) (approving \$5,000 service awards); *In re Sorbates Direct Purchaser*
16 *Antitrust Litig.*, No. 99-1358MMC, 2002 WL 31655191, at *3 (N.D. Cal. Nov. 15,
17 2002) (approving \$7,500 service award); *Williams v. Costco Wholesale Corp.*,
18 2010 WL 2721452, at *7 (S.D. Cal. July 7, 2010) (approving \$5,000 award in an
19 case settling for \$440,000). As such, this factor also weighs in favor of approval.

20 **D. The Court Should Approve the Proposed Notice Program**

21 Rule 23 requires that before final approval, the “court must direct notice in
22 a reasonable manner to all class members who would be bound by the proposal.”
23 Fed. R. Civ. P. 23(e)(1)(B). For classes certified under Rule 23(b)(3), “the court
24 must direct to class members the best notice that is practicable under the
25 circumstances, including individual notice to all members who can be identified
26 through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “The notice may be by one
27 or more of the following: United States mail, electronic means, or other appropriate
28 means.” *Id.*

Such notice must be the “best notice practicable,” *see* Fed. R. Civ. P.

1 23(c)(2)(B), which means “individual notice to all members who can be identified
2 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173
3 (1974). To satisfy due process, notice to class members must be the best
4 practicable, and reasonably calculated under all the circumstances to apprise
5 interested parties of the pendency of the action and afford them an opportunity to
6 present their objections. CR 23(c)(2); *Phillips Petroleum Co. v. Shutts*, 472 U.S.
7 797, 812 (1985). Class settlement notices must present information about a
8 proposed settlement simply, neutrally, and understandably. *In re Hyundai & Kia*
9 *Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019). Notice is adequate if it
10 generally describes the terms of the class action settlement in sufficient detail to
11 alert those with adverse viewpoints to investigate and to come forward and be
12 heard. *Id.*

13 Here, and after a competitive bid process, the parties have agreed to a robust
14 notice program to be administered by a well-respected third-party class
15 administrator—Kroll—which will use all reasonable efforts to provide direct and
16 individual notice to each potential Settlement Class Member via email or mail. Decl
17 ¶¶ 37-41. The costs of administering the Settlement will be paid by Timios and will
18 not negatively impact the amount available to Settlement Class Members who
19 make valid claims. *Id.* ¶ 49. The Notice and Claim Forms negotiated by the Parties
20 are clear and concise and inform Settlement Class Members of their rights and
21 options under the Settlement, including detailed instructions on how to make a
22 claim, object to the Settlement, or opt-out of the Settlement. *Id.* ¶ 28, Exs. 2, 3, 5,
23 and 6.

24 In addition to the direct notice, the Administrator will also establish a
25 dedicated Settlement Website and will maintain and update the website throughout
26 the Claims Period, with the forms of Short Notice, Long Notice, and Claim Form
27 approved by the Court, as well as the Settlement Agreement. *Id.* ¶ 27, Exs. 2, 3, 5,
28 6. The Claims Administrator will also make available a toll-free help line to provide
Settlement Class Members with additional information about the settlement. *Id.* ¶

1 29. The Claims Administrator is also authorized and required to provide copies of
2 the forms of Short Notice, Long Notice, and Claim Form approved by the Court,
3 as well as the Settlement Agreement, upon request. *Id.* ¶ 26.

4 Plaintiffs have negotiated a notice program that is reasonably calculated
5 under all the circumstances to apprise Class Members of the pendency of the action
6 and afford them an opportunity to present their objections. Class Members here
7 provided Defendant their contact information in order to receive products they
8 purchased: it is not known to be a particularly transient Class, thus direct notice via
9 email is the best practicable. *Compare Roes 1-2 v. SFBSC Management LLC*, 944
10 F.3d 1035, 1046 (9th Cir. 2019). Notice programs providing notice by email and
11 mail have been approved by the Ninth Circuit. *See e.g. In re Online DVD-Rental*
12 *Antitrust Litigation*, 779 F. 3d 934, 946 (9th Cir. 2015) (finding notice provided
13 initially by email, and then by mail to individuals whose emails bounced back was
14 sufficient under both the U.S. Constitution and Rule 23).

15 Because the notice plan ensures that Settlement Class Members' due process
16 rights are amply protected, this Court should approve it. *See Hartranft v. TVI, Inc.*,
17 No. 15-01081-CJC-DFM, 2019 WL 1746137, at *3 (C.D. Cal. Apr. 18, 2019)
18 (“The Court finds that the Class Notice and the manner of its dissemination
19 described in Paragraph 7 above and Section VIII of the Agreement constitutes the
20 best practicable notice under the circumstances and is reasonably calculated, under
21 all the circumstances, to apprise Settlement Class Members of the pendency of this
22 action, the terms of the Agreement, and their right to object to or exclude
23 themselves from the Settlement Class.”); *see also Spencer v. #1 A LifeSafer of Ariz.,*
24 *LLC*, No. CV-18-02225-PHX-BSB, 2019 WL 1034451, at *3 (D. Ariz. Mar. 4,
25 2019) (Bade, J.) (preliminarily approving class action settlement and finding “that
26 the proposed notice program is clearly designed to advise the Class Members of
27 their rights.”).

28 **E. Appointment of the Settlement Administrator**

In connection with implementation of the Notice Program and

1 administration of the settlement benefits, the Parties request that the Court appoint
2 Kroll Settlement Administration to serve as the Claims Administrator. Kroll has a
3 trusted and proven track record of supporting thousands of class action
4 administrations, with over 50 years of legal administration experience. S.A. Ex. E,
5 ¶ 5; Decl., ¶ 37. Notice and administration is expected to cost approximately
6 \$86,000 and will be paid by Defendant separate and apart from the relief to the
7 Class. *Id.*, ¶ 36.

8 **F. Appointment of Settlement Class Counsel**

9 Under Rule 23, “a court that certifies a class must appoint class counsel [who
10 must] fairly and adequately represent the interests of the class.” Fed. R. Civ. P.
11 23(g)(1)(B). In making this determination, courts generally consider the following
12 attributes: the proposed class counsel’s (1) work in identifying or investigating
13 potential claims, (2) experience in handling class actions or other complex
14 litigation, and the types of claims asserted in the case, (3) knowledge of the
15 applicable law, and (4) resources committed to representing the class. Fed. R. Civ.
16 P. 23(g)(1)(A)(i–iv).

17 Here, proposed Class Counsel has extensive experience prosecuting class
18 actions and other complex cases, and specifically data breach cases. *See* Decl. ¶ 45,
19 Exs. B-D (firm resumes). Accordingly, the Court should appoint M. Anderson
20 Berry of Clayeo C. Arnold, A Professional Law Corporation.

21 **VI. CONCLUSION**

22 Plaintiffs have negotiated a fair, adequate, and reasonable Settlement that
23 will provide Class Members with both significant monetary and equitable relief.
24 The Settlement is likely to be approved, and as such, Notice should be ordered to
25 issue to the class. For all the above reasons, Plaintiffs respectfully request this Court
26 to grant Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action
27 Settlement.

28 Date: March 31, 2022

Respectfully Submitted,

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/s/ M. Anderson Berry
M. ANDERSON BERRY (SBN 262879)
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aberry@justice4you.com

*Attorneys for Plaintiffs and the Proposed
Classes*

Exhibit 1

REDACTED VERSION OF DOCUMENT PROPOSED TO BE FILED UNDER SEAL

EXHIBIT 1

[REDACTED]

Exhibit 2

TIMIOS DATA INCIDENT SETTLEMENT CLAIM FORM

CLAIM FORM AND INSTRUCTIONS

This Claim Form should be filled out and submitted by mail if you received notice that your Personal Identifiable Information (“PII”) was potentially compromised in the Data Incident involving Timios that occurred between July 19, 2021 and July 25, 2021. If you fill out this Claim Form, you may get a payment that includes (1) up to \$500 for (i) reimbursement for documented out-of-pocket expenses and/or (ii) up to 3 hours of lost time compensable at \$20 per hour; (2) up to \$3,000 for reimbursement of documented monetary expenses; (3) 18 months of Identity-Theft Protection; and/or (4) up to \$50 if you were a California resident at the time of the Data Incident. You may be eligible for payment from all four payment categories, and payment categories may be combined. Please refer to the Settlement Notice posted on the settlement website, www.TimiosSettlement.com, for more information on submitting a Claim Form. You may also fill out and submit a Claim Form on the settlement website by following the prompts.

To receive any of these benefits, you must submit the Claim Form below by (DATE).

Expense Reimbursement. All members of the Settlement Class who submit a Valid Claim using the Claim Form are eligible for the following documented out-of-pocket expenses, not to exceed \$500 per member of the Settlement Class, that were incurred as a result of the Data Incident: (i) unreimbursed bank fees; (ii) unreimbursed card reissuance fees; (iii) unreimbursed overdraft fees; (iv) unreimbursed charges related to unavailability of funds; (v) unreimbursed late fees; (vi) unreimbursed over-limit fees; (vii) long distance telephone charges; (viii) cell minutes (if charged by minute), Internet usage charges (if charged by the minute or by the amount of data usage and incurred solely as a result of the Data Incident), and text messages (if charged by the message and incurred solely as a result of the Data Incident); (ix) unreimbursed charges from banks or credit card companies; (x) interest on payday loans due to card cancellation or due to over-limit situation incurred solely as a result of the Data Incident; (xi) costs of credit report(s), credit monitoring, and/or other identity theft insurance products purchased by members of the Settlement Class between October 11, 2021 and the date of the Claims Deadline; and (xii) other losses incurred by Settlement Class Members determined by the Claims Administrator to be fairly traceable to the Data Incident, including, but not limited to, the cost of postage and gas for local travel. To receive reimbursement for any of the above-referenced out-of-pocket expenses, Settlement Class Members must submit (i) their name and current address; (ii) supporting documentation of such out-of-pocket expenses; and (iii) a description of the loss, if not readily apparent from the documentation.

Members of the Settlement Class are also eligible to receive up to three hours of lost time spent dealing with issues arising out of the Data Incident (calculated at the rate of \$20 per hour). Members of the Settlement Class must attest on the Claim Form to the time spent. No documentation other than a description of their actions shall be required for members of the Settlement Class to receive compensation for attested time. Claims made for lost time can be combined with claims made for out-of-pocket expenses and, together with the out-of-pocket expenses, are subject to the \$500 cap for each member of the Settlement Class.

Extraordinary Expense Reimbursement: All members of the Settlement Class who have suffered a proven monetary loss and who submit a Valid Claim using the Claim Form are eligible for up to \$3,000 if: (1) the loss is an actual, document, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Data Incident; (3) the loss occurred between July 19, 2021 and the Claims Deadline; and (4) the loss is not already covered by one or more of the reimbursement categories; and (5) the member of the Settlement Class made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

Members of the Settlement Class seeking reimbursement under Expense Reimbursement and Extraordinary Expense Reimbursement must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the **90th day after the Notice Commencement Date.**

Cash Payment for California Settlement Subclass Members: All California Settlement Subclass Members who submit a Valid Claim using the Claim Form shall be eligible to receive a payment of \$50 provided that the California Settlement Subclass Member attests, under oath, that he or she was a resident of the State of California at some point between July 19, 2021 and July 25, 2021.

This additional amount can be combined with a claim for reimbursement for lost time and for out-of-pocket losses under Expense Reimbursement and can be combined (if applicable) with reimbursement for losses under Extraordinary Expense Reimbursement. All claims made under Cash Payment for California Settlement Subclass Members shall be subject to the \$500 per-Settlement-Class-Member cap on compensation for ordinary loss and lost time.

Identity-Theft Protection: All members of the Settlement Class who submit a Valid Claim using the Claim Form are eligible for 18 months of free identity-theft protection, called “Financial Shield” by Aura. For members of the Settlement Class who opted to receive the one year of credit monitoring initially offered by Timios, the 18 months of “Financial Shield” shall be in addition to that year. The list of “Financial Shield” services can be found in the Settlement Agreement and includes benefits such as up to \$1 Million Dollars of identity theft insurance and Dark Web Monitoring, among other benefits. **You must submit a Claim Form to obtain Identity-Theft Protection.** After you submit the claim form, if the Court approves the Settlement, you will receive an email with instructions to enroll in the Aura “Financial Shield” program.

REQUIREMENTS FOR FILING A CLAIM FORM

Your claim will be considered only upon compliance with all of the following conditions:

1. You must accurately complete all required portions of the attached Claim Form.
2. You must sign this Claim Form, which includes the certification. If you file a Claim Form electronically, your electronic signature and submission of the form shall have the same force and effect as if you signed the form in hard copy.
3. If you are claiming Expense Reimbursement: You must submit documentation supporting your out-of-pocket expenses, specifically (i) your name and current address; (ii) supporting documentation of such out-of-pocket expenses; and (iii) a description of the loss, if not readily apparent from the documentation. **The failure to submit such documentation may prevent you from claiming reimbursement for out-of-pocket expenses.**
4. If you are claiming Extraordinary Expense Reimbursement: All members of the Settlement Class who have suffered a proven monetary loss and who submit a Valid Claim using the Claim Form are eligible for up to \$3,000 if: (1) the loss is an actual, document, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Data Incident; (3) the loss occurred between July 19, 2021 and the Claims Deadline; and (4) the loss is not already covered by one or more of the reimbursement categories listed in; and the member of the Settlement Class made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. **The failure to submit such documentation may prevent you from claiming reimbursement for Extraordinary Expense Reimbursement.**
5. If you are claiming Lost Time Reimbursement: Members of the Settlement Class are also eligible to receive up to three hours of lost time spent dealing with issues arising out of the Data Incident (calculated at the rate of \$20 per hour). Members of the Settlement Class must attest on the Claim Form to the time spent. **No documentation other than a description of their actions shall be required for members of the Settlement Class to receive compensation for attested time. Claims made for lost time can be combined with claims**

Questions? Call x-xxx-xxx-xxxx or visit www.timiossettlement.com

made for out-of-pocket expenses and, together with the out-of-pocket expenses, are subject to the \$500 cap for each member of the Settlement Class.

- 6. If you are claiming Cash Payment for California Settlement Subclass Members: All California Settlement Subclass Members who submit a Valid Claim using the Claim Form shall be eligible to receive a payment of \$50 provided that the California Settlement Subclass Member attests, under oath, that he or she was a resident of the State of California at some point between July 19, 2021 and July 25, 2021.
- 7. If you are claiming Identity-Theft Protection: All members of the Settlement Class who submit a Valid Claim using the Claim Form are eligible for 18 months of free identity-theft protection, called “Financial Shield” by Aura. For members of the Settlement Class who opted to receive the one year of credit monitoring initially offered by Timios, the 18 months of “Financial Shield” shall be in addition to that year. The list of “Financial Shield” services can be found in the Settlement Agreement and includes benefits such as up to \$1 Million Dollars of identity theft insurance and Dark Web Monitoring, among other benefits **You must submit a Claim Form to obtain Identity-Theft Protection.** After you submit the Claim Form, if the Court approves the Settlement, you will receive an email with instructions to enroll in the Aura “Financial Shield” program
- 8. You have two ways to complete and submit a Claim Form: (A) you may mail the completed and signed Claim Form and certification by First Class U.S. Mail, postage prepaid, postmarked no later than **(DATE)** to:

(SETTLEMENT ADDRESS)

Or (B) you may complete and submit the Claim Form and certification using the settlement website, located at www.TimiosSettlement.com. If you file an electronic claim form and have documentation supporting your Expense Reimbursement and Extraordinary Expense Reimbursement, you must include documentation with your electronic submission.

- 9. Your failure to complete and submit the Claim Form using the settlement website by **(DATE)**, or by mail postmarked by **(DATE)**, will preclude you from receiving any payment in this settlement. If you submit by mail, you are advised to use (but are not required to use) certified mail, return receipt requested so that you will have a record of the date of mailing.

Submission of this Claim Form does not assure that you will share in the payments related to the settlement in *Schellhorn, et al. v. Timios, Inc.* If the Claims Administrator determines that your Claim may be invalid, the Claims Administrator may reject your Claim subject to your right to present information to dispute the Claims Administrator’s finding. For more information on this process, see Paragraph 2.5 of the Settlement Agreement, which is available at www.TimiosSettlement.com.

First, please provide us your information so we may contact you.

First: _____ M: _____ Last: _____

Address: _____

City: _____ State: _____ ZIP: _____ Country: _____

Phone: _____ Email : _____ Last 4 SSN: _____

Questions? Call x-xxx-xxx-xxxx or visit www.timiossettlement.com

Second, please provide the Class Member ID the Claims Administrator provided to you in the letter or email notifying you of the settlement. If you do not have this information but believe you may be a class member, please contact the Claims Administrator at (NUMBER).

Class Member ID: _____

Third, please describe your claimed damages. Three types of damages are available. First, you may recover certain out-of-pocket expenses incurred as a result of the Data Incidents. Second, you may recover money to compensate you for time you spent addressing the Data Incident(s). And third, you may receive a \$50 payment if you are a member of the California Settlement Subclass. These expenses or time must have been incurred during the applicable time period, which is generally from July 19, 2021 through the end of the claim deadline. Please refer to the settlement Notice for more information.

1. Documented Out-of-Pocket Expenses.

You may receive reimbursement for documented out-of-pocket expenses or costs incurred as a result of the Data Incident, up to \$500. The maximum amount Timios is required to pay per Claim for out-of-pocket expenses is \$500. To do so, (1) itemize your expenses or out-of-pocket costs in the chart below; (2) sign the certification at the end of this Claim Form, attesting that all information submitted is true and correct, that you incurred these expenses as a result of the Data Incident, and that none of your claimed out-of-pocket expenses have already been reimbursed by any other source; (3) include with this Claim Form documentation supporting each claimed expense or cost; and (4) provide your address above.

Documentation is required for claimed expenses. Please be sure to include documentation to expedite the processing of your Claim.

Date	Description	Amount

Documentation: Attach supporting documentation. For example, a bank statement showing claimed fees (you may redact unrelated transactions and all but the last four digits of any account number).

2. Documented Out-Of-Pocket- Extraordinary Expense Reimbursement.

You may receive reimbursement for documented out-of-pocket expenses or costs incurred as a result of the Data Incident, up to \$3,000. The maximum amount Timios is required to pay per Claim for out-of-pocket extraordinary expenses is \$3,000. To do so, (1) the loss must be an actual, documented and unreimbursed monetary loss; (2) the loss must be more likely than not caused by the Data Incident; (3) the loss must have occurred between July 19, 2021 and the Claims Deadline; and (4) the loss must not be already covered by one or more of the reimbursement categories listed in Expense reimbursement and the member of the Settlement Class must have made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. Include with this Claim Form documentation supporting each claimed expense or cost and provide your address above.

Please provide a detailed description below or in a separate document submitted with this Claim Form.

Questions? Call x-xxx-xxx-xxxx or visit www.timiossettlement.com

Date	Description	Amount

3. Lost-Time Reimbursement.

You may be eligible for reimbursement of up to three hours of lost time spent remedying issues related to the Data Incident (at \$20 per hour) with an attestation and brief description of the actions taken to remedy issues and the time associated with each action.

Round to the nearest hour and check only one box.

How much time did you spend? 1 Hour 2 Hours 3 Hours

What did you do?

When, approximately, did this occur?

Attestation

I attest under penalty of perjury that I spent the number of hours claimed above making reasonable efforts to deal with the Data Incident.

4. Payment to California Settlement Subclass Members.

If you reside or resided in the State of California at any time between July 19, 2021 and July 25, 2021, you are eligible to claim a \$50 cash payment.

California Address where Data Incident Notice was received

Documentation: The Claims Administrator may require documentation to validate your Claim.

Attestation

Questions? Call x-xxx-xxx-xxxx or visit www.timiossettlement.com

I attest under penalty of perjury that, at some time between July 19, 2021 and July 25, 2021, I was a resident of the State of California.

5. Identity-Theft Protection

If you wish to receive 18 months of free identity-theft protection, please provide your email address in the space provided above, check the box below certifying that you would like to receive Identity-Theft Protection, and return this Claim Form to the Claims Administrator, either via mail or electronically. Submitting this Claim Form will not automatically enroll you into credit monitoring. To enroll, you must follow the instructions that will be emailed to you after the settlement becomes final. For members of the Settlement Class who opted to receive the one year of credit monitoring initially offered by Timios, the 18 months of free Identity-Theft protection will be in addition to that year.

I would like to receive Identity-Theft Protection and have provided my email address in the space provided above.

Last, you must certify that the information you provided above is true and accurate. Please sign the following:

I declare under penalty of perjury under the laws of the United States that the information I supplied in this Claim Form is true and correct to the best of my recollection. I understand that I may be asked to provide supplemental information by the Claims Administrator or claims referee before my claim will be considered complete and valid.

Print Name:

Signature: _____ Date

Questions? Call x-xxx-xxx-xxxx or visit www.timiossettlement.com

Exhibit 3

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

**If you were notified of a Data Incident involving Timios in 2021,
you may be eligible to benefits from a settlement.**

A federal court ordered this notice. This is not a solicitation from a lawyer.

- A settlement has been reached in a Class Action lawsuit against Timios, Inc (“Timios”) arising out of a criminal cyberattack that occurred between July 19, 2021 and July 25, 2021 and involved third-party criminals attempting to gain unauthorized access to Timios’ network and encrypt some of Timios’ systems (“Data Incident”).
- Plaintiffs allege that between July 19, 2021 and July 25, 2021, Timios was the target of a criminal cyberattack in which third-party criminals gained unauthorized access to Timios’ network and encrypted some of its systems (“Data Incident”). Plaintiffs further allege that, as a result of the Data Incident, the criminals gained access to Plaintiffs’ and “other consumers[.]” personal information, including without limitation, “unredacted names, Social Security numbers, driver’s license or state-issued identification numbers, passport numbers, tax identification numbers, military identification numbers, financial account numbers, payment card numbers, and/or date of birth” (collectively, “PII”).
- The Settlement Class includes all residents of the United States whose information may have been affected by the Data Incident. There is a separate Settlement Class for Settlement Class Members who were California residents at the time the Data Incident occurred. You should have received an email or a letter from the Claims Administrator if you are a member of the Settlement Class. That notification included a unique Class Member ID for you to verify your identity to receive the settlement benefits described in this notice. If for some reason you have not received login information, but believe you are a Settlement Class Member, please call (NUMBER) to verify your identity and receive further information on how to file a Claim.
- The settlement provides reimbursement of up to \$500 for out-of-pocket expenses and documented lost time that resulted from the Data Incident for persons who file a valid Claim Form, as further described below. The Settlement also provides up to \$3,000 for proven monetary Extraordinary Expenses for Class Members who have incurred Extraordinary Expenses and who submit a valid Claim Form. Additionally, the settlement provides \$50 for Class Members who were California residents at the time of that Data Incident, who attest to same, and who submit a valid Claim Form.
- You must file a Claim Form to receive a payment. You can file a Claim online on this website, www.TimiosSettlement.com, download a Claim Form and mail it, or you may call (NUMBER) and ask that a Claim Form be mailed to you. The claim deadline is [90 days after notice emailing]. You must use the Class Member ID you received with your notification to verify your identity as a member of the Settlement Class. If for some reason you did not receive a Class Member ID, but believe you are a Settlement Class Member, please call (NUMBER) to verify your identity and receive further information on how to file a Claim.

**Your legal rights are affected even if you do nothing.
Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
FILE A CLAIM	The only way to get benefits under this settlement. You must file a Claim by (Claims Deadline)
OPT-OUT OF THE SETTLEMENT	Get no benefits. This is the only option that may allow you to sue Timios over the claims being resolved by this settlement. You must opt-out of the settlement by (Exclusion Deadline)
OBJECT	Write the Court about why you do not think this settlement is fair, reasonable, or adequate. You must object by (Objection Deadline)
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
IF YOU DO NOTHING	Get no benefits. Give up your rights to sue Timios about the legal Claims in this case.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to grant final approval of the settlement. Payments will only be made after the Court grants final approval of the settlement and after any appeals are resolved in favor of the settlement.

Questions? Call **(NUMBER)** or visit www.TimiosSettlement.com

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Questions? Call (NUMBER) or visit www.TimiosSettlement.com

BASIC INFORMATION

1. Why was this Notice issued?

The Court authorized this notice because you have a right to know about the proposed settlement in this Class Action lawsuit and about all of your options before the Court decides whether to give “Final Approval” to the settlement. This notice explains the legal rights and options that you may exercise before the Court decides whether to approve the settlement.

Judge Virginia A. Phillips of the United States District Court for the Central District of California is overseeing this case. The case is known as *Schellhorn, et al. v. Timios, Inc.*, Case No.:2:21-cv-08661-VAP-JC. The people who sued are called the Plaintiffs. Timios, is called the Defendant.

2. What is this lawsuit about?

The Plaintiffs in the lawsuit claim that Timios is responsible for the Data Incident that occurred and further allege that, as a result of the Data Incident, the criminals gained access to Plaintiffs’ and “other consumers[’]” personal information, including without limitation, “unredacted names, Social Security numbers, driver’s license or state-issued identification numbers, passport numbers, tax identification numbers, military identification numbers, financial account numbers, payment card numbers, and/or date of birth” (collectively, “PII”). The lawsuit seeks compensation for people who had losses as a result of the Data Incident.

Timios denies all of Plaintiffs’ claims and asserts that it did not do anything wrong.

3. Why is this lawsuit a class action?

In a Class Action, one or more people called “Plaintiffs” sue on behalf of all people who have similar Claims. All of these people together are the “Settlement Class Members.” In this case, the Plaintiffs are Myron Schellhorn, Rodney Allen, Tedda Allen, Lauren Waters, Jeff Harrington, and David Thompson. From the onset of the Litigation, and over the course of several months, the Parties engaged in settlement negotiations. As a result of these negotiation, the Parties reached a settlement, which is memorialized in the Settlement Agreement.

4. Why is there a Settlement?

By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid Claims will get compensation. The Representative Plaintiffs and their attorneys believe the settlement is fair, reasonable, and adequate and, thus, in the best interest of the Settlement Class and its members. The settlement does not mean that Timios did anything wrong.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am included in the settlement?

The Settlement Class includes all persons to whom Timios mailed notice that between July 19, 2021 and July 25, 2021, Timios was the target of a cyberattack in which third-party criminals gained unauthorized access to Timios’ network, encrypted some of Timios’ systems, and may have gained unauthorized access to the personal information of consumers.

Specifically excluded from the Settlement Class are: (i) Timios and its respective officers and directors; (ii) all members of the Settlement Class who timely and validly request exclusion from

Questions? Call (NUMBER) or visit www.TimiosSettlement.com

the Settlement Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads nolo contendere to any such charge.

6. What if I am not sure whether I am included in the settlement?

If you are not sure whether you are included in the settlement, or have any other questions related to the Settlement, you may:

1. Call (NUMBER)
2. Email (EMAIL); or
3. Write to:
(ADDRESS)

Please do not contact the Court with questions.

THE SETTLEMENT BENEFITS

7. What does the settlement provide?

All members of the Settlement Class who submit a valid Claim using the Claim Form are eligible for 18 months of free identity-theft protection, called “Financial Shield” by Aura. For members of the Settlement Class who opted to receive the one year of credit monitoring initially offered by Timios, the 18 months of “Financial Shield” shall be in addition to that year.

The settlement will also provide payments to people who submit Valid Claims for expenses or time incurred as a result of the Data Incident. If for some reason you have not received unique Class Member ID information, but believe you are a Settlement Class Member, please call (NUMBER) to verify your identity and receive further information on how to file a claim.

In addition to the above benefits, California Settlement Subclass Members who submit a Valid Claim will also be eligible for an additional benefit of \$50 each.

8. What payments are available?

Members of the Settlement Class seeking reimbursement must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before **xx,xx,xxxx**. This is the only way to get a payment or receive the free credit monitoring.

Expense Reimbursement. All members of the Settlement Class who submit a Valid Claim using the Claim Form are eligible for the following documented out-of-pocket expenses, not to exceed \$500 per member of the Settlement Class, that were incurred as a result of the Data Incident: (i) unreimbursed bank fees; (ii) unreimbursed card reissuance fees; (iii) unreimbursed overdraft fees; (iv) unreimbursed charges related to unavailability of funds; (v) unreimbursed late fees; (vi) unreimbursed over-limit fees; (vii) long distance telephone charges; (viii) cell minutes (if charged by minute), Internet usage charges (if charged by the minute or by the amount of data usage and incurred solely as a result of the Data Incident), and text messages (if charged by the message and incurred solely as a result of the Data Incident); (ix)

Questions? Call (NUMBER) or visit www.TimiosSettlement.com

unreimbursed charges from banks or credit card companies; (x) interest on payday loans due to card cancellation or due to over-limit situation incurred solely as a result of the Data Incident; (xi) costs of credit report(s), credit monitoring, and/or other identity theft insurance products purchased by members of the Settlement Class between October 11, 2021 and the date of the Claims Deadline; and (xii) other losses incurred by Settlement Class Members determined by the Settlement Administrator to be fairly traceable to the Data Incident, including, but not limited to, the cost of postage and gas for local travel. To receive reimbursement for any of the above-referenced out-of-pocket expenses, Settlement Class Members must submit (i) their name and current address; (ii) supporting documentation of such out-of-pocket expenses; and (iii) a description of the loss, if not readily apparent from the documentation.

Lost Time. Members of the Settlement Class are also eligible to receive up to three hours of lost time spent dealing with issues arising out of the Data Incident (calculated at the rate of \$20 per hour). Members of the Settlement Class must attest on the Claim Form to the time spent. No documentation other than a description of their actions shall be required for members of the Settlement Class to receive compensation for attested time. Claims made for lost time can be combined with claims made for out-of-pocket expenses and, together with the out-of-pocket expenses, are subject to the \$500 cap for each member of the Settlement Class.

Extraordinary Expense Reimbursement. All members of the Settlement Class who have suffered a proven monetary loss and who submit a Valid Claim using the Claim Form are eligible for up to \$3,000 if: (i) the loss is an actual, documented and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Data Incident; (iii) the loss occurred between July 19, 2021 and the Claims Deadline; and (iv) the loss is not already covered by one or more of the reimbursement categories listed in Expense Reimbursement; and the member of the Settlement Class made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring, insurance and identity theft insurance.

Cash Payment for California Settlement Subclass Members. All California Settlement Subclass Members who submit a Valid Claim using the Claim Form shall be eligible to receive a payment of \$50 provided that the California Settlement Subclass Member attests, under oath, that he or she was a resident of the State of California at some point between July 19, 2021 and July 25, 2021. This additional amount can be combined with a claim for reimbursement for lost time and for out-of-pocket losses under Expense reimbursement and can be combined (if applicable) with reimbursement for losses under extraordinary expense reimbursement. All claims made under this shall be subject to the \$500 per-Settlement-Class-Member cap on compensation for ordinary loss and lost time.

Identity-Theft Protection. All members of the Settlement Class who submit a Valid Claim using the Claim Form are eligible for 18 months of free identity-theft protection, called “Financial Shield” by Aura. For members of the Settlement Class who opted to receive the

Questions? Call (NUMBER) or visit www.TimiosSettlement.com

one year of credit monitoring initially offered by Timios, the 18 months of “Financial Shield” shall be in addition to that year. Financial Shield includes additional benefits, such as up to \$1 Million Dollars of identity theft insurance and Dark Web Monitoring, among other benefits. **You must submit a Claim Form to obtain Identity-Theft Protection.** After you submit the claim form, if the Court approves the Settlement, you will receive an email with instructions to enroll in the Aura “Financial Shield” program. For more information on “Financial Shield” services visit www.TimiosSettlement.com

HOW TO GET BENEFITS

9. How do I get benefits?

To get a payment from the settlement, you must complete a Claim Form. Please read the instructions carefully, fill out the Claim Form, provide reasonable documentation (where applicable), and submit it online or mail it postmarked no later than **(CLAIM DEADLINE)** to: **(ADDRESS)**

You may submit a Claim online or download a copy at www.TimiosSettlement.com, or you may request one by mail by calling **(NUMBER)**.

10. How will claims be decided?

The Claims Administrator will initially decide whether the information provided on a Claim Form is complete and valid. The Claims Administrator may request additional information from any claimant. If the required information is not provided timely, the Claim will be considered invalid and will not be paid.

If the Claim is complete and the Claims Administrator denies the Claim entirely or partially, the claimant will be provided an opportunity to have their claim reviewed by an impartial claims referee selected by the parties.

REMAINING IN THE SETTLEMENT

11. Do I need to do anything to remain in the settlement?

You do not have to do anything to remain in the settlement, but if you want a payment, you must submit a Claim Form postmarked by **[CLAIM DEADLINE]**.

12. What am I giving up as part of the settlement?

By not timely opting-out of the class, all of the Court’s orders will apply to you, and you give Timios a “Release.” A Release means you cannot sue or be part of any other lawsuit against Timios about the claims or issues in this lawsuit (relating to the Data Incident), and you will be bound by the settlement. The specific claims you are giving up against Timios and related persons or entities are called “Released Claims.” The Released Claims are defined in Section 1.22 and described in Section 6 of the Settlement Agreement, which is available under the

Questions? Call **(NUMBER)** or visit www.TimiosSettlement.com

documents page at www.TimiosSettlement.com. The Settlement Agreement describes the Released Claims with specific and accurate legal descriptions, so read it carefully.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue Timios about issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

13. If I exclude myself, can I get a payment from this settlement?

No. If you exclude yourself, you will not be entitled to any benefits of the settlement. You will also not be bound by any judgment in this case.

14. If I do not exclude myself, can I sue Timios for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Timios for the Claims that this settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment.

15. How do I exclude myself from the settlement?

To exclude yourself, send a letter that says you want to be excluded from the settlement in, *Schellhorn, et al. v. Timios, Inc.*, Case No. 2:21-cv-08661-VAP-JC (C.D. Cal.) (“Exclusion Request”). Include your name, address, and signature. You must mail your Exclusion Request postmarked by [**EXCLUSION DEADLINE**], to:

Schellhorn v Timios, Inc Settlement
c/o Kroll Claims Administrator
P.O. Box XXXX
New York, NY XXXXX-XXXX

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

Yes. The Court appointed the following lawyer as Proposed Settlement Class Counsel: M. Anderson Berry of Clayco C. Arnold, A Professional Law Corp.

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Proposed Settlement Class Counsel will seek, and Timios has agreed not to oppose, an order from the Court awarding \$215,000.00 to Proposed Settlement Class Counsel for attorneys’ fees, inclusive of any costs and expenses of the Litigation. Proposed Settlement Class Counsel,

Questions? Call **(NUMBER)** or visit www.TimiosSettlement.com

in their sole discretion, shall allocate and distribute the amount of attorneys’ fees, costs, and expenses awarded by the Court among Plaintiffs’ Counsel.

18. How do I tell the Court that I do not like the settlement?

You can object to the settlement if you do not like it or some part of it. The Court will consider your views. To do so, you must file a written objection.

Your objection must include all of the following information: (i) the objector’s full name and address; (ii) the case name and docket number - *Schellhorn, et al. v. Timios, Inc.*, Case No. 2:21-cv-08661-VAP-JC (C.D. Cal.); (iii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of the objector’s settlement notice, copy of original notice of the Data Incident, or a statement explaining why the objector believes he or she is a Settlement Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and (vii) the objector’s signature or the signature of the objector’s duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection.

Your written notice of an objection, in the appropriate form, must be mailed, postmarked by **(Objection Deadline)** and sent to the following addresses:

Class Counsel	Counsel for Timios
M. Anderson Berry Clayeo C Arnold, A Professional Law Corp. 865 Howe Avenue Sacramento, CA 95825	Casie D. Collignon Baker & Hostetler, LLP 1801 California Street Suite 4400 Denver, CO 80202-2662

19. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the settlement and why you do not think it should be approved. You can object only if you do not exclude yourself from the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the settlement.

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing on **DATE at TIME** to consider whether to approve the settlement. The Court will hear any objections, determine if the Settlement is fair, and consider Proposed Settlement Class Counsel’s request for fees and expenses of up to \$215,000 and an incentive award for the two Plaintiffs of \$2,500.00. The hearing will be held either in person

Questions? Call **(NUMBER)** or visit www.TimiosSettlement.com

at **ADDRESS**, via zoom, or telephonically. Instructions on how to attend the Final Approval Hearing will be available at www.TimiosSettlement.com. You may attend the Final Approval Hearing and ask to be heard by the Court, but you do not have to. Attorney fees and costs will be posted on the website after they are filed with the Court.

21. Do I have to attend the hearing?

No. Proposed Settlement Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 18, the Court will consider it.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must file an objection according to the instructions in Question 18, including all the information required.

Your Objection must be either (1) mailed, with a postmark date no later than **[DATE]**, to Proposed Settlement Class Counsel, M. Anderson Berry, Clayeo C. Arnold, A Professional Law Corp., 865 Howe Avenue, Sacramento, CA 95825; and counsel for Timios, Casie D. Collignon, Baker & Hostetler, LLP, 1801 California Street, Suite 4400, Denver, Colorado 80202-2662; or (2) filed with the Court no later than **[DATE]**, through the Court's ECF system, with service on Proposed Settlement Class Counsel and Timios' counsel made through the ECF system.

IF YOU DO NOTHING

23. What happens if I do nothing?

If you do nothing, you will get no monetary benefits from this settlement. Once the settlement is granted Final Approval and the judgment becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Timios about the legal issues in this case, ever again.

You must exclude yourself from the settlement if you want to retain the right to sue Timios for the Claims resolved by this settlement.

GETTING MORE INFORMATION

24. How do I get more information?

This Notice only provides a summary of the proposed settlement. Complete details about the settlement can be found in the Settlement Agreement available at www.TimiosSettlement.com

You may also:

1. Write to:

Schellhorn v Timios, Inc Settlement
c/o Kroll Claims Administrator

Questions? Call **(NUMBER)** or visit www.TimiosSettlement.com

P.O. Box XXXX
New York, NY XXXXX-XXXX

2. Visit the Settlement website at www.TimiosSettlement.com
3. Call the toll-free number (NUMBER)

**PLEASE DO NOT CALL THE COURT OR THE JUDGE WITH QUESTIONS ABOUT
THE SETTLEMENT OR CLAIMS PROCESS.**

Questions? Call (NUMBER) or visit www.TimiosSettlement.com

Exhibit 4

1 M. Anderson Berry (SBN 262879)
2 **CLAYEO C. ARNOLD,**
3 **A PROFESSIONAL LAW CORP.**
4 865 Howe Avenue
5 Sacramento, CA 95825
6 Telephone: (916) 239-4778
7 Facsimile: (916) 924-1829
8 aberry@justice4you.com

9 *Attorney for Plaintiffs and the Proposed Classes*

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 MYRON SCHELLHORN, RODNEY
13 ALLEN, TEDDA ALLEN, LAUREN
14 WATERS, JEFF HARRINGTON, and
15 DAVID THOMPSON, On Behalf of
16 Themselves and All Others Similarly
Situated,

17 Plaintiffs,

18 v.

19 TIMIOS INC.,

20 Defendants.

Case No.: 2:21-cv-08661-VAP-JC

**[PROPOSED] ORDER
GRANTING MOTION FOR
PRELIMINARY APPROVAL
OF CLASS ACTION
SETTLEMENT**

**Judge: Hon. Virginia A.
Phillips**

1 This case is before the Court on Plaintiffs Myron Schellhorn’s, Rodney Allen’s, Tedda
2 Allen’s, Lauren Waters’, Jeff Harrington’s, and David Thompson’s (collectively “Plaintiffs”)
3 Unopposed Motion for Preliminary Approval of the Class Action Settlement (the
4 “Motion”). The Court, having considered the Motion, the supporting brief, the parties’
5 Settlement Agreement dated March 31, 2022, (the “Settlement”), attached hereto as
6 Exhibit 1; the proposed Claim Form, Long Notice, and Short Notice (attached as Exhibits
7 2, 3, and 5 respectively, to the Motion); the pleadings and other papers filed in this Action;
8 and the statements of counsel and the Parties, and for good cause shown:

9 **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

10
11 **Preliminary Approval of Settlement Agreement**

12 1. Unless otherwise defined herein, all capitalized terms as used in this Order
13 shall have the definitions and meanings accorded to them in the Settlement Agreement.

14 2. The Court, pursuant to 28 U.S.C. § 1332, has jurisdiction over the Litigation,
15 Plaintiffs, all Settlement Class Members, Defendant Timios, Inc. (“Timios”), and any
16 party to any agreement that is part of or related to the Settlement Agreement.

17 3. The Court finds that the proposed Settlement set forth in the Settlement
18 Agreement is sufficiently fair, reasonable, and adequate such that it is hereby preliminarily
19 approved and notice of the settlement should be provided to the Settlement Class Members
20 and that a hearing should be held as set forth below.

21 **Class Certification**

22 4. Solely for purposes of the Settlement, the Court conditionally certifies the
23 following Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3) (“Settlement Class”):

24 All persons to whom Timios mailed notice that between July 19,
25 2021 and July 25, 2021, Timios was the target of a cyberattack
26 in which third-party criminals gained unauthorized access to
27 Timios’ network, encrypted some of Timios’ systems, and may
28 have gained unauthorized access to the personal information of

1 consumers.

2 5. Additionally, and solely for purposes of the Settlement, the Court
3 conditionally certifies the following Subclass pursuant to Fed. R. Civ. P. 23(a) and (b)(3)
4 (“California Settlement Class”):

5 All persons residing in California between July 19, 2021 and July
6 25, 2021 to whom Timios mailed notice that between July 19,
7 2021 and July 25, 2021, Timios was the target of a cyberattack
8 in which third-party criminals gained unauthorized access to
9 Timios’ network, encrypted some of Timios’ systems, and may
10 have gained unauthorized access to the personal information of
11 consumers.

12 6. Excluded from the Settlement Class and California Settlement Subclass are:
13 (i) Timios and its respective officers and directors; (ii) all members of the Settlement Class
14 and/or California Settlement Subclass who timely and validly request exclusion from the
15 Settlement Class and/or California Settlement Subclass; (iii) the Judge and Magistrate
16 Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found
17 by a court of competent jurisdiction to be guilty under criminal law of initiating, causing,
18 aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

19 7. Subject to final approval of the Settlement, the Court finds and concludes for
20 settlement purposes only that the prerequisites to a class action, set forth in Fed. R. Civ.
21 P. 23(a) and (b) are satisfied in that:

22 (a) the Settlement Class and California Settlement Subclass are so numerous
23 that joinder of all members is impracticable;

24 (b) there are questions of law or fact common to the Settlement Class and
25 California Settlement Subclass;

26 (c) Plaintiffs and Class Counsel (as defined below) fairly and adequately
27 represent the Settlement Class and California Settlement Subclass;

28 (d) the Claims of Plaintiffs are typical of those of Settlement Class Members

1 and California Settlement Subclass;

2 (e) common issues predominate over any individual issues affecting the
3 members of the Settlement Class and California Settlement Subclass;

4 (f) Plaintiffs fairly and adequately protect and represent the interests of all
5 members of the Settlement Class and California Settlement Subclass, and
6 Plaintiffs' interests are aligned with the interests of all other members of
7 the Settlement Class and California Settlement Subclass; and

8 (g) settlement of the Litigation on a class-action basis is superior to other
9 means of resolving this matter.

10 8. The Court appoints M. Anderson Berry of Clayco C. Arnold, A Professional
11 Law Corp. as Class Counsel, having determined that the requirements of Rule 23(g) of the
12 Federal Rules of Civil Procedure are fully satisfied by this appointment.

13 9. The Court hereby appoints Plaintiffs Myron Schellhorn, Rodney Allen, Tedda
14 Allen, Lauren Waters, Jeff Harrington, and David Thompson as the Class Representatives for
15 settlement purposes only on behalf of the Settlement Class and California Settlement
16 Subclass.

17 **Notice to Settlement Class and California Settlement Subclass Members**

18 10. At the hearing for Plaintiffs' Motion for Preliminary Approval of the Class
19 Action Settlement, the Court approved the Settlement Agreement, as well as the Long Notice
20 and the Short Notice, filed on March 31, 2022, attached as Exhibits 3 and 5, respectively, to
21 the Motion, and finds that the dissemination of the Settlement Notices substantially in the
22 manner and form set forth in Section 3 of the Settlement Agreement ("Notice Plan") attached
23 as Exhibit 1 to this Order complies fully with the requirements of Federal Rule of Civil
24 Procedure 23 and the due process of law, and is the best notice practicable under the
25 circumstances.

26 11. The Court further approves the Claim Form, substantially similar to Exhibit
27 2 to the Motion, which will be available both on the Settlement Website and by request.

28 12. The notice procedures described in the Notice Plan are hereby found to be

1 the best means of providing notice under the circumstances and, when completed, shall
2 constitute due and sufficient notice of the proposed Settlement and the Final Fairness
3 Hearing to all persons affected by and/or entitled to participate in the Settlement, in full
4 compliance with the notice requirements of Rule 23 of the Federal Rules of Civil
5 Procedure and due process of law.

6 13. The Court hereby orders that, within fourteen (14) days of the entry of this
7 Order, Timios shall provide the Claims Administrator the contact information of
8 Settlement Class Members and/or California Settlement Subclass Members, including
9 names, email addresses (where available), and physical addresses, that is currently in
10 Timios' possession.

11 14. No later than thirty (30) days from the date of this Order preliminarily
12 approving the Settlement Agreement, Class Counsel shall cause the Claims Administrator
13 to send the Short Notice to each Settlement Class Member and/or California Settlement
14 Subclass Members via email, if an email address is available, and/or through mailing to
15 any potential Settlement Class member for whom an email address was unavailable; and
16 shall cause to be published the Long Notice available to the rest of the Class as stated in
17 the proposed Notice Plan. All notices by publications, as well as all mailings to any
18 Settlement Class Member and/or California Settlement Subclass Members for whom the
19 initial email containing the Short Notice was returned as undeliverable, shall be complete
20 forty-five (45) days from the date of this Order preliminarily approving the Settlement
21 Agreement. Contemporaneously with seeking Final Approval of the Settlement, Proposed
22 Settlement Class Counsel and Timios shall cause to be filed with the Court an appropriate
23 affidavit or declaration from the Claims Administrator with respect to complying with the
24 Notice Plan.

25 15. All costs incurred in disseminating or otherwise in connection with the
26 Settlement Notice shall be paid by Timios pursuant to the Settlement Agreement.

27 16. The Settlement Notices and Claim Form satisfy the requirements of due
28 process and of Rule 23(e) of the Federal Rules of Civil Procedure and are thus approved

1 for dissemination to the Settlement Class. The Claim Form shall be made available to the
2 Settlement Class Members and California Settlement Subclass Members as set forth in the
3 Notice Plan and shall be made available to any potential Class Member that requests one.

4 **Responses by Settlement Class Members and/or California Settlement Subclass**
5 **Members, and the Scheduling of a Final Fairness Hearing**

6 17. Settlement Class Members and/or California Settlement Subclass Members
7 may opt-out or object up to sixty (60) days from the Notice Commencement Date (the
8 “Opt-Out Deadline”).

9 18. Any member of the Settlement Class and/or California Settlement Subclass
10 Members who wishes to be excluded (“opt-out”) from the Settlement Class and/or
11 California Settlement Subclass must send a written request to the designated Post Office
12 box established by the Claims Administrator postmarked on or before the Opt-Out
13 Deadline. Members of the Settlement Class and/or California Settlement Subclass may
14 not opt-out of the Settlement by submitting requests to opt-out as a group or class, but
15 must in each instance individually and personally submit an opt-out request. All
16 Settlement Class Members and/or California Settlement Subclass Members that opt-out
17 of the Settlement will not be eligible to receive any benefits under the Settlement, will not
18 be bound by any further orders or judgments entered for or against the Settlement Class
19 and/or California Settlement Subclass, and will preserve their ability to independently
20 pursue any claims they may have against Timios.

21 19. Any member of the Settlement Class and/or California Settlement Subclass
22 Members who does not properly and timely opt-out of the Settlement shall, upon entry of
23 the Order and Final Judgment, be bound by all the terms and provisions of the Settlement
24 Agreement and Released Claims, whether or not such Settlement Class Member and/or
25 California Settlement Subclass Member objected to the Settlement and whether or not
26 such Settlement Class Member and/or California Settlement Subclass Member received
27 consideration under the Settlement Agreement.

28 20. The Court adopts the following schedule for the remaining events in this case,

1 which ensures that the appropriate state and federal officials are served with the
2 notification required by the Class Action Fairness Act:

Event	Date
Timios to Provide CAA Notice Required by 28 U.S.C. § 1715(b)	Within 10 days after the filing of this Motion
Timios to Provide Contact Information for Settlement Class Members and/or California Settlement Subclass Members to Claims Administrator	Within 14 days after Entry of Preliminary Approval Order
Notice Program Commences	Within 30 days after entry of Preliminary Approval Order
Notice Program Concludes	Within 45 days after entry of Preliminary Approval Order
Compliance with CAFA Waiting Period under 28 U.S.C. § 1715(d)	90 days after the Appropriate Governmental Officials are Served with CAFA Notice
Deadline to file Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards	Within 45 days after the Notice Commencement Date
Postmark Deadline for Request for Exclusion ("Opt-Out") or Objections	60 days after Commencement of Notice Program
Postmark/Filing Deadline for Filing Claims	90 days after Commencement of Notice Program
Deadline to file Motion for Final Approval of the Settlement Agreement	75 days after Commencement of Notice Program
Deadline for Plaintiffs to File any Response to Objections or Supplement to Motion for Final Approval	No later than 7 days prior to the Final Fairness Hearing
Deadline for Claims Administrator to File or Cause to be Filed, if Necessary, a Supplemental Declaration with the Court	At least 5 days prior to the Final Fairness Hearing
Final Fairness Hearing	To be determined by the Court

28 21. A hearing on the Settlement (the "Final Fairness Hearing") shall be held

1 before the Court on a date to be set by the Court.

2 22. At the Final Fairness Hearing, the Court will consider (a) the fairness,
3 reasonableness, and adequacy of the proposed class Settlement and whether the Settlement
4 should be granted final approval by the Court; (b) dismissal with prejudice of the
5 Litigation; (c) entry of an order including the release of claims and release of Timios; (d)
6 entry of a final approval order; and (e) entry of final judgment in this Litigation. Proposed
7 Settlement Class Counsel's application for award of attorney's fees and costs, and requests
8 for the Court to award a service award to the named Plaintiffs, shall also be heard at the
9 time of the hearing.

10 23. The date and time of the Final Fairness Hearing shall be subject to
11 adjournment by the Court without further notice to the members of the Settlement Class,
12 other than that which may be posted by the Court. Should the Court adjourn the date for
13 the Final Fairness Hearing, that shall not alter the deadlines for mailing and publication of
14 notice, the Opt-Out Deadline, or the deadlines for submissions of settlement objections,
15 claims, and notices of intention to appear at the Final Fairness Hearing unless those dates
16 are explicitly changed by subsequent Order. The Court may also decide to hold the hearing
17 via zoom or telephonically. Instructions on how to appear at the Final Fairness Hearing
18 will be posted on the Settlement Website.

19 24. Any person or entity who or which does not elect to be excluded from the
20 Settlement Class and/or California Settlement Subclass may, but need not, enter an
21 appearance through its own attorney. Settlement Class Members and/or California
22 Settlement Subclass Members that do not timely object or opt-out and that do not have an
23 attorney who enter an appearance on their behalf will be represented by Proposed
24 Settlement Class Counsel.

25 25. Any person or entity who or which does not elect to be excluded from the
26 Settlement Class and/or California Settlement Subclass Members may object to the
27 proposed Settlement. Any Settlement Class Member and/or California Settlement
28 Subclass Member may object to, among other things, (a) the proposed Settlement, (b)

1 entry of Final Approval Order and the judgment approving the Settlement, (c) Proposed
2 Settlement Class Counsel’s Application for fees and expenses, or (d) the service award
3 request, by (i) serving a written objection upon Proposed Settlement Class Counsel and
4 Timios’ counsel or (ii) filing the written objection with the Court through the Court’s ECF
5 system, with service on Proposed Settlement Class Counsel and Timios’ counsel made
6 through the ECF system.

7 26. Any Settlement Class Member making the objection (an “Objector”) must
8 sign the objection personally or through Objector’s counsel. An objection must state why
9 the Objector objects to the proposed Settlement and provide the basis to support such
10 position. If an Objector intends to appear at the hearing, personally or through counsel,
11 the Objector must include with the objection a notice of the Objector’s intent to appear at
12 the hearing. The objection must also contain a detailed list of any other objections by the
13 Objector and/or by the attorney representing the Objector to any class action settlement(s)
14 submitted to any state or federal court in the United States in the previous three (3) years.

15 27. Objections, along with any notices of intent to appear, must be mailed to
16 Proposed Settlement Class Counsel and Timios’ Counsel with a postmark date of no later
17 than sixty (60) days after the Notice Commencement Date or filed with the Court no later
18 than sixty (60) days after the Notice Commencement Date. Such notice shall state: (i) the
19 objector’s full name, address, telephone number, and email address (if any); (ii)
20 information identifying the objector as a Settlement Class Member, including proof that
21 the objector is a member of the Settlement Class (e.g., copy of notice, copy of original
22 notice of the Data Incident); (iii) a written statement of all grounds for the objection,
23 accompanied by any legal support for the objection the objector believes applicable; (iv)
24 the identify of any and all counsel representing the objection in connection with the
25 objection; (v) a statement whether the objector and/or his or her counsel will appear at the
26 Final Fairness Hearing; and (vi) the objector’s signature and the signature of the objector’s
27 duly authorized attorney or other duly authorized representative. To be timely, written
28 notice of an objection in the appropriate form must be either (1) mailed to Proposed

1 Settlement Class Counsel and Timios' Counsel with a postmark date of no later than sixty
2 (60) days after the Notice Commencement Date (2) filed with the Clerk of the Court,
3 located at the Office of the Clerk, United States District Court, 350 W 1st Street, Suite
4 4311, Los Angeles, CA 90012-4565, and contain the case name and docket number
5 (*Schellhorn, et al. v. Timios, Inc.*, Case No. 2:21-cv-8661-VAP-JC), no later than sixty
6 (60) days from the Notice Commencement Date, as defined in ¶ 3.2.

7 28. Only Settlement Class Members and/or California Settlement Subclass
8 Members that have filed and served valid and timely notices of objection shall be entitled
9 to be heard at the Final Fairness Hearing. Any Settlement Class Member and/or California
10 Settlement Subclass Member who does not timely mail or file and serve an objection in
11 writing in accordance with the procedure set forth in the Class Notice and mandated in
12 this Order shall be deemed to have waived any objection to (a) the Settlement; (b) the
13 Released Claims and Released Persons; (c) entry of Final Approval Order or any
14 judgment; (d) Proposed Settlement Class Counsel's application for fees, costs, and
15 expenses, and/or (e) the service award request for the named Plaintiffs, whether by appeal,
16 collateral attack, or otherwise.

17 29. Settlement Class Members and/or California Settlement Subclass Members
18 need not appear at the hearing or take any other action to indicate their approval.

19 30. Upon entry of the Order and Final Judgment, all members of the Settlement
20 Class and/or California Settlement Subclass that have not personally and timely requested
21 to be excluded from the Settlement Class and/or California Settlement Subclass will be
22 enjoined from proceeding against Timios with respect to all of the Released Claims and
23 the Released Persons.

24 31. Timios shall prepare and send, at Timios' expense, all notices that are
25 required by the Class Action Fairness Act of 2005 ("CAFA") as specified in 28 U.S.C.
26 1715. Proposed Settlement Class Counsel and Counsel for Timios shall cooperate
27 promptly and fully in the preparation of such notices, including providing Timios with any
28 and all information in their possession necessary for the preparation of these notices.

1 Timios shall provide courtesy copies of the notices to Proposed Settlement Class Counsel
2 for the purpose of implementing the settlement. Timios shall provide notice to Proposed
3 Settlement Class Counsel of compliance with the CAFA requirements within ten (10) days
4 of providing notice to Attorneys General under CAFA.

5 **Administration of the Settlement**

6 32. The Court hereby appoints the claims administrator proposed by the parties,
7 Kroll Settlement Administration (the “Claims Administrator”). Responsibilities of the
8 Claims Administrator shall include: (a) establishing a post office box for purposes of
9 communicating with Settlement Class Members and/or California Settlement Subclass
10 Members; (b) disseminating notice to the Settlement Class and California Settlement
11 Subclass; (c) developing a web site to enable Settlement Class Members and California
12 Settlement Subclass Members to access documents; (d) accepting and maintaining
13 documents sent from Settlement Class Members and/or California Settlement Subclass
14 Members relating to claims administration; and (e) distributing settlement checks to
15 Settlement Class Members and/or California Settlement Subclass Members. Pursuant to
16 the Settlement Agreement, the Claims Administrator and costs of administration shall be
17 paid by Timios.

18 33. In the event the Settlement Agreement and the proposed settlement are
19 terminated in accordance with the applicable provisions of the Settlement Agreement, the
20 Settlement Agreement, the proposed Settlement, and all related proceedings shall, except
21 as expressly provided to the contrary in the Settlement Agreement, become null and void,
22 shall have no further force and effect, and Settlement Class Members and/or California
23 Settlement Subclass Members shall retain all of their current rights to assert any and all
24 claims against Timios, and Timios shall retain any and all of their current defenses and
25 arguments thereto (including but not limited to arguments that the requirements of Fed. R.
26 Civ. P. 23(a) and (b)(3) are not satisfied for purposes of continued litigation. The
27 Litigation shall thereupon revert forthwith to its respective procedural and substantive
28 status prior to the date of execution of the Settlement Agreement and shall proceed as if

1 the Settlement Agreement and all other related orders and papers had not been executed.

2 34. Neither this Order nor the Settlement Agreement nor any other settlement-
3 related document nor anything contained herein or therein or contemplated hereby or
4 thereby nor any proceedings undertaken in accordance with the terms set forth in the
5 Settlement Agreement or herein or in any other settlement-related document, shall
6 constitute, be construed as or be deemed to be evidence of or an admission or concession
7 by Timios as to the validity of any claim that has been or could have been asserted against
8 it or as to any liability by it as to any matter set forth in this Order, or as to the propriety
9 of class certification for any purposes other than for purposes of the current proposed
10 settlement.

11
12 **IT IS SO ORDERED.**

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15 Dated: _____, 2022

16 The Honorable Virginia A. Phillips
17 United States District Court Judge
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Exhibit 5

**A Settlement Has Been Reached in A Class Action
Lawsuit Against Timios, Inc., Claiming Personal
Information of Approximately 74,755 Individuals
Was Compromised Due to a Data Incident.**

A settlement has been reached in a proposed class action lawsuit involving Timios, Inc. (“Timios”), Case No.: 2:21-cv-08661. In the lawsuit, the plaintiffs allege that between July 19, 2021 and July 25, 2021, Timios was the target of a criminal cyberattack in which third-party criminals gained unauthorized access to Timios’ network and encrypted some of its systems (“Data Incident”). Plaintiffs further allege that, as a result of the Data Incident, the criminals gained access to Plaintiffs’ and “other consumers[’]” personal information, including without limitation, “unredacted names, Social Security numbers, driver’s license or state-issued identification numbers, passport numbers, tax identification numbers, military identification numbers, financial account numbers, payment card numbers, and/or date of birth” (collectively, “PII”). Timios denies the allegations and that it did anything wrong.

Who Is Included?

Timios notified approximately 74,755 individuals of the Data Incident in October 2021. You are included in the settlement if you were mailed this notice by Timios or if Timios previously notified you by mail about the Data Incident.

What Can I Get?

Expense Reimbursement. All members of the Settlement Class who submit a Valid Claim using the Claim Form are eligible for documented out-of-pocket expenses, not to exceed \$500 per member of the Settlement Class, that were incurred as a result of the Data Incident. Expenses include unreimbursed bank fees, unreimbursed card reissuance fees, unreimbursed late fees, unreimbursed overdraft fees, and more. A full list of out-of-pocket expenses is available at www.TimiosSettlement.com. To receive reimbursement, Settlement Class Members must submit a Claim Form and (i) their name and current address; (ii) supporting documentation of such out-of-pocket expenses; and (iii) a description of the loss, if not readily apparent from the documentation, no later than **XX,XX,XXXX**.

Lost Time. Members of the Settlement Class are also eligible to receive up to three hours of lost time spent dealing with issues arising out of the Data Incident (calculated at the rate of \$20 per hour). Members of the Settlement Class must attest on the Claim Form to the time spent. No documentation other than a description of their actions shall be required for members of the Settlement Class to receive compensation for attested time. Claims made for lost time can be combined with claims made for out-of-pocket expenses and, together with the out-of-pocket expenses, are subject to the \$500 cap for each member of the Settlement Class.

Extraordinary Expense Reimbursement. All members of the Settlement Class who have suffered a proven monetary loss and who submit a Valid Claim using the Claim Form are eligible for up to \$3,000 if: (i) the loss is an actual, documented and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Data Incident; (iii) the loss occurred between July 19, 2021 and the Claims Deadline; (iv) the loss is not already covered by one or more of the reimbursement categories listed in Expense Reimbursement; and (v) the member of the Settlement Class made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring, insurance and identity theft insurance.

Members of the Settlement Class seeking reimbursement must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before **xx,xx,xxxx**.

Cash Payment for California Settlement Subclass Members. All California Settlement Subclass Members who submit a Valid Claim using the Claim Form are eligible to receive a payment of \$50 provided that the California Settlement Subclass Member attests, under oath, that he or she was a resident of the State of California at some time between July 19, 2021 and July 25, 2021.

This additional amount can be combined with a Claim for reimbursement for lost time and for out-of-pocket losses under Expense Reimbursement and can be combined (if applicable) with reimbursement for losses under Extraordinary Expense Reimbursement. All Claims made under this shall be subject to the \$500 per-Settlement-Class-Member cap on compensation for ordinary loss and lost time.

Identity-Theft Protection. All members of the Settlement Class who submit a Valid Claim using the Claim Form are eligible for 18 months of free identity-theft protection, called “Financial Shield” by Aura. For members of the Settlement Class who opted to receive the one year of credit monitoring initially offered by Timios, “Financial Shield” shall be in addition to that year. Financial Shield includes additional benefits, such as up to \$1 Million Dollars of identity theft insurance and Dark Web Monitoring, among other benefits. **You must submit a Claim Form to obtain Identity-Theft Protection.** After you submit the claim form, if the Court approves the Settlement, you will receive an email with instructions to enroll in the Aura “Financial Shield” program. For more information on “Financial Shield” services visit **www.TimiosSettlement.com**

What are my rights?

File a Claim. You must file a valid Claim in order to receive monetary compensation and/ or Identity-Theft Protection. All Claim Forms must be submitted postmarked by **xx,xx,xxxx**.

Do Nothing. You will be legally bound by decisions of the Court, and you will give up any rights to prosecute certain Claims against Timios.

Opt-Out. You will not be legally bound by the settlement, cannot file a Claim, cannot get money, and cannot receive credit monitoring, but you will keep your right to sue for claims in this lawsuit. Opt-out requests must be submitted postmarked by **xx,xx,xxxx**

Object to the Settlement. You may write to the Court and explain why you do not like the settlement. Objections must be postmarked and/or filed by **xx,xx,xxxx**

Complete instructions on how to opt-out of or object to the settlement are found in the long notice available at **www.TimiosSettlement.com**

When Will the Court Approve the Settlement?

The Court will hold a Final Approval Hearing on **DATE** at **TIME** to consider whether to approve the settlement. The Court will hear any objections, determine if the Settlement is fair, and consider Class Counsel’s request for fees and expenses of up to \$215,000 and a service award for the Class Representative Plaintiffs of \$2,500.00 each. The hearing will be held either in person at **ADDRESS**, via Zoom, or telephonically. Instructions on how to attend

the Final Approval Hearing will be available at www.TimiosSettlement.com. You may attend the Final Approval Hearing and ask to be heard by the Court, but you do not have to. Attorneys' fees and costs will be posted on the website after they are filed with the Court.

Do not call the Court or the judge with questions about the settlement or the claims process.

This is only a summary. For detailed information visit www.TimiosSettlement.com or call [xxx-xxx-xxxx](tel:xxx-xxx-xxxx). You may contact the Claims Administrator at [xxx-xxx-xxxx](tel:xxx-xxx-xxxx)

www.TimiosSettlement.com [xxx-xxx-xxxx](tel:xxx-xxx-xxxx).

Exhibit 6

Sheldon v. Timios, Inc. Settlement
c/o Kroll Claims Administrator
P.O. Box 0000
Philadelphia, PA 19102-0000

FIRST CLASS PERMIT
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

Court-Ordered Legal Notice

A Settlement Has Been Reached
in a Class Action Lawsuit Against
Timios, Inc. Claiming Personal
Information of Approximately
74,755 Individuals Was
Compromised Due to a Data
Incident

<<Barcode>>

Class Member ID: <<Refnum>>

<<FirstName>> <<LastName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>.-<<zip4>>

[BARCODE AREA]

2:21-cv-08661-VAP-TC Document 22-6
A settlement has been reached in a proposed class action lawsuit involving Timios, Inc. ("Timios"), Case No.: 2:21-cv-08661. The lawsuit alleges Timios was the target of a cyberattack, between July 19, 2021 and July 25, 2021, in which third-party criminals attempted to gain unauthorized access to Timios' network and to encrypt some of its systems ("Data Incident") that potentially exposed personal information including names, Social Security numbers, passport numbers, government ID numbers, driver's license numbers, and more. Timios denies the claims and that it did anything wrong.

Who Is Included?

Timios notified approximately 74,755 individuals about the Data Incident in or around October 2021. You are included in the settlement if you were mailed this notice by Timios or if Timios previously notified you by mail about the Data Incident.

What Can I Get?

Expense Reimbursement: You are eligible for reimbursement of out-of-pocket expenses, **up to \$500**, incurred as a result of the Data Incident. Expenses include bank fees, card reissuance fees, late fees, over-limit fees, and more. The full list is available at www.TimiosSettlement.com.

Lost Time: You are eligible for up to three hours of lost time spent dealing with issues related to the Data Incident (\$20 per hour). Lost time and expense reimbursement can be combined, **up to \$500**.

Identity-Theft Protection: You are eligible for 18 months of free Identity-Theft Protection and other benefits called "Financial Shield" by Aura. More information is available at www.TimiosSettlement.com.

Extraordinary Expense Reimbursement: You are eligible for **up to \$3,000** if you suffered monetary loss you can prove. More information is available at www.TimiosSettlement.com.

Cash Payment for California Residents: You are eligible to receive a payment of **\$50** if you attest, under oath, that you were a resident of California at some time between July 19, 2021 and July 25, 2021.

Filed 03/31/22 Page 3 of 3 Page ID:
What are my rights?
File a Claim. You must file a Valid Claim to receive monetary compensation and/or Identity-Theft Protection. All Claim Forms must be submitted postmarked by **Month 00, 2022**.

Do Nothing. You will be legally bound by decisions of the Court and you will give up any rights to prosecute certain claims against Timios.

Opt-Out. You will not be legally bound by the settlement, cannot file a Claim, cannot get money, and cannot receive credit monitoring, but you will keep your right to sue for claims in this lawsuit. Opt-out requests must be submitted postmarked by **Month 00, 2022**.

Object to the Settlement. You may write to the Court and explain why you do not like the settlement. Objections must be postmarked and/or filed by **Month 00, 2022**. Complete instructions on how to opt-out of or object to the settlement are found in the Long Notice available at www.TimiosSettlement.com.

When Will the Court Approve the Settlement?

The Court will hold a Final Approval Hearing on **DATE at TIME** to consider whether to approve the settlement. The Court will hear any objections, determine if the Settlement is fair, and consider Proposed Settlement Class Counsel's request for fees and expenses of up to \$215,000 and service awards for the Class Representative Plaintiffs of \$2,500 each. The hearing will be held either in person at **ADDRESS**, via Zoom, or telephonically. Instructions on how to attend the Final Approval Hearing will be available at www.TimiosSettlement.com. You may attend the Final Approval Hearing and ask to be heard by the Court, but you do not have to. Attorneys' fees and costs will be posted on the website after they are filed with the Court.

This is only a summary. For detailed information visit www.TimiosSettlement.com, call **1-000-000-0000**, or write to the Claims Administrator at Schellhorn v. Timios, Inc. Settlement, c/o Kroll Claims Administrator, PO Box 0000, Philadelphia PA 19102-0000.