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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Myron Schellhorn et al.,  
Plaintiffs,  
v.  
Timios, Inc.,  
Defendant.

Case No. 2:21-cv-08661-VAP-(JCx)

**Order GRANTING  
Motion for Preliminary Approval  
of Class Action Settlement  
(Doc. Nos. 21-22, 31)**

United States District Court  
Central District of California

Plaintiffs Myron Schellhorn et al. (“Plaintiffs”) filed a Motion for Preliminary Approval of Class Action Settlement (“Motion”) on February 22, 2022. (Doc. Nos. 21-22, 31.) Timios Inc. (“Timios”) filed no opposition. Having considered the papers filed in support of the Motion, the Court deems this matter appropriate for resolution without oral argument of counsel pursuant to Local Rule 7-15 and **GRANTS** the Motion.

**I. BACKGROUND**

**A. Procedural History**

Plaintiffs Myron Schellhorn, Rodney Allen, and Tedda Allen filed a Class Action Complaint against Timios on November 3, 2021. (Doc. No. 1.) Plaintiffs Lauren Waters, Jeff Harrington, and David Thompson filed a similar action against Timios on November 4, 2021. *See Waters, et al. v. Timios*, No. 2:21-cv-08709-VAP-(JCx) (C.D. Cal.). The Court joined the two

1 actions, and Plaintiffs filed a First Amended Complaint (“FAC”) on March 1,  
2 2021. (Doc. No. 18.)

3  
4 The FAC alleges that Timios suffered a data breach between July 18,  
5 2021, and Jul 25, 2021, resulting in the disclosure of Plaintiffs’ personal  
6 identifiable information (“PII”). (FAC ¶¶ 27-45.) Accordingly, the FAC  
7 asserts the following claims against Timios: 1) negligence; 2) negligence per  
8 se; 3) breach of confidence; 4) breach of implied contract; 5) intrusion into  
9 private affairs and invasion of privacy; 6) violation of the Illinois Consumer  
10 Fraud Act; 7) violations of Illinois’ Personal Information Protection Act; 8)  
11 violation of Illinois’s Security Breach Notification Laws; 9) unjust enrichment;  
12 and 10) declaratory judgment. (*Id.* ¶¶ 180-308.)

13  
14 The parties engaged in informal settlement negotiations for several  
15 months. (Motion at 2.) Although the parties engaged private mediator  
16 Bennett Picker, Esq., they were able to reach a settlement before mediation.  
17 (*Id.* at 2-3.) The parties drafted the joint Settlement Agreement (“Settlement  
18 Agreement” or “SA”) currently before the Court on March 31, 2022. (*Id.* at 3;  
19 SA, Doc. No. 32-1.)

20  
21 **B. Settlement Class**

22 The proposed Settlement Class is defined as:

23  
24 [A]ll persons to whom Timios mailed notice that between July 19,  
25 2021 and July 25, 2021, Timios was the target of a cyberattack in  
26 which third-party criminals gained unauthorized access to Timios’

1 network, encrypted some of Timios' systems, and may have gained  
2 unauthorized access to the personal information of consumers.

3  
4 (SA § IV 1.27.) The proposed class consists of approximately 74,755  
5 persons who may have had their PII disclosed because of the data breach.  
6 (Motion at 3.)

7  
8 The Settlement Agreement also proposes a California Settlement  
9 Subclass defined as:

10  
11 [A]ll persons residing in California between July 19, 2021  
12 and July 25, 2021 to whom Timios mailed notice that be-  
13 tween July 19, 2021 and July 25, 2021, Timios was the  
14 target of a cyberattack in which third-party criminals  
15 gained unauthorized access to Timios' network, encrypted  
16 some of Timios' systems, and may have gained unauthor-  
17 ized access to the personal information of consumers.

18  
19 (SA § IV 1.2.)

20  
21 **C. Settlement Terms**

22 The Settlement Agreement establishes monetary and non-monetary  
23 benefits. (SA § IV 2.1-2.6.) The monetary benefits consist of: (1)  
24 reimbursement of out-of-pocket expenses and lost time of up to \$500 per  
25 Class Member; (2) reimbursement of extraordinary expenses of up to  
26 \$3,000 per Class Member; and (3) \$50 per California Settlement Subclass

1 member. (*Id.* §§ 2.1-2.3.) The non-monetary benefits consist of free identity  
2 theft protection services for eighteen months, and for Timios to implement  
3 and maintain measures to secure its systems. (*Id.* §§ 2.4, 2.6.)  
4

5 Timios will retain Kroll Settlement Administration to serve as Claims  
6 Administrator. (Berry Decl. ¶ 23.) Notice and administration costs are  
7 estimated to cost approximately \$86,000. (*Id.* ¶ 36.) Class members are to  
8 submit Claim Forms within 90 days of preliminary approval, and the Claims  
9 Administrator shall accept or reject such Claim Forms within 30 days of  
10 receipt. (SA §§ IV 2.2, 2.5.3.) If accepted, Class Members have 30 days to  
11 accept or reject the offer of payment. (*Id.* § 2.5.4.) Class Members may  
12 dispute a claim decision with a claims referee, who shall make a ruling  
13 within 15 days of the dispute. (*Id.* § 2.5.5.) The Claims Administrator will  
14 issue checks for valid claims within 60 days of the final approval of the  
15 Settlement Agreement, or within 30 days that the claim is approved,  
16 whichever is later. (*Id.* § 8.2.)  
17

18 The Settlement Agreement entitles each named Plaintiff to a Service  
19 Award of \$2,500. (*Id.* § 7.3.) Class Counsel seeks up to \$215,000,  
20 approximately 19 percent,<sup>1</sup> of the settlement value for attorneys' fees and  
21 costs. (*Id.* § 7.2; Motion at 8.)  
22

23 Finally, Plaintiffs and Settlement Class Members release any future  
24 related claims against Timios. (*Id.* § 6.)  
25

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26 <sup>1</sup> Plaintiffs estimate the value of the monetary settlement benefits and the  
identity theft protection services at \$1,130,720. (Motion at 8.)

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**D. Notice Procedures**

Within 14 days of preliminary approval of the Settlement Agreement, Timios will provide the Claims Administrator the Settlement Class Member Information. (*Id.* § 3.2.) Within 30 days of preliminary approval, the Claims Administrator will provide the Short Notice Form by email (Ex. 5) or mail the Postcard Notice (Ex. 6) to the Settlement Class. (SA § IV 3.2.) The Notice Program will conclude within 45 days of preliminary approval. (*Id.*)

The Settlement Administrator will establish the Settlement Website containing:

- (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; (v) the operative Amended Class Action Complaint filed in the Litigation; and (vi) any other materials agreed upon by the Parties and/or required by the Court.

The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically.

(*Id.*) Finally, a toll-free help line shall be established to provide Settlement Class Members with additional information about the settlement. (*Id.*)

**II. LEGAL STANDARD**

Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” “[S]trong judicial policy . . .

1 favors settlements, particularly where complex class action litigation is  
2 concerned.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.  
3 1992). “The purpose of Rule 23(e) is to protect the unnamed members of  
4 the class from unjust or unfair settlements affecting their rights.” *In re*  
5 *Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). The Court’s  
6 review of the settlement is meant to be “extremely limited” and should  
7 consider the settlement as a whole. *Hanlon v. Chrysler Corp.*, 150 F.3d  
8 1011, 1026 (9th Cir. 1998).

9  
10 At the preliminary approval stage, the Court need only consider  
11 whether the proposed settlement: “(1) appears to be the product of serious,  
12 informed, non-collusive negotiations; (2) has no obvious deficiencies; (3)  
13 does not improperly grant preferential treatment to class representatives or  
14 segments of the class; and (4) falls within the range of possible approval.”  
15 *Harris v. Vector Mktg. Corp.*, No. 08-05198, 2011 WL 1627973, at \*7 (N.D.  
16 Cal. Apr. 29, 2011); *see also Moppin v. Los Robles Reg’l Med. Ctr.*, No. 15-  
17 01551, 2016 WL 7479380, at \*8 (C.D. Cal. Sept. 12, 2016) (“At the  
18 Preliminary Approval phase, the Court need only decide whether the  
19 settlement is potentially fair.”); *In re Tableware Antitrust Litig.*, 484 F. Supp.  
20 2d 1078, 1079 (N.D. Cal. Apr. 12, 2007) (citing Federal Judicial Center,  
21 Manual for Complex Litigation § 30.44 (2d ed. 1985)).

### 22 23 III. DISCUSSION

#### 24 A. Class Certification

25 Under Rule 23(e)(1), as amended December 1, 2018, the Court must  
26 direct notice to the class of a class action settlement upon determining that

1 notice is justified because the Court concludes it will likely be able to  
2 approve the settlement and certify the class for purposes of judgment on the  
3 settlement. When a plaintiff seeks conditional class certification for purposes  
4 of settlement, the court must ensure that the four requirements of Federal  
5 Rule of Civil Procedure 23(a) and at least one of the requirements of Rule  
6 23(b) are met. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997);  
7 *Staton v. Boeing Co.*, 327 F.3d 938, 952-53 (9th Cir. 2003).

8  
9 Under Rule 23(a), the plaintiff must show the class is sufficiently  
10 numerous; there are questions of law or fact common to the class; the  
11 claims or defenses of the representative parties are typical of those of the  
12 class; and the representative parties will fairly and adequately protect the  
13 class's interests. Under Rule 23(b), the plaintiff must show that the action  
14 falls within one of the three "types" of classes.

15  
16 Here, Plaintiffs seek certification under Rule 23(b)(3). Rule 23(b)(3)  
17 allows certification where: (1) questions of law or fact common to the  
18 members of the class predominate over any questions affecting only  
19 individual members, and (2) a class action is superior to other available  
20 methods for the fair and efficient adjudication of the controversy. (Motion at  
21 15.)

22  
23 **1. Rule 23(a) Requirements**

24 i. Numerosity

25 Rule 23(a)(1) requires that "the class is so numerous that joinder of all  
26 members is impracticable." "No exact numerical cut-off is required; rather,

1 the specific facts of each case must be considered.” *In re Cooper Cos. Inc.*  
2 *Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. Jan. 5, 2009) (citing *Gen. Tel.*  
3 *Co. of Nw., Inc. v. E.E.O.C.*, 446 U.S. 318, 330 (1980)). “As a general  
4 matter, courts have found that numerosity is satisfied when [the] class size  
5 exceeds 40 members.” *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*,  
6 311 F.R.D. 590, 602-03 (C.D. Cal. Nov. 16, 2015); see *Tait v. BSH Home*  
7 *Appliances Corp.*, 289 F.R.D. 466, 473-74 (C.D. Cal. Dec. 20, 2012).  
8 Additionally, it is not necessary to state the exact number of class members  
9 when the plaintiff’s allegations “plainly suffice” to satisfy the numerosity  
10 requirement. *In re Cooper*, 254 F.R.D. at 634.

11  
12 Plaintiffs’ allegations here satisfy the standard for numerosity. The  
13 Settlement Class consists of approximately 74,755 persons. (Motion at 3,  
14 12.) The Court certainly may infer that more than 40 persons had their PII  
15 disclosed because of Timios’s data breach. See *Moore*, 311 F.R.D. at 602-  
16 03. Moreover, Timios does not dispute that the proposed class is  
17 numerous. Accordingly, as requiring the joinder of thousands of plaintiffs  
18 would be impracticable, the Court finds the Class satisfies the numerosity  
19 requirement.

20  
21 ii. Commonality

22 Rule 23(a)(2) requires that “there are questions of law or fact common  
23 to the class.” The plaintiff must “demonstrate that the class members ‘have  
24 suffered the same injury,’” which “does not mean merely that they have all  
25 suffered a violation of the same provision of law.” *Wal-Mart Stores, Inc. v.*  
26 *Dukes*, 564 U.S. 338 (2011) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457



1 U.S. 147, 157 (1982)). Rather, the plaintiff's claim must depend on a  
2 "common contention" that is capable of class wide resolution. (*Id.*). This  
3 means "that determination of its truth or falsity will resolve an issue that is  
4 central to the validity of each one of the claims in one stroke." (*Id.*).  
5

6 The issues in this litigation present common questions of law and fact  
7 that can be determined on a class wide basis: whether Class Members' PII  
8 was compromised in the data breach; whether Timios owed a duty to  
9 Plaintiffs and Class members; whether Timios breached its duties; whether  
10 Timios unreasonably delayed in notifying Plaintiffs and class members of  
11 the material facts of the data breach; and whether Timios violated the  
12 common law and statutory violations alleged in the FAC. (Motion at 12.)  
13 Accordingly, the Court finds the Class satisfies the commonality requirement  
14

15 iii. Typicality

16 Rule 23(a)(3) requires that the "claims or defenses of the  
17 representative parties are typical of the claims or defenses of the class."  
18 Representative claims are "typical" if they are "reasonably coextensive with  
19 those of the absent class members; they need not be substantially  
20 identical." *Hanlon*, 150 F.3d at 1020.  
21

22 Plaintiffs' claims here are typical of the class members' claims  
23 because every member of the class, including Plaintiffs, asserts damages  
24 based on Timios failure to protect their PII. (Motion at 13.) Accordingly,  
25 Plaintiffs' claims are "reasonably coextensive" with those of the class. See  
26 *Hanlon*, 150 F.3d at 1020; see also *Reyes v. Experian Info. Sols., Inc.*, No.

1 16-00563, 2019 WL 4854849, at \*6 (C.D. Cal. Oct. 1, 2019) (“Because  
2 Plaintiff only seeks to represent a class of consumers whose credit reports  
3 contained this exact same ‘inaccuracy,’ the unnamed class members share  
4 an identical injury. Further, Plaintiff’s claim is based on the same course of  
5 conduct by Defendant as the claims of the unnamed class members”  
6 satisfying the typicality requirement).

7  
8 iv. Adequacy of Representation

9 Rule 23(a)(4) requires that “the representative parties will fairly and  
10 adequately protect the interests of the class.” This factor requires: (1) a lack  
11 of conflicts of interest between the proposed class and the proposed class  
12 representative, and (2) representation by qualified and competent counsel  
13 that will prosecute the action vigorously. *Staton*, 327 F.3d at 957. The  
14 concern in the context of a class action settlement is that there is no  
15 collusion between the defendant, class counsel, and the class  
16 representatives to pursue their own interests at the expense of the interests  
17 of the class. (*Id.* at 958 n.12).

18  
19 There is no evidence of a conflict of interest between Plaintiffs and the  
20 class. Plaintiffs’ claims are identical to those of the class, and Plaintiffs have  
21 every incentive to pursue those claims vigorously. (Motion at 14.) Nor is  
22 there any evidence that Plaintiffs’ counsel will not adequately represent or  
23 protect the interests of the class. Plaintiffs’ counsel, M. Anderson Berry of  
24 Clayeo C. Arnold, A Professional Law Corp., David K. Lietz of Milberg, and  
25 Bill Markovits, Paul D. Demarco, and Terence R. Coates of Markovits, Stock  
26 & DeMarco, LLC, have extensive experience litigating consumer protection

1 class actions and have relied on their experience litigating the instant action.  
2 (Exs. B-D, Berry Decl. ¶¶ 46-51.) Counsel vigorously prosecuted this action  
3 and satisfy all the criteria for M. Anderson Berry of Clayco C. Arnold, A  
4 Professional Law Corp., to be appointed as interim class counsel pursuant  
5 to Rule 23(g)(3). See, e.g., *Reyes*, 2019 WL 4854849, at \*7 (“As for  
6 Plaintiff’s and counsel’s willingness to vigorously prosecute this action on  
7 behalf of the class, the Court has no doubt. The Court knows only too well  
8 how actively this case has been litigated on both sides from its inception in  
9 2016.”). There is also no evidence of conflicts of interest between Plaintiffs  
10 and Timios or Plaintiffs’ counsel and Timios.

11  
12 As Plaintiffs satisfy all of the Rule 23(a) criteria, the Court turns to the  
13 Rule 23(b) requirements.

## 14 15 **2. Rule 23(b)(3) Requirements**

16 Plaintiffs seek preliminary class certification under Rule 23(b)(3).  
17 Rule 23(b)(3) applies where the court finds: (1) “that the questions of law or  
18 fact common to class members predominate over any questions affecting  
19 only individual members,” and (2) “that a class action is superior to other  
20 available methods for fairly and efficiently adjudicating the controversy.”  
21 See *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 957  
22 (9th Cir. 2009).

### 23 24 i. Predominance

25 “The Rule 23(b)(3) predominance inquiry tests whether classes are  
26 sufficiently cohesive to warrant adjudication by representation.” *Hanlon*, 150

1 F.3d at 1022. “This analysis presumes that the existence of common issues  
2 of fact or law have been established pursuant to Rule 23(a)(2); thus, the  
3 presence of commonality alone is not sufficient to fulfill Rule 23(b)(3).” (*Id.*).  
4 “When common questions present a significant aspect of the case and they  
5 can be resolved for all members of the class in a single adjudication, there  
6 is clear justification for handling the dispute on a representative rather than  
7 on an individual basis.” (*Id.*).  
8

9 As discussed above, Plaintiffs demonstrated commonality amongst  
10 proposed class members as the central issue in this case is whether Timios  
11 used reasonable data security measures to prevent a breach in consumers’  
12 PII. (Motion at 16.) The only individual determinations, then, are the  
13 quantification of damages for each Settlement Class member—and such  
14 individual determinations do not defeat class certification. Plaintiffs thus  
15 demonstrate that a common issue predominates over individualized  
16 concerns.  
17

18 ii. Superiority

19 “[T]he purpose of the superiority requirement is to assure that the  
20 class action is the most efficient and effective means of resolving the  
21 controversy.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175  
22 (9th Cir. 2010). Where recovery on an individual basis would be dwarfed by  
23 the cost of litigating on an individual basis, this factor weighs in favor of  
24 class certification. (*Id.*).  
25  
26

1 A class action appears to be superior to other available methods for  
2 adjudicating this matter fairly and efficiently. The potential monetary relief  
3 for each Settlement Class Member (up to \$3,550 for out-of-pocket  
4 expenses, extraordinary expenses, and being part of the California  
5 Settlement Subclass) is dwarfed by the cost of litigating on an individual  
6 basis. (SA §§ IV 2.1-2.3.) Without class certification, it is unlikely that these  
7 claims would be litigated at all. Accordingly, Plaintiffs satisfy Rule 23(b)(3).  
8

9 **B. Fairness, Adequacy, and Reasonableness of the Settlement**

10 Plaintiffs seek preliminary approval of the Settlement Agreement.  
11 Rule 23(e) “requires the district court to determine whether a proposed  
12 settlement is fundamentally fair, reasonable, and accurate.” *Staton*, 327  
13 F.3d at 959 (quoting *Hanlon*, 150 F.3d at 1026). To determine whether this  
14 standard is met, courts consider factors including “the strength of the  
15 plaintiffs’ case; the risk, expense, complexity, and likely duration of further  
16 litigation; the risk of maintaining class action status throughout the trial; the  
17 amount offered in settlement; the extent of discovery completed, and the  
18 stage of the proceedings; the experience and views of counsel; . . . and the  
19 reaction of the class members to the proposed settlement.” (*Id.* (quoting  
20 *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003))).  
21

22 At the preliminary approval stage, a full “fairness hearing” is not  
23 required. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079. Rather,  
24 the inquiry is whether the settlement “appears to be the product of serious,  
25 informed, non-collusive negotiations, has no obvious deficiencies, does not  
26

1 improperly grant preferential treatment to class representatives or segments  
2 of the class, and falls within the range of possible approval.” (*Id.*)  
3

4 1. Product of Serious, Informed, Non-Collusive Negotiations

5 To approve the Settlement Agreement at this stage, the Court must  
6 find first it is “not the product of fraud or overreaching by, or collusion  
7 between, the negotiating parties.” *Hanlon*, 150 F.3d at 1027. Three factors  
8 may raise concerns of collusion: (1) “when counsel receive[s] a  
9 disproportionate distribution of the settlement, or when the class receives no  
10 monetary distribution but class counsel are amply rewarded”; (2) “when the  
11 parties negotiate a ‘clear sailing’ arrangement providing for the payment of  
12 attorneys’ fees separate and apart from class funds”; and (3) “when the  
13 parties arrange for fees not awarded to revert to defendants rather than be  
14 added to the class fund.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654  
15 F.3d 935, 947 (9th Cir. 2011) (internal quotation marks and citations  
16 omitted).  
17

18 The Court finds that “sufficient discovery has been taken or  
19 investigation completed to enable counsel and the court to act intelligently.”  
20 *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 447 (E.D. Cal.  
21 2013) (internal quotation marks omitted). This case was filed on November  
22 3, 2021 (Doc. No. 1), and since then the Parties conducted informal  
23 discovery, engaged in numerous negotiations, and reached a settlement.  
24 (Motion at 24.) Moreover, the parties “did not negotiate attorneys’ fees until  
25 agreement on all substantive portions of the class resolution had been  
26 reached” and thus the three *Bluetooth* factors that raise concerns of

1 collusion are absent here. (*Id.* at 25.) Accordingly, this factor weighs in  
2 favor of preliminary approval.

3  
4 2. Obvious Deficiencies

5 The Court finds that the Settlement Agreement on its face does not  
6 have obvious deficiencies, and thus finds that this factor weighs in favor of  
7 preliminary approval.

8  
9 3. Preferential Treatment to Class Representatives or Segments  
10 of Class

11 The proposed Settlement Agreement does not improperly grant  
12 preferential treatment to class representatives. Although the Court has  
13 some minor concerns regarding Plaintiffs’ service awards—as discussed  
14 below—those concerns are insufficient to make this factor weigh against  
15 preliminary approval and can be addressed in more detail at the final  
16 approval hearing.

17  
18 4. Range of Possible Approval

19 “To evaluate the range of possible approval criterion, which focuses  
20 on substantive fairness and adequacy, courts primarily consider plaintiffs’  
21 expected recovery balanced against the value of the settlement offer.”

22 *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1125 (E.D.  
23 Cal. Nov. 17, 2009).

1           Moreover, to evaluate whether a settlement is fundamentally fair, ade-  
2           quate, and reasonable, the Court considers the factors that ultimately inform  
3           final approval: (1) the strength of the plaintiff's case; (2) the risk, expense,  
4           complexity, and likely duration of further litigation; (3) the risk of maintaining  
5           class action status throughout the trial; (4) the amount offered in settlement;  
6           (5) the extent of discovery completed and the stage of the proceedings; (6)  
7           the experience and views of counsel; (7) the presence of a governmental  
8           participant; and (8) the reaction of class members to the proposed settle-  
9           ment. *Harris*, 2011 WL 1627973, at \*7 (citing *Hanlon*, 150 F.3d at 1026).

10  
11           i.       Strength of Plaintiff's Case and Future Risk

12           Plaintiffs' FAC alleges claims for: 1) negligence; 2) negligence per se;  
13           3) breach of confidence; 4) breach of implied contract; 5) intrusion into pri-  
14           vate affairs and invasion of privacy; 6) violation of the Illinois Consumer  
15           Fraud Act; 7) violations of Illinois' Personal Information Protection Act; 8) vi-  
16           olation of Illinois's Security Breach Notification Laws; 9) unjust enrichment;  
17           and 10) declaratory judgment. (FAC ¶¶ 180-308.). Although Class Counsel  
18           argues it can prove its claims, the Settlement Agreement is reasonable as  
19           "data breach cases are among the riskiest and uncertain of all class action  
20           litigation." (Motion at 21.) Accordingly, Plaintiffs and Class Members would  
21           face further litigation risks if the case were not settled. (*Id.*)

22  
23           As it stands, the Settlement Agreement provides distributions to Class  
24           Members on the basis of their expenses and damages, as well as provide  
25           Class Members free identity theft protection services for eighteen months.  
26           (Motion at 22.) Given the relative strength of Plaintiffs' claims, and the risks



1 and costs associated with future complex litigation, the Settlement Agree-  
2 ment’s terms appear to be reasonable. This factor thus favors preliminary  
3 approval.

4  
5 ii. Extent of Discovery Completed and Stage of the  
6 Proceedings

7 This factor requires the Court to evaluate whether “the parties have  
8 sufficient information to make an informed decision about settlement.”  
9 *Linney v. Cellullar Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998).

10  
11 As noted above, the parties litigated diligently since November 2021,  
12 including gathering publicly available information and engaging in informal  
13 discovery, *supra*. Accordingly, the Court finds this factor weighs in favor of  
14 preliminary approval. *See Linney*, 151 F.3d at 1239.

15  
16 iii. Experience and Views of Counsel

17 As stated above, Class Counsel has ample experience litigating class  
18 actions similar to this case and thus have demonstrated the ability to  
19 prosecute vigorously on behalf of the class members. (See Exs. B-D, Berry  
20 Decl. ¶¶ 46-51.) Accordingly, the Court finds this factor weighs in favor of  
21 preliminary approval.

22 //

23 //

24 //

25

26

1           iv.     Presence of a Governmental Participant and Reaction of  
2                     the Class Members to the Proposed Settlement

3           As there is no governmental participant in this action, and the parties  
4 have not yet provided notice to the class members, these factors are  
5 inapposite for the purposes of preliminary approval.  
6

7           v.     The Amount Offered in the Settlement

8           For a settlement to be fair and adequate, “a district court must  
9 carefully assess the reasonableness of a fee amount spelled out in a class  
10 action settlement agreement.” *Staton*, 327 F.3d at 963.  
11

12                     a.     Attorneys’ Fees and Costs

13           When evaluating attorneys’ fees, the Ninth Circuit holds “the district  
14 court has discretion in common fund cases to choose either the percentage-  
15 of-the-fund or the lodestar method.” *Vizcaino v. Microsoft Corp.*, 290 F.3d  
16 1043, 1047 (9th Cir. 2002) (citing *In re Wash. Pub. Power Supply Sys. Sec.*  
17 *Litig.*, 19 F.3d 1291, 1295–96 (9th Cir.1994)).  
18

19           When using the percentage-of-the-fund method, “courts typically set a  
20 benchmark of 25% of the fund as a reasonable fee award and justify any  
21 increase or decrease from this amount based on circumstances in the  
22 record.” *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 455 (E.D.  
23 Cal. May 14, 2013); see *Paul, Johnson, Alston & Hunt v. Graultry*, 886 F.2d  
24 268, 272 (9th Cir. 1989). The percentage may be adjusted upward or  
25 downward based on: (1) the results achieved; (2) the risks of litigation; (3)  
26 the skill required and the quality of work; (4) the contingent nature of the fee;

1 (5) the burdens carried by the class counsel; and (6) the awards made in  
2 similar cases. *Monterrubio*, 291 F.R.D. at 455 (citing *Vizcaino*, 290 F.3d at  
3 1048–50).

4  
5 Class Counsel here intends to seek an award of attorneys’ fees and  
6 costs of no more than \$215,000, approximately 19 percent, of the  
7 settlement value, (SA § IV 7.2; Motion at 8), which is within the Ninth  
8 Circuit’s 25 percent “benchmark award for attorney[s]’ fees.” *Hanlon*, 150  
9 F.3d at 1029. Given the claims, stage of the action at the time of resolution,  
10 results achieved, and other information presented in Plaintiffs’ Motion, the  
11 Court is likely to determine that approximately 19 percent in attorneys’ fees  
12 is warranted and reasonable at the final settlement approval. The Court  
13 notes, however, that Class Counsel has not attached any accounting of past  
14 costs or expenses. Thus, the Court will revisit the costs request at the time  
15 the parties seek final approval of the settlement.

16  
17 b. Incentive Award

18 Named plaintiffs “are eligible for reasonable incentive payments.”  
19 *Staton*, 327 F.3d at 977. Such awards “are intended to compensate class  
20 representatives for work done on behalf of the class, to make up for  
21 financial or reputational risk undertaken in bringing the action, and,  
22 sometimes, to recognize their willingness to act as a private attorney  
23 general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958–59 (9th Cir.  
24 2009).

1           “The district court must evaluate [incentive] awards individually, using  
2 ‘relevant factors includ[ing] the actions the plaintiff has taken to protect the  
3 interests of the class, the degree to which the class has benefitted from  
4 those actions, . . . the amount of time and effort the plaintiff expended in  
5 pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation.”  
6 *Staton*, 327 F.3d at 977.

7  
8           Courts may also consider: the risk to the class representative in  
9 commencing suit, both financial and otherwise; the notoriety and personal  
10 difficulties encountered by the class representative; the amount of time and  
11 effort spent by the class representative; the duration of the litigation; and the  
12 personal benefit (or lack thereof) enjoyed by the class representative as a  
13 result of the litigation. *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294,  
14 299 (N.D. Cal. Aug. 16, 1995). “Courts have generally found that \$5,000  
15 incentive payments are reasonable.” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652,  
16 669 (E.D. Cal. Jun. 24, 2008) (citations omitted).

17  
18           Under the proposed Settlement Agreement, each named Plaintiff will  
19 receive an award of \$2,500. (SA § IV 7.3.) The Court find that the incentive  
20 awards of \$2,500 to each named Plaintiff are reasonable. *See Alberto*, 252  
21 F.R.D. at 669.

22  
23                           c.     Settlement Administrator Costs

24           Timios will retain Kroll Settlement Administration (“Kroll”) to serve as  
25 Claims Administrator. (Berry Decl. ¶ 23.) Plaintiffs selected Kroll after  
26 soliciting bids from three claims administrators, and Kroll submitted the most

1 competitive bid. (*Id.* ¶ 37.) Moreover, “Kroll has a trusted and proven track  
2 record of supporting thousands of class action administrations, with over 50  
3 years of legal administration experience.” (*Id.*) Notice and administration  
4 costs are estimated to cost approximately \$86,000, and Timios shall bear  
5 any costs that exceed this amount. (*Id.* ¶ 36; SA § 9.4.) Accordingly, the  
6 Court is likely to determine that \$86,000 in Administrator Costs is  
7 reasonable at the final settlement approval.

8  
9 d. Conclusion Based on Review of *Hanlon* Factors

10 As most of the *Hanlon* factors weigh in favor of preliminary approval,  
11 the Court finds that the proposed settlement is “within the range of possible  
12 approval” and that notice should be sent to class members. *Vasquez*, 670  
13 F. Supp. 2d at 1125.

14  
15 Nevertheless, the Court stresses that it is unlikely to approve the  
16 litigation costs in their current form at the final approval stage.

17  
18 **C. Notice Procedure**

19 Under Rule 23(e), the Court must “direct notice in a reasonable  
20 manner to all class members who would be bound” by the proposed  
21 settlement. Fed. R. Civ. P. 23(e)(1). Plaintiff must provide notice that is  
22 “timely, accurate, and informative.” *See Hoffmann-La Roche Inc. v.*  
23 *Sperling*, 493 U.S. 165, 172 (1989).

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1. Notice Form

The Court accepts the proposed notice forms. The Short Notice Form and the Postcard Form explains: (1) the nature of the claims involved in the case; (2) the essential terms of the Settlement, including the California Settlement Subclass members; (3) the monetary and non-monetary relief available through a valid claim; (4) Class Members' rights to file a claim, to opt-out, or to object to the Settlement, and specifics on the dates for exercising these rights; (5) the time and location of the Final Approval Hearing; (6) an explanation that each Settlement Class Member has the right to appear at the Final Approval Hearing; and (7) the Settlement Website address and a toll-free number where additional information can be obtained. (Motion at 27-28; Exs. 5, 6.)

The Settlement Website will provide: (1) the Long Notice; (2) the Claim Form; (3) the Preliminary Approval Order; (4) this Settlement Agreement; (5) the operative Amended Class Action Complaint filed in the Litigation; and (6) any other materials agreed upon by the Parties or required by the Court. The Settlement Website also provides Class Members with the ability to complete and submit the Claim Form electronically. (SA § IV 3.2.)

The Long Form explains in detail a "summary of the parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent

1 contemplated herein, and the date, time and place of the Final Fairness  
2 Hearing.” (Ex. 3.)  
3

4 The Claim Form also explains in detail the nature of the action and  
5 terms of the Settlement Agreement, as well as the processes and  
6 requirements to submit a claim. (Ex. 2.)  
7

8 **2. Claims Administration**

9 The Claims Administrator will send notice to Class Members,  
10 establish the Settlement Website, establish a toll-free number, accept or  
11 reject claims, and issue appropriate payments. Within 14 days of  
12 preliminary approval of the Settlement Agreement, Timios will provide the  
13 Claims Administrator the Settlement Class Member information. (SA § IV  
14 3.2.) Within 30 days of preliminary approval, the Claims Administrator will  
15 provide the Short Notice Form by email (Ex. 5) or mail the Postcard Notice  
16 (Ex. 6) to the Settlement Class. (SA § IV 3.2.) Class members shall submit  
17 Claim Forms within 90 days of preliminary approval, and the Claims  
18 Administrator shall accept or reject such Claim Forms within 30 days of  
19 receipt. (*Id.* §§ IV 2.2, 2.5.3.) If accepted, Class Members have 30 days to  
20 accept or reject the offer of payment. (*Id.* § 2.5.4.) Class Members may  
21 dispute a claim decision with a claims referee, who shall make a ruling  
22 within 15 days of the dispute. (*Id.* § 2.5.5.) The Claims Administrator will  
23 issue checks for valid claims within 60 days of the final approval of the  
24 Settlement Agreement, or within 30 days the claim is approved, whichever is  
25 later. (*Id.* § 8.2.)  
26

1 The Court finds that the notice forms and proposed administration  
2 processes are adequate.

3  
4 **D. Class Representative and Class Counsel**

5 As explained above, the Court finds that Plaintiffs will fairly and  
6 adequately protect the interests of the class and that proposed class  
7 counsel, M. Anderson Berry of Clayeo C. Arnold, A Professional Law  
8 Corporation, is well equipped to represent the class.

9  
10 Accordingly, the Court designates named Plaintiffs as Class  
11 Representative for the Settlement Class and appoints M. Anderson Berry of  
12 Clayeo C. Arnold, A Professional Law Corporation, as Class Counsel.

13  
14 **IV. CONCLUSION**

15 For the reasons stated above, most of the factors considered by the  
16 Court favor settlement. Although the Court declines to approve the litigation  
17 costs, the proposed settlement is within the range of possible final approval.  
18 The Court thus **GRANTS** Plaintiffs' Motion for preliminary approval of class  
19 action settlement and conditionally certifies the class for settlement.

20  
21 Within fourteen (14) calendar days of this Order, Timios shall provide  
22 the Claims Administrator the Settlement Class Member List. Within thirty  
23 (30) calendar days of this Order, the Claims Administrator shall disseminate  
24 notice using the templates portrayed in Exhibits 5 and 6 of the Settlement  
25 Agreement, as well as establish the Settlement Website and the toll-free tel-  
26 ephone service.



United States District Court  
Central District of California

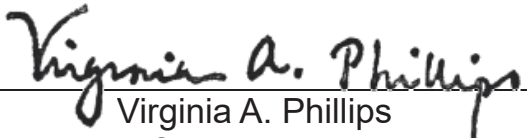
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Class members shall have one-hundred and twenty (120) calendar days from the date of this Order to submit claims, and sixty (60) days from the date of this Order to object or opt out of the settlement.

The final approval hearing will be conducted on October 17, 2022 at 2:00 p.m.

**IT IS SO ORDERED.**

Dated: 5/10/22

  
\_\_\_\_\_  
Virginia A. Phillips  
United States District Judge