

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

SARAH ARMON, ABHI SHETH, LANDON THURMAN, and DALE DEAN, individually and on behalf of all others similarly situated, JANE AND JOHN DOES 1-10, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

WASHINGTON STATE UNIVERSITY,  
Defendant.

No. 17-2-23244-1 SEA (consolidated with Case No. 17-2-25052-0 SEA)

**UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

**I. INTRODUCTION**

Plaintiffs Sarah Armon, Abhi Sheth, Landon Thurman and Dale Dean (“Plaintiffs”) request that the Court preliminarily approve the proposed class action settlement (“Settlement”) that would resolve claims arising out of the security incident that Defendant Washington State University (collectively, “WSU” or “Defendant”) announced it discovered in April 2017, which compromised the private information (“Personal Information”) of over 1 million individuals (the “Security Incident”). The Personal Information compromised in the Security Incident included the names, addresses, Social Security numbers, dates of birth, and other personally identifiable information. The proposed Settlement resolves all claims asserted in this matter and provides substantial relief to the proposed Settlement Class. Accordingly, pursuant to CR 23(e), Plaintiffs move this Court to enter the order

1 attached hereto as Exhibit A, which preliminarily approves the Settlement. Defendant has no objection  
2 to this motion.

3 The proposed Settlement provides Settlement Class Members with an opportunity to submit  
4 a claim for two years of robust Credit Monitoring and Insurance Services and for cash reimbursements  
5 for time expended and out of pocket costs incurred as a result of the Security Incident. In addition,  
6 WSU has committed to valuable injunctive relief in the form of remedial and enhanced security  
7 measures with respect to the Personal Information.

8 Specifically, Settlement Class Members may claim (i) two years of an enhanced version of the  
9 Identity Guard's Individual Total Plan ("Credit Monitoring and Insurance Service(s)"), (ii) cash  
10 reimbursement for out of pocket costs incurred as a result of the Security Incident (up to \$5,000 per  
11 Class Member who submits a valid claim), and (iii) cash reimbursement for time expended as a result  
12 of the Security Incident (at \$15 per hour for a maximum of 3 hours per Settlement Class Member who  
13 submits a valid claim). In the event the total amount of all claims for cash exceeds \$3.25 million, the  
14 amount of each claim for cash shall be reduced *pro rata*. In addition, WSU will pay for (i) all settlement  
15 and administration expenses (estimated to be \$651,254), (ii) a maximum of \$806,194 for court  
16 approved attorneys' fees and expenses, and (iii) service payments of up to \$2,500 for each of the four  
17 Class Representatives (maximum of \$10,000). These features alone provide a minimum value of  
18 \$4,707,448.00 to Settlement Class Members; this amount does not include the value of the Credit  
19 Monitoring and Insurance Services, and the remediation and enhanced security measures.

20 The Settlement is a favorable one for the Settlement Class because it provides meaningful and  
21 direct relief. Thus, Plaintiffs seek preliminary approval of the Settlement, and provisional certification  
22 of a nationwide class for purposes of providing the Settlement Class with notice of the Settlement and  
23 an opportunity to opt-out, object, or otherwise be heard. The proposed Settlement satisfies all criteria  
24 for preliminary settlement approval under Washington law. Accordingly, Plaintiffs move the Court to  
25 take the initial steps in the settlement approval process by: (1) granting preliminary approval to the  
26 proposed Settlement; (2) provisionally certifying the Settlement Class; (3) appointing as Class Counsel:

1 Ahdoot & Wolfson, PC, Bender Law LLC, Mix Sanders Thompson PLLC, and Tousley Brain Stephens  
2 PLLC; (4) approving the proposed notice plan and forms of notice (collectively the “Class Notice”); (5)  
3 appointing Epiq Class Action and Claims Solutions, Inc. (“Epiq”) as the Claims Administrator and Cam  
4 Azari of Hilsoft Notifications as the Notice Expert; and (6) scheduling the final fairness hearing (“Final  
5 Fairness Hearing”).

## 6 II. STATEMENT OF FACTS

### 7 A. Factual Background

8 In addition to offering education, WSU conducts research and development. [Dkt. 38,  
9 Consolidated Complaint], at ¶ 13. WSU collected educational data on the affected 1,193,190 individuals  
10 over at least a 15-year period. *Id.* at ¶ 19. Plaintiffs allege that the data WSU collected is sensitive, and  
11 can range from SAT and ACT scores to social security numbers, addresses, phone numbers, email  
12 addresses, dates of birth, career data, and personal health information. *Id.* ¶ 20. Plaintiffs allege most  
13 of the individuals affected by the Security Incident had no idea that WSU had their Personal  
14 Information, much less how WSU obtained it. *Id.* ¶ 7.

15 The Personal Information was used by WSU’s Social & Economic Sciences Research Center  
16 (SESRC) in Olympia. *Id.* ¶ 18. SESRC created a network back-up on a weekly basis that was saved  
17 onto portable hard drives. SESRC would swap out hard drives on a weekly or bi-weekly basis. When  
18 not in use, the hard drive would be stored in a self-storage unit in Olympia. *Id.* ¶ 5. This self-storage  
19 facility was unmonitored by security cameras. *Id.* ¶ 57. In April of 2017, approximately 722,984 files  
20 were stored on the back-up drive. Of those, 3,057 files contained the Personal Information at issue.  
21 Some of this information was saved in unencrypted format. Declaration of Kim D. Stephens in Support  
22 of Motion for Preliminary Approval of Class Action Settlement (“Stephens Decl.”) ¶ 7. In April of 2017,  
23 the backup hard drives were swapped, and the unused hard drive was placed into a safe located inside  
24 of a self-storage unit. An unknown third party broke and entered into the self-storage unit and stole  
25 the safe and the backup hard drive inside of it. *Id.* ¶ 6.

26 WSU first learned of the Security Incident on April 21, 2017. *Id.* ¶ 6. WSU confirmed the lost  
27

1 hard drive contained Personal Information on April 26, 2017. Complaint ¶ 18. WSU sent notice to the  
2 affected individuals on June 9, 2017, offering to enroll each person for one year of free credit  
3 monitoring. *Id.* WSU also issued a press release announcing the Security Incident. WSU operated a  
4 phone center to answer questions from those who received the notices. Stephens Decl. ¶ 8. In all,  
5 approximately 44,626 individuals activated the free credit monitoring offered to them by WSU. *Id.* ¶  
6 9.

7 The Complaint alleges that Plaintiffs' Personal Information is valuable, and that its substantial  
8 value was damaged as result of the Security Incident. Complaint. ¶ 25-29. Data theft of Personal  
9 Information impairs a person's reputation and credit, and may be used to file fraudulent tax returns,  
10 open credit or other accounts, and engage in other forms of identity fraud. *Id.* Plaintiffs allege that  
11 they have experienced these activities after the Security Incident, or they incurred costs to prevent  
12 these activities such as buying credit monitoring and/or identity theft insurance. WSU disputes that  
13 Plaintiffs incurred these damages as a direct result of the Security Incident, and that any such activities  
14 Plaintiffs have endured were the result of other causes, including data breaches that have occurred  
15 across the country. [Dkt. 66, Answer].

16 **B. Procedural History**

17 Plaintiffs initially filed separate actions. The actions, however, were later consolidated and  
18 Plaintiffs filed a consolidated Complaint. [Dkt. 38]. This Complaint asserted numerous legal theories.  
19 WSU filed a Motion to Dismiss on January 10, 2017. The matter was heard by Judge Donahue on April  
20 6, 2018. Judge Donahue granted WSU's motion as to Plaintiffs' claim of a violation of Washington's  
21 Consumer Protection Act, and denied the remainder of WSU's motion. [Dkt. 58].

22 **C. The Parties Thoroughly Investigated This Case.**

23 Before this action was filed, Plaintiffs' counsel propounded public records requests for certain  
24 documents. Stephens Decl. ¶ 5. After the hearing on WSU's Motion to Dismiss, both parties engaged  
25 in formal discovery with each propounding interrogatories and records requests to the other. WSU  
26 produced approximately 54,505 pages of materials and digital files. Plaintiffs also subpoenaed third  
27

1 parties who also produced voluminous documents. Plaintiffs engaged in a secure inspection of a near-  
2 replica of documents on the hard drive that was stolen. Both parties retained experts. WSU's counsel  
3 interviewed Plaintiffs' expert on computer security. *Id.*

4 **D. Settlement.**

5 Settlement negotiations commenced on November 26, 2018, with a mediation before retired  
6 Judge Bruce Hilyer. *Id.* ¶ 10. A second day of mediation was held on December 14, 2018. The parties  
7 continued negotiations through Judge Hilyer on December 17, 2018, via phone. Thereafter, the parties  
8 continued negotiations directly. *Id.* An agreement to terms was reached on January 23, 2019. *Id.* ¶  
9 11. WSU's Board of Regents considered and authorized the settlement on January 25, 2019. Thereafter,  
10 counsel for the parties drafted and negotiated the written terms over January through April. *Id.* The  
11 Settlement Agreement was executed on April 8, 2019. *Id.*

12 **III. THE PROPOSED SETTLEMENT**

13 The Settlement is set forth in the executed Settlement Agreement attached as Exhibit 1 to the  
14 Declaration of Kim D. Stephens, filed concurrently herewith, and summarized below.

15 **A. The Settlement Class**

16 The "Settlement Class" is defined as:

17  
18 All individuals whose personal information (including but not limited  
19 to social security numbers), financial information, and/or educational  
20 records were on the WSU Social & Economic Sciences Research  
21 Center's hard drive stolen in April 2017 from Quality Self Storage in  
22 Olympia, Washington.

23 SA ¶ 1.39. The Settlement Class is limited to those individuals who were included on the original list  
24 for mailing the written Summary Notice, as defined in ¶ 3.2(d) of the Settlement Agreement. Excluded  
25 from the Class are all persons who properly and timely opt out pursuant to the Settlement Agreement.  
26  
27

1 **B. Considerations**

2 **1. Compensation to the Class**

3 The Settlement Agreement provides for compensation of cash and the Credit Monitoring and  
4 Insurance Services to Settlement Class Members who submit a timely and valid Claim.

5 First, Class Members may submit a claim for reimbursement of time expended as a result of  
6 the Security Incident of up to \$45 (\$15 per hour for a maximum of 3 hours). *Id.* ¶ 2.3. Settlement  
7 Class Members do not need to submit any documentation other than their attestation to receive this  
8 benefit. *Id.* Second, and in addition, Settlement Class Members may also make a claim for out of  
9 pocket expenses incurred as a result of the Security Incident up to a maximum of \$5,000. *Id.* ¶ 2.2.  
10 Such claims must be supported by documents evidencing such costs. *Id.* In the event the aggregate  
11 cash value of all such claims exceed \$3.25 million, then each claimants' cash share shall be reduced *pro*  
12 *rata* (WSU's liability to pay such claims for cash is capped at \$3.25 million). *Id.* ¶ 2.2(a).

13 Third, and in addition to both cash reimbursement options, Settlement Class Members who  
14 submit a valid claim may elect to receive Credit Monitoring and Insurance Services in the form of an  
15 enhanced version of a product called Identity Guard Individual Total Plan. *Id.* ¶ 2.1. The Credit  
16 Monitoring and Insurance Services include the following features:

- 17 • Up to \$1 Million Dollars reimbursement insurance from AIG covering losses due to identity  
18 theft, stolen funds, etc.;
- 19 • Three bureau credit monitoring providing notice of changes to the Participating Settlement  
20 Class Member's credit profile;
- 21 • Real time instant authentication alerts when someone attempts to make a change to the  
22 Participating Settlement Class Member's personal account information within Identity Guard's  
23 network;
- 24 • LexisNexis Authentication Alerts utilizing LexisNexis' database of legal, governmental and  
25 newsworthy incidents (for example, the system searches payday-loan providers and court  
26 records, and also monitors the top ten largest U.S. financial institutions, for attempted or  
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1 actual fraudulent use of the Participating Settlement Class Member’s information);

- 2 • Dark Web Monitoring providing notification if the Participating Settlement Class Member’s
- 3 information such as Social Security number, credit card numbers, financial account numbers,
- 4 and health insurance number are found on the Dark Web;
- 5 • Threat Alerts powered by IBM “Watson” providing proactive alerts about potential threats
- 6 relevant to the Participating Settlement Class Member found by IBM Watson’s AI, for instance:
- 7 breaches, phishing scams, and malware vulnerabilities;
- 8 • Customer support and victim assistance provided by Identity Guard;
- 9 • Anti-phishing and safe Apps for iOS & Android Mobile devices; and
- 10 • Safe browsing software for PC & Mac to help protect the Participating Settlement Class
- 11 Member’s computer against malicious content with an add-on for Safari, Chrome, and Firefox
- 12 web browsers that delivers proactive malware protection by blocking various malware delivery
- 13 channels including phishing, malvertisements, and Flash (the extension also blocks content
- 14 and tracking cookies to help protect personal information).

15 *Id.*

16 The Credit Monitoring and Insurance Services are superior to many competing products on  
17 the market and are tailored to provide Settlement Class Members with the best credit monitoring  
18 available. Stephens Decl., ¶ 14. However, if a Settlement Class Member already has the Individual  
19 Total Plan with Identity Guard, then the term offered to that individual plan under the Settlement will  
20 be extended by the remaining term of the individual’s existing service, so that he or she nonetheless  
21 will receive this valuable benefit. SA ¶ 2.1. The Credit Monitoring and Insurance Services, if made  
22 available to the general public, would be sold for over \$19.99 per month. Stephens Decl. ¶ 13; *see also*  
23 [www.identityguard.com/plans/total](http://www.identityguard.com/plans/total) (last visited April 4, 2019). Accordingly, the retail market value  
24 of this benefit being made available to the Settlement Class is up to \$525 million, excluding the cost of  
25 the product. When WSU sent notification of the Security Incident in June 2017, it offered free credit  
26 monitoring. 44,626 people activated that credit monitoring, or about 3.74% of the Class. If 3.74% of  
27

1 the Class Members activate the Identity Guard product, that value amounts to \$21,409,769.80. *Id.*

2 **2. Injunctive Relief**

3 As a result of this litigation and Settlement, WSU has agreed to implement the following  
4 valuable enhanced remedial and security measures for the benefit of the Settlement Class:

- 5 • Destruction of archived SESRC research data and confirmation of its destruction to  
6 Plaintiffs' counsel.
- 7 ■ Storage of SESRC backup hard drives in a more secure location (confidentially disclosed  
8 to Plaintiff's counsel) with limited access by personnel.
- 9 ■ Conducted data security assessment and audits and implemented extensive new  
10 procedures, policies, technologies, and training in response to the findings.
- 11 ■ Implemented data encryption for servers, backup hard disks, and laptops.
- 12 ■ Terminated an existing information technology contractor and delegated IT systems  
13 oversight to the WSU Office of Research Information Technology.
- 14 ■ Installed sophisticated third party intrusion detection software.
- 15 ■ Implementation of a new Information Security and Network Operation Center.
- 16 ■ Provision of future security audits to Plaintiffs' Counsel to evaluate compliance with  
17 WSU's injunctive relief assurances.

18 SA at ¶¶ 2.10 & 2.11.

19 **3. Settlement Class Representative Service Payments**

20 WSU has also agreed to pay court approved Service Payments to each of the four Settlement  
21 Class Representatives in the maximum amount of \$2,500 each (a total of \$10,000). *Id.* ¶¶ 2.8 & 7.3.

22 This payment recognizes their service to and efforts on behalf of the Settlement Class and is in addition  
23 to the relief they will be entitled to under the terms of the Settlement. The Settlement Class  
24 Representatives' Service Payment, if approved, will be paid by WSU in addition to the other  
25 considerations outlined herein, and will in no way reduce any of the benefits to Settlement Class  
26 Members.

27 By agreeing to act as Settlement Class Representatives, Plaintiffs accepted burdens that were  
not imposed on the rest of the Settlement Class. Unlike unnamed Settlement Class Members, Plaintiffs



1 responded to discovery requests, were available as potential witnesses at deposition and at trial, were  
2 consulted with during settlement negotiations, provided information to assist their expert, and  
3 subjected themselves to all the obligations of a named party. Stephens Decl. ¶ 5. A stipend is therefore  
4 appropriate.

5 Incentive awards, which serve as premiums in addition to any claims-based recovery from the  
6 settlement, promote the public policy of encouraging individuals to undertake the responsibility of  
7 representative lawsuits. *Peterson v. Kitsap Cty. Fed. Credit Union*, 171 Wn. App. 404, 287 P.3d 27 (Div.  
8 2, 2012)(“Incentive awards are intended to compensate class representatives for work done on behalf  
9 of the class, to make up for financial or reputational risk undertaken in bringing the action, and,  
10 sometimes, to recognize their willingness to act as a private attorney general”)(citations omitted); See  
11 *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (courts routinely approve incentive  
12 awards to compensate named plaintiffs for services they provide); see also *Manual for Complex*  
13 *Litigation* (Fourth) § 21.62 n. 971 (2004) (incentive awards may be “merited for time spent meeting  
14 with class members, monitoring cases, or responding to discovery”). Such awards are common and  
15 range from several hundred dollars to many thousands of dollars, although most often they fall within  
16 the \$1,000 to \$3,000 range, as requested here. NEWBERG, at § 17:8 (Noting median incentive award  
17 for class action settlements during 2006-2011 was \$5,250, but that average award in consumer credit  
18 cases was \$1,326.30); SHERRIE R. SAVETT, *Consumer Class Actions: Class Certification Issues, Including*  
19 *Ethical Considerations and Counsel Fees and Incentive Payments to Named Plaintiffs*, Prac. Law. Inst.  
20 pp. 340-345 (1996) (compiling list of 52 cases with incentive awards to class representatives).

21 **C. Attorneys’ Fees and Costs**

22 The Settlement Agreement provides that WSU will pay attorneys’ fees and expenses of up to  
23 \$806,194.00 subject to Court approval. Any such attorneys’ fees and expenses awarded by the Court  
24 will be paid by WSU in addition to the other considerations to the Settlement Class outlined herein,  
25 and will in no way reduce any Settlement Class Member’s recovery. SA ¶¶ 7.1 & 7.6.

26 The parties negotiated the fee only after reaching an agreement on class wide relief. *Id.* ¶ 7.1.  
27

1 The fee award will be split among the five law firms that prosecuted this case. *Id.* ¶ 7.2. The benefits  
2 to Settlement Class Members under the Settlement Agreement are not contingent on the amount of  
3 attorneys' fees or expenses awarded, and the Settlement will be implemented regardless of whether  
4 there is any objection to the fee. *Id.* ¶ 7.6.

5 **D. Settlement Administration and Notice**

6 WSU agreed to pay for all Notice and settlement administration costs. *Id.* ¶¶ 2.7-2.8 & 2.13.

7 Epiq has been hired to perform the notice and settlement administration services required in  
8 the Settlement Agreement. *Id.* ¶ 2. Epiq is an experienced notice and settlement administrator that  
9 specializes in services critical to the effective administration of class action settlements. Declaration of  
10 Cameron Azari ("Azari Decl."), ¶¶ 5-6; SA ¶ 1.7.

11 Epiq will send the Summary Notice and Claim Form for the Credit Monitoring and Insurance  
12 Services to all 1.1 million Settlement Class Members for whom WSU has contact information. SA ¶  
13 3.2(a). This contact information was gathered by WSU during its initial response to the Security  
14 Incident when it sent notice to the Settlement Class about the Security Breach in June 2017. Stephens  
15 Decl. ¶ 8. Given this extensive contact data compilation, and that WSU has already gone through one  
16 round of mailing notice to the Settlement Class less than two years ago, notice to the Settlement Class  
17 by mail is expected to reach more than 90% of the Settlement Class. Azari Decl. ¶¶ 13-14.

18 Further, Class Notices that are returned as undeliverable will be researched to determine if an  
19 alternate address is available. SA ¶ 3.2(d)(iii). A website will be established to allow Settlement Class  
20 Members the ability to obtain additional information and documents about the Settlement, including  
21 the Long Form Notice. *Id.* ¶¶ 1.30 & 3.2(c). Moreover, Settlement Class Members will be able to  
22 download a Claim Form from the Settlement Website or simply submit a claim on line. *Id.*

23 Epiq estimates that the notice mailing and media effort will reach more than 90% of  
24 Settlement Class Members. Azari Decl. ¶¶ 13-14. The Notice Plan is the best practicable under the  
25 circumstances and satisfies due process. *Id.* ¶ 13. When the Notice Plan is completed, Epiq will provide  
26 a report to the Court verifying the implementation of each aspect of the program. SA ¶ 3.2(g).

1                   **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT AND PROVISIONAL**  
2                                   **CERTIFICATION OF THE SETTLEMENT CLASS**

3       **A. Settlement and Class Action Approval Process**

4           As a matter of public policy, courts strongly favor and encourage settlements, particularly in  
5 class actions and other complex matters, where the inherent costs, delays and risks of continued  
6 litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *In re*  
7 *Firestorm 1991*, 106 Wn. App. 217, 22 P.3d 849 (Div. 3, 2001)(“Class action settlements are favored as  
8 an economic use of judicial resources”); *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th  
9 Cir. 1992) (noting that “strong judicial policy . . . favors settlements, particularly where complex class  
10 action litigation is concerned”); *see also* 4 HERBERT B. NEWBERG & ALBA CONTE, NEWBERG ON CLASS  
11 ACTIONS § 11.41 (5th ed. Supp. 2012)(“The compromise of complex litigation is encouraged by the  
12 courts and favored by public policy”) The traditional means for handling claims like those at issue  
13 here – individual litigation – would tax the court system, require a massive expenditure of public and  
14 private resources, and given the relatively small value of the claims of the individual class members,  
15 would be impracticable. The proposed Settlement therefore is the best vehicle for Settlement Class  
16 Members to receive the relief to which they are entitled in a prompt and efficient manner.

17           The MANUAL FOR COMPLEX LITIGATION (4th ed.) describes a three-step procedure for approval  
18 of class action settlements:

- 19                   (1) Preliminary approval of the proposed settlement at an  
20                   informal hearing;
- 21                   (2) Dissemination of mailed and/or published notice of the  
22                   settlement to all affected class members; and
- 23                   (3) A “formal fairness hearing,” or final settlement approval  
24                   hearing, at which class members may be heard regarding the  
25                   settlement, and at which evidence and argument concerning  
26                   the fairness, adequacy, and reasonableness of the settlement  
27                   may be presented.

28           *Id.* at §§ 22.924; 21.63. This procedure safeguards class members’ due process rights and enables the  
29 court to fulfill its role as the guardian of class interests. NEWBERG, at § 11.24.

30           The Court’s preliminary approval will allow Class Members to receive notice of the

1 Settlement's terms and the date and time of the Final Fairness Hearing, at which Class Members may  
2 be heard regarding the Settlement and the Court will hear further evidence and argument concerning  
3 the fairness, adequacy and reasonableness of the Settlement. See MANUAL FOR COMPLEX LITIGATION, §§  
4 13.14, 21.634.

5 **B. The Settlement Meets the Criteria for Preliminary Approval**

6 The purpose of preliminary evaluation of proposed class action settlements is to determine  
7 whether the settlement is fair, adequate and reasonable, and thus whether notice to the class of the  
8 settlement's terms and the scheduling of a formal fairness hearing is worthwhile. *Pickett v. Holland*  
9 *America Line-Westours, Inc.*, 145 Wn.2d 178, 187, 35 P.3d 351 (2001); NEWBERG, at § 11.25. A settlement  
10 is fair, adequate, and reasonable when "the interests of the class as a whole are better served if the  
11 litigation is resolved by the settlement rather than pursued." NEWBERG, at § 11.157 (citing MANUAL FOR  
12 COMPLEX LITIGATION (4<sup>th</sup>) § 21.62. The decision to approve or reject a proposed settlement is committed  
13 to the Court's sound discretion. *Pickett*, 145 Wn.2d at 189 (citing *City of Detroit v. Grinnell Corp.*, 495  
14 F.2d 448, 454-55 (2d Cir. 1974)). The criteria generally utilized to make this determination include:  
15 the likelihood of success by plaintiffs; the amount of discovery or evidence; the settlement terms and  
16 conditions; recommendation and experience of counsel; future expense and likely duration of  
17 litigation; recommendation of neutral parties, if any; number of objectors and nature of objections;<sup>1</sup>  
18 and the presence of good faith and the absence of collusion. *Pickett*, at 188-89.

19 A settlement by definition requires compromise: "[I]t is the very uncertainty of outcome in  
20 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The  
21 proposed settlement is not to be judged against a hypothetical or speculative measure of what might  
22 have been achieved by the negotiators." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir.  
23 1998). "[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning  
24 of highest hopes." *Id.* A court's inquiry into a class action settlement "is not whether the final product  
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26 <sup>1</sup> This factor will not come into play until the Final Settlement Hearing.  
27

1 could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.” *Hanlon*  
2 *v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).<sup>2</sup> It is not the Court’s duty, or place, to ensure  
3 that every party is content with the settlement; such would contravene the very nature of a consensual  
4 settlement. *Pickett*, at 189. The Court’s duty is to look into whether there is inequitable treatment  
5 between class members. *Id.* Here, there is no inequitable treatment among Class Members as all Class  
6 Members are eligible to apply for the same nature of Settlement benefits.

7 Neither formal notice nor a hearing is required at the preliminary approval stage; the Court  
8 may grant such relief upon an informal application by the settling parties, or even on the basis of  
9 information already known, at the Court’s discretion. MANUAL FOR COMPLEX LITIGATION, § 21.632.  
10 Nevertheless, here, the parties have scheduled a short hearing to present this motion.

11 While consideration of the requirements for *final* approval is unnecessary at this stage, the  
12 Settlement not only meets the criteria for preliminary approval, it meets the heightened standard for  
13 final approval because it is fair, adequate, and reasonable. Therefore, it should be preliminarily  
14 approved.

15 **1. This Settlement is the Product of Serious, Informed and Arm’s Length**  
16 **Negotiations**

17 Arm’s-length negotiations conducted by competent counsel constitute *prima facie* evidence of  
18 fair settlements. *M. Berenson Co., Inc. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass.  
19 1987) (citing MANUAL FOR COMPLEX LITIGATION (Second) § 30.41 (1985)) (“where . . . a proposed class  
20 settlement has been reached after meaningful discovery, after arm’s-length negotiation by capable  
21 counsel, it is presumptively fair”). The Settlement here is the result of intensive negotiations that were  
22 held over multiple days of in-person mediation and telephonic conferences between experienced  
23 counsel who are familiar with class action litigation in general and with the legal and factual issues of  
24 this case in particular. Stephens Decl. In negotiating this Settlement, both Plaintiffs’ and Defense  
25 counsel had the benefit of years of experience in class action litigation combined with significant

26 <sup>2</sup> Because CR 23 is identical to the federal rule, Washington courts look to federal decisions  
27 construing the federal rule for guidance. WASH. PRACT. § 23.1; *Pickett*, 145 Wn.2d at 188.

1 experience litigating cases arising out data breach actions across the country. *Id.* ¶¶ 2-4; *See also*  
2 Declarations of Tina Wolfson (“Wolfson Decl.”); Rachel Bender (“Bender Decl.”); and Michael Rhodes  
3 (“Rhodes Decl.”).

4 Settlement negotiations formally began in November with mediation, and continued into  
5 January. Stephens Decl. ¶ 10. Even before and after mediation, counsel for the parties held numerous  
6 phone conferences to establish the parameters of the negotiations and to work out the details inherent  
7 in the deal’s ultimate terms. The negotiations culminated in January 2019 and resulted in an  
8 agreement-in-principle on the substantive terms. The parties negotiated attorneys’ fees and costs and  
9 Class Representative service payments only after reaching an agreement on the benefits to the  
10 Settlement Class. *Id.* Thereafter, WSU’s Board of Regents voted to approve the Settlement. *Id.* ¶ 11.  
11 Plaintiffs’ Counsel support the resulting Settlement as fair, and as providing reasonable relief to the  
12 members of the Class. *Id.* ¶ 15; Wolfson Decl.; Rhodes Decl.; & Bender Decl.

13 **2. The Settlement Provides Substantial Relief for Settlement Class**  
14 **Members and Treats All Class Members Fairly.**

15 The Settlement provides substantial relief for Class Members. All Class Members who submit  
16 a valid and timely Claim Form are entitled to the cash compensations described above and two years  
17 of Credit Monitoring and Insurance Services. The latter has a retail value of \$479.76 per Class Member,  
18 which aggregates up to \$525 million if all Class Members sign up for this valuable this service. This  
19 Credit Monitoring and Insurance Services is designed to protect Class Members from the very harm  
20 alleged in this lawsuit. Specifically, it monitors a Class Member’s credit profile and notifies them of  
21 any changes. It proactively searches the Dark Web (where illegal transactions of Personal Information  
22 occurs) and helps facilitates removal of Personal Information on the Dark Web. Further, in the event  
23 a Class Member’s Personal Information has been used improperly, such as through opening a credit  
24 account or filing a fraudulent tax return, the \$1 million in insurance benefits stands to compensate the  
25 Class Members for their loss and assist in remedying the problem.

26 As for the cash benefits, a Class Member is eligible to be compensated at \$15 per hour for up  
27 to three hours’ worth of time in investigating the WSU Security Incident, enrolling in previous credit

1 monitoring made available to them, checking their credit and other activities they engaged in  
2 responding to the Security Incident.

3 For those Class Members who have already incurred damages, they may apply for  
4 extraordinary benefits; i.e., cash compensation for expenses they already paid for up to \$5,000. The  
5 procedure for doing this is straightforward: the Class Member completes the Online Claim Form and  
6 attaches their receipts or other proof of payment. The claim is then reviewed by the Settlement  
7 Administrator, and if approved, is paid. If further information is needed by the Settlement  
8 Administrator, then the Class Member will be notified and will have 30 days to submit additional  
9 information or documentation.

10 **3. The Requested Attorneys' Fees Are Fair and Reasonable**

11 Pursuant to the Settlement, proposed Class Counsel (five law firms) will collectively seek an  
12 award of \$806,194.00 in attorneys' fees and expenses. This amount was negotiated only after the  
13 parties agreed to all substantive terms of the Settlement. Stephens Decl. ¶ 10.

14 Subject to the Court's approval, WSU has agreed to pay this amount to proposed Class Counsel  
15 in addition to the relief it is making available to the Class. The requested fee is supported by both the  
16 lodestar and percentage-of-the-fund methods that courts use to determine fees in class action cases.  
17 *Vizcaino v. Microsoft Corp.*, 142 F. Supp.2d 1299, 1301 (W.D. Wash. 2001); *Lobatz v. U.S. West Cellular*  
18 *of California, Inc.*, 222 F.3d 1142, 1147 (9th Cir. 2000) ("the aggregate amount of attorneys' fees and  
19 class settlement payments may be viewed as a constructive class common-fund"). This requested fee  
20 amounts to 24.8% of the cash compensation WSU is making available to the Class, which is in line  
21 with the 25% benchmark that Courts in the Ninth Circuit have coalesced around. *In re Bluetooth*  
22 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). However, in reality the percentage is  
23 significantly lower because it does not take into account the value of the following considerations to be  
24 paid and /or performed by WSU: (i) notice and administration costs (estimated to be approximately  
25 \$651,254), (ii) the injunctive relief provisions of the Settlement, (iii) the attorneys fees and expenses  
26 themselves (which is also a benefit to the Class), (iv) the Service Payments, and (v) the Credit  
27

1 Monitoring and Insurance Services. The market value of the Credit Monitoring and Insurance Service  
2 made available to Class Members is approximately is \$19.99 per month. Here, Class Members who  
3 submit claims will receive two years of this service, which is a total value of \$479.76 per Class Member.  
4 That represents over \$525 million in market value made available to the Class. Even if the same  
5 “claims rate” of 3.74% of Class Members activate the Identity Guard product, that market value  
6 amounts to \$21,409,769.80. Stephens Decl., ¶ 13. Finally, the changes in WSU’s data security practices  
7 that have already occurred and which will continue to occur as a result of the injunctive relief Plaintiffs’  
8 Counsel obtained from WSU are substantial and valuable. When all of the benefits are valued,  
9 proposed Class Counsel’s fee request is far below 24.8%, and imminently reasonable.

10 **C. The Court Should Provisionally Certify the Settlement Class**

11 If the Court finds the proposed Settlement within the range of reasonableness, provisional  
12 certification of the Class is appropriate and necessary to inform Class Members of the existence and  
13 terms of the proposed Settlement, of their right to be heard on its fairness, of their right to opt out,  
14 and of the date, time and place of the formal fairness hearing. See MANUAL FOR COMPLEX LITIGATION, §  
15 21.633. Certification of a settlement class requires analysis of the factors defined in CR 23. *Pickett*,  
16 145 Wn.2d at 188-89. Washington courts liberally interpret CR 23 because the rule avoids the  
17 multiplicity of litigation, saves class members the costs and trouble of filing individual lawsuits, and  
18 frees the defendant from the harassment of identical future litigation. *Chavez v. Our Lady of Lourdes*  
19 *Hospital at Pasco*, 190 Wn.2d 507, 515, 415 P.3d 224 (2018)(citing *Smith v. Behr Process Corp.*, 113 Wn.  
20 App. 306, 318, 54 P.3d 665 (Div. 2, 2002)).

21 **1. The Rule 23 Certification Requirements Are Satisfied**

22 Rule 23(a) requires the following criteria be met in order for a class to be certified: (1)  
23 numerosity of claimants; (2) questions of law or fact are common to the Class; (3) the claims of the  
24 Class representative are typical of the claims of the Class; and (4) the Class representative will fairly  
25 and adequately protect the interests of the Class. These prerequisites are met here for purposes of  
26 settlement.  
27



1 a. The Class is so numerous that joinder of all members is impracticable

2 The numerosity requirement is satisfied where “the class is so numerous that joinder of all  
3 members is impracticable.” *Kavu, Inc. v. Omnipack Corp.*, 246 F.R.D. 642, 647 (W.D. Wash. 2007)  
4 (court found that sending unsolicited faxes to at least 3,000 recipients satisfied numerosity). Although  
5 there is no specific number required to satisfy the numerosity requirement, courts generally find that  
6 numerosity is satisfied when there are at least 40 class members. *Our Lady of Lourdes*, 190 Wn.2d at  
7 520; *Agne v. Papa John’s Int’l, et al.*, 286 F.R.D. 559, 567 (W.D. Wash. 2012). Here, the parties estimate  
8 the Class to be comprised of 1,193,190 individuals. Stephens Decl. ¶¶ 8 & 13. It is impracticable to join  
9 1.1 million putative members of the Settlement Class and the numerosity requirement is clearly  
10 satisfied.

11 b. There are common issues of law and fact

12 It is not necessary that every question of law or fact is common to the class. *Abdullah v. U.S.*  
13 *Sec. Associates, Inc.*, 731 F.3d 952, 957 (9th Cir. 2013). Instead, Rule 23(a)(2) requires only a “single  
14 *significant* question of law or fact.” *Abdullah* 731 F.3d at 957 (quoting *Mazza v. Am. Honda Motor Co.*,  
15 666 F.3d 581, 589 (9th Cir. 2012)). Commonality requires courts to “find that determination of a  
16 common contention’s truth or falsity will resolve an issue that is central to the validity of each one of  
17 the claims in one stroke.” *Id.* (internal quotations omitted). In this way, “[w]hat matters to class  
18 certification . . . is not the raising of common ‘questions’ even in droves but, rather the capacity of a  
19 classwide proceeding to generate common answers apt to drive the resolution of the litigation.” *Wal-*  
20 *Mart Store, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). Here, the parties have reached a resolution of  
21 the litigation, driven in large part by the common issues of law and fact that will apply to the Class.

22 In this case, Class Members are all confronted with the same issue: they all allegedly had their  
23 Personal Information exposed as a result of the theft of the hard drive that they allege WSU negligently  
24 stored in a self-storage unit unencrypted. In the absence of class certification and settlement, each  
25 individual Class Member would be required to litigate a long list of common issues of law and fact, all  
26 relating to Defendant’s alleged common course of conduct that allowed the hard drive to be stolen and  
27 their Personal Information exposed. [Dkt. 38, Amd. Complaint at ¶¶ 17-23]. Rule 23(a)(2)’s

1 commonality requirement is satisfied. Numerous data breach cases have been certified across the  
2 country for settlement purposes. Stephens Decl. ¶ 12.

3 c. The Class representative's claims are typical

4 Representative claims are typical of the class claims if they are “reasonably coextensive with  
5 those of the absent class members.” *Hanlon*, 150 F.3d at 1020; *see also Hansen v. Ticket Track, Inc.*,  
6 213 F.R.D. 412, 415 (W.D. Wash. 2003). The typicality element examines whether: (1) the case is based  
7 on conduct that is not unique to the plaintiff; (2) the class members have been injured by the same  
8 conduct as the plaintiff; and (3) the class members have the same or a similar injury to the plaintiff.  
9 *Agne*, 286 F.R.D. at 568. “When it is alleged that the same unlawful conduct was directed at or affected  
10 both the named plaintiff and the class sought to be represented, the typicality requirement is usually  
11 satisfied, irrespective of varying fact patterns which underlie individual claims.” *Kavu*, 246 F.R.D. at  
12 648 (citing *Smith v. University of Washington Law School*, 2 F.Supp.2d 1324, 1342 (W.D. Wash. 2007)).  
13 The Class Representatives’ claims “need not be identical to the claims of other class members, but the  
14 class representative must be part of the class and possess the same interests and suffer the same injury  
15 as the class members.” *Rodriguez v. Carlson*, 166 F.R.D. 465, 473 (E.D. Wash. 1996).

16 Here, Plaintiffs have the same claims as the Class, and must satisfy the same elements of every  
17 other Class Member. Supported by identical legal theories, Plaintiffs and all Class Members share  
18 claims based on the same course of conduct – WSU’s storing of their Personal Information unencrypted  
19 onto a hard drive stored offsite at an unmonitored self-storage unit. Plaintiffs and all Class Members  
20 have allegedly been injured in the same manner by having their valuable Personal Information  
21 exposed.

22 d. The named Plaintiffs and their counsel adequately represent the  
23 proposed Class

24 The adequacy of representation requirement is satisfied if: (1) the class representative is  
25 represented by qualified and competent counsel; and (2) the class representative’s interests do not  
26 conflict with the interests of the proposed class members. *See Hanlon*, 150 F.3d at 1020; *see also*  
27 *Hansen*, 213 F.R.D. at 415; *Fernandez v. Dep’t of Social & Health Svcs.*, 232 F.R.D. 642, 645 (E.D. Wash.

1 2005). Plaintiffs satisfy both prongs of the adequacy requirement.

2 First, Plaintiffs and each Class Member allegedly have been injured in the same manner.  
3 Complaint. ¶38. Plaintiffs assert the same legal claims and theories as those of all Class Members. *Id.*  
4 ¶. Plaintiffs seek the identical relief that would be sought by all members of the Class. No known  
5 conflict exists between Plaintiffs and the proposed Class. Stephens Decl. ¶ 10. Plaintiffs agreed to  
6 assume the responsibility of representing the Class, which responsibility includes responding to  
7 discovery requests, testifying at a deposition or trial and diligently pursuing this action in cooperation  
8 with counsel. *Id.* ¶ 5. Plaintiffs have taken seriously their obligations to the Class. *Id.* Nothing more  
9 is required.

10 Second, proposed Class Counsel have extensive experience and expertise in prosecuting  
11 complex actions, including class and data breach actions. *Id.* ¶¶ 2-4; Wolfson Decl.; Bender Decl.; &  
12 Rhodes Decl. In pursuing this litigation vigorously, Plaintiffs advanced and will continue to advance  
13 and fully protect the interests of the Class. Accordingly, CR 23(a)(4)'s requirement of adequate  
14 representation is satisfied.

15 **2. The Proposed Settlement Class Meets the Predominance and**  
16 **Superiority Requirements of Rule 23(b)(3)**

17 If the elements of Rule 23(a) are met, a class action is maintainable if one of the subsections of  
18 Rule 23(b) is also satisfied. *Hanlon*, 150 F.3d at 1022. This action is well-suited for certification under  
19 Rule 23(b)(3) in the context of Settlement because questions common to the Class Members  
20 predominate over questions affecting only individual Class Members, and the class action device  
21 provides the best method for the fair and efficient resolution of the Class's claims. *Id.* Indeed,  
22 Defendant supports class certification for the purpose of effectuating the proposed Settlement. When  
23 addressing the propriety of class certification, the Court should take into account the fact that, in light  
24 of the Settlement, trial will now be unnecessary, and so manageability of the Class for trial purposes  
25 is not relevant to the Court's inquiry. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

26 a. Common questions predominate.

27 A class action is appropriate under CR 23(b)(3) if "questions of law or fact common to the

1 members of the class predominate over any questions affecting only individual members ...” The  
2 predominance requirement is more demanding than the commonality requirement, but does not  
3 demand unanimity of common questions; instead it simply requires that common questions outweigh  
4 individual issues. *King v. Riveland*, 125 Wn.2d 500, 519, 886 P.2d 160 (1994). This inquiry addresses  
5 whether there is a common nucleus of operative facts in each class member’s claim. *Chavez v. Our*  
6 *Lady of Lourdes Hospital at Pasco*, 190 Wn.2d 507, 516, 415 P.3d 224 (2018). “When common  
7 questions present a significant aspect of the case and they can be resolved for all members of the class  
8 in a single adjudication, there is clear justification for handling the dispute on a representative basis  
9 rather than on an individual basis.” *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las*  
10 *Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001) (citing *Hanlon*, 150 F.3d 1011, 1022). Even a  
11 single individual factual or legal issue may satisfy the predominance inquiry so long as it is common  
12 among the class and is an overriding issue in the case. *Our Lady of Lourdes*, 190 Wn.2d at 519.

13 Common questions predominate here for purposes of settlement. Common questions include  
14 whether (1) WSU acted negligently in storing Class Members’ Personal Information in unencrypted  
15 format on a hard drive in a self-storage unit; (2) whether WSU acted negligently in even having the  
16 Class Members’ Personal Information at the time of the Security Incident; (3) whether WSU had  
17 appropriate security measures in place to prevent the zone of danger such as the loss; (4) if WSU had  
18 appropriate procedures in place and whether WSU followed them; (5) whether WSU followed the data  
19 breach notification statute timely; (6) what the thief of the hard drive did with the data on it; and (7)  
20 whether the Class Members’ Personal Information was used or accessed. Predominance is satisfied.

21 b. Class treatment is superior to alternative methods of adjudication

22 The Court should certify the Class if it finds that a “class action is superior to other available  
23 methods for fair and efficient adjudication of the controversy.” CR 23(b)(3). “A class action may be  
24 superior if class litigation of common issues will reduce litigation costs and promote greater efficiency,  
25 or if no realistic alternative exists.” *Connor v. Automated Accounts, Inc.*, 202 F.R.D. 265, 272 (E.D.  
26 Wash. 2001). Factors of superiority include whether members of the class have an interest in  
27

1 individually controlling the litigation; the extent and nature of litigation concerning the controversy  
2 already commenced by other members of the class, the desirability of concentrating the litigation of  
3 the claims in the particular forum and the difficulties likely to be encountered in the management of  
4 the class action. CR 23(b)(3).

5 Here, Class Members have not expressed an interest in individually controlling the litigation  
6 because no other lawsuits have been filed. This is likely due to the exorbitant costs associated with  
7 bringing data breach actions because of the document-intensive discovery and expenses of experts  
8 necessary to prove the claims. Judicial economy is enhanced by allowing these claims to be processed  
9 *en masse*. That is why a class action can prove superior. It is desirable to concentrate the claims in  
10 this forum, which is in Washington State where the Defendant operates and the majority of Class  
11 Members reside. Concentrating the claims into one forum and certifying the class is likely the only  
12 way the Class Members' rights will be vindicated. *Our Lady of Lourdes*, 190 Wn.2d at 524. The parties  
13 do not anticipate encountering difficulties with the administration of this Settlement that would rise  
14 to the level of preventing class treatment. Indeed, a class action is the superior method of adjudicating  
15 consumer claims arising from this Security Incident—just as in other, similar, data breach cases where  
16 classwide settlements have been approved. *See, e.g., In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573,  
17 585 (N.D. Cal. 2015); *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351,  
18 at \*2 (N.D. Ga. Aug. 23, 2016); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, 2009  
19 WL 5184352, at \*6–7 (W.D. Ky. Dec. 22, 2009). Class treatment is superior for Settlement in this case

20 **3. The Proposed Settlement Class is of the Type Condoned by the Supreme**  
21 **Court**

22 The U.S. Supreme Court has established the propriety, and recognized the necessity, of  
23 settlement class certification in cases such as these which involve identifiable class members, and  
24 relatively small and similar economic damages. *Amchem Prods., Inc.*, 521 U.S. at 620. Noting that  
25 Federal Rule of Civil Procedure 23(b)(3) aims primarily at vindicating “the rights of groups of people  
26 who individually would be without effective strength to bring their opponent into court at all,” the  
27 Supreme Court declared cases like this as a paradigm for class treatment:

1 The policy at the very core of the class action mechanism is to  
2 overcome the problem that small recoveries do not provide the  
3 incentive for any individual to bring a solo action prosecuting his or  
4 her rights. The class action solves this problem by aggregating the  
5 relatively paltry potential recoveries into something worth someone's  
6 (usually an attorney's) labor.

7 *Id.* at 617 (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997)). Washington's  
8 Supreme Court is in accord. *Our Lady of Lourdes*, 190 Wn.2d at 522-524.

9 The present action involves a single Defendant and economic (rather than personal injury)  
10 damages, which is precisely the type of "core" class action endorsed in *Amchem*. Without this class  
11 action – and without this Settlement – most Class Members would be "without effective strength to  
12 bring their arguments into court at all." *Id.* Unlike the class disapproved in *Amchem*, which presented  
13 individualized personal injury issues and future-injury classes, the proposed Class here seeks only  
14 economic damages.

#### 15 **D. The Proposed Notice Program is Constitutionally Sound**

16 To protect their rights, the Court must provide Class Members with the best notice practicable  
17 regarding the proposed Settlement. CR 23(c)(2). The best practicable notice is that which is  
18 "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of  
19 the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover*  
20 *Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

21 The Claims Administrator will send direct notice to all Class Members via U.S. mail. Between  
22 the direct mail and webpage hosting that will provide information about the case and Settlement,  
23 approximately 90% of Class Members are expected to be reached.

24 As for the Class Notice itself, it is carefully crafted to fully inform the Class about the claims.

25 As stated in the MANUAL OF COMPLEX LITIGATION, a settlement notice should:

- 26 • Define the class;
- 27 • Describe clearly the options open to the class members and the deadlines for taking action;
- Describe the essential terms of the proposed settlement;
- Disclose any special benefits provided to the class representatives;

- Provide information regarding attorneys' fees;
- Indicate the time and place of the hearing to consider approval of the settlement, and the method for objecting to or opting out of the settlement;
- Explain the procedures for allocating and distributing settlement funds, and, if the settlement provides different kinds of relief for different categories of class members, clearly set out those variations;
- Provide information that will enable class members to calculate or at least estimate their individual recoveries; and
- Prominently display the address of class counsel and the procedure for making inquiries.

MANUAL FOR COMPLEX LITIGATION, § 21.312. Both the Long Form Notice and Summary Notice have clear headings and call-outs addressing each of these requirements. SA, Exhibits B-C. The Notice Plan and Notices satisfy the requirements of due process and is the best practicable under the circumstances.

**E. Scheduling Final Approval Hearings is Appropriate**

The last step in the Settlement approval process is a Final Fairness Hearing at which the Court may hear all evidence and argument necessary to make its Settlement evaluation. Proponents of the Settlement may explain the terms and conditions of the Settlement, and offer argument in support of final approval. In addition, Settlement Class Members, or their counsel, may be heard in support of or in opposition to the Settlement Agreement. The Court will determine after the Final Fairness Hearing whether the Settlement should be approved, and whether to enter a final order and judgment under CR 23(e). Plaintiffs request that the Court set a date for a hearing on final approval at the Court's convenience in or after October, 2019.

DATED this 8th day of April, 2019.

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**Attorneys for Plaintiffs and Class**

I certify that this memorandum contains 8,014 words, in compliance with the Local Civil Rules.



1 **CERTIFICATE OF SERVICE**

2 Pursuant to LGR 30 (B)(i), I certify that on this date I electronically served a copy of the  
3 foregoing document via the e-service feature within the clerk's online eFiling application upon the  
4 following parties:  
5

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28 Dated this 8<sup>th</sup> day of April, 2019, at Seattle, Washington.

29 

30 Nadine Morin, Legal Assistant

31 6366/001/534658.1

# **EXHIBIT A**

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THE HONORABLE LINDA C. INVEEN

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

SARAH ARMON, ABHI SHETH, LONDON THURMAN, and DALE DEAN, individually and on behalf of all others similarly situated, JANE AND JOHN DOES 1-10, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

WASHINGTON STATE UNIVERSITY,

Defendant.

No. 17-2-23244-1 SEA (consolidated with Case No. 17-2-25052-0 SEA)

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

Plaintiffs, by unopposed motion, have submitted a proposed Class Action Settlement Agreement (“Settlement Agreement”) to the Court for review. Having reviewed the Settlement Agreement and Plaintiffs’ motion and supporting declarations, the Court FINDS, CONCLUDES, and ORDERS as follows:

1. The Court concludes that the Settlement Agreement is the result of arms-length negotiations between the parties after twenty months of contested litigation. The Settlement Agreement has no obvious defects and is within the range of possible settlement approval, such that the terms are reasonable and notice to the Class is appropriate. Capitalized terms appearing in this Order have the same meaning as used in the Settlement Agreement.

1           2.       The proposed notices to be mailed to the Class and posted on the internet at  
2 [www.WSUSettlement.com](http://www.WSUSettlement.com), examples of which are attached to the Settlement Agreement and are  
3 sufficient in detail to provide sufficient notice of the Settlement Agreement to the Class. The  
4 proposed plan of distribution of the notice through mail and establishment of a website are  
5 likewise sufficient.

6           3.       The forms of Notice fairly, plainly, accurately, and reasonably inform Class  
7 members of: (1) appropriate information about the nature of this litigation, the Settlement, the  
8 Class definition, the identity of Class Counsel, and the essential terms of the Settlement; (2)  
9 appropriate information about Class Counsel's forthcoming application for attorneys' fees and  
10 the proposed incentive award to the Class Representative; (3) appropriate information about how  
11 to participate in the Settlement; (4) appropriate information about this Court's procedures for  
12 final approval of the Settlement, and about Class Members' right to appear through counsel if  
13 they desire; (5) appropriate information about how to challenge or opt-out of the Settlement, if  
14 they wish to do so; and (6) appropriate instructions as to how to obtain additional information  
15 regarding this litigation and the Settlement. In addition, pursuant to CR 23(c)(2)(B), the Notice  
16 informs Class Members that any Class Member who fails to opt-out will be prohibited from  
17 bringing a lawsuit against Defendants based on or related to any of the claims asserted by  
18 Plaintiff.

19           4.       The Court finds that the factors of CR 23(a) are satisfied here. The proposed class  
20 consists of over 1 million people, and joinder is therefore impracticable. The claims asserted by  
21 the Plaintiffs are both common and typical of the claims of the class members. The Court finds  
22 no conflict of interest presented among Class Counsel or Plaintiffs with the Class. In addition,  
23 the Court finds that the factors of CR 23(b) are also satisfied. The Court finds both factual  
24 questions and legal issues that are common to the Plaintiffs' claims and the Class which  
25 predominate over any individualized issues. Certification of the Class for settlement purposes is  
26  
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1 superior to piecemeal litigation of the Plaintiffs' and Class members' claims. The Court therefore  
2 certifies as the Settlement Class the following:

3 All individuals whose personal information (including but not  
4 limited to social security numbers), financial information, and/or  
5 educational records were on the WSU Social & Economic  
6 Sciences Research Center's hard drive stolen in April 2017 from  
Quality Self Storage in Olympia, Washington.

7 The Settlement Class is limited to those individuals who were included on the original list for  
8 mailing the written Summary Notice, as defined in ¶ 3.2(d) of the Settlement Agreement.

9 5. The Court appoints Michael K. Rhodes of Mix Sanders Thompson PLLC; Kim  
10 D. Stephens and James Bulthuis of Tousley Brain Stephens PLLC; Rachel R. Bender of Bender  
11 Law, PLLC; and Tina Wolfson of Ahdoot & Wolfson, PC, as the Proposed Settlement Class  
12 Counsel.  
13

14 6. The Court appoints Sarah Armon, Abhi Sheth, Landon Thurman and Dale Dean  
15 as Settlement Class Representatives.

16 7. The Court appoints Epiq as the Settlement Administrator in accordance with the  
17 terms of the Settlement Agreement, and finds, based on the Declaration of Cam Azari that Epiq  
18 has sufficient knowledge, skill and expertise to effectively distribute the Notice and to handle the  
19 administration of claims to be submitted by the Class. The Settlement Administrator shall  
20 distribute Notice to the Class as provided by the Settlement Agreement. The Court appoints Cam  
21 Azari as Notice Specialist.

22 8. The Court appoints the Honorable Bruce Hilyer (Ret.) to serve as Class Referee.

23 9. Within 10 days of the date of entry of this Order, the Settlement Administrator  
24 shall establish the settlement website [www.WSUSettlement.com](http://www.WSUSettlement.com) for the posting of Notice and  
25 the Claim Form as provided in the Settlement Agreement. A copy of this Order, the complaint,  
26 Class Counsel's motion for attorney's fees, and motion for final approval shall also be posted on  
27

1 the settlement website. Additional filings in the case may be posted on the site at the request of  
2 one or more of the parties.

3 10. Within 30 days of the date of entry of this Order, the Settlement Administrator  
4 shall have sent the Notice and Claim Form substantially in the form specified in the Settlement  
5 Agreement.

6 11. Class Counsel shall file their motion for attorney fees, costs, and class  
7 representative incentive award within 160 days of the date of entry of this Order.

8 12. Within 160 days of the date of entry of this Order, Class Counsel shall file a  
9 motion for entry of Final Judgment approving the Settlement Agreement and determining the  
10 Fee Award and any incentive award to the Class Representative.

11 13. The Final Approval Hearing is scheduled for \_\_\_\_\_ .m on \_\_\_\_\_,  
12 2019, at the King County Superior Courthouse, 516 Third Avenue, Courtroom W-864, Seattle,  
13 Washington. Class Counsel and/or WSU may file a reply to any objections to the Settlement  
14 Agreement or opposition to Class Counsel's fee request no later than seven days before the Final  
15 Approval Hearing.

16 14. **All Notice required by this Order and the Settlement Agreement shall notify**  
17 **the Class of the Objection/Exclusion Deadline, which shall be the date which is the 90th day**  
18 **after the date the Settlement Administrator has sent Notice.**

19 15. **All Notice required by this Order and the Settlement Agreement, as well as**  
20 **the Claim Form, shall notify the Class of the Claims Deadline, which shall be a date which**  
21 **is 120 days after the date Notice is sent to the class as specified in paragraph 10 of this**  
22 **Order.**

23 DATED this \_\_\_\_\_ day of April, 2019.

24  
25 \_\_\_\_\_  
26 The Honorable Laura Inveen  
27