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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL – SPRING STREET COURTHOUSE

SIRINE ADLOUNI,

Plaintiff,

v.

UCLA HEALTH SYSTEMS
 AUXILIARY, et al.,

Defendants.

Lead Case No. BC589243 (*Adlouni*)

Consolidated and Related to:
 BC589327 (*Ortiz*), BC590219 (*Allen*),
 BC590344 (*A.Y.*), BC590534 (*Brooks*),
 BC590942 (*Hawkins*), BC590943 (*Most*),
 BC590990 (*Gambin*), BC591185 (*Liberatore*),
 BC591192 (*Urnovitz*), BC591624 (*Alexandria*),
 BC592539 (*Snyder*), BC593562 (*Williams*),
 BC593527 (*Deville*), BC594104 (*Koci*),
 BC595049 (*Jenani*), BC598189 (*Edelstein*)

Assigned for All Purposes to:
Hon. Daniel J. Buckley, Dept. 1, Spring Street

**REPLY IN SUPPORT OF MOTION FOR
 FINAL APPROVAL OF CLASS ACTION
 SETTLEMENT**

BY FAX

Date: June 18, 2019
 Time: 9:00 a.m.
 Judge: Daniel J. Buckley
 Dept.: 1, Spring Street Courthouse

Date Filed: July 24, 2015
 Trial Date: None

1 **I. Introduction**

2 Plaintiffs submit this reply in support of their motion for final approval of the class
3 settlement. This reply provides the Court with updated information on the dissemination of
4 Class Notice, opt outs and claims rate, and responds to the two purported objectors.

5 Preliminary approval of the proposed settlement was granted on February 21, 2019.
6 After a robust notice program designed to maximize notice to the class members affected by the
7 cyberattack on the UCLA Health System’s computer system, response has been overwhelmingly
8 positive and resulted in applications from thousands of class members seeking benefits from the
9 proposed settlement. Only two class members filed objections. One is legally precluded from
10 objecting because she timely opted out of the case before she objected. The other, who indicates
11 that she will attend the final approval hearing, styled her submission as an objection, but has no
12 complaint about the settlement’s terms. She focuses on telling the Court the problems
13 experienced from her own identity theft, as she also told Class Counsel in telephone
14 conversations. She does not mention the settlement terms and did sign up for the free two-year
15 identity protection/insurance package.

16 Given the overwhelming support for the settlement and the lack of any real objection,
17 the proposed settlement should be fully and finally approved.

18 **II. The Notice Program, Identity Theft Protection Enrollment and Claims**

19 Notice was provided to class members as detailed in the accompanying Supplemental
20 Declaration of Cameron R. Azari, Esq. (“Azari Sup. Decl.”). This notice plan was approved by
21 the Court and carefully tailored to reach class members and fairly apprise them of the settlement
22 with a clear and thorough explanation of the case, the terms of the proposed settlement, the
23 release, the maximum amount Plaintiffs’ Counsel may seek for attorneys’ fees and expenses,
24 the amount Plaintiffs may seek as service awards, the date, time, and place of the final approval
25 hearing, and the procedure for class members to opt out or object to the settlement. *See*
26 Declarations of Cameron Azari filed in support of Preliminary Approval of Settlement (dated
27 October 23, 2018 and January 31, 2019).

28

1 The initial postcard notice was completed by March 20. By mid-May, 3,425,467 double-
2 postcard notices and 838,639 email notices were sent to class members, as well as a detailed
3 notice in English or Spanish that was mailed to 631 persons who requested one by way of the
4 toll-free telephone number. Azari Sup. Decl., ¶¶ 6-8. In addition, 412,631 double-postcard
5 notices were re-mailed where the initial address to which notice was directed was determined to
6 be erroneous. *Id.*, ¶ 8. Two sets of email reminder notices were sent to class members who had
7 not responded on May 6, 2019 and May 20, 2019. *Id.*, ¶ 9.

8 In addition to the U.S. Mail and Email notice program, a second phase of internet Banner
9 Noticing on the Google Display Network and Facebook began on May 4, 2019 and is intended
10 to run through June 5, 2019. *Id.*, ¶¶ 10-12. The www.UCLAHealthCyberSettlement.com
11 website remains live and as of this month received 91,191 unique visitors to the site with more
12 than 367,289 website pages presented. *Id.*, ¶ 15.

13 In addition to the formal notice program, ID Experts (the firm providing the ID protection
14 package) sent an email to approximately 130,000 of the people for whom they had email
15 addresses, that had signed up for the original one-year protection package when offered by
16 UCLA starting in July 2015 when the cyber-attack was disclosed. The parties also requested,
17 and ID Experts agreed to send a second email to that group on June 3, 2019.

18 By the end of May, the notice efforts resulted in the submission of 106,245 ID Experts
19 Enrollment Forms, 1,567 Preventive Measures Claim Forms, and 924 Unreimbursed Loss Claim
20 Forms. Azari Sup. Decl., ¶ 17. Epiq, the Claim Administrator, continues to receive and log
21 incoming claims, including additional requests for the ID protection package at a brisk rate that
22 continues to run at several thousand per week, with signups so far ranging from a low of 4,335
23 per week to a high of more than 29,000 per week. These robust signups continuing through the
24 date of this filing, demonstrate the class members' favorable view of the settlement and their
25 willingness to take advantage of the valuable benefits it offers.

26 The 106,245 signups to date for the free two-year protection package provided by ID
27 Experts demonstrates the value this settlement will provide to the class members. The ID
28 protection package has a retail value of \$9.95 per month or approximately \$239 per sign up over

1 the 24-month term of the plan. See Declaration of Jeff S. Westerman ISO Plaintiffs’ Motion for
2 Final Approval of Class Action Settlement and Request for Attorneys’ Fees and Expenses and
3 Plaintiff Service Awards (filed May 6, 2019) (“Westerman Decl.”), ¶ 7. With 106,245 signups
4 to date, that represents a value to class members of more than \$25.3 million, which value will
5 increase as signups are continuing.

6 **III. The Class Response to the Proposed Settlement Is Overwhelmingly Favorable**

7 In determining if the settlement is fair, reasonable and adequate, the reaction of the class
8 – those most impacted by the settlement – should be considered. *Dunk v. Ford Motor Co.*, 48
9 Cal. App. 4th 1794, 1801 (1996). Absent a significant number of dissents, the settlement should
10 be deemed approved by those most directly affected by it. *7-Eleven Owners for Fair*
11 *Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1153 (2000) (one factor that “lead[s] to
12 a presumption the settlement was fair” is that only “a small percentage of objectors” – 80 out of
13 5,454 class members – came forward).

14 Here the reaction of the class members is overwhelmingly favorable with a significant
15 number applying for the ID protection package and submitting claims. The deadline for
16 requesting exclusion or objecting was May 20, 2019. Azari Sup. Decl., ¶ 19. It is significant
17 that of the approximately 3.5 million who received mailed notice, only 54 requests for exclusion
18 were received and there have been only two letters styled as objections. Azari Sup. Decl., ¶ 19.
19 When these low numbers are contrasted with the 106,245 requests for the ID Experts protection
20 pan, 1,567 Preventive Measures Claims, and 924 Unreimbursed Loss Claims, there is ample
21 evidence the proposed settlement is overwhelmingly supported by the class.

22 **IV. Objections to Settlement**

23 A class action objector bears the burden of proving any assertions in a fairness challenge.
24 *U.S. v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990); *Carter v. City of L.A.*, 224 Cal. App. 4th 808,
25 820 (2014) (citations omitted). An objector must clearly describe why the settlement terms were
26 not fair and reasonable while considering “the range of possible results further litigation might
27 have produced, including no class certification and/or zero or minimal recovery of damages.”
28 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 44 (2008).

1 Correspondence style as “objections” were received from just two class members: Gina
2 Pinkowski and Anita Washington.

3 **Ms. Pinkowski Does Not State an Objection**

4 Ms. Pinkowski says she is “objecting to the settlement,” but in fact states no objection
5 to the terms of the settlement. *See* Azari Sup. Decl., Ex. 1 (Pinkowski objection). Instead she
6 describes “ongoing” fraud for which she has “filed countless police reports” relating to her stolen
7 PII/PHI. *Id.* at 1-2. She states the “basis of my objection” is “ongoing privacy violations
8 (PII/PHI),” “ongoing financial fraud,” “ongoing cyber intrusion” “ongoing/unlawful access to
9 and obtaining credit reports,” “unlawful access to computer,” and “unlawful access to Personal
10 Health Information[.]” *Id.* at 1.

11 Ms. Pinkowski’s letter exemplifies why this settlement should be approved. Under the
12 settlement her list of ongoing fraud might be mitigated going forward by the free two-year
13 identity theft protection package in which she has enrolled. She can also submit Preventative
14 Measures and/or Unreimbursed Loss claims for activity that will be evaluated by the Claims
15 Administrator and if it meets the settlement parameters, she can obtain reimbursement up to
16 \$20,000. Settlement Agreement, Ex. 9 at §V.B.1. The police reports she filed can be used to
17 evaluate any unreimbursed losses. *Id.*, Ex. 9 at §IV.E.2. Even the time she spent dealing with
18 her identity theft problems can be submitted for evaluation for possible compensation. *Id.*, §IV.
19 We will reach out to Ms. Pinkowski to confirm that she enrolled in the two-years of free credit
20 monitoring, identity theft protection, and insurance provided by the Settlement. *See* Azari Sup.
21 Decl., Ex. 1 at 4. Ms. Pinkowski asks to be heard at the fairness hearing. *Id.*, Ex. 1 at 2.

22 **Ms. Washington Waived Any Objection**

23 On March 27, 2019, Ms. Washington enrolled in the ID protection services package and
24 submitted Preventative Measure and Unreimbursed Losses Claim Forms. Azari Sup. Decl.,
25 ¶ 21. She then opted out of the settlement class on April 5, 2019. *Id.*, Ex. 2. On May 15, 2019,
26 she submitted an objection that both objects and states her wish to opt out. *Id.*, Ex. 3.
27 Ms. Washington wrote that she intends to appear at the fairness hearing. *Id.*, Ex. 2 at 1. She can
28 hopefully clarify whether she intends to opt out or object at that time.

1 In the event Ms. Washington’s opt out is taken at face value, she does not have the right
2 to object. A class member that opts out of the class lacks standing to assert their claims of error
3 regarding the fairness of the settlement. *See* Fed. R. Civ. P. 23(e)(5) (“[a]ny class member may
4 object to a proposed settlement”); *S.F. NAACP v. S.F. Unified Sch. Dist.*, 59 F. Supp. 2d 1021,
5 1032 (N.D. Cal. 1999) (“[N]oneclass members have no standing to object to the settlement of a
6 class action”.¹ As the settlement and class notice clearly explained “[t]o object, you must remain
7 in the class.” Settlement Agreement, Ex. 5; *see also id.*, at Ex. 6 (“[i]f you stay in the Class, you
8 may object”). In fact, Ms. Washington’s objection reinforces her earlier opt out and intent to
9 not be part of the class. In her “objection,” Ms. Washington writes: “At this point the only
10 option I have is the hearing will give me the ability to continue with the opt out”.

11 Assuming Ms. Washington has the right to and intends to object, her basis for objection
12 is addressed as follows. She claims the two-year identity protection and insurance services
13 should be increased to five “because of the sensitive medical and personal information” involved
14 in the data breach. Azari Sup. Decl., Ex. 2 at 1. This assertion misses the fact that the
15 cyberattack occurred beginning of September 2014 and lasted into early 2015. This two-year
16 settlement package will run from after final approval until 2021, which means she will be
17 protected through the seventh year following the start of the attack. In addition, the two-year
18 period was obtained as part of diligent and arduous negotiations. Declaration of Jeff S.
19 Westerman ISO of Plaintiffs’ Motion for Final Approval, ¶ 84 (“the mediator’s proposal
20 suggested a package resolution of multiple components of the settlement that had been the
21 subject of back and forth negotiation”). During negotiations, the mediator suggested to keep the
22 settlement as an integrated package and re-negotiating any individual component would disrupt
23 the entire proposal. *Id.* Two years was agreed upon and it compares favorably with the reported
24 data breach settlements approved in state and federal courts. Supplemental Declaration of Jeff

27 ¹ Courts may look to the procedures governing federal class actions under rule 23 of the
28 Federal Rules of Civil Procedure for guidance, particularly in the absence of relevant state
precedent. *Wash. Mut. Bank v. Super. Ct.*, 24 Cal. 4th 906, 922 (2001); *Jolly v. Eli Lilly & Co.*,
44 Cal. 3d 1103, 1118 (1988).

1 S. Westerman ISO Unopposed Motion for Preliminary Approval, Ex. C. (listing eight approved
2 settlements that provide two years or less of free protection services, two of which provide none).

3 Next, Ms. Washington objects “to the terms of the settlement payments of time spent
4 trying to resolve some of the issues as a result of the breach of information” and “to the
5 settlement terms of damages payout because some damages or [sic]not related to cash damages
6 to credit charges as in my case.” Azari Sup. Decl., Ex. 2 at 1. It is unclear to what Ms.
7 Washington takes issue, and what she thinks her damages would total, or why. However, the
8 settlement allows for reimbursement for time of up to six hours. Settlement Agreement, §III.4.
9 And a single class member may be entitled to reimbursement of up to \$20,000 for unreimbursed
10 loss claims. *Id.*, §V.B. Since Ms. Washington does not describe the losses she incurred it is not
11 possible to determine if her losses are covered by the settlement or if they even exceed the
12 maximum she might be eligible to recover. If she was charged for unauthorized use of her credit
13 cards in the time period covered by the settlement, the settlement allows reimbursement “that
14 resulted from a third party’s unauthorized use of the Class members’ PII or PHI.” *Id.*, Ex. 9 at
15 §IV. A simple request for more relief is not a proper objection, particularly when there is no
16 showing the relief provided is inadequate.

17 In any event, Ms. Washington’s objection fails to consider the risk of obtaining nothing
18 if litigation ensued, and here, the risk was great. *See* Supp. Memo. ISO of Motion for
19 Preliminary Approval at 8-9, 14-16 and Attachment A; Memo ISO Motion for Preliminary
20 Approval at 20. Additionally, if she does not opt out, she can apply for reimbursement of up to
21 \$20,000 for covered losses she incurred with reasonable documentation. In other words, she has
22 “failed to explain why the settlement terms were not fair and reasonable in relation to the range
23 of possible results further litigation might have produced, including no class certification and or
24 zero or minimal recovery of damages.” *Chavez*, 162 Cal. App. 4th at 44.

25 Like the objector in *Chavez*, Ms. Washington “makes no claim that any of the factors
26 supporting a presumption of fairness is not present in this case.” *Id.*, at 53.

27 Where the “percentage of objectors is small” a presumption of fairness exists. *Dunk*, 48
28 Cal. App. 4th at 1801-02 (affirming trial court’s final approval of class settlement because “only

1 a small number of the class objected”); *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th
2 at 1153 (presumption of fairness where percentage of objectors is small). Accordingly,
3 Ms. Washington’s objection, if it is one, should be overruled.

4 **V. Fees and Costs**

5 There are no objections to the request for attorneys’ fees and expenses and Plaintiff
6 service awards.

7 In light of the substantial benefits obtained for the settlement class and the
8 overwhelmingly positive response to the proposed settlement, attorneys’ fees in the total amount
9 of \$3,275,000 and expensed of up to \$135,000, both amounts The Regents agreed to, are
10 reasonable. Westerman Decl., ¶ 9. The value of the 24-month ID protection package made
11 available to the 4.5 million class members provides potential value of \$1,078,920,000. *See*
12 Memorandum in Support of Plaintiffs’ Motion for Final Approval (“Memo.”), at 11. Even if
13 only enrollments are considered, attorneys’ fees are just 12.9% of the value of the ID protection
14 services claimed by class members to date (\$25,392,555) – and not even counting the benefits of
15 notice and administration costs (\$1.9 million), attorneys’ fees and expenses (together \$3,392,750),
16 cybersecurity enhancements (\$5.5 million) and the Preventative Measures and Unreimbursed Losses
17 claims fund (\$2 million). *See* Memo. at 38:3-7. The collective lodestar of the eight leadership
18 firms is \$2,423,125.85, resulting in a modest multiplier of 1.35. If all the reported lodestar of all
19 Plaintiffs’ Counsel is considered, including the time incurred before the Court entered the Case
20 Management Order on December 19, 2015, sometimes referred to as “pre-lead time,” before
21 counsels’ efforts were fully coordinated or assigned by Interim Lead Counsel, then the total lodestar
22 reported from all firms through April 10, 2019 is \$2,894,317.35, and the requested fee results in a
23 multiplier of just 1.13. Memo. at 31; Westerman Decl., ¶ 101. The already modest multiplier will
24 be even smaller by the time of the final approval to account for counsels’ time from April 11 to final
25 approval in June. The multiplier will continue to shrink in light of the settlement implementation
26 work, which includes about two years of future claims administration, monitoring the cyber
27 remediation certifications, determining uses for remaining cyber remediation funds, and continuing
28 to oversee and facilitate the settlement claims administration. In addition, there have been and will

1 continue to be regular contacts with claimants/Class Members who contact counsel regarding the
2 settlement. Westerman Decl., ¶ 101.

3 **VI. Conclusion**

4 In light of the substantial benefits obtained for the class the overwhelmingly positive
5 response to the proposed settlement, the risks of continued litigation, the protracted arm's length
6 negotiations which required mediator's proposals by Hon. Charles W. McCoy, Ret. and the
7 judgment of experienced counsel, the settlement is fair reasonable and adequate. For all the
8 reasons presented on this motion, Plaintiffs respectfully request that the Court confirm
9 certification of the Settlement Class, grant final approval of the settlement, approve the
10 application for attorneys' fees and expenses and grant the requested service awards for the
11 named Plaintiffs.

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13 Dated: May 28, 2019

Respectfully submitted,

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