

Hon. Benjamin H. Settle

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7 **THE UNITED STATES DISTRICT COURT**
8 **FOR THE WESTERN DISTRICT OF WASHINGTON**
9 **TACOMA DIVISION**

10 DONNA BRIM, KIMBERLY PERRY,
11 AND JANET TURNER LAMONICA,
as individuals and on behalf of all others
similarly situated,

12 Plaintiffs,

13 vs.

14 PRESTIGE CARE, INC.

15 Defendant.
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Case No. 3:24-cv-05133-BHS

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

NOTE ON MOTION CALENDAR:
November 25, 2024

1 **I. INTRODUCTION**

2 Plaintiffs Donna Brim, Kimberly Perry, and Janet Turner Lamonica submit this
3 Unopposed Motion for Preliminary Approval of Class Action Settlement. Defendant, Prestige
4 Care, Inc. (“Prestige Care” or “Defendant”) does not oppose certification of the Settlement Class
5 solely for purposes of facilitating the settlement sought to be approved in this motion, and it does
6 not oppose the relief sought in this motion. Plaintiffs strongly believe the Settlement is fair,
7 reasonable, and adequate, and that the Court should grant preliminary approval and notice should
8 be distributed to Class Members.

9 **II. STATEMENT OF FACTS**

10 This matter is a putative class action arising out of a data breach of Prestige Care’s
11 computer systems that Prestige Care discovered on or about September 7, 2023 (the “Data
12 Incident”). During the Data Incident, an unauthorized actor gained access to certain files on
13 Prestige Care’s network; those files contained information related to certain individuals,
14 including, but not limited to, names and Social Security Numbers (personally identifiable
15 information or “PII”) as well as medical treatment and health insurance information (protected
16 health information or “PHI”) (collectively, “Personal Information”).

17 After Prestige Care learned of the Data Incident, it notified approximately 45,000 current
18 and former patients and employees that their Personal Information may have been impacted by
19 the Data Incident. Plaintiffs brought this action on behalf of all persons whose Personal
20 Information may have been compromised, alleging claims based on Prestige Care’s failure to: (i)
21 adequately protect PII and PHI; (ii) warn of its inadequate information security practices; and
22 (iii) effectively monitor its network for security vulnerabilities and incidents. Plaintiffs asserted
23 claims of (i) negligence, (ii) breach of implied contract, (iii) breach of fiduciary duty, (iv) unjust

1 enrichment, (v) declaratory judgment, and (vi) violations of the Washington State Consumer
2 Protection Act, RCW 19.86.010, *et seq.*

3 Prestige Care denies each and all of the claims and contentions alleged against it in the
4 Litigation. Prestige Care denies all wrongdoing or liability associated with the Data Incident that
5 Plaintiffs alleged, or which could be alleged, in the Litigation. Nonetheless, Prestige Care has
6 concluded that further conduct of the Litigation would be protracted and expensive, and that it is
7 desirable that the Litigation be fully and finally settled in the manner and upon the terms and
8 conditions set forth in this Settlement Agreement.

9 **III. PROCEDURAL HISTORY**

10 After Prestige Care sent its notice, three lawsuits were filed in federal court against
11 Prestige Care concerning the Data Incident: *Brim v. Prestige Care, Inc.*, Case No. 3:24-cv-05133-
12 BHS; *Perry v. Prestige Care, Inc.*, Case No. 3:24-cv-05151-SKV; and *Lamonica v. Prestige*
13 *Care, Inc.*, Case No. 3:24-cv-05203-MLP. On April 1, 2024, the cases were consolidated under
14 the title *Brim v. Prestige Care, Inc.*, Case No. 3:24-cv-05133-BHS (the “Action”), and appointed
15 Kaleigh N. Boyd of Tousley Brain Stephens PLLC as Interim Lead Counsel. On April 30, 2024,
16 the plaintiffs filed a Consolidated Amended Class Action Complaint.

17 Over the course of several months, the Parties engaged in settlement negotiations. The
18 parties then agreed to participate in early mediation and prior to doing so, informally exchanged
19 discovery on a variety of topics related to the Litigation. On August 19, 2024, the Parties
20 participated in an arm’s-length, full day, mediation session with the Honorable Ronald B.
21 Leighton (Ret.); through the assistance of the mediator, the parties reached a settlement in
22 principle.

23 In the months following the mediation, the Settling Parties continued to discuss the finer

1 points of the Settlement and draft and finalize the Settlement and Settlement Agreement for
2 which Plaintiffs seek preliminary approval today.

3 **IV. THE SETTLEMENT TERMS**

4 **A. Proposed Settlement Class**

5 The Proposed Settlement will provide substantial relief for the Settlement Class, which
6 is defined as: “all individuals whose Personal Information was potentially compromised in the
7 Data Incident.” Settlement Agreement¹ (“S.A.”) ¶ 1.25. The Settlement Class contains
8 approximately 45,000 individuals.

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

10 Settlement Class Members may claim (a) defined relief of up to \$400 in Out-of-Pocket
11 Losses, up to \$100 in Lost Time, and/or up to \$5,000 in Consequential Damages OR (b) a \$50
12 Alternative Cash Payment. Monetary Relief is subject to an aggregate cap of \$700,000. *Id.* ¶ 2.1.
13 In addition to monetary relief, Settlement Class Members are eligible to claim three years of
14 credit monitoring and identity theft protection services, as set forth below.

15 1. Out-of-Pocket Losses.

16 The first category of payments is designed to provide reimbursement for ordinary out-of-
17 pocket expenses related to the Data Incident. *Id.* ¶ 2.1.1(a). All Settlement Class Members who
18 submit a Valid Claim using the Claim Form are eligible for any documented and attested-to out-
19 of-pocket expenses directly associated with dealing with the Data Incident, not to exceed \$400
20 per Settlement Class Member, that were incurred more likely than not as a result of the Data
21 Incident, including but not limited to (i) unreimbursed expenses, charges and/or losses relating
22 to fraud or identity theft such as unreimbursed bank fees; long distance phone charges; cell phone
23

¹ A copy of the Settlement Agreement is attached as Exhibit B to the Boyd Dec.

1 charges (only if charged by the minute); data charges (only if charged based on the amount of
2 data used); postage; gasoline for local travel; fees for credit repair or similar services; and costs
3 associated with freezing or unfreezing credit; and/or any other charge or loss reasonably related
4 to the Data Incident incurred by Class Members between September 7, 2023 and the Claims
5 Deadline. To receive reimbursement for out-of-pocket losses, Settlement Class Members must
6 submit a Valid Claim, including supporting documentation, to the Claims Administrator. *Id.*

7 2. Lost Time.

8 Class Members are also eligible to receive reimbursement for up to four hours of lost time
9 spent dealing with the Data Incident, rounded to the nearest whole hour, calculated at the rate of
10 \$25 per hour. *Id.* ¶ 2.1.1(b). Class Members may receive up to four hours of lost time if the Class
11 Member attests that any claimed lost time was spent responding to issues raised by the Data
12 Incident, and briefly describes how the lost time was spent. Claims for reimbursement of lost
13 time may be combined with claims for documented out-of-pocket expenses. *Id.*

14 3. Consequential Damages

15 Class Members are also eligible to receive reimbursement for documented extraordinary
16 out-of-pocket losses, not to exceed \$5,000 per Class Member for documented monetary loss that
17 (i) is actual, documented, and unreimbursed; (ii) was more likely than not caused by the Data
18 Incident; (iii) occurred between September 7, 2023 to the Claims Deadline; (iv) results from
19 actual identity theft, fraud or similar criminal victimization; and (v) is not already covered by one
20 or more of the above-referenced reimbursed expenses. *Id.* ¶ 2.1.1(c). Class Members must also
21 provide documentation that he or she made reasonable efforts to avoid, or seek reimbursement
22 for, such extraordinary losses, including but not limited to exhaustion of all available credit
23 monitoring insurance and identity theft insurance. *Id.*

1 4. Alternative Cash Payment

2 As an alternative to the other forms of monetary relief and credit monitoring Settlement
3 Class Members may elect a one time \$50 cash payment. *Id.* ¶ 2.1.2.

4 5. Credit Monitoring and Identity Theft Protection

5 In addition to, and regardless of whether they submit a claim for monetary relief,
6 Settlement Class Members may claim three (3) years of one-bureau credit monitoring and
7 identity theft protection services through IDX. The identity theft monitoring will include identity
8 theft insurance of at least \$1 million. Settlement Class Members who elect to receive an
9 Alternative Cash Payment are not eligible to claim Credit Monitoring and Identity Theft
10 Protection. *Id.* ¶ 2.2.

11 **C. Class Notice and Settlement Administration**

12 The Costs of Claims Administration will be paid for by Prestige Care separate and apart
13 from other benefits to the Settlement Class Members. *Id.* ¶ 2.5. Notice will be given to the
14 Settlement Class via individual notice, which will be given by mailing the Short-Form notice
15 (Exhibit A to the Settlement Agreement) to the last known mailing address for Settlement Class
16 Members. *Id.* ¶ 3.2.1. A Long Notice, attached to the Settlement Agreement as Exhibit B, will
17 also be posted on the settlement website, which will be established by the Claims Administrator
18 within 30 days of the entry of the Preliminary Approval Order (the “Notice Deadline”), along
19 with other important documents such as the Settlement Agreement and the motions for final
20 approval and for attorneys’ fees and expenses. *Id.* ¶ 1.15. The notice documents are clear and
21 concise and directly apprise Class Members of all the information they need to know to make a
22 claim or to opt-out or object to the Settlement. Furthermore, a toll-free help line staffed with a
23 reasonable number of live operators shall be made available to address Settlement Class

1 Members' inquiries. *Id.* ¶ 3.2.4.

2 Moreover, Defendant has retained EisnerAmper, a nationally recognized and well-
3 regarded class action settlement administrator, to serve as Claims Administrator, subject to the
4 Court's approval. *See* Declaration of Kaleigh N. Boyd ("Boyd Dec."), ¶ 14.

5 **D. Attorneys' Fees and Expenses**

6 If the Settlement is preliminarily approved, proposed Class Counsel plan to petition the
7 Court for an award of reasonable attorneys' fees and costs after the Settlement Class has received
8 notice of the Settlement. Plaintiffs will file a motion seeking an award of reasonable attorneys'
9 fees as well as reimbursement of their reasonable costs and litigation expenses incurred. S.A.
10 ¶ 3.6. As will be further explained in that motion, Class Counsel's fee request is well within the
11 range of reasonableness for Settlements of this nature and size.

12 **E. Service Awards to Named Plaintiffs**

13 Plaintiffs in this case have been vital in litigating this matter, including providing
14 important information about the impact of the Data Breach to proposed Settlement Class
15 Counsel. Plaintiffs have been personally involved in the case and support the Settlement. Boyd
16 Dec., ¶ 12. Plaintiffs will separately petition the Court for awards of \$2,500 each in recognition
17 of the time, effort, and expense they incurred pursuing claims that benefited the Settlement Class.
18 S.A. ¶ 3.6.3.

19 The amount requested here is presumptively reasonable and commonly awarded in settled
20 class action cases. *See, e.g., Pauley v. CF Entertainment*, 2020 WL 5809953, at *4 (C.D. Cal.)
21 (granting "class representative enhancement fees in the amount of \$5,000 each to Plaintiffs," and
22 finding that amount to be "presumptively reasonable"); *Yahoo Mail Litig.*, No. 13-CV-4980,
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1 2016 WL 4474612, at *11 (N.D. Cal. Aug. 25, 2016) (“The Ninth Circuit has established
2 \$5,000.00 as a reasonable benchmark [for service awards].”).

3 F. Release

4 Upon entry of the Final Approval Order, Plaintiffs and the Settlement Class will be
5 deemed to have “fully, finally, and forever released, relinquished, and discharged all Released
6 Claims.” S.A., generally. “Released Claims” are defined, *inter alia*, as:

7 any and all past, present, and future rights, liabilities, actions, demands, damages,
8 penalties, costs, attorneys’ fees, losses, remedies, claims, and causes of action
9 including, but not limited to, any causes of action arising under or premised upon
10 any statute, constitution, law, ordinance, treaty, regulation, or common law of any
11 country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et*
12 *seq.*, and all similar statutes in effect in any states in the United States; violations
13 of Washington State Consumer Protection Act and other state consumer protection
14 statutes; violations of any federal or state data breach notification statute;
15 negligence; negligence *per se*; breach of contract; breach of implied contract;
16 breach of fiduciary duty; breach of confidence; invasion of privacy; fraud;
17 misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment;
18 bailment; wantonness; failure to provide adequate notice pursuant to any breach
19 notification statute or common law duty; and including, but not limited to, any
20 and all claims for damages, injunctive relief, disgorgement, declaratory relief,
21 equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit
22 monitoring services, the creation of a fund for future damages, statutory damages,
23 punitive damages, special damages, exemplary damages, restitution, and/or the
appointment of a receiver, whether known or unknown, liquidated or unliquidated,
existing or potential, accrued or unaccrued, fixed or contingent, direct or derivative,
and any other form of legal statutory, or equitable relief that either has been
asserted, was asserted, or could have been asserted, by any Settlement Class
Member against any of the Released Parties based on, relating to, concerning or
arising out of the Data Incident or the allegations, transactions, occurrences, facts,
or circumstances alleged in or otherwise described in the Litigation. Released
Claims shall not include the right of any Settlement Class Member or any of the
Released Parties to enforce the terms of the settlement contained in this Settlement
Agreement and shall not include the claims of Settlement Class Members who have
timely excluded themselves from the Settlement Class consistent with the terms and
requirements of this Agreement. Released Claims shall not include any claims for
medical malpractice that Plaintiffs and Settlement Class Members have, or may
have in the future, against Prestige Care.

S.A. ¶ 1.22.

1 **V. LEGAL AUTHORITY**

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

9 Here, Plaintiffs request that the Court take the first step and grant preliminary approval
10 of the proposed Settlement Agreement.

11 **VI. ARGUMENT**

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

23 The Manual for Complex Litigation (Fourth) advises that in cases presented for both

1 preliminary approval and class certification, the “judge should make a preliminary determination
2 that the proposed class satisfies the criteria.” § 21.632. Because a court evaluating certification
3 of a class action that settled is considering certification only in the context of settlement, the
4 court’s evaluation is somewhat different than in a case that has not yet settled. *Amchem Prods.,
5 Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In some ways, the court’s review of certification of a
6 settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case
7 management issues inherent in the ascertainable class determination need not be confronted. *See*
8 *id.* Other certification issues, however, such as “those designed to protect absentees by blocking
9 unwarranted or overbroad class definitions,” require heightened scrutiny in the settlement-only
10 class context “for a court asked to certify a settlement class will lack the opportunity, present
11 when a case is litigated, to adjust the class, informed by the proceedings as they unfold.” *Id.*

12 Plaintiffs here seek certification of a Settlement Class consisting of: “all individuals
13 whose Personal Information was potentially compromised in the Data Incident.” S.A. ¶ 1.25. The
14 Settlement Class specifically excludes: (i) Prestige Care, and its officers and directors; (ii) all
15 Settlement Class Members who timely and validly request exclusion from the Settlement Class;
16 (iii) the presiding judge, and his or her staff and family; and (iv) any other Person found by a court
17 of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting
18 the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such
19 charge. *Id.* The Settlement Class contains approximately 45,000 individuals.

20 For the reasons set forth below, the Court should certify the Class for settlement purposes
21 and preliminarily approve the Settlement.

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

23 Before assessing the parties’ settlement, the Court should first confirm the underlying

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

5
6 i. The proposed Class is sufficiently numerous.

7 While there is no fixed point at which the numerosity requirement is met, Courts find
8 numerosity where there are so many class members as to make joinder impracticable. *See Fed.*
9 *R. Civ. P. 23(a)(1)*. “Where the exact size of the class is unknown but general knowledge and
10 common sense indicate that it is large, the numerosity requirement is satisfied.” *Orantes-*
11 *Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982). Generally, Courts will find
12 numerosity is satisfied where a class includes at least 40 members. *Rannis v. Recchia*, 380 Fed.
13 App’x 646, 651 (9th Cir. 2010). Numbering approximately 45,000 individuals, the proposed
14 settlement class easily satisfies Rule 23’s numerosity requirement. Joinder of so many individuals
15 is clearly impracticable—thus the numerosity prong is satisfied.

16 ii. The Settlement Class Satisfies the Commonality Requirement.

17 The Settlement Class also satisfies the commonality requirement, which requires that
18 class members’ claims “depend upon a common contention,” of such a nature that “determination
19 of its truth or falsity will resolve an issue that is central to the validity of each [claim] in one
20 stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, as in most data breach
21 cases, “[t]hese common issues all center on [Defendant’s] conduct, satisfying the commonality
22 requirement.” *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-
23 02583-TWT, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016). For the same reason, Plaintiffs
allege that predominance is readily met here “where the class is a ‘cohesive group of individuals

1 [who] suffered the same harm in the same way because of the [defendant's] conduct.” *In re*
2 *Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 559 (9th Cir. 2019)). Thus, common
3 questions include, *inter alia*, whether Prestige Care engaged in the wrongful conduct alleged;
4 whether Class Members’ Personal Information was compromised in the Data Incident; whether
5 Prestige Care owed a duty to Plaintiffs and Class members; whether Prestige Care breached its
6 duties; and whether Prestige Care unreasonably delayed in notifying Plaintiffs and class members
7 of the material facts of the Data Incident.

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

9 iii. Plaintiffs’ claims and defenses are typical to those of the
10 Settlement Class.

11 Plaintiffs satisfy the typicality requirement of Rule 23 because Plaintiffs’ claims, which
12 are based on Defendant’s alleged failure to protect the Personal Information of Plaintiffs and all
13 members of the Class, are “reasonably coextensive with those of the absent class members.” *See*
14 *Fed. R. Civ. P. 23(a)(3); Meyer v Portfolio Recovery Associates*, 707 F.3d 943, 1041-42 (9th Cir.
15 2012) (upholding typicality finding). Plaintiffs allege their Personal Information was
16 compromised, and that they were therefore impacted by the same allegedly inadequate data
17 security that they allege harmed the rest of the Settlement Class. *See Just Film, Inc. v. Buono*,
18 847 F.3d 1108, 1118 (9th Cir. 2017) (“[I]t is sufficient for typicality if the plaintiff endured a
19 course of conduct directed against the class.”). Thus, typicality has been met.

20 iv. Plaintiffs will adequately protect the interests of the Class.

21 The adequacy requirement of Rule 23 is satisfied where (1) there are no antagonistic or
22 conflicting interests between named plaintiffs and their counsel and the absent class members;
23 and (2) the named plaintiffs and their counsel will vigorously prosecute the action on behalf of
the class. *Fed. R. Civ. P. 23(a)(4); see also Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985

1 (9th Cir. 2011) (*citing Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

2 Here, Plaintiffs have no conflicts of interest with other class members, are subject to no
3 unique defenses, and they and their counsel have and continue to vigorously prosecute this case
4 on behalf of the class. Plaintiffs are members of the Class who experienced the same injuries and
5 seek, like other Class Members, compensation for Prestige Care’s data security shortcomings.
6 As such, their interests and the interests of their counsel are not inconsistent with those of other
7 Class Members.

8 Further, Settlement Class Counsel has years of experience as vigorous class action
9 litigators and are well suited to advocate on behalf of the Class. *See* Boyd Dec. ¶¶ 3–5, and
10 Exhibit A, resume of Settlement Class Counsel. Thus, Plaintiffs satisfy the requirement of
11 adequacy.

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

13 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class
14 certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or
15 (3).” *Hanlon*, 150 F.3d at 1022. Here, Plaintiffs allege that the Settlement Class is maintainable
16 for purposes of settlement under Rule 23(b)(3), as common questions predominate over any
17 questions affecting only individual members and class resolution is superior to other available
18 methods for a fair and efficient resolution of the controversy. *Id.*

19 Rule 23(b)(3) requires that a district court determine that “a class action is superior to
20 other available methods for the fair and efficient adjudication of the controversy.” In determining
21 whether the “superiority” requirement is satisfied, a court may consider: (1) the interest of
22 members of the class in individually controlling the prosecution or defense of separate actions;
23 (2) the extent and nature of any litigation concerning the controversy already commenced by or

1 against members of the class; (3) the desirability or undesirability of concentrating the litigation
2 of the claims in the particular forum; and (4) the difficulties likely to be encountered in the
3 management of a class action. Fed. R. Civ. P. 23(b)(3).

4 The predominance requirement “tests whether proposed classes are sufficiently cohesive
5 to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623 (citing *Wright, et al.*, Fed.
6 Prac. and Proc. § 1777, p. 518–19 (2d ed. 1986)). “If common questions ‘present a significant
7 aspect of the case and they can be resolved for all members of the class in a single adjudication,’
8 then ‘there is clear justification for handling the dispute on a representative rather than on an
9 individual basis,’ and the predominance test is satisfied.” *See Hanlon*, 150 F.3d at 1022. To
10 satisfy this requirement, “common issues need only predominate, not outnumber individual
11 issues.” *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) (quotations omitted).

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

19 Class certification here is also “superior to other available methods for . . . fairly and
20 efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(a)(4). Classwide resolution is the
21 only practical method of addressing the alleged violations at issue in this case. Adjudicating
22 individual actions here is impracticable: the amount in dispute for individual class members is
23 too small, the technical issues involved are too complex, and the required expert testimony and

1 document review too costly. *See Just Film*, 847 F.3d at 1123; *Local Joint Exec. Bd. of Culinary/*
2 *Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases
3 involving “multiple claims for relatively small individual sums” are particularly well suited to
4 class treatment); *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th
5 Cir. 2010) (“Where recovery on an individual basis would be dwarfed by the cost of litigating on
6 an individual basis, this factor weighs in favor of class certification.”).

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

12 In any event, no one member of the class has an interest in controlling the prosecution of
13 this action because Plaintiffs’ claims and the claims of the members of the class are the same.
14 Alternatives to a class action are either no recourse for thousands of individuals, or a multiplicity
15 of suits resulting in an inefficient and possibly disparate administration of justice. Classwide
16 resolution is the only practical method of addressing the alleged violations at issue in this case.
17 There are thousands of class members with modest individual claims, most of whom likely lack
18 the resources necessary to seek individual legal redress. *See Local Joint Exec. Bd. of Culinary/*
19 *Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases
20 involving “multiple claims for relatively small individual sums” are particularly well suited to
21 class treatment); *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th
22 Cir. 2010); *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). A class action
23 is therefore superior to other methods for the fair and efficient adjudication of the claims of

1 Plaintiffs and the Class.

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

3 In order for the court to preliminarily approve a class settlement and to direct that notice
4 be sent to class members, the parties must show that the court “will likely be able to (i) approve
5 the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the
6 proposal.” Fed. R. Civ. P. 23(e)(1)(B). *Tuttle v. Audiophile Music Direct Inc.*, No.C22-1081JLR,
7 2023 WL 3318699, at *3 (W.D. Wash. May 9, 2023). Rule 23(e) provides that a proposed class
8 action may be “settled, voluntarily dismissed, or compromised only with the court’s approval.”
9 Moreover, “[t]he parties must provide the court with information sufficient to enable it to
10 determine whether to give notice of the proposal to the class.” If the parties make a sufficient
11 showing that the Court will likely be able to “approve the proposal” and “certify the class for
12 purposes of judgment on the proposal,” “[t]he court must direct notice in a reasonable manner to
13 all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e). Thus, notice
14 should be given to the class, and hence preliminary approval should be granted, where the Court
15 “will likely be able to” finally approve the settlement under Rule 23(e)(2) and certify the class
16 for settlement purposes. *Id.*

17 As a general matter, preliminary approval is appropriate if the settlement falls within the
18 range of possible approval. *Hunichen v. Antonomi LLC*, No. C19-0615-RAJ-SKV, 2021 WL
19 5854964, at *4 (W.D. Wash. Nov. 12, 2021). In sum, “the purpose of the preliminary approval
20 process is to determine whether there is any reason not to notify the class members of the
21 proposed settlement and to proceed with a fairness hearing.” *Lucas v. Kmart Corp.*, 234 F.R.D.
22 688, 693 (D. Colo. 2006). In any event, while a complete fairness evaluation is unnecessary at
23 this early juncture, Plaintiffs’ and their counsel strongly believe that the resolution reached here

1 is in the Settlement Class’s best interests.

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

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

19 1. The Strength of Plaintiffs’ Case

20 Plaintiffs believe they have built a strong case for liability. Boyd Dec., ¶ 7–8. Plaintiffs
21 contend that Prestige Care is liable for its negligent, unfair, and unlawful conduct under multiple
22 causes of action. *See, e.g., Huynh v. Quora, Inc.*, 508 F. Supp. 3d 633, 650 (N.D. Cal. 2020)
23 (“[T]ime and money [plaintiff] spent on credit monitoring in response to the Data Breach is

1 cognizable harm to support her negligence claim”); *Wallace v. Health Quest Sys., Inc.*, No. 20
 2 CV 545 (VB), 2021 WL 1109727, at *8–15 (S.D.N.Y. Mar. 23, 2021) (upholding data breach
 3 claims for negligence, breach of implied contract, breach of confidence and violations of New
 4 York General Business Law); *Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800-UU,
 5 2012 WL 9391827, at *6 (S.D. Fla. Oct. 18, 2012) .

6 While Plaintiffs believe they have strong claims, they also understand that their success
 7 is not guaranteed. The chances of prevailing on the merits are uncertain—especially where
 8 significant unsettled questions of law and fact exist, which is common in data breach litigation.
 9 “Data breach litigation is evolving; there is no guarantee of the ultimate result.” *Fox v. Iowa*
 10 *Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) (citing
 11 *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *1
 12 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are particularly risky, expensive, and
 13 complex.”)). Although nearly all class actions involve a high level of risk, expense, and
 14 complexity, this is a particularly complex class action litigation. Given the obstacles and inherent
 15 risks Plaintiffs face with respect to the novel claims in data breach class actions, including class
 16 certification, summary judgment, and trial, the substantial benefits the Settlement provides favors
 17 preliminary approval of the Settlement. Boyd Dec., ¶ 7.

18 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

19 While Plaintiffs believe their case is a strong one, all cases, including this one, are subject
 20 to substantial risk. This case involves a proposed class of approximately 45,000 individuals; a
 21 complicated and technical factual overlay; and a motivated Defendant that has every reason to
 22 vigorously defend against Plaintiffs’ claims.

23 Although nearly all class actions involve a high level of risk, expense, and complexity—

1 undergirding the strong judicial policy favoring amicable resolutions, *Linney v. Cellular Alaska*
2 *P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)—this is an especially complex class. Historically,
3 data breach cases face substantial hurdles in surviving even the pleading stage. *See, e.g.*,
4 *Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB) (RLE), 2010 WL
5 2643307, at *2-4 (S.D.N.Y. June 25, 2010) (collecting cases). Even cases of similar wide-spread
6 notoriety and implicating data far more sensitive than at issue here have been found wanting at
7 the district court level. *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d
8 1, 19 (D.D.C. 2017) (“The Court is not persuaded that the factual allegations in the complaints
9 are sufficient to establish . . . standing.”), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019)
10 (holding that plaintiff had standing to bring a data breach lawsuit).

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

18 Each risk, by itself, could impede the successful prosecution of these claims at trial and
19 in an eventual appeal—which could result in zero recovery to the class. “Regardless of the risk,
20 litigation is always expensive, and both sides would bear those costs if the litigation continued.”
21 *Paz v. AG Adriano Goldschmeid, Inc.*, No. 14CV1372DMS(DHB), 2016 WL 4427439, at *5
22 (S.D. Cal. Feb. 29, 2016). Thus, this factor favors approval.

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

2 While Plaintiffs’ case is still in the pleadings stage, the parties have not briefed and the
3 Court has not yet certified, any class treatment of this case. If they were to proceed to litigate
4 their claims through trial, Plaintiffs would encounter risks in obtaining and maintaining
5 certification of the class Defendant will certainly oppose certification if the case proceeds. Thus,
6 Plaintiffs “necessarily risk losing class action status.” *Grimm v. American Eagle Airlines, Inc.*,
7 No. LA CV 11-00406 JAK(MANx), 2014 WL 1274376, at *10 (C.D. Cal. Sept. 24, 2014). While
8 Plaintiffs are confident that this case is well suited for class certification, numerous obstacles to
9 certification remain. Few data breach cases have proceeded forward to obtain a ruling certifying
10 a contested class. The first to obtain certification was *Smith v. Triad of Ala., LLC*, No. 1:14-CV-
11 324-WKW, 2017 U.S. Dist. LEXIS 38574, at *45–46 (M.D. Ala. Mar. 17, 2017), and a more
12 recent certified contested class, *In re Marriott International Customer Data Securities Breach*
13 *Litigation*, 341 F.R.D. 128 (D. Md. 2022), was recently decertified on appeal, *see In re Marriott*
14 *Int’l, Inc.*, 78 F.4th 677, 680 (4th Cir. 2023) and later recertified. Thus, the dearth of direct
15 precedent adds to the risks posed by continued litigation.

16 4. The Amount Offered in Settlement

17 In light of the risks and uncertainties presented by data breach litigation, the value of the
18 Settlement favors approval. The Settlement makes significant relief available to Settlement Class
19 Members. Each Class Member is eligible to make a claim up to \$400 in Out-of-Pocket Losses, up
20 to \$100 in Lost Time, up to \$5,000 in Consequential Damages and/or three years of Credit
21 Monitoring and Identity Theft Protection Services OR (b) a \$50 Alternative Cash Payment. This
22 Settlement is a strong result for the Class, and as discussed below is in line with other settlements
23 in cases involving data breaches of similar scope. Because the settlement amount here is similar

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

7 The Settlement value per class member here is on par with or exceeds that in other
 8 exemplary data breach settlements.² Plaintiffs have achieved an excellent resolution for the
 9 Settlement Class.

10 5. The Extent of Discovery Completed and the Stage of Proceedings

11 Before entering into settlement discussions on behalf of class members, counsel should
 12 have “sufficient information to make an informed decision.” *Linney*, 151 F.3d at 1239. Here,
 13 Plaintiffs vigorously and aggressively gathered information that was available regarding Prestige
 14 Care and the Data Incident—including publicly-available documents concerning announcements
 15

16
 17 ² *See, e.g., Dickey’s Barbeque Restaurants, Inc.*, Case No. 20-cv-3424 (N.D. Tex.), Dkt. 62 (data
 18 breach class action involving more than 3 million people that settled for \$2.3 million); *In re*
 19 *Capital One Consumer Data Breach Litigation*, MDL No. 1:19md2915 (AJT/JFA) Doc. 2251
 20 (Memo in Support of Final Approval), 1 (\$190 million common fund settlement for a class of
 21 approximately 98 million); *Cochran v. Accellion, Inc., et al.*, No. 5:21-cv-01887-EJD (N.D. Cal.),
 22 ECF No. 32 (June 30, 2021) (\$5 million settlement fund for 3.82 million class members); *Adlouni*
 23 *v. UCLA Health Systems Auxiliary, et al.*, No. BC 589243 (Cal. Super. Ct. June 28, 2019) (\$2
 million settlement in medical information data breach for approximately 4,500,000 Class
 Members); *In re Anthem, Inc. Data Breach Litig.*, No. 5:15-md-02617 (N.D. Cal. Aug. 15, 2018)
 (\$115 million settlement in medical information data breach for 79,200,000 Class Members); *In*
re The Home Depot, Inc. Customer Data Sec. Breach Litig., No. 1:14-MD02583, 2016 WL
 6902351, at *7 (N.D. Ga. Aug. 23, 2016) and ECF No. 181-2 ¶¶ 22, 38 (\$13 million settlement for
 approximately 40 million class members); *In re Target Corp. Customer Data Sec. Breach Litig.*,
 MDL No. 14-2522, 2017 WL 2178306, at *1–2 (D. Minn. May 17, 2017) (\$10 million settlement
 for nearly 100 million Class Members); *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 582 (N.D.
 Cal. 2015) (\$1.25 million settlement for approximately 6.4 million Class Members).

1 of the Data Incident and notice of the Data Incident to Plaintiffs and the Settlement Class. Boyd
2 Dec., ¶ 7–8. The parties also informally exchanged non-public information concerning the Data
3 Incident and the size of the Class in preparation for a successful mediation. *Id.*

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

12 6. The Experience and Views of Counsel

13 Class Counsel has substantial experience litigating complex class cases of various types,
14 including data breach cases such as this one. *See* Boyd Dec. ¶¶ 3–5 & Ex. A thereto. Having
15 worked on behalf of the putative class since the Data Incident was first announced, evaluated the
16 legal and factual disputes, and dedicated significant time and monetary resources to this
17 litigation, proposed Class Counsel endorse the Settlement without reservation. *Id.* ¶ 9. A great
18 deal of weight is accorded to the recommendation of counsel, who are most closely acquainted
19 with the facts of the underlying litigation. *See, e.g., Norton v. Maximus, Inc.*, 2017 WL 1424636,
20 at *6 (D. Idaho Apr. 17, 2017); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523,
21 528 (C.D. Cal. 2004). Thus, this factor supports approval.

22 7. Governmental Participants.

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

1 8. The Reaction of the Class Members to the Proposed Settlement

2 Because notice has not yet been given, this factor is not yet implicated; however, the
3 named Plaintiffs support the Settlement. Boyd Dec., ¶ 20.

4 9. Lack of Collusion Among the Parties

5 The parties negotiated a substantial Settlement, as outlined above. The parties did not
6 commence discussion of fees until agreement on all substantive portions of the class resolution
7 had been reached, and both the class portion of the resolution and the fees were negotiated at
8 arm’s-length under the direction of a third party neutral mediator, the Hon. Ron B. Leighton, who
9 has extensive experience in handling class action cases and data breach class action cases.
10 Therefore, the Court can be assured that the negotiations were not collusive. *See G. F. v. Contra*
11 *Costa Cty.*, No. 13-cv-03667-MEJ, 2015 WL 4606078, at *43 (N.D. Cal. July 30, 2015) (“[T]he
12 assistance of an experienced mediator in the settlement process confirms that the settlement is
13 non-collusive.”) (internal quotation marks and citation omitted); *see also Cohorst v. BRE Props.*,
14 No. 3:10-CV-2666-JM-BGS, 2011 WL 7061923, at *12 (S.D. Cal. Nov. 9, 2011) (“[V]oluntary
15 mediation before a retired judge in which the parties reached an agreement-in-principle to settle
16 the claims in the litigation are highly indicative of fairness We put a good deal of stock in
17 the product of arms-length, non-collusive, negotiated resolution.”).

18 10. The Settlement Treats Settlement Class Members Equitably

19 Finally, Rule 23(e)(2)(D) requires that this Court confirm that the settlement treats all
20 class members equitably. The Advisory Committee’s Note to Rule 23(e)(2)(D) advises that
21 courts should consider “whether the apportionment of relief among class members takes
22 appropriate account of differences among their claims, and whether the scope of the release may
23 affect class members in different ways that bear on the apportionment of relief.” Fed. R. Civ. P.

1 23(e), advisory comm.’s note (2018).

2 In determining whether this factor weighs in favor of approval, a Court must determine
3 whether the Settlement “improperly grant[s] preferential treatment to class representatives or
4 segments of the class.” *Paredes Garcia v. Harborstone Credit Union*, No. 3:21-CV-05148-LK,
5 2023 WL 4315117 (W.D. Wash. July 3, 2023) (quoting *In re Tableware Antitrust Litig.*, 484 F.
6 Supp. 2d 1078, 1079 (N.D. Cal. 2007)).

7 Here, the Settlement does not improperly discriminate between any segments of the class,
8 as all class members are entitled to the same relief. While Plaintiffs have been permitted to seek
9 approval of a service award from this Court, as will be explained in detail in Plaintiffs’ Fee
10 Motion, the award of \$2,500 per Plaintiff is in line with awards granted in similar cases, is
11 presumptively reasonable, and does not call into question Plaintiffs’ adequacy or the validity of
12 the Settlement. *See, e.g., Roe v. Frito-Lay, Inc.*, No. 14-cv-00751, 2017 WL 1315626, at *8 (N.D.
13 Cal. Apr. 7, 2017) (noting a \$5,000 Service Award is presumptively reasonable in the Ninth
14 Circuit); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015)
15 (approving service awards of \$5,000).

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

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

23 Such notice must be the “best notice practicable,” *see* Fed. R. Civ. P. 23(c)(2)(B), which

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

11 Here, and after a competitive bid process, the parties have agreed to a robust notice
 12 program to be administered by a well-respected third-party class administrator—EisnerAmper—
 13 which will use all reasonable efforts to provide direct and individual notice to each potential
 14 Settlement Class Member. Prior to sending the Postcard Notice, EisnerAmper will check all
 15 mailing addresses against the National Change of Address (“NCOA”) database maintained by
 16 the USPS to ensure all address information is up-to-date and accurately formatted for
 17 mailing.³S.A. ¶ 3.2.1. The Notice and Claim Forms negotiated by the Parties are clear and concise
 18 and inform Settlement Class Members of their rights and options under the Settlement, including
 19 detailed instructions on how to make a claim, object to the Settlement, or opt-out of the
 20

21 _____
 22 ³ The NCOA database is maintained by the USPS and consists of approximately 160 million
 23 permanent change-of-address (COA) records consisting of names and addresses of individuals,
 families, and businesses who have filed a change-of-address with the Postal Service. The address
 information is maintained on the database for 48 months and reduces undeliverable mail by
 providing the most current address information, including standardized and delivery-point-coded
 addresses, for matches made to the NCOA file for individual, family, and business moves.

1 Settlement. *Id.* Exs. A, B, and C.

2 In addition to the direct notice, the Administrator will also establish a dedicated
3 Settlement Website. The Settlement Website will also provide the ability for Settlement Class
4 Members to file an online Claim Form. In addition, the Settlement Website also include links to
5 relevant filings including but not limited to the operative complaint; preliminary approval motion
6 and order; motion for attorneys' fees, costs, and service awards; and motion for final approval.
7 S.A.. ¶ 3.2.3. The Claims Administrator will also make a toll-free help line staffed with a
8 reasonable number of live operators shall be made available to address Settlement Class
9 Members' inquiries. *Id.* ¶ 3.2.4.

10 Plaintiffs have negotiated a notice program that is reasonably calculated under all the
11 circumstances to apprise Class Members of the pendency of the action and afford them an
12 opportunity to present their objections. Because this notice plan ensures that Settlement Class
13 Members' due process rights are amply protected, it should be approved. *See Hartranft v. TVI,*
14 *Inc.*, No. 15-01081-CJC-DFM, 2019 WL 1746137, at *3 (C.D. Cal. Apr. 18, 2019) ("The Court
15 finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above
16 and Section VIII of the Agreement constitutes the best practicable notice under the circumstances
17 and is reasonably calculated, under all the circumstances, to apprise Settlement Class Members
18 of the pendency of this action, the terms of the Agreement, and their right to object to or exclude
19 themselves from the Settlement Class."); *see also Spencer v. #1 A LifeSafer of Ariz., LLC*, No.
20 CV-18-02225-PHX-BSB, 2019 WL 1034451, at *3 (D. Ariz. Mar. 4, 2019) (Bade, J.).

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

22 In connection with implementation of the Notice Program and administration of the
23 settlement benefits, the Parties request the Court appoint EisnerAmper to serve as the Claims

1 Administrator. EisnerAmper is a well-respected third-party administrator with a trusted and
2 proven track record of supporting class action administrations. Boyd Dec. ¶¶ 14.

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

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

11 Here, proposed Class Counsel have extensive experience prosecuting class actions and
12 other complex cases, and specifically data breach cases. *See* Boyd Dec. ¶ 3-5, Ex. A (firm
13 resumes). All Plaintiffs’ Counsel concur that having a single person designated as Class Counsel
14 is a streamlined leadership structure that is appropriate for and commensurate with the needs of
15 this action. Accordingly, the Court should appoint Kaleigh N. Boyd of Tousley Brain Stephens
16 PLLC as Class Counsel.

17 **VII. CONCLUSION**

18 Plaintiffs have negotiated a fair, adequate, and reasonable Settlement that will provide
19 Class Members with both significant monetary and equitable relief. The Settlement should be
20 approved and Notice should be ordered to issue to the class. For all the above reasons, Plaintiffs
21 respectfully request this Court to grant Plaintiffs’ Unopposed Motion for Preliminary Approval
22 of Class Action Settlement.

23 I certify that this motion contains 8,178 words in compliance with the local civil rules.

1
2 Date: November 25, 2024

Respectfully Submitted,

3 **TOUSLEY BRAIN STEPHENS PLLC**

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23 *Attorneys for Plaintiffs and the Proposed Classes*

HONORABLE BENJAMIN H. SETTLE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Brim, et al.,

Plaintiffs,

v.

Case No. 3:24-cv-05133

Prestige Care Inc.,

Defendant.

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND
NOTICE PLAN**

WHEREAS, the above-captioned class action is pending in this Court (the “Action”);

WHEREAS, Plaintiffs Donna Brim, Kimberly Perry, and Janet Turner Lamonica (“Plaintiffs”), individually and on behalf of all others similarly situated, and Defendant Prestige Care Inc., (“Defendant”) have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendant in the above-captioned action (the “Action”) on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

1 **WHEREAS**, Plaintiffs have made an application, pursuant to Rule 23(e) of the Federal
2 Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with
3 the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only,
4 appointing Plaintiffs as Class Representatives, appointing Class Counsel as counsel for the
5 Settlement Class, appointing Eisner Advisory Group, LLC (“EAG”) as Settlement Administrator,
6 and allowing notice to Settlement Class Members as more fully described herein;
7

8 **WHEREAS**, the Court has read and considered: (a) Plaintiffs’ Motion for Preliminary
9 Approval of Class Action Settlement and Notice Plan, and the papers filed, and arguments made
10 in connection therewith; and (b) the Settlement Agreement and exhibits attached thereto; and

11 **WHEREAS**, unless otherwise defined herein, the capitalized terms herein shall have the
12 same meaning as they have in the Settlement Agreement.

13 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

14 1. **Class Certification for Settlement Purposes Only**. For settlement purposes only
15 and pursuant to Federal Rule of Civil Procedure 23(e), the Court certifies, solely for purposes of
16 effectuating the proposed Settlement, a Settlement Class in this matter defined as follows:
17

18 All individuals impacted to whom Prestige Care sent notice of the
19 Data Incident.

20 The Settlement Class includes approximately 45,000 people. The Settlement Class
21 specifically excludes: (i) all Persons who timely and validly request exclusion from the Class;
22 (ii) the Judge assigned to evaluate the fairness of this settlement (including any members of the
23 Court’s staff assigned to this case); (iii) Defendant’s officers and directors, and (iv) any other
24 Person found by a court of competent jurisdiction to be guilty under criminal law of initiating,
25 causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads
26 nolo contendere to any such charge.

1 2. **Class Findings:** The Court provisionally finds, for settlement purposes only, that:
2 (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be
3 impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims
4 of the Class Representatives are typical of and arise from the same operative facts and seek
5 similar relief as the claims of the Settlement Class Members; (d) the Class Representatives and
6 Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class
7 as the Class Representatives have no interests antagonistic to or in conflict with the Settlement
8 Class and have retained experienced and competent counsel to prosecute this matter on behalf of
9 the Settlement Class; (e) questions of law or fact common to Settlement Class Members
10 predominate over any questions affecting only individual members; and (f) a class action and
11 class settlement is superior to other methods available for a fair and efficient resolution of this
12 controversy.
13

14 3. **Class Representatives and Settlement Class Counsel:** Donna Brim, Kimberly
15 Perry, and Janet Turner Lamonica are hereby provisionally designated and appointed as the Class
16 Representatives. The Court provisionally finds that the Class Representatives are similarly
17 situated to absent Settlement Class Members and therefore typical of the Settlement Class and
18 that they will be adequate Class Representatives. The Court further finds that Kaleigh N. Boyd
19 of Tousley Brain Stephens PLLC is experienced and adequate counsel and are hereby
20 provisionally designated as Settlement Class Counsel.
21

22 4. **Preliminary Settlement Approval.** The Court hereby preliminarily approves
23 the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable, and adequate
24 to the Settlement Class, subject to further consideration at the Final Approval Hearing to be
25
26

1 conducted as described below. For the purposes of preliminary approval, the Court finds the
2 proposed settlement is fair, reasonable, and adequate.

3 5. **Final Approval Hearing.** A Final Approval Hearing shall be held at
4 ____: ____ .m. on _____, 2024, in the United States District Court, Western
5 District of Washington, located at _____, _____,
6 _____ for the following purposes:

- 7
- 8 a. To determine whether the proposed Settlement is fair, reasonable, and adequate to the
9 Class and should be approved by the Court;
 - 10 b. To determine whether to grant Final Approval, as defined in the Settlement Agreement;
 - 11 c. To determine whether the notice plan conducted was appropriate;
 - 12 d. To determine whether the claims process under the Settlement is fair, reasonable and
13 adequate and should be approved by the Court;
 - 14 e. To determine whether the requested Class Representatives Service Awards in the amount
15 of \$2,500 to each Class Representative, and Class Counsel’s attorneys’ fees in the amount
16 of \$325,000 should be approved by the Court;
 - 17 f. To determine whether the settlement benefits are fair, reasonable, and adequate; and,
 - 18 g. To rule upon such other matters as the Court may deem appropriate.

19 6. **Retention of Claims Administrator and Manner of Giving Notice.** Class
20 Counsel is hereby authorized to retain EAG, (the “Settlement Administrator”) to supervise and
21 administer the notice procedure in connection with the proposed Settlement as well as the
22 processing of Claims as set for more fully below.

23 7. **Approval of Form and Content of Notice.** The Court (a) approves, as to form
24 and content, the Long Form Notice, Summary (or Postcard) Notice, and Claim Form attached to
25 the Settlement Agreement as Exhibits A, B and C, and (b) finds that the Notice provided to
26 Settlement Class Members as set forth in the Settlement Agreement (i) is the best notice
practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under

1 the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of
2 the effect of the proposed Settlement (including the releases to be provided thereunder), of Class
3 Counsel's request for Fee Award and Costs, of Class Representatives' requests for Service Award
4 Payments, of their right to object to the Settlement, Class Counsel's request for Fee Award and
5 Costs, and/or Class Representatives' requests for Service Award Payments, of their right to
6 exclude themselves from the Settlement Class, and of their right to appear at the Final Approval
7 Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive
8 notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal
9 Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and
10 all other applicable law and rules. The date and time of the Final Approval Hearing shall be
11 included in the Notice before it is distributed so long as that date is known at the time of Notice.

12
13 8. **Participation in the Settlement.** Settlement Class Members who qualify for and
14 wish to submit a Claim Form shall do so in accordance with the requirements and procedures
15 specified in the Notice and the Claim Form and must do so within ninety (90) days after Notice
16 is mailed to the Settlement Class Members. If a Final Approval Order and Judgment is entered,
17 all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit
18 a claim in accordance with the requirements and procedures specified in the Notice and the Claim
19 Form shall be forever barred from receiving any such benefit, but will in all other respects be
20 subject to and bound by the provisions in the Settlement Agreement, the Release included in that
21 Settlement Agreement, and the Final Approval Order and Judgment.

22
23 9. **Claims Process and Distribution and Allocation Plan.** The Settlement
24 Agreement contemplates a process for the Settlement Administrator to assess and determine the
25 validity and value of claims and a payment methodology to Settlement Class Members who
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1 submit a timely, valid Claim Form. The Court preliminarily approves the claims process
2 described in the Settlement Agreement and directs that the Settlement Administrator effectuate
3 the distribution of Settlement consideration according to the terms of the Settlement Agreement,
4 should the Settlement be finally approved.

5 10. **Exclusion from Class**. Any Settlement Class Member who wishes to be excluded
6 from the Settlement Class must mail a written notification of the intent to exclude himself or
7 herself from the Settlement Class to the Settlement Administrator at the address provided in the
8 Notice, postmarked no later than **60 Days after the date Notice is mailed to the Settlement**
9 **Class Members** (the “Opt-Out/Objection Deadline”). The written notification must include the
10 name of the proceeding, the individual’s full name, current address, personal signature, and the
11 words “Request for Exclusion” or a comparable statement that the individual does not wish to
12 participate in the Settlement at the top of the communication.
13

14 Any Settlement Class Member who does not timely and validly exclude himself or herself
15 from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final Approval
16 Order and Judgment is entered, any Settlement Class Member who has not submitted a timely,
17 valid written notice of exclusion from the Settlement Class shall be bound by all proceedings,
18 orders, and judgments in this matter, including but not limited to the Release set forth in the Final
19 Approval Order and Judgment, including Settlement Class Members who have previously
20 initiated or who subsequently initiate any litigation against any or all of the Released Parties
21 relating to the claims and transactions released in the Settlement Agreement. All Settlement Class
22 Members who submit valid and timely notices of exclusion from the Settlement Class shall not
23 be entitled to receive any benefits of the Settlement.
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1 11. **Objections and Appearances.** No Settlement Class Member shall be heard, and
2 no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall
3 be received and considered by the Court, unless the objection is filed with the Court and sent to
4 Counsel for the Parties, postmarked by no later than the Objection Date, as specified in the
5 Settlement Agreement and Long Form Notice. For an objection to be considered by the Court,
6 the objection must also include all of the information set forth in Section 5.1 of the Settlement
7 Agreement, which is as follows: (i) the name of the proceedings; (ii) the Settlement Class
8 Member’s full name, current mailing address, email address, and telephone number; (iii) a
9 statement of the specific grounds for the objection, as well as any legal support for the objection;
10 (iv) the identity of any attorneys representing the objector; (v) a statement regarding whether the
11 Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing;
12 (vi) a statement identifying all class action settlements objected to by the Settlement Class
13 Member in the previous 3 years; and (vii) the signature of the Settlement Class Member or the
14 Settlement Class Member’s attorney.
15

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17 12. Any Settlement Class Member who fails to comply with the provisions in
18 Paragraph 11 may waive and forfeit any and all rights he or she may have to object, and shall be
19 bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders,
20 and judgments in this matter, including, but not limited to, the release in the Settlement
21 Agreement if a Final Approval Order and Judgment is entered. If a Final Approval Order and
22 Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed
23 herein shall be deemed to have waived his or her objections and shall be forever barred from
24 making any such objections in this Action or in any other proceeding or from challenging or
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1 opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement,
2 the motion for Service Award Payments, or the motion for Fee Award and Costs.

3 13. **Termination of Settlement**. This Order shall become null and void and shall be
4 without prejudice to the rights of the Parties, all of whom shall be restored to their respective
5 positions existing as of the date of the execution of the Settlement Agreement if the Settlement
6 is not finally approved by the Court or is terminated in accordance with the Settlement
7 Agreement. In such event, the Settlement and Settlement Agreement shall become null and void
8 and be of no further force and effect, and neither the Settlement Agreement nor the Court's
9 orders, including this Order, relating to the Settlement shall be used or referred to for any purpose
10 whatsoever.
11

12 14. **Use of Order**. This Order shall be of no force or effect if a Final Approval Order
13 and Judgment is not entered or there is no Effective Date and shall not be construed or used as
14 an admission, concession, or declaration by or against Defendant of any fault, wrongdoing,
15 breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an
16 admission, concession, or declaration by or against the Settlement Class Representatives or any
17 other Settlement Class Member that his or her claim lacks merit or that the relief requested is
18 inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she,
19 or it may have in this litigation or in any other lawsuit.
20

21 15. **Stay of Proceedings and Temporary Injunction**. Until otherwise ordered by the
22 Court, the Court stays all proceedings in the Action other than proceedings necessary to carry
23 out or enforce the terms and conditions of the Settlement Agreement. Pending final determination
24 of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and all other
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1 members of the Settlement Class, from commencing or prosecuting any and all of the Released
2 Claims against the Released Entities.

3 16. **Taxes.** The Settlement Administrator is authorized and directed to perform all
4 obligations with respect to taxes and any reporting or filings in respect thereof without further
5 order of the Court in a manner consistent with the provisions of the Settlement Agreement.

6 The Court retains jurisdiction to consider all further applications arising out of or
7 connected with the proposed Settlement.

8 17. **Summary of Deadlines.** The preliminarily approved Settlement shall be
9 administered according to its terms pending the Final Approval Hearing. Deadlines arising under
10 the Settlement Agreement and this Order include but are not limited to:

<u>FROM DATE OF PRELIMINARY APPROVAL</u>	
Prestige Care provides Class List to the Settlement Administrator	+7 days
Prestige Care Pays Administrative Expenses	+20 days
Notice Date	+30 days
Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	+60 days
Opt-Out & Objection Deadline	+60 days after the Notice Date
Settlement Administrator Provide List of Objections/Exclusions to Counsel	+7 days after the Objection Date / Opt-Out Date
Claims Deadline	+90 days after the Notice Date
<u>Final Approval Hearing</u>	+135 days from Preliminary Approval (at least)
Motion for Final Approval	-14 days before Final Approval Hearing Date
Settlement Administrator Provide Notice of Opt-Outs and/or Objections	-14 days before Final Approval Hearing Date

25
26 **FROM THE TIME JUDGMENT GRANTING FINAL APPROVAL BECOMES FINAL**

FROM DATE OF PRELIMINARY APPROVAL

Effective Date	+10 days from the date all of the conditions set forth in Section 3.8.1 of the Settlement Agreement have occurred
Payment of Fee Award and Expenses	+14 days after Effective Date
Payment of Service Awards	+14 days after Effective Date
Payment of Valid Claims	+60 days after Effective Date or +30 days of the date that the claim is approved, whichever is later
Settlement Website Deactivation	+120 days after Effective Date

IT IS SO ORDERED this ___ day of _____, 202__.

 The Honorable Benjamin H. Settle
 United States District Court
 Western District of Washington

Presented by:
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[PROPOSED] ORDER GRANTING PLAINTIFFS’
 UNOPPOSED MOTION FOR FINAL APPROVAL OF
 CLASS ACTION SETTLEMENT - 10

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