Honorable Josephine Wiggs
Hearing: October 28, 2025
With Oral Argument

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

JACKIE STONE, NERYS JONES, DAVINA KIM, JEAN DEFOND, and SHANE COZWITH, individually and on behalf of all others similarly situated, Plaintiffs, v. ACCELLION USA LLC, a Washington limited liability company; and THE OFFICE OF THE WASHINGTON STATE AUDITOR, Defendants.	NO. 21-2-01439-5 SEA PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Since this Court granted Plaintiffs' Motion for Preliminary Approval, the reaction of the settlement class has been overwhelmingly positive. Of the approximately 1.3 million Class Members, only four have opted out of the settlement and no class member has objected. The proposed Settlement, which provides a non-reversionary common fund of $3,085,152.73, provides the class with meaningful relief, commensurate with damages alleged in the operative Complaint. Reached through arm's-length negotiations by experienced and well-informed counsel, the Settlement will deliver tangible, immediate benefits to Settlement Class Members, addressing the potential harms of the data breach without protracted and inherently risky litigation. Because the proposed Settlement is fair, reasonable, and adequate, and because it

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satisfies all the requirements of Rule 23, the Court should finally certify the Settlement Class and grant final approval.

II. STATEMENT OF FACTS

A. Factual Background

This case arises out of a data security breach of Defendant Accellion's File Transfer Appliance ("FTA"), which Accellion first discovered in December 2020 and made public on January 12, 2021. Accellion is a cybersecurity company that provides various enterprise cybersecurity tools, including until relatively recently, FTA. Consolidated Amended Complaint ("CAC") ¶ 1. Businesses and organizations used FTA devices to transfer large, sensitive files. CAC ¶ 1, 4, 24. At different times, FTA was advertised as both a secure product and a "legacy product" that was "nearing end-of life." CAC ¶ 4. For several years, Accellion had been encouraging FTA users to upgrade to its newer and more secure product, Kiteworks, while still permitting customers to use FTA servers. CAC ¶ 4.

The Office of the Washington State Auditor ("SAO"), one of the Defendants in this case, licensed an FTA device before the Data Security Incident. CAC ¶ 5. SAO used FTA to transfer files related to an audit of the State's unemployment benefits program. The files contained personal identifying information ("PII") provided by unemployment applicants, including their names, Social Security numbers, dates of birth, street and email addresses, and bank account and routing numbers, in order to apply for unemployment benefits. CAC ¶ 45.

Plaintiffs allege that even though SAO knew that FTA was inadequately secured and had been advised to migrate to Kiteworks, SAO used FTA for several years, and stopped using FTA only after the breach in December 2020. CAC ¶¶ 9, 47. Plaintiffs brought this action on behalf of all persons whose information may have been compromised, alleging claims against both Accellion and SAO for their roles in the breach.

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B. Procedural History, Discovery, and Settlement Negotiations

In September 2021, both SAO and Accellion filed separate motions to dismiss. Following full briefing and oral argument on December 3, 2021, the Court denied SAO's motion. Shortly thereafter, Defendants moved to stay this litigation based on a purported nationwide settlement with Accellion that was then pending approval in the Northern District of California. On February 10, 2022, the Court entered a stay of these proceedings as to both Defendants. After nearly 18 months, when it was clear that the proposed settlement in the Northern District of California would not proceed, the Court denied Defendants' request to continue the stay any further, and on August 1, 2023, lifted the stay.

After the stay was lifted, the Parties engaged in significant discovery. *See* Jordan Decl. ¶ 3. SAO produced 4,865 pages of documents. *Id*. Plaintiffs' counsel has also been heavily involved in coordinated discovery efforts in the related action in the Northern District of California, including taking and defending depositions. *Id*.

Shortly after the stay was lifted, the Parties agreed to engage Jill Sperber of Judicate West as a mediator to oversee settlement negotiations in the Action. *Id*. ¶ 4. The Parties participated in extensive arm's-length settlement negotiations conducted through Ms. Sperber that included a day-long mediation session on November 1, 2023, followed by continued negotiations over the weeks and months that followed mediation. *Id*. ¶ 5. When the Parties could not resolve their claims, they continued formal discovery efforts. *Id*. ¶ 6.

Eventually, after further discovery the Parties re-engaged in settlement discussions. Following extensive arm's-length negotiations, on March 24, 2025, Plaintiffs and Defendant SAO reached an agreement to resolve the claims between them in this class action.[1] *Id*. ¶ 7. The Parties thereafter finalized all the terms of the Settlement and executed the Settlement Agreement on June 6, 2025. *Id*. ¶ 8.

[1] Defendant Accellion USA LLC is not a party to the Settlement Agreement.

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The Court entered an order granting Preliminary Approval of the Settlement on June 26, 2025. Dkt. 163. The Notice Plan approved therein has been carried out and the response of the Class has been favorable. The Parties filed a Stipulated Motion to Modify the Case Schedule to extend the final approval briefing deadlines. Dkt. 164. The Final Approval Hearing remains set for October 28, 2025. Dkt. 163, 165. For the reasons set forth herein, Plaintiffs now seek final approval of the Settlement.

III. SETTLEMENT TERMS

The following section briefly summarizes the core terms of the Settlement Agreement ("S.A."), which Plaintiffs previously filed with the Court. *See* Dkt. 160, Ex. 1.

> All individuals residing in the United States to whom SAO or its authorized representative provided a notice concerning the December 2020 Data Security Incident.

S.A. ¶ 1.8. This proposed Class encompasses approximately 1.3 million[2] Class Members. *Id*.

Consideration

The Settlement Agreement requires SAO to pay $3,085,152.73 into a non-reversionary common settlement fund set up by the Settlement Administrator (the "Settlement Fund"). This fund will be used to fund (i) Compensation for Out-Of-Pocket Losses and Lost Time; (ii) Alternative Compensation Payments; (iii) Costs of Claims Administration; (iv) service awards; and (v) attorney's fees and litigation expenses. S.A. ¶¶ 2.1, 2.2.

Settlement Class Members who submit a timely Valid Claim using an approved Claim Form, along with necessary supporting documentation, are eligible to receive monetary compensation for the following:

- **Out-of-Pocket Losses:** All Settlement Class Members who submit a timely claim form, with supporting documentation, are eligible for compensation for

[2] Following de-duplication efforts, the class size was reduced from 1.6 million to approximately 1,329,001 individuals.

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Out-of-Pocket Losses fairly traceable to the Data Security Incident**,** up to $5,000;

- **Reimbursement for Lost Time:** Settlement Class Members who have approved Settlement Claims for Out-of-Pocket Losses also may submit Settlement Claims to be compensated for lost time they reasonably spent responding to the Data Security Incident. Settlement Class Members may claim up to three (3) hours of time compensated at the rate of $30 per hour (for a total of $90).
- **Alternative Compensation**: Settlement Class Members who do not submit approved Settlement Claims for Out-of-Pocket Losses or Attested Time may elect to receive Alternative Compensation payments. These payments will be calculated by first deducting from the Settlement Fund claims for Out-Of-Pocket Losses, Attested Time, and all other expenses, claims, fee awards, costs, and service awards, and allocating the remainder evenly to all eligible Alternative Compensation claimants

Id. ¶ 12. Claims are subject to review for timeliness, completeness, and validity by the Settlement Administrator; expenses eligible for reimbursement, as well as the requirements for a claim.

IV. NOTICE TO THE CLASS

As directed by this Court's Preliminary Approval Order, the parties worked diligently to implement the Notice Plan in coordination with the approved Settlement Administrator, EisnerAmper Gulf Coast, LLC ("Settlement Administrator" or "EAG"). Using records provided by SAO, EAG fully implemented the comprehensive notice program. As detailed below and in the Declaration of Ryan Aldridge in Support of Plaintiffs' Motion for Final Approval of Settlement ("Admin. Decl."), submitted herewith, that notice plan has been successful.

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A. Direct Mail and Email Notice

On July 10, 2025, EAG received a data file containing the name and mailing or email addresses for a total of 1,398,976 Class Members from SAO. Following verification and deduplication efforts, EAG prepared a refined master list of 1,329,001 Class Members, referred to as the "Class List." Admin Decl. ¶ 6. On July 26, 2025, EAG sent the Short-Form Notice via email to 1,273,817 Class Members, following efforts to verify and validate email addresses and domains. *Id.* ¶¶ 7-8. The email notice was successfully delivered to 1,173,285 Class Members. *Id.* ¶ 8. Additionally, EAG sent the Postcard Notice via U.S. First-Class mail to 53,627 Class Members. *Id.* ¶ 11. Following receipt of undeliverable emails or mail notices returned as undeliverable, EAG performed address lookup information and re-issued email and mail notices to new addresses for Class Members for whom additional address information could be located. *Id.* ¶ 11. In total, 1,299,510 Class Members successfully received notice via email or mail. *See id.* ¶ 16 & table 1.

B. Settlement Website, Phone, and Email

EAG established and maintained a dedicated settlement website with the domain/URL www.SAOFTASettlement.com that went live on July 26, 2025. *Id.* ¶ 13. The Settlement Website contained broad information including the Settlement Agreement, Long Form Notice, Claim Form, and Frequently Asked Questions. *Id.* The Settlement Website generated approximately 71,266 views of the website's pages. *Id.*

EAG also established a toll-free support phone number that provided information about the Settlement to class members 24-hours a day throughout the notice period. *Id.* ¶ 14.

Finally, EAG established and maintained a dedicated email address which Class Members were able to use to communicate with EAG regarding the case. *Id.* ¶ 15.

C. Effectiveness of Notice Program

The Notice Program as designed and implemented reached approximately 97.78% of the identified Settlement Class. *Id.* ¶ 16. The reach of the Notice Program is consistent with

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other court-approved and best-practicable programs and was designed to satisfy the requirements of due process.

V. CLAIMS, OPT OUTS, AND OBJECTIONS

The reaction of the Settlement Class has been positive. To date, the claims administrator has received over 17,748 claims. *Id.* ¶ 17. Only eight (8) class members have submitted a valid opt-out request, and no member has objected. *See id.* ¶¶ 18-19.

The deadline to submit a claim is October 24, 2025. *Id.*¶ 17. With more than two weeks left for Settlement Class Members to submit claims, the claims received are expected to increase. Prior to the Final Approval Hearing, EAG will provide a supplemental declaration to update the Court with the total amount of timely claims, opt-outs, and objections received.

VI. ARGUMENT

Class action settlement approval "take[s] place over three stages. First, the parties present a proposed settlement asking the Court to provide preliminary approval for both (a) the settlement class and (b) the settlement terms." *Rinky Dink Inc. v. Elec. Merch. Sys. Inc.*, No. C13-1347 JCC, 2015 WL 11234156, at *1 (W.D. Wash. Decl. 11, 2015). Second, if preliminary approval is granted, "(i) notice is sent to the class describing the terms of the proposed settlement, (ii) class members are given an opportunity to object or opt out, and (iii) the court holds a fairness hearing at which class members may appear and support or object to the settlement." *Id.* "Third, taking account of all of the information learned during the aforementioned processes, the court decides whether or not to give final approval to the settlement and class certification." *Id.* Now at the third and final stage of this process, Plaintiffs respectfully request that the Court decide that final approval is appropriate both as to the Settlement and as to certification of the Settlement Class.

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A. The Court Should Grant Final Approval of the Settlement

Plaintiffs respectfully request that the Court grant final approval of this class action settlement in accordance with CR 23. CR 23(e) prohibits the dismissal or compromise of a class action "without the approval of the court." Consistent with that rule, a class action may not settle unless the trial court has concluded that the proposed class settlement is "fair, adequate, and reasonable." *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 188 (2001). While courts apply "heightened scrutiny" when assessing the fairness, adequacy, and reasonableness of a pre-class certification settlement, the inquiry remains "delicate" and "largely unintrusive." *Summers v. Sea Mar Cmty. Health Ctrs.*, 29 Wn. App. 2d 476, 500 (2024), *review denied sub nom. Barnes v. Sea Mar Cmty. Health Ctrs.*, 3 Wn.3d 1002 (2024). To perform that inquiry, a trial court considers:

> [1] the likelihood of success by plaintiffs; [2] the amount of discovery or evidence; [3] the settlement terms and conditions; [4] recommendation and experience of counsel; [5] future expense and likely duration of litigation; [6] recommendation of neutral parties, if any; [7] number of objectors and nature of objections; and [8] the presence of good faith and the absence of collusion.

Pickett., 145 Wn.2d at 188. Not all factors will be relevant to every case, and the relative importance of any one factor "will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Id.* All relevant factors favor final approval of the Settlement here.

1. Plaintiffs' Likelihood of Success Merits Final Approval

The existence of risk and uncertainty to the Plaintiff and Class "weigh[] heavily in favor of a finding that the settlement was fair, adequate, and reasonable." *Pickett*, 145 Wn.2d at 192. Here, Plaintiffs believe in the merits of their claims but also recognize that success would be far from certain. Defendants deny all allegations of wrongdoing and contend that Plaintiffs and the Class have not suffered any cognizable harm from the Data Incident. Moreover, SAO maintains that Plaintiffs would be unable to satisfy the requirements necessary to proceed as a class action

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under Washington law. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain—especially where serious questions of law and fact exist, which is common in data breach litigation. Data breach litigation is evolving; and there is no guarantee of the ultimate result. *See Gordon v. Chipotle Mexican Grill, Inc*., 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019). Accordingly, although Plaintiff is confident in the strength of their case against SAO, the outcome is nonetheless uncertain. There is also a very real risk of a prolonged and expensive appeals process. While the chances of prevailing at trial, and in subsequent appeals, are uncertain, the value for the Class through the Settlement Agreement is guaranteed. Class Counsel understood and considered these risks when negotiating the Settlement Agreement, which eliminates these risks and provides substantial compensation to Class Members without further delay.

2. The Amount of Discovery and Evidence Supports Final Approval

Where "extensive discovery" takes place before a class action settlement, final approval is favored. *See Pickett*, 145 Wn.2d at 199. This is to ensure the parties have "sufficient information to make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). In this case, the Parties reached an agreement only after SAO provided significant discovery, and the Parties discussed their respective positions on the merits of the claims and class certification. Jordan Decl. ¶¶ 3-4. With this information, Class Counsel concluded that a settlement according to the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and if approved, would provide outstanding relief. *Id.* ¶ 15.

3. The Settlement Terms and Conditions Support Final Approval

The terms and conditions of the proposed Settlement Agreement support its final approval. All Class Members who submitted a valid and timely Claim Form remain entitled to compensation, up to a total of $5,000 per person, for out -of-pocket monetary losses incurred as a result of the Incident. S.A. ¶ 2.2.1. Settlement Class Members may submit claims to be

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compensated for lost time they reasonably spent responding to the Data Breach, up to three (3) hours of time compensated at the rate of $30 per hour. *Id.* ¶ 2.2.2. Alternatively, Settlement Class Members are also eligible to make a claim for a *pro rata* cash payment from the Settlement Fund, subject to the limits of the Settlement Fund. *Id.* ¶ 2.2.3. Accordingly, the settlement provides fair, reasonable and adequate recovery in light of the risks of further litigation.

4. The Positive Recommendation and Experience of Class Counsel Supports Final Approval

"When experienced and skilled class counsel support a settlement, their views are given great weight." *Pickett*, 145 Wn.2d at 200. Class Counsel in the present matter, who are experienced and skilled in complex class action litigation, support the Settlement as fair, reasonable, and adequate and in the best interests of the Class. Jordan Decl. ¶¶ 16-23. Class Counsel have significant class action experience and have litigated the case aggressively and effectively. Given Class Counsel's knowledge and experience, Counsel believe the settlement is an excellent result that provides substantial benefits for Settlement Class Members. Jordan Decl. ¶¶ 16-19.

5. Future Expense and Likely Duration of Litigation Support Final Approval

Another factor the Court considers in assessing the fairness of a settlement is the expense and likely duration of the litigation had a settlement not been reached. *Pickett*, 145 Wn.2d at 188. While Plaintiffs strongly believe in the merits of their case, they also understand that Defendant asserts a number of potentially case-dispositive defenses, and Plaintiffs would face continued risks if this case was litigated further. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles—even just to make it past the pleading stage. See *Hammond v. The Bank of N.Y. Mellon Corp.*, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010).

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This settlement guarantees substantial recovery for the Class, while obviating the need for lengthy, uncertain, and expensive litigation and risk of appeal. Although the Parties conducted significant discovery up to this point, continued litigation of this matter would cause additional expense and delay. In contrast, the settlement makes substantial monetary relief available to Class Members in a prompt and efficient manner.

6. The Reaction of the Class Supports Final Approval

A court may infer a class action settlement is fair, adequate, and reasonable when few, if any, class members object to it. *See Pickett*, 145 Wn.2d at 200–01 (approving settlement with almost fifty objections). Here, the deadline to opt out or object to settlement elapsed on September 25, 2025. As of the date of this filing, no Class Member formally objected and only eight Class Members opted out. Admin Decl. ¶¶ 18-19. This indicates strong support for the settlement by the Settlement Class Members and weighs heavily in favor of final approval. *See Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc*., 2019 WL 3183651 at *5 (D. Md. Jul. 15, 2019) (finding opt-out rate of .026 percent indicated strong support for settlement of data breach action). In fact, courts have typically deemed a small number of objections as affirmative support for settlement approval, as the number of objections suggests an overall favorable reaction from the class. *Rodriguez v. West Publishing Corp*., 563 F.3d 948, 967 (9th Cir. 2009); *Hughes v. Microsoft Corp*., No. C98–1646C, C93–0178C, 2001 WL 34089697, at *8 (W.D. Wash. Mar. 26, 2001). Here, there are *no* objections.

Thus far, 1.34% of the Settlement Class Members have submitted timely claims. *See* Admin Decl. ¶ 17. The date by which Settlement Class Members must submit a claim is October 24, 2025, so Class Counsel expects the claims rate to increase. This is in line with the average data breach class action claims rates and meets the standard for final approval. *See In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 321 (N.D. Cal. 2018) (noting that class data breach settlements in *In re Home Depot* and *In re Target* had claims rates of 0.2 percent and 0.23 percent respectively). "A low claim submission rate, while not ideal, is not necessarily

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indicative of a deficient notice plan." *Pollard v. Remington Arms Co., LLC*, 896 F.3d 900, 906 (8th Cir. 2018) (affirming district court's order granting final approval of settlement when claims submission rate was 0.29% at the time of the final approval hearing). Specifically for data breach cases, a low claims rate is not unusual. *Weisenberger v. Ameritas Mut. Holding Co.*, No. 4:21-CV-3156, 2024 WL 3903550 at *3 (D. Neb. Aug. 21, 2024).

B. Class Members Received the Best Notice Possible

This Court previously determined that the notice program meets the requirements of due process and applicable law, provides the best notice practicable under the circumstances, and constitutes due and sufficient notice of all individuals entitled thereto. *See* Dkt. 163. The Settlement Administrator implemented the Notice Program preliminarily approved by the Court. *See generally* Admin Decl. To date, the Notice program has been successful. And the Settlement Administrator was able to achieve direct notice to approximately 97.78% percent of the Settlement Class. Admin Decl. ¶ 16.

C. The Requested Attorneys' Fees Are Fair and Reasonable

By separate concurrent motion, Class Counsel requests a total award of $1,028,384.24, inclusive of their litigation costs and expenses, to be paid from the Settlement Fund, which represents one-third of the non-reversionary common fund benefit earned for the Class. *See* Plaintiffs' Motion for Attorneys' Fees, Costs and Service Award; S.A. ¶ 9.2. This amount was negotiated only after the Parties agreed to all substantive terms of the settlement. Jordan Decl. ¶ 15.

Class Counsel's request for fees is reasonable under a percentage-of-the fund analysis. Washington contingency fee percentages in individual cases are usually in the range of 33 to 40 percent. *See Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wn.2d 157, 161–66 (2010). The typical range for attorneys' fees awarded in common fund class action settlements is between 20 and 33 percent. *See Alba Conte et al.*, 4 Newberg on Class Actions § 14.6 (4th ed. 2002); *Bowles v. Wash. Dep't of Ret. Sys.*, 121 Wn.2d 52, 73 (1993). Washington courts, including those in

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King County, have regularly granted fees requests at or exceeding 30 percent of the common fund. *See Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 601–02 (1983); *see also, e.g.*, *Garcia v. Washington State Department of Licensing*, Case No. 22-2-0563505 SEA, Final Approval Order and Judgment (Dixon, J.) (awarding 30 percent of common fund in attorneys' fees for data breach case against the Washington Department of Licensing).

D. The Requested Service Awards Are Fair and Reasonable

Class Counsel is also requesting Service Award Payments for the Settlement Class Representatives in recognition of her contribution to this Litigation in the amount of $7,500.00, in accordance with the terms of the Settlement Agreement. The requested service award of $7,500 is well in line with awards approved by state and federal courts in Washington and elsewhere in the data breach context. *See, e.g.*, *In re Online DVD-Rental Antitrust Litig*., 779 F.3d 934, 947–48 (9th Cir. 2015) (approving service payments to plaintiffs in the amount of $5,000 each); *Lutz v. Electromed, Inc.*, No. 21-cv-02198, Dkt. No. 73 (D. Minn.) (service award of $9,900). Service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Peterson v. Kitsap Cnty. Fed. Credit Union*, 171 Wn. App. 404, 430 (2012) (citation omitted).

The settlement is not contingent on the Court's granting of such an award. S.A. ¶ 9.3. The basis for the award is purely to compensate Plaintiffs for their time and effort in initiating the lawsuit, staying abreast of all aspects of this litigation, cooperating in discovery, participating in the settlement discussions, and fairly and adequately protecting the interests of the Settlement Class Members. Thus, the service award does not constitute preferential treatment. These factors support approval of the settlement.

E. Final Certification of the Settlement Class Is Appropriate

Certification of a settlement class requires analysis of the factors defined in CR 23. *Pickett*, 145 Wn.2d at 188–89. This Court provisionally certified the Settlement Class in its

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Preliminary Approval Order, finding that the requirements of Rules 23(a) and (b)(3) were met. *See* Dkt. 22. Because no relevant facts have changed since the Court certified the Settlement Class, the Court need not revisit class certification here. The Settlement Class should now be finally certified.

VII. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval to the Settlement by entering the proposed Final Approval Order.

I certify that this memorandum contains 4,036 words, in compliance with the Local Civil Rules.

DATED this 6th day of October, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2025, a copy of the foregoing was served on counsel at the following address by the methods indicated:

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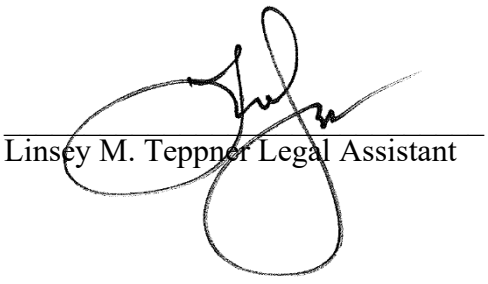
I declare under penalty of perjury under the laws of the state of Washington and the United States that the foregoing is true and correct.

Executed this 6th day of October, 2025, at Seattle, Washington.



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