

Daniel O. Herrera (*pro hac vice* anticipated)  
Nickolas J. Hagman (admitted *pro hac vice*)

**CAFFERTY CLOBES MERIWETHER  
& SPRENGEL LLP**

135 S. LaSalle, Suite 3210  
Chicago, Illinois 60603  
Telephone: (312) 782-4880  
dherrera@caffertyclobes.com  
nhagman@caffertyclobes.com

*Interim Co-Lead Counsel*

[Additional Counsel Listed on Signature Page]

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

*In re Kannact, Inc. Data Security Incident*

Lead Case No. 6:23-cv-1132-AA

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL**

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Plaintiffs Terry Dukes, Ann Fongheiser, and Alan White (“Plaintiffs” or “Representative Plaintiffs”) submit this Unopposed Motion for Preliminary Approval of Class Action Settlement. Defendant Kannact, Inc. (“Kannact” or “Defendant”) does not oppose certification of the Settlement Class<sup>1</sup> solely for purposes of effectuating the Settlement submitted for preliminary approval with this motion.

The Settlement follows extensive arms’ length negotiations supervised by a respected, experienced mediator. Under the Settlement, Kannact will pay \$700,000 into a non-reversionary common fund for the benefit of Plaintiffs and Settlement Class Members (the “Settlement Fund”). The Settlement Class Members will receive individual notice of the Settlement by direct email or U.S. mail. Every Settlement Class Member can make a claim for reimbursement of documented losses incurred as a result of the Data Security Incident, up to \$5,000 or, alternatively, for a *pro rata* cash payment. Every Settlement Class Member is also entitled to three years of free credit monitoring and identity theft protection services, regardless of whether they make a claim for monetary benefits. In addition, Kannact has implemented or will implement certain reasonable steps to enhance the security of its systems and environments presently and in the future. Notice and Settlement Administration costs, as well as litigation expenses, attorneys’ fees, and Class Representative service awards as awarded by the Court, will be paid out of the Settlement Fund.

Plaintiffs and Settlement Class Counsel strongly endorse the Settlement as an excellent result that is in the best interests of the Settlement Class, particularly given the substantial risks and delay associated with continued litigation. They thus respectfully submit that the Court should

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<sup>1</sup> Capitalized terms herein have the same meaning as those set forth in the Parties’ Settlement Agreement and Release (referred to herein as the “Settlement Agreement,” “Settlement,” or “S.A.”), attached as Exhibit 1 to the Declaration of Nickolas J. Hagman (“Hagman Decl.”).



grant preliminary approval and direct that notice be sent to the Settlement Class in accordance with the Settlement Agreement.

### **FACTUAL BACKGROUND**

Plaintiffs allege that on or around March 13, 2023, cybercriminals obtained access to Kannact's computer and information systems and potentially accessed personally identifying information, financial account information, and private health information (collectively "Private Information") belonging to Kannact's current and former patients and employees (the "Data Security Incident"). Specifically, Plaintiffs allege that the following categories of information were potentially compromised in the Data Security Incident, including, but not limited to: full names, email addresses, employee ID numbers, dates of birth, Social Security numbers, and medical and health insurance information. Kannact discovered this intrusion on March 13, 2023, and took steps to secure its systems. On August 23, 2023, Kannact sent notice of the Data Security Incident to 109,210 individuals.

### **PROCEDURAL BACKGROUND**

On August 3, 2023, Plaintiff Terry Dukes filed a putative class action complaint against Kannact concerning the Data Security Incident in this Court. Plaintiffs Ann Fongheiser and Alan White filed related actions on September 5 and 6, 2023, respectively. Dukes, Fongheiser, and White thereafter filed a joint motion to consolidate the three cases on September 21, 2023. On September 26, 2023, the Court granted consolidation and, on October 25, 2023, Plaintiffs filed their Consolidated Amended Class Action Complaint.

In January 2024, the Parties began settlement discussions. Shortly thereafter, the Parties agreed to attend a full-day mediation on February 27, 2024, before Judge Wayne Andersen (Ret.) of JAMS. Prior to the mediation, the Parties engaged in an informal exchange of information and

documents, and they presented their positions and arguments in confidential submissions to Judge Andersen. At the February 27, 2024, mediation, the Parties reached an agreement. This accepted settlement is memorialized in the Settlement Agreement attached to this motion. The parties promptly notified the Court of the Settlement in the Joint Status Report filed on March 1, 2024, and requested a stay of this matter until April 16, 2024. On that date, the Parties filed another Joint Status Report, requesting that the Court extend the stay. The Court continued the stay of all deadlines in this matter until May 31, 2024.

## SETTLEMENT TERMS

### I. Proposed Settlement Class

The Settlement will provide substantial relief for the Proposed Settlement Class, which is defined as “all persons in the United States whose information may have been impacted in the Data Security Incident, including persons to whom Kannact mailed a notification that their information may have been impacted in the Data Incident.” Settlement Agreement (“S.A.”) ¶ 1.32. The Settlement Class contains approximately 109,210 persons. Hagman Decl. ¶ 6.

### II. Settlement Benefits – Monetary Relief

The Settlement negotiated on behalf of the Class provides a \$700,000 non-reversionary Settlement Fund, from which Settlement Class Members may make a claim for the following benefits:

(a) Cash Award. Settlement Class Members who submit a valid and timely Claim Form may elect to receive a payment (a “Cash Award”). The cash awards for all valid claimants shall be a *pro rata* share of the “Post Loss Payment Net Settlement Fund,” which is effectively the remainder of the Settlement Fund after payment of: the cost of notice and administration; any attorneys’ fees, expenses, and service awards approved by the Court; the cost of Credit Monitoring

and Insurance claimed by Class Members; and approved Documented Loss Payments. S.A. ¶¶ 2.2(a), 2.4.

(b) *Documented Loss Payment.* In the event a Settlement Class Member does not elect a Cash Award, the Settlement Class Member may submit a claim for a Settlement Payment of up to \$5,000 for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, a Settlement Class Member must submit an attestation regarding any actual and unreimbursed Documented Loss, and reasonable documentation that demonstrates the Documented Loss itself. S.A. ¶ 2.2(b).

(c) *Credit Monitoring and Insurance Services.* Each Settlement Class Member who submits a valid and timely Claim Form may elect to receive three (3) years of Credit Monitoring and Insurance Services (“CMIS”) regardless of whether they also make a claim for a Settlement Payment pursuant to Paragraph 2.2. The CMIS will have an enrollment period of twelve (12) months after the enrollment codes are sent to Class Members claiming this benefit. The CMIS will include the following services to be provided to each Settlement Class Member who submits a valid and timely Claim Form and elects the CMIS: (i) up to \$1 million dollars of identity theft insurance coverage; (ii) three bureau credit monitoring providing notice of changes to the Settlement Class Members’ credit profile; (iii) alerts for activity including new inquiries, new accounts created, change of address requests, changes to public records, postings of potentially negative information, and other leading indicators of identity theft; (iv) customer care and dedicated fraud resolution agent; (v) comprehensive educational resources; and (vi) extended fraud resolution.

### III. Class Notice and Settlement Administration

Plaintiffs' Counsel contacted several leading class action claims administrators to seek bids for providing administrative services for this Settlement. Hagman Decl. ¶ 24. After thorough vetting of the proposals and comparing the cost efficiencies against the services provided, the Parties selected, and request that the Court approve, Postlethwaite & Netterville APAC, now known as EisnerAmper, as Settlement Administrator. S.A. ¶ 1.29. The Settlement Administrator will be responsible for providing notice to Settlement Class Members, maintaining a Settlement Website with all pertinent documents and deadlines, communicating with Settlement Class Members, reviewing and making determinations regarding claims, and disbursing settlement payments.

The Notice Program will be paid for from the Settlement Fund and has been designed to provide the best notice practicable, aiming to reach the greatest number of Settlement Class Members possible. Hagman Decl. ¶ 26. Notice will be given to the Settlement Class via direct, individual notice, by sending the Short Notice (S.A., Exhibit D) via email or U.S. mail to the postal addresses provided to the Settlement Administrator by Kannact. S.A. ¶ 3.3(c). The Long Notice (S.A. Exhibit B) will be posted on the Settlement Website, which the Settlement Administrator will establish prior to the dissemination of the Short Form Notice, along with other important documents, such as the Settlement Agreement and the motions for final settlement approval and for attorneys' fees, expenses, and service awards once they are filed. S.A. ¶ 3.3(b).

The notice documents, including the Short Notice and Long Notice, are based on models approved by courts in this District in data breach settlements. They are clear, concise, and directly apprise Settlement Class Members of all the information they need to know regarding how to make a claim, opt out, or object to the Settlement. Hagman Decl. ¶ 25. The timing of the Notice Program

will give Class Members adequate time to determine if they would like to submit a claim, opt out of, or object to the Settlement. In addition to the Settlement Website, a toll-free number with interactive voice responses will be established to address Class Members' questions and assist them with their options and with making claims under the Settlement. *Id.*

#### **IV. Attorneys' Fees and Expenses**

If the Settlement is preliminarily approved, Class Counsel will apply for an award of reasonable attorneys' fees and costs no later than 14 days prior to the opt-out/objection deadline. Pursuant to the Settlement Agreement, Settlement Class Counsel will seek an award of Attorneys' Fees and reasonable costs and expenses incurred in the Litigation, of no more than one-third of the Settlement Fund (\$233,333.00). S.A. ¶¶ 7.1.-7.2.

#### **V. Service Awards to Representative Plaintiffs**

The Representative Plaintiffs in this case have played a crucial role in this matter, including by stepping up publicly to represent the other individuals impacted by the Data Security Incident and providing their Counsel with important information about the impact of the Data Security Incident. All Plaintiffs have been personally involved in the case and support the Settlement. Hagman Decl. ¶ 33. Plaintiffs will separately petition the Court for service awards of \$1,500 for each Representative Plaintiff in recognition of the time, effort, and expense they incurred pursuing claims for the benefit of the Settlement Class. S.A. ¶ 7.4. Service awards in this range are commonly awarded in class action cases. *See, e.g., Pauley v. CF Entm't*, No. 2:13-CV-08011-RGK-CW, 2020 WL 5809953, at \*4 (C.D. Cal. July 23, 2020) (where the Court granted "class representative enhancement fees in the amount of \$5,000 each to Plaintiffs," finding that amount to be "presumptively reasonable"); *In re Yahoo Mail Litig.*, No. 13-CV-4980, 2016 WL 4474612,

at \*11 (N.D. Cal. Aug. 25, 2016) (“The Ninth Circuit has established \$5,000.00 as a reasonable benchmark [for service awards].”).

## **VI. Release**

Upon entry of the Final Approval Order, Plaintiffs and the Settlement Class Members who do not submit a valid and timely Opt-Out Request will be deemed to have “fully, finally, and forever released, relinquished, and discharged all Released Claims.” S.A. ¶ 6.1. “Released Claims” are fully defined in Section 1.24 of the Settlement Agreement, and include all claims “based on, relating to, concerning or arising out of the Data Security Incident and alleged theft of other personal information or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation” other than claims relating to the enforcement of the Settlement Agreement and the claims of any Settlement Class Members who timely opted out of the class. S.A. ¶ 1.24. *See Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (holding that a settlement “may preclude a party from bringing a related claim in the future even though the claim was not presented and might not have been presentable in the class action . . . where the released claim is based on the identical factual predicate as that underlying the claims in the settled class action”).

## **ARGUMENTS AND AUTHORITY**

Federal Rule of Civil Procedure 23(e) requires court review and approval of any proposed class action settlement. Federal courts strongly favor and encourage settlements, particularly in class actions where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”); 5 Newberg on Class

Actions § 13:44 (recognizing judicial policies favoring settlement in class action cases and noting presumption that a proposed settlement is “fair in the presence of certain factors.”). Handling claims like those at issue here through individual litigation would unduly tax the court system, require large expenditures of resources, and would be impracticable given the relatively small value of the claims of the individual members of the proposed class. The Settlement before the Court provides the best vehicle for Settlement Class Members to obtain the relief to which they are entitled in a prompt and efficient manner.

Courts, including those in this Circuit, endorse a three-step procedure for approval of class action settlements: (1) preliminary approval of the proposed settlement, (2) dissemination of court-approved notice to the class with the opportunity for putative class members to opt out or object to the settlement, and (3) a final fairness hearing at which class members may be heard regarding the settlement and at which evidence may be heard regarding the fairness, adequacy, and reasonableness of the settlement. *Manual for Complex Litigation (Fourth)* (2004) § 21.63.

Plaintiffs seek certification of a Settlement Class consisting of: “all persons in the United States whose information may have been impacted in the Data Incident, including persons to whom Kannact mailed a notification that their information may have been impacted in the Data Incident.” S.A. ¶ 1.32. The Settlement Class includes approximately 109,210 persons.

### **I. The Settlement Satisfies Rules 23**

As part of its review of a proposed class settlement, the Court “should make a preliminary determination that the proposed class satisfies the criteria” of Rule 23. *Manual for Complex Litigation (Fourth)* § 21.632. In evaluating a settlement, however, the Court does not consider trial manageability. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

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

Before assessing the parties' settlement, the Court should first confirm that the underlying Settlement Class meets the requirements of Rule 23(a). *See Amchem*, 521 U.S. at 620; Manual for Complex Litigation (Fourth), § 21.632. These requirements are: numerosity, commonality, typicality, and adequacy—each of which is met here. Fed. R. Civ. P. 23(a); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011).

i. The proposed Settlement Class is sufficiently numerous.

In this district, there is a “rough rule of thumb” that 40 class members is sufficient to meet the numerosity requirement. *Giles v. St. Charles Health Sys., Inc.*, 294 F.R.D. 585, 590 (D. Or. 2013); *see also Wilcox Dev. Co. v. First Interstate Bank of Or., N.A.*, 97 F.R.D. 440, 443 (D. Or. 1983) (same); 1 McLaughlin on Class Actions § 4:5 (15th ed.) (“The rule of thumb adopted by most courts is that proposed classes in excess of 40 generally satisfy the numerosity requirement.”). Numbering approximately 109,210 individuals, the proposed settlement class easily satisfies Rule 23's numerosity requirement. Joinder of so many individuals is clearly impracticable.

ii. The proposed Settlement Class satisfies the commonality requirement.

The Settlement Class also satisfies the commonality requirement, which requires that class members' claims “depend upon a common contention” of such a nature that “determination of its truth or falsity will resolve an issue that is central to the validity of each [claim] in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Plaintiff allege that here, “[t]hese common issues all center on [Defendant's] conduct, satisfying the commonality requirement.” *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-TWT, 2016 WL 6902351, at \*2 (N.D. Ga. Aug. 23, 2016).



Plaintiffs assert that the common questions include whether Kannact failed to implement adequate data security measures; whether Class Members' Private Information was compromised in the Data Security Incident; whether Kannact owed a duty to Plaintiffs and Class members; whether Kannact breached its duties; whether Kannact's conduct was unfair; and whether Kannact unreasonably delayed in notifying Plaintiffs and class members of the material facts of the Data Security Incident. *See Guy v. Convergent Outsourcing, Inc.*, No. C22-1558 MJP, 2023 WL 8778166, at \*3 (W.D. Wash. Dec. 19, 2023) (allegations regarding defendant's "failure to safeguard their PII consistent with industry standards" satisfied commonality). Plaintiffs, accordingly, assert that they have met the commonality requirement of Rule 23(a).

iii. The Representative Plaintiffs' claims and defenses are typical of those of the Settlement Class.

Plaintiffs assert they satisfy the typicality requirement of Rule 23 because Plaintiffs' claims, which are based on Kannact's alleged failure to protect the Private Information of Plaintiffs and all class members, are "reasonably coextensive with those of the absent class members." *See Fed. R. Civ. P. 23(a)(3); Meyer v Portfolio Recovery Assocs.*, 707 F.3d 943, 1041–42 (9th Cir. 2012) (upholding typicality finding). Plaintiffs allege their Private Information and that of the class was potentially compromised, and therefore they were impacted by the same allegedly inadequate data security that they allege harmed the rest of the Settlement Class. *Convergent Outsourcing*, 2023 WL 8778166, at \*3 (finding allegations that personal information was compromised in data breach satisfied typicality requirement); *see also Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) ("[I]t is sufficient for typicality if the plaintiff endured a course of conduct directed against the class."). Thus, typicality is met.

iv. The Representative Plaintiffs will adequately protect the interests of the Class.

The adequacy requirement of Rule 23 is satisfied where (1) there are no antagonistic or conflicting interests between named plaintiffs and their counsel and the absent class members; 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*, 657 F.3d at 985 (*citing Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

Here, Plaintiffs have no conflicts of interest with other Settlement Class Members, are not subject to unique defenses, and they and their counsel have vigorously prosecuted and continue to vigorously prosecute this case on behalf of the class. Plaintiffs are members of the Class who assert they experienced the same alleged injuries and seek, like other Settlement Class Members, compensation for harm resulting from Kannact's data security shortcomings. There is no conflict of interest.

Further, Plaintiffs' counsel have decades of combined experience as zealous class action litigators, including in the area of data breach litigation, and are well suited to continue representing the Settlement Class. *See Hagman Decl.* ¶¶ 39-46; Exhibits 2-4 to Hagman Decl. Thus, Plaintiffs satisfy the adequacy requirement.

v. The Class is ascertainable.

Rule 23 also requires, at least implicitly, that the members of the proposed class be objectively ascertainable. *Ott v. Mortg. Inv'rs Corp. of Ohio, Inc.*, 65 F. Supp. 3d 1046, 1064 (D. Or. 2014). A proposed class must be "precise, objective, [and] presently ascertainable." *See Williams v. Oberon Media, Inc.*, 468 F. App'x 768, 770 (9th Cir. 2012) (quotation marks omitted) (alteration added). Class members must be identifiable through "a manageable process that does not require much, if any, individual factual inquiry." *Lilly v. Jamba Juice Co.*, 308 F.R.D. 231,

237 (N.D. Cal. 2014) (quoting William B. Rubenstein, 1 Newberg on Class Actions § 3:3 (5th ed.)). This requirement does not entail, however, that “every potential member . . . be identified at the commencement of the action.” *Id.* (quotation marks omitted) (emphasis added). The purported class members have been identified through Kannact’s records.

**B. The Settlement Satisfies Rule 23(b)(3)**

“In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or (3).” *Hanlon*, 150 F.3d at 1022. Here, the Settlement Class is maintainable for purposes of settlement under Rule 23(b)(3), which requires that a district court determine that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

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

In determining whether the “superiority” requirement is satisfied, a court may consider: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already

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

Plaintiffs' claims arise out of the same Data Security Incident and depend, first and foremost, on whether Kannact used reasonable data security measures to protect Settlement Class Members' Private Information. Plaintiffs assert that question can be resolved, for purposes of settlement, using the same evidence for all Settlement Class Members, and therefore is precisely the type of predominant question that makes a class-wide settlement worthwhile. *See, e.g., Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453–54 (2016) (“When ‘one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) . . . .’”) (citation omitted). Predominance for settlement purposes is accordingly met, as “the class is a ‘cohesive group of individuals [who] suffered the same harm in the same way because of the [defendant’s alleged] conduct.’” *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 559 (9th Cir. 2019) (citation omitted).

Class certification here is also “superior to other available methods for . . . fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(a)(4). Plaintiffs assert that classwide resolution is the only practical method of addressing the alleged violations at issue in this case. Adjudicating individual actions here is impracticable: the amount in dispute for individual class members is too small, the technical issues involved are complex, and the required expert testimony and document review are costly. *See Just Film*, 847 F.3d at 1123; *Local Joint Exec. Bd. of Culinary/ Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases involving “multiple claims for relatively small individual sums” are particularly well suited to class treatment); *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th

Cir. 2010) (“Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification.”).

No single member of the class has an interest in controlling the prosecution of this action because Plaintiffs’ claims and those of Settlement Class Members concern the same incident. Alternatives to a class action are either no recourse for over 100,000 individuals, or a multiplicity of suits resulting in an inefficient and possibly disparate administration of justice. There are thousands of class members with modest individual claims, most of whom likely lack the resources necessary to pursue individual legal redress. *Convergent Outsourcing*, 2023 WL 8778166, at \*4 (finding class action superior for adjudication of data breach litigation “given the relatively small individual amounts likely at issue, the limited interest each class member likely has in directing the litigation, and the desirability in having one court resolve this legal and factual issue for all class members.”); *see also Wolin*, 617 F.3d at 1175 (9th Cir. 2010); *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (finding class action method to be superior if “classwide litigation of common issues will reduce litigation costs and promote greater efficiency”). A class action is therefore superior to other methods for the fair and efficient adjudication of the claims of Plaintiffs and the Class.

## **II. The Court Should Preliminarily Approve the Settlement Under Rule 23(e)**

For the Court to preliminarily approve a class settlement and to direct that notice be sent to class members, the parties must show that the Court “will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B). “Once certification is satisfied, the court evaluates the settlement pursuant to Rule 23(e) and may grant preliminary approval if it finds the settlement is ‘fair, reasonable, and adequate.’” *Russell v. Ray Klein, Inc.*, No. 1:19-CV-00001-MC, 2022 WL

1639560, at \*2 (D. Or. May 24, 2022) (quoting Fed. R. Civ. P. 23(e)). “The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.” Fed. R. Civ. P. 23(e)(1)(A). If the parties make a sufficient showing that the Court will likely be able to “approve the proposal” and “certify the class for purposes of judgment on the proposal,” “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e).

To guide the inquiry into whether a settlement is “fair, reasonable, and adequate,” Congress codified four considerations:

(A) [T]he class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(A)–(D).

*Russell*, 2022 WL 1639560, at \*5. The Ninth Circuit has also identified nine factors to consider in analyzing the fairness, reasonableness, and adequacy of a class settlement: (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the views of counsel; (7) the presence of a governmental participant; (8) the reaction of the class members to the proposed settlement and; (9) whether the settlement is a product of collusion among the parties. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011); *see also Hanlon*, 150 F.3d at 1026. In applying these factors, this Court should be guided by the general principle that settlements of class actions are favored by federal courts. *See Class Plaintiffs*, 955 F.2d at 1276

(noting that “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”).

Here, the relevant factors support the conclusion that the negotiated settlement is fundamentally fair, reasonable, and adequate, and should be preliminarily approved.

**A. The Rule 23(e) Factors are Satisfied**

**i. The Representative Plaintiffs and Interim Class Counsel have adequately represented the Settlement Class.**

Class Counsel are highly experienced in litigating complex class actions and are considered leaders in the field of data breach litigation. They have been appointed as lead or co-lead counsel on numerous data breach cases and were appointed by this Court to serve as interim class counsel. *See* Hagman Decl. ¶¶ 39-46; Exhibits 2-4 to Hagman Decl. Their professional experience, including in prosecuting similar class actions, enabled Counsel to provide exemplary representation for the Class in prosecuting claims and negotiating on the Class’s behalf.

Upon learning of the data breach, Class Counsel engaged in a rigorous investigation before filing suit. Hagman Decl. ¶¶ 5-6. Class Counsel recognized the opportunity and potential benefit to the Class from an early negotiated resolution. Counsel worked with an experienced mediator and sought targeted informal discovery to facilitate and inform these negotiations. *Id.* ¶¶ 10-14.

Class Counsel’s substantial experience with data breach litigation allowed them to negotiate for and reach a proposed settlement that is in the best interest of the Class. The proposed Settlement was negotiated between experienced attorneys for all Parties who are familiar with class action litigation in general and with the legal and factual issues of this case in particular. As detailed above, the Settlement was the result of months of extensive and arm’s-length settlement negotiations with an experienced mediator. Hagman Decl. ¶¶ 11-13.

Likewise, Representative Plaintiffs have demonstrated their adequacy to represent the Class. Plaintiffs provided detailed information regarding the circumstances of the impacts they experienced after the Data Security Incident and greatly assisted Class Counsel with the investigation of the claims. Each of them has remained in contact with Counsel throughout the litigation, and each reviewed and approved the terms of the Settlement as being in the best interest of the Class. Hagman Decl. ¶ 33.

**ii. The Settlement was negotiated at arm's length**

The terms of the Settlement were negotiated at arm's length and included a full day mediation under the direction of the mediator Hon. Wayne Andersen (Ret.), who has extensive experience in mediating class actions, including data breach class actions. The negotiations were vigorously contested, were overseen by Judge Andersen, and were non-collusive. *See G. F. v. Contra Costa Cty.*, No. 13-cv-03667-MEJ, 2015 WL 4606078, at \*13 (N.D. Cal. July 30, 2015) (“[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.”) (internal quotation marks and citation omitted); *see also Cohorst v. BRE Props.*, No. 3:10-CV-2666-JM-BGS, 2011 WL 7061923, at \*12 (S.D. Cal. Nov. 9, 2011) (“[V]oluntary mediation before a retired judge in which the parties reached an agreement-in-principle to settle the claims in the litigation are highly indicative of fairness . . . . We put a good deal of stock in the product of arms-length, non-collusive, negotiated resolution.”).

**iii. The relief to the class is adequate.**

The relief offered to Class Members in the proposed Settlement addresses the types of repercussions and injuries arising from the Data Security Incident and is more than adequate under the factors outlined in Rule 23(e)(2)(C). Class Counsel, who have meaningful experience in leading major data breach class actions, strongly believe that the relief is fair, reasonable, and



adequate. Experienced counsel’s judgment in this regard merits some deference. *See, e.g., Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.”) (citations omitted).

In evaluating the adequacy of a proposed settlement, the Court must take into account (i) the costs, risks and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys’ fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).

a. The costs, risks, and delay of trial and appeal

While Plaintiffs believe they have strong claims, they also recognize success is not guaranteed. Class Counsel acknowledge the substantial risks and delays that would arise in continued litigation. This case involves a proposed class of approximately 109,000 individuals; the need to establish cognizable harm and causation; a complicated and technical factual overlay; and a motivated, well-represented Defendant that already has provided some relief to potentially affected individuals in the form of credit monitoring services. “Regardless of the risk, litigation is always expensive, and both sides would bear those costs if the litigation continued.” *Paz v. AG Adriano Goldschmeid, Inc.*, No. 14CV1372DMS(DHB), 2016 WL 4427439, at \*5 (S.D. Cal. Feb. 29, 2016).

The chances of prevailing on the merits are uncertain—especially where significant unsettled questions of law and fact exist, which is common in data breach litigation. “Data breach litigation is evolving; there is no guarantee of the ultimate result.” *Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at \*5 (W.D. Wis. Mar. 4, 2021) (citing *Gordon v. Chipotle*

*Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at \*1 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are particularly risky, expensive, and complex.”)). Although nearly all class actions involve a high level of risk, expense, and complexity, the size and magnitude of the Data Security Incident in this case would have made continued litigation lengthy, complex, and difficult, and the rapid evolution of case law in this area of the law makes outcomes uncertain while increasing litigation expense. Given the obstacles and inherent risks Plaintiffs face with respect to their claims, including risks relating to class certification, summary judgment, and trial, the substantial benefits the Settlement provides favor preliminary approval of the Settlement. Hagman Decl. ¶¶ 36-37.

Historically, data breach cases face substantial hurdles in surviving even the pleading stage. *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB) (RLE), 2010 WL 2643307, at \*1–2 (S.D.N.Y. June 25, 2010) (collecting cases). Even large cases implicating data more sensitive than that at issue here have been found wanting at the district court level. *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court is not persuaded that the factual allegations in the complaints are sufficient to establish . . . standing.”), *rev’d*, 928 F.3d 42 (D.C. Cir. 2019). Moreover, the path to a class-wide monetary judgment remains unforged, particularly in the area of damages. For now, data breach cases are among the riskiest and uncertain of all class actions, making settlement a prudent path when a reasonable one can be reached. The damages methodologies, while theoretically sound in Plaintiffs’ view, remain untested in a disputed class certification setting and unproven in front of a jury. Class Counsel is unaware of a single data breach class action that has been tried to a jury. As in any data breach case, establishing causation on a class-wide basis is rife with uncertainty.

Each risk, by itself, could impede the successful prosecution of these claims at trial and in an eventual appeal—which could result in zero recovery to the class and would further delay redress for the breach victims.

Finally, because Plaintiffs’ case remains at the pleadings stage, the parties have not briefed, and the Court has not yet certified, any class treatment of the claims. If they were to proceed to litigate through trial, Plaintiffs would face risks in obtaining and maintaining certification of the class, which Defendant would likely oppose in the absence of a settlement. Thus, Plaintiffs “necessarily risk losing class action status” at any time following certification. *Grimm v. American Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK(MANx), 2014 WL 12746376, at \*10 (C.D. Cal. Sept. 24, 2014); *see also Mazzei v. Money Store*, 829 F.3d 260, 265–67 (2d Cir. 2016) (class decertified after trial).

While Plaintiffs believe their claims are well suited for class certification, numerous obstacles to certification exist. For example, in a recent data breach case where classes were contested but ultimately certified, *In re Marriott International Customer Data Securities Breach Litigation*, 341 F.R.D. 128 (D. Md. 2022), the classes were decertified on appeal. *See In re Marriott Int’l, Inc.*, 78 F.4th 677, 680 (4th Cir. 2023).<sup>2</sup> The relative absence of trial class certification precedent in the relatively novel data breach setting adds to the risks posed by continued litigation.

b. The effectiveness of distributing relief to the class

Subject to Court approval, the Parties have agreed to retain EisnerAmper, an experienced and competent settlement and claims administrator familiar with handling data breach settlements. The 109,210 Settlement Class Members are specifically identifiable from Kannact’s records, and

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<sup>2</sup> To complete the story, the classes were re-certified by the district court on remand. *See In re Marriott Int’l Customer Data Sec. Breach Litig.*, No. 19-MD-2879, 2023 WL 8247865, at \*1 (D. Md. Nov. 29, 2023). Further emphasizing the point, however, *Marriott* was filed over five years ago, and has yet to proceed anywhere near trial.

notice of the Settlement and its terms will be individually mailed to each of them. The Settlement Administrator is tasked with reviewing and determining the validity of submitted claims and will provide Settlement Class Members with an opportunity to correct any deficiency submissions. Credit monitoring (CMIS) codes will be distributed within thirty (30) days of the Effective Date. S.A. ¶ 8.2. Settlement Class Members will receive payments for approved claims for cash relief using their preferred method (i.e. check or some form of electronic payment) within twenty-one (21) days from the Effective Date. S.A. ¶ 8.3. This process ensures that all Settlement Class Members have an opportunity to seek relief, will have their claims assessed fairly by a competent administrator, and will receive benefits in a timely manner. This factor supports a finding that the Proposed Settlement is adequate.

c. The terms of the proposed attorneys' fees, including timing of payment.

Pursuant to the Settlement Agreement, Class Counsel will seek up to \$233,333.33 in fees, in addition to the costs and expenses incurred in connection with the prosecution of this matter. Any fee award is of course subject to Court approval. This fee award was not discussed until after the substantive material terms of the Settlement were agreed upon by the Parties. Hagman Decl. ¶ 32. The Settlement provides for payment of attorneys' fees and expenses thirty (30) days after the effective date of the Settlement. SA ¶ 7.5.

d. Any agreement required to be identified under Rule 23(e)(3)

There are no additional agreements made in connection with the Settlement proposal.

**iv. The Settlement treats class members equitably.**

Finally, Rule 23(e)(2)(D) requires that this Court confirm that the Settlement treats all class members equitably relative to each other. The Advisory Committee's Note to Rule 23(e)(2)(D) advises that courts should consider "whether the apportionment of relief among class members

takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.” Fed. R. Civ. P. 23(e), advisory comm.’s note (2018). In determining whether this factor weighs in favor of approval, the Court must determine whether the Settlement “improperly grant[s] preferential treatment to class representatives or segments of the class.” *Paredes Garcia v. Harborstone Credit Union*, No. 3:21-CV-05148-LK, 2023 WL 4315117, \*5 (W.D. Wash. July 3, 2023) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).

Here, the Settlement does not discriminate between any segments of the class, as all Settlement Class Members are entitled to the same relief. Each and every Settlement Class Member has the opportunity to make a claim for up to \$5,000 in documented losses, or the opportunity to claim an alternative cash payment. All Settlement Class Member may also obtain three years of free three-bureau credit monitoring and identity theft protection services. While Plaintiffs will apply for service awards, an award of \$1,500 per class representative is in line with awards granted in similar cases and is not out of proportion to the recoveries for other class members. *See, e.g., Roe v. Frito-Lay, Inc.*, No. 14-cv-00751, 2017 WL 1315626, at \*8 (N.D. Cal. Apr. 7, 2017) (noting a \$5,000 Service Award is presumptively reasonable in the Ninth Circuit); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947–48 (9th Cir. 2015) (approving service awards of \$5,000).

#### **B. The Ninth Circuit’s Factors are Satisfied**

Most of the traditional factors recognized by the Ninth Circuit for determining settlement approval are encompassed within Rule 23(e)’s considerations, including (i) strength of the Plaintiffs’ case, (ii) the risks, expenses, complexity, and duration of continuing litigation, (iii) the risks of maintaining a class through trial and appeal, and (iv) absence of collusion. To the extent

not already addressed above, this proposed settlement also meets the Ninth Circuit's factors. *See Hanlon*, 150 F.3d at 1026.

**i. The Amount Offered in Settlement**

Given the risks and uncertainties presented by continued litigation, the value of the Settlement strongly favors approval. The Settlement makes significant relief available to Settlement Class Members. Every Settlement Class Member may request three years of free three-bureau Credit Monitoring and identity theft protection services, a valuable benefit. Moreover, each Settlement Class Member is eligible to make a claim for \$5,000 in reimbursements for Documented Losses, or an alternative cash payment, which will consist of a *pro rata* share of the net Settlement Fund after payment of costs of the Settlement (including the costs of carrying out the Notice Program and Claims Administration, any Attorneys' Fees and Expenses Award, any Service Award to Representative Plaintiff, and payments for claims for Documented Losses and Credit Monitoring).

This Settlement is a strong result for the Class, and is in line with other settlements in cases involving data breaches of similar scope. The \$700,000 fund for a Settlement Class of approximately 109,000 people apportions out to approximately \$6.41 per class member (assuming every class member claimed). This is significantly better than many approved data breach settlements—many of which provided per-class member recoveries of less than \$1.<sup>3</sup> Because the

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<sup>3</sup> *See, e.g., Dickey's Barbeque Restaurants, Inc.*, Case No. 20-cv-3424 (N.D. Tex.), Dkt. 62 (data breach class action involving more than 3 million people that settled for \$2.3 million, or \$0.76 per person); *In re: Capital One Consumer Data Breach Litig.*, MDL No. 1:19md2915 (AJT/JFA) Doc. 2251 (E.D. Va. Aug. 29, 2022) (Memo in Support of Final Approval), page 1 (\$190 million common fund settlement for a class of approximately 98 million, or \$1.93 per person); *Adlouni 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; 44 cents per class member); *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; \$1.45 per class member); *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) & ECF No. 181-2

Settlement amount here compares favorably to that achieved in other settlements approved in similar cases, this factor weighs in favor of the Settlement’s adequacy. *See Calderon v. Wolf Firm*, No. SACV 16-1622-JLS(KESx), 2018 WL 6843723, at \*7–8 (C.D. Cal. Mar. 13, 2018) (comparing class settlement with other settlements in similar cases). Accordingly, this factor favors approval.

## ii. The Extent of Discovery Completed and Stage of Proceedings

Before entering into settlement discussions on behalf of class members, counsel should have “sufficient information to make an informed decision.” *Linney*, 151 F.3d at 1239. Here, Plaintiffs gathered information that was available regarding Kannact and the Data Security Incident—including publicly-available documents concerning announcements of the Data Security Incident and notice of the Data Security Incident to Plaintiffs and the Settlement Class. Hagman Decl. ¶¶ 5-6, 10, 12. Further, the Parties informally exchanged non-public information concerning the Data Security Incident and the size of the Class before and during the mediation and settlement negotiation process. *Id.* Kannact also provided confirmatory discovery as part of the Settlement. *Id.* This information gathering process adequately substituted for formal discovery (which would have been costly, and potentially depleted the amount of Defendant’s funds available for a settlement), and Class Counsel’s knowledge from decades of experience in similar types of privacy and data protection matters also enabled Class Counsel to represent the interests of class members without expending hundreds of hours and excessive financial resources to come up to speed. *See id.* “[T]he efficiency with which the Parties were able to reach an agreement need

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¶¶ 22, 38 (\$13 million settlement for approximately 40 million class members; 32.5 cents per class member); *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; 10 cents per class member); *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; 20 cents per class member).

not prevent this Court from granting . . . approval.” *Hillman v. Lexicon Consulting, Inc.*, No. EDCV 16-01186-VAP(SPx), 2017 WL 10433869, at \*8 (C.D. Cal. April 27, 2017).

In short, Plaintiffs entered the Settlement after being well informed about the strengths and weaknesses of this case, and they had sufficient information to conclude that the Settlement is in the best interest of the class.

### **iii. The Experience and Views of Class Counsel**

As discussed, Class Counsel have substantial experience litigating complex class cases of various types, including data breach cases such as this one. *See* Hagman Decl. ¶¶ 39-46. Having worked on behalf of the proposed class since the Data Security Incident was first announced, evaluated the legal and factual issues, and dedicated significant time and monetary resources to this litigation, proposed Class Counsel endorse the Settlement without reservation. *Id.* ¶¶ 36-37. The Court may accord a great deal of weight to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. *See, e.g., Norton v. Maximus, Inc.*, No. 1:14-0030 WBS, 2017 WL 1424636, at \*6 (D. Idaho Apr. 17, 2017). Thus, this factor supports approval.

### **iv. Governmental Participants**

There are no governmental participants in this matter. This factor is neutral.

### **v. The Reaction of Settlement Class Members to the Proposed Settlement**

The Representative Plaintiffs all support the Settlement. Plaintiffs will update the Court as to the response of the Class to the Settlement after notice has been given. *Id.* ¶ 27.

## **III. The Court Should Approve the Proposed Notice Program**

Rule 23 requires that prior to final approval, the “court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B).



For classes certified under Rule 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.” *Id.* Such notice must be the “best notice practicable,” *see* Fed. R. Civ. P. 23(c)(2)(B), which means “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). To satisfy due process, notice to class members must be the best practicable, and reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Fed. R. Civ. P. 23(c)(2); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Class settlement notices must present information about a proposed settlement simply, neutrally, and understandably. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019).

Here, and after a competitive bidding process, the parties have agreed to a robust Notice Program to be administered by a well-respected third-party Settlement Administrator—EisnerAmper—which will use all reasonable efforts to provide direct and individual notice to each potential Settlement Class Member by email or U.S. mail. Prior to sending the Short Notice, EisnerAmper will check all mailing addresses against the National Change of Address (“NCOA”) database maintained by the USPS to ensure all address information is up-to-date and accurately formatted for mailing.<sup>4</sup> Notices that are returned as undeliverable will be re-sent to forwarding

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<sup>4</sup> The NCOA database is maintained by the USPS and consists of approximately 160 million permanent change-of-address (COA) records, including 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.

addresses, and skip traces will be used to find the current addresses of Settlement Class Members. S.A. ¶ 3.3(c).

The costs of administering the Settlement will be paid from the Settlement Fund. S.A. ¶ 3.3. The Notice Program and Claim Forms negotiated by the Parties are clear, concise, and inform Settlement Class Members of their rights and options under the Settlement, including detailed instructions on how to make a claim, object to the Settlement, or opt out of the Settlement. S.A. Exs. A, B, and D.

The Administrator will also establish a dedicated Settlement Website that will allow Settlement Class Members to file an online Claim Form. In addition, the Settlement Website will include relevant dates, answers to frequently asked questions (“FAQs”), instructions for how Settlement Class Members may opt out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and how to obtain other case-related information. S.A. ¶ 3.3(b). The Administrator will also establish a toll-free help line where callers will be able to hear an introductory message, have the option to learn more about the Settlement in the form of recorded answers to FAQs, and request that a Long Notice be mailed to them. *Id.* ¶ 3.3(e).

The Notice Program is reasonably calculated under all the circumstances to apprise Settlement Class Members of the pendency of the action and afford them an opportunity to present their objections. Plaintiffs’ Counsel estimates that direct notice will reach at least 90% of the Settlement Class. Hagman Decl. ¶ 26. Because the Notice Program upholds Settlement Class Members’ due process rights, the Court should approve it. *See Hartranft v. TVI, Inc.*, No. 15-01081-CJC-DFM, 2019 WL 1746137, at \*3 (C.D. Cal. Apr. 18, 2019); *Spencer v. #1 A LifeSafer of Ariz., LLC*, No. CV-18-02225-PHX-BSB, 2019 WL 1034451, at \*3 (D. Ariz. Mar. 4, 2019)

(preliminarily approving class action settlement and finding “that the proposed notice program is clearly designed to advise the Class Members of their rights”).

**IV. The Court Should Appoint EisnerAmper as Settlement Administrator**

In connection with the implementation of the Notice Program and administration of the Settlement benefits, the Parties respectfully ask that the Court appoint EisnerAmper to serve as the Settlement Administrator. EisnerAmper is a well-respected third-party administrator with a trusted and proven track record of supporting class action administration. Hagman Decl. ¶ 24.

**V. The Court Should Appoint Interim Class Counsel as Settlement Class Counsel**

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

Here, proposed Settlement Class Counsel have extensive experience prosecuting class actions and other complex cases, and specifically data breach cases. *See* Hagman Decl. ¶¶ 39-46. The Settlement they negotiated on behalf of the class confirms their adequacy. Accordingly, the Court should appoint Cafferty Clobes Meriwether & Sprengel LLP, Milberg Coleman Bryson Phillips Grossman PLLC and Siri & Glimstad LLP as Settlement Class Counsel.

**CONCLUSION**

Plaintiffs have negotiated a fair, adequate, and reasonable Settlement that will provide Settlement Class Members with significant monetary and equitable relief. For all the above

reasons, Plaintiffs respectfully request this Court grant Plaintiffs' Motion preliminarily approving the Settlement and direct that Notice be sent to the Settlement Class.

DATE: May 16, 2024

Respectfully submitted,

By: /s/ Nickolas J. Hagman

Daniel O. Herrera (*pro hac vice* anticipated)

Nickolas J. Hagman (admitted *pro hac vice*)

**CAFFERTY CLOBES MERIWETHER**

**& SPRENGEL LLP**

135 S. LaSalle, Suite 3210

Chicago, Illinois 60603

Telephone: (312) 782-4880

dherrera@caffertyclobes.com

nhagman@caffertyclobes.com

Gary M. Klinger (admitted *pro hac vice*)

**MILBERG COLEMAN BRYSON**

**PHILLIPS GROSSMAN, PLLC**

227 W. Monroe Street, Suite 2100

Chicago, IL 60606

Telephone: 866.252.0878

gklinger@milberg.com

Mason A. Barney (*pro hac vice* anticipated)

Tyler J. Bean (*pro hac vice* anticipated)

**SIRI & GLIMSTAD LLP**

745 Fifth Avenue, Suite 500

New York, New York 10151

Tel: (212) 532-1091

mbarney@sirillp.com

tbean@sirillp.com

Kim D. Stephens, P.S., OSB #030635

Kaleigh N. Boyd (admitted *pro hac vice*)

**TOUSLEY BRAIN STEPHENS PLLC**

1200 Fifth Avenue, Suite 1700

Seattle, WA 98101-3147

Tel: (206) 682-5600/Fax: (206) 682-2992

kstephens@tousley.com

kboyd@tousley.com

*Interim Liaison Counsel*

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

*In re Kannact, Inc. Data Security Incident*

Lead Case No. 6:23-cv-1132-AA

**DECLARATION OF NICKOLAS J. HAGMAN IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL**

I, Nickolas J. Hagman, being competent to testify, make the following declaration:

1. I am currently a partner of the law firm Cafferty Clobes Meriwether & Sprengel LLP (“Cafferty Clobes”). I am one of the interim co-lead attorneys for Plaintiffs,<sup>1</sup> and one of the attorneys seeking appointment as Class Counsel for the proposed Settlement Class.

2. I submit this declaration in support of Plaintiffs’ Unopposed Motion for Preliminary Approval, filed contemporaneously herewith.

3. A true and correct copy of the Settlement Agreement (“Agreement” or “S.A.”) is attached hereto as **Exhibit 1**. Attached to the Settlement Agreement are the following exhibits: **Exhibit A**: Claim Form; **Exhibit B**: Long Form Notice; **Exhibit C**: Preliminary Approval Order; and **Exhibit D**: Short Form Notice.

**INITIAL INVESTIGATIONS AND PLEADINGS**

4. On August 23, 2023, Defendant Kannact, Inc. (“Kannact”) sent Notice of Data Security Incident letters to approximately 109,210 individuals, notifying them that Kannact had suffered a data security incident on or around March 13, 2023 (the “Data Breach” or “Breach”).

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<sup>1</sup> The Court appointed Cafferty Clobes Meriwether & Sprengel LLP, Milberg Coleman Bryson Phillips Grossman LLP, and Siri & Glimstad LLP as Interim Co-Lead Class Counsel (hereinafter referred to as “Class Counsel”). Dkt. 15.

5. After learning of the Data Breach, Class Counsel began investigating the Breach by collecting available information from public sources and interviewing impacted individuals.

6. The initial investigation into the facts and circumstances of the alleged Data Breach revealed that the Data Breach likely involved personally identifying information, financial account information, and private health information (collectively “Private Information”) belonging to approximately 109,210 of Kannact’s current and former patients and employees.

7. On August 3, 2023, Plaintiff Terry Dukes filed a putative class action complaint against Kannact concerning the Data Security Incident in this Court. Plaintiffs Ann Fongheiser and Alan White filed related actions on September 5 and 6, 2023, respectively. Dukes, Fongheiser, and White thereafter filed a joint motion to consolidate the three cases on September 21, 2023. On September 26, 2023, the Court granted consolidation and, on October 25, 2023, Plaintiffs filed their Consolidated Amended Class Action Complaint.

8. The Court appointed Cafferty Clobes Meriwether & Sprengel LLP, Milberg Coleman Bryson Phillips Grossman LLP, and Siri & Glimstad LLP as Interim Co-Lead Class Counsel (hereinafter referred to as “Class Counsel”). Dkt. 15.

9. The Consolidated Class Action Complaint (“Consolidated Complaint”) was filed on October 25, 2023, and asserted the following claims for relief against AENT: (i) negligence; (ii) negligence *per se*; (iii) breach of third-party beneficiary contract; (iv) bailment; (v) unjust enrichment; (vi) violations of the Oregon Unlawful Trade Practices Act, Or. Rev. Stat. § 646; (vii) violations of the Tennessee Consumer Protection Act, Tenn. Code § 47-18-104, *et seq.*, (viii) violations of the Tennessee Data Breach Notification, Act, Tenn. Code § 47-18-2107; (ix) violations of the North Carolina Identity Theft Protection Act, N.C. Gen. Stat. § 75-61, *et seq.*;

(x) violations of the Missouri Merchandise Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*; and  
(xi) declaratory judgment. Dkt. 18.

### **THE CLASS SETTLEMENT**

#### ***History of Negotiations***

10. Shortly after Plaintiffs filed the Consolidated Complaint, Interim Co-Lead Counsel and counsel for Kannact began settlement discussions, which involved the exchange of informal discovery to determine the details and scope of the Data Breach. The Parties also exchanged non-public documents and information regarding the data breach and the size of the class during the mediation and settlement negotiation process.

11. On February 27, 2024, Interim Co-Lead Counsel engaged in an arm's-length, full day remote mediation session mediated by the Hon. Wayne R. Andersen (Ret.). The Parties reached a settlement in principle and, for several weeks after, continued to negotiate in good faith and at arms' length regarding the finer points of the settlement, and drafted the Settlement Agreement and accompanying notice documents and exhibits. Further, as part of the Settlement, Kannact provided confirmatory discovery.

12. The Parties' use of informal discovery saved significant time and expense during the litigation and guarded against unnecessary depletion of Defendant's funds that were available for the Settlement.

13. While negotiations were always collegial and professional between the Parties, there is no doubt that the negotiations were also adversarial in nature, with both Parties strongly advocating their respective client's positions.

14. The Settlement Agreement with its various exhibits was executed on April 29, 2024.

***The Settlement's Benefits***

15. The Settlement provides Settlement Class Members with significant benefits that would not otherwise be available to them unless a settlement was reached.

16. The Settlement negotiated on behalf of the Class provides a \$700,000 non-reversionary Settlement Fund, from which Settlement Class Members may make a claim for the following benefits.

17. Cash Award. Settlement Class Members who submit a valid and timely Claim Form may elect to receive a payment (a “Cash Award”). The cash awards for all valid claimants shall be a *pro rata* share of the “Post Loss Payment Net Settlement Fund,” which is effectively the remainder of the Settlement Fund after payment of: the cost of notice and administration; any attorneys’ fees, expenses, and service awards approved by the Court; the cost of Credit Monitoring and Insurance claimed by Class Members; and approved Documented Loss Payments.

18. Documented Loss Payment. In the event a Settlement Class Member does not elect a Cash Award, the Settlement Class Member may submit a claim for a Settlement Payment of up to \$5,000 for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, a Settlement Class Member must submit an attestation regarding any actual and unreimbursed Documented Loss, and reasonable documentation that demonstrates the Documented Loss itself. S.A. ¶¶ 2.2(b).

19. Credit Monitoring and Insurance Services. Each Settlement Class Member who submits a valid and timely Claim Form may elect to receive three (3) years of Credit Monitoring and Insurance Services (“CMIS”) regardless of whether they also make a claim for a Settlement Payment pursuant to Paragraph 2.2. The CMIS will have an enrollment period of twelve (12) months after the enrollment codes are sent to Class Members claiming this benefit. The CMIS will



include the following services to be provided to each Settlement Class Member who submits a valid and timely Claim Form and elects the CMIS: (i) up to \$1 million dollars of identity theft insurance coverage; (ii) three bureau credit monitoring providing notice of changes to the Settlement Class Members' credit profile; (iii) alerts for activity including new inquiries, new accounts created, change of address requests, changes to public records, postings of potentially negative information, and other leading indicators of identity theft; (iv) customer care and dedicated fraud resolution agent; (v) comprehensive educational resources; and (vi) extended fraud resolution.

20. Kannact also agreed to implement additional reasonable steps to adequately secure its systems and environments presently and in the future. S.A. ¶ 2.5.

***Release***

21. The release in this case is tailored to the claims that have been pleaded or could have been pleaded in this case. *See* S.A. ¶ 6.

22. Settlement Class Members who do not exclude themselves from the Settlement Agreement will release claims related to the Data Breach. *Id.* ¶ 4.2.

***Notice***

23. Class Counsel worked to ensure that the Notice Program is the best practicable and reasonably calculated to apprise interested parties of the action so that they may make a claim, state their objection, or exclude themselves from the settlement.

24. Class Counsel contacted several class action claims administrators and sought bids for the settlement administration process, then vetted each of the proposals and weighed the costs against the services provided by the class action claims administrators. Class Counsel selected Postlethwaite & Netterville APAC, now known as EisnerAmper, as Settlement Administrator.

Eisner Amper is a respected third-party administrator with significant experience in supporting class action administration.

25. A Short Form Notice that will be mailed to Settlement Class Members. S.A. at Ex. A. The Short Form Notice provides clear, concise information about the Settlement. *Id.* Additionally, the Claims Administrator will create a Settlement Website that will allow Settlement Class Members to view important documents related to the Settlement, including the Long Form Notice and Claim Form. *Id.* ¶ 3.3. Class Members will also be able to use a toll-free number with interactive voice responses to address any questions they may have, and assist them with their options and ability to make a claim under the Settlement.

26. The Notice Program is intended to reach as many potential Settlement Class Members as possible, is designed to be “reasonable notice of the commencement of a class action.” Class Counsel estimates that direct notice will reach a minimum of 90% of the Settlement Class. As such, the Notice Program set forth in the Settlement Agreement comports with Fed. R. Civ. P. 23 and Due Process.

### ***Exclusions and Objections***

27. The timing to file objections and exclusions is structured to give Settlement Class Members sufficient time to review the terms of the Settlement and decide whether they would like to opt-out or object.

28. Settlement Class Members who opt-out of the Settlement are not eligible to receive any Settlement Benefits and shall not be bound by the terms of the Settlement Agreement. *Id.* ¶ 4.2. They also waive and forfeit any and all rights they may have to object to the Settlement or to participate at the Final Approval Hearing. *Id.*

29. Any Settlement Class Member wishing to object to the Settlement Class shall individually sign and timely submit written objection. *Id.* ¶ 5.1. The objection must provide the basis for the objection and information required by the Settlement Agreement. *Id.*

30. Any Settlement Class Member who fails to comply with the requirements for objecting set forth in Settlement Agreement shall waive any objections. *Id.* ¶ 5.2.

31. All Settlement Class members who fail to properly or timely request to be excluded from the Settlement Class shall be bound by the terms of the Settlement. *Id.* ¶ 4.2.

***Service Awards, Fees, and Costs***

32. The Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service awards to Class Representatives until after the substantive terms of the settlement had been agreed upon, other than that Defendant would pay reasonable attorneys' fees, costs, expenses, and a service award to Class Representatives as may be agreed to by Defendant and proposed Class Counsel and/or as ordered by the Court.

33. The Settlement Agreement contemplates a reasonable service award for Class Representatives of \$1,500 each, subject to approval of the Court. *Id.* ¶ 7.3. The Service Award is meant to recognize Plaintiffs for their effort on behalf of the Class. Plaintiffs assisted in the investigation of the case, reviewed the pleadings, answered counsel's many questions, and reviewed the terms of the Settlement Agreement. Plaintiffs remained in contact with Class Counsel throughout the litigation to assist them with litigating the case. The Class Representatives were not promised a service award, nor did they condition their representation on the expectation of a service award.

34. Further, Settlement Class Representatives do not have any interests antagonistic to other class members and have retained lawyers who are abundantly qualified and experienced, satisfying the adequacy requirement.

35. Proposed Class Counsel have diligently identified, investigated, and prosecuted the claims in this matter, have dedicated substantial resources to the investigation and litigation of those claims, and have successfully negotiated the Settlement of this matter to the benefit of Plaintiffs and Settlement Class Members. Accordingly, Proposed Class Counsel will submit a separate motion seeking attorneys' fees, costs, and Plaintiff's Service Awards 14 days prior to Settlement Class Members' deadline to exclude themselves from the Settlement Class or to object to the Settlement Agreement. Plaintiffs will request an award of attorneys' fees, costs, and expenses not to exceed one-third (33.3%) of the Settlement Fund (\$233,333.00). *Id.* ¶ 7.2.

***Opinions of Class Counsel***

36. While Plaintiffs believe they have strong claims and would be able to prevail, their success is not guaranteed. It is reasonable for the Parties at this stage to agree that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication. There was risk to both sides in continuing towards trial. The settlement avoids uncertainty for all parties involved in light of the inherent risks Plaintiffs face with respect to the novel claims in data breach class actions, including class certification, summary judgment, and trial.

37. In my opinion, and the opinion of Class Counsel, the Settlement is fair, reasonable, and adequate and provides significant benefits for Plaintiffs and approximately 109,210 Settlement Class Members, and I, and Class Counsel, strongly support the Settlement. Plaintiffs also strongly support this Settlement.

**QUALIFICATIONS OF CLASS COUNSEL**

38. Cafferty Clobes Meriwether & Sprengel LLP, Milberg Coleman Bryson Phillips Grossman PLLC and Siri & Glimstad LLP seek appointment as Class Counsel for the proposed Settlement Class.

***Cafferty Clobes Meriwether & Sprengel***

39. Cafferty Clobes is a leading, national class action firm with offices in Chicago, Illinois, Media, Pennsylvania, and Ann Arbor, Michigan, and decades of experience leading and handling complex consumer, antitrust, commodities, securities, employment and other commercial class actions both in Illinois and across the country. *See e.g., In re Disposable Contact Lens Antitrust Litig.*, MDL No. 2626 (M.D. Fla.) (Cafferty Clobes serves on Defendant Discovery Committee in action in which \$36 million in settlements have been reached with three of five defendants while the parties prepare for trial); *In re Behr DeckOver Marketing, Sales Practices, and Products Liability Litig.*, No. 17-cv-4464 (N.D. Ill.) (uncapped settlement entitling class members to 75% of all documented repair costs); *Sharp v. Watts Regulator Co.*, No. 8:16CV200, 2017 WL 1373860, at \*3 (D. Neb. Apr. 13, 2017) (\$14 million settlement); *Klug v. Watts Regulator Co.*, No. 8:15CV61, 2017 WL 1373857, at \*3 (D. Neb. Apr. 13, 2017) (\$4 million settlement); *In re Autoparts Antitrust Litig.*, MDL No. 2311 (E.D. Mich.) (representing Cafferty Clobes on Plaintiffs' Discovery Committee in multidistrict litigation that has secured more than \$1.2 billion in settlements for affected vehicle owners); *Traxler v. PPG Indus., Inc.*, No. 15-cv-00912 (N.D. Ohio) (\$6.5 million settlement in deck resurfacer class action).

40. Cafferty Clobes' experience also extends to cases like the instant action, which arise from violations of consumers' privacy rights. *See e.g., In re TikTok, Inc. Consumer Privacy Litig.*, MDL No. 2948 (N.D. Ill.) (Cafferty Clobes were responsible for drafting pleadings and discovery

leading to a \$92 million settlement); *Carroll v. Crème de la Crème, Inc.*, No. 17-CH-1624 (Cook County Cir. Ct.) (Cafferty Clobes appointed Co-Lead Counsel and obtained a settlement providing significant relief, including requiring the defendant to change its biometric collection and storage practices); *In re Experian Data Breach Litig.*, No. 8:15-cv-01592-AG-DFM, (C.D. Cal.) (\$22 million class settlement—valued at more than \$170 million when factoring non-monetary relief—arising out of a breach of consumers’ personally identifiable information); *In re Premera Blue Cross Customer Data Security Breach Litig.*, 3:15-md-2633-SI (D. Or.) (\$32 million data breach settlement—total value in excess of \$148 million); *In re California Pizza Kitchen Data Breach Litig.*, No. 8:21-cv-01928 (C.D. Cal.) (appointing Cafferty Clobes and Milberg as Settlement Class Counsel, and approving the settlement that provided monetary reimbursement for ordinary losses (including lost time), extraordinary losses, two years of credit monitoring, and required defendant to change business practices); *Hough v. Navistar, Inc.*, No. 2021L001161 (DuPage County Cir. Ct.) (Cafferty Clobes appointed Co-Lead Counsel and obtained a \$1.25 million settlement that also included, free identity theft protection services, and required defendant to change its data security practices).

41. Cafferty Clobes also continue to represent consumers as lead counsel in class cases throughout the county. *See, e.g., In re General Motors Air Conditioning Marketing and Sales Practices Litig.*, No. 4:17-cv-12786-MFL-EAS, ECF No. 10 (E.D. Mich. Oct. 19, 2017) (appointing Cafferty Clobes as co-lead counsel in MDL arising from defect in 3.7 million vehicles); *In re Cattle and Beef Antitrust Litig.*, MDL No. 3031 (D. Minn.) (Cafferty Clobes serves as co-lead counsel in action alleging a price fixing conspiracy entered into by the nation’s four largest meat packers); *Gates et al. v. Western Washington Medical Group*, No. 23-2-08498-31 (Wash. Sup. Ct. Snohomish Cnty. Mar. 7, 2024) (appointing Cafferty Clobes as interim co-lead

counsel); *In re: Francesca's Acquisition LLC Data Security Breach Litig.*, No. 4:23-cv-03881 (S.D. Tex. Jan. 17, 2024) (same); *Wilkins et al. v. Mulkay Cardiology Consultants, P.C. et al.*, No. BER-L-6203-23 (N.J. Sup. Ct. Bergen Cnty Jan. 19, 2024) (same). Attached as **Exhibit 2** is a true and correct copy of Cafferty Clobes' firm resume.

***Milberg Coleman Bryson Phillips Grossman PLLC***

42. Since its founding in 1965, Milberg has repeatedly taken the lead in landmark cases that have set groundbreaking legal precedents, prompted changes in corporate governance, and recovered over \$50 billion in verdicts and settlements.<sup>2</sup> Milberg has been instrumental in obtaining precedent-setting decisions at every level, including at the United States Supreme Court.<sup>3</sup> The firm pioneered federal class action litigation and is widely recognized as a leader in defending the rights of victims of large-scale wrongdoing. Milberg has been described by the *New York Times* as “[a] powerhouse that compelled miscreant and recalcitrant businesses to pay billions of dollars to aggrieved shareholders and customers.”

43. Milberg currently is involved in some of the largest and well-known class action cases in the country and is particularly active in the field of data breach and privacy litigation. The firm is comprised of more than one hundred attorneys who work from offices across the United States and in Portugal, the United Kingdom, the Netherlands, and Germany. Milberg attorneys come from diverse backgrounds and reflect the diversity of the bar and the classes they seek to represent—from the standpoint of age, gender, experience, and geographic location. Milberg and the firm's attorneys have extensive experience serving as leadership in numerous privacy and other

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<sup>2</sup> See, e.g., *In re Tyco Int'l Ltd., Sec. Litig.*, MDL 1335 (D.N.H.) (serving as lead counsel and obtaining approval of \$3.2 billion settlement); *In re Prudential Ins. Co. Sales Practice Litig.*, No. 95-4704 (D.N.J.) (serving as lead counsel and recovering more than \$4 billion for policyholders); see also <https://milberg.com/outstanding-recoveries/>.

<sup>3</sup> See <https://milberg.com/precedent-setting-decisions/page/3/>.

complex class actions, including some of the largest data privacy litigation in the United States. *See, e.g., In re Blackbaud Data Privacy*, MDL No. 2972 (D. S.C.) (where Milberg serves as interim class counsel in a data breach involving millions of consumers); *In Re: CaptureRx Data Breach Litig.*, No. 5:21-cv-00523-OLG (W.D. Tex.) (appointed co-lead counsel in data breach case involving over 2.4 million class members; final approval of \$4.75 million settlement granted June 2022); *Heath v. Ins. Techs. Corp.*, No. 21-cv-01444 (N.D. Tex.) (\$11 million settlement for a major data breach involving more than 4 million consumers; final approval granted January 2023); *Sherwood v. Horizon Actuarial Services, LLC*, Case No. 1:22-cv-01495-ELR (N.D. Ga.) (appointed co-lead counsel in 2 million class member data breach class action); *In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.) (appointed class counsel in 3 million person data breach class action); *John v. Advocate Aurora Health, Inc.*, No. 22-CV-1253-JPS (E.D. Wis.) (appointed co-lead counsel in data privacy class action concerning the disclosure of protected health information).

44. Simply put, Milberg is a leader in class action litigation and has achieved unparalleled success in litigation, and leading privacy class actions across the United States. Milberg is committed to contributing the necessary resources to successfully litigate this action on behalf of the class. Additional information regarding Milberg can be found in the Milberg Firm Resume, attached hereto as **Exhibit 3**.

***Siri & Glimstad LLP***

45. S&G has decades of combined global experience fighting to deliver justice and preserve individuals' rights against big-industry misconduct, having represented and achieved compensation for tens of millions of consumers. Specifically, S&G was recently involved in a class action alleging violations of the Telephone Consumer Protection Act ("TCPA") which



resulted in a settlement of \$25,000,000 (plus free satellite radio service) to a potential class of over 14 million customers. *See Buchanan v. Sirius XM Radio, Inc.*, Case No. 3:17-cv-00728 (N.D. Tex.). S&G was also trial co-counsel for plaintiffs in an ERISA matter filed as a class action involving breaches of fiduciary duty related to the management and termination of an Employee Stock Ownership Plan, which settled after the beginning of trial for \$1,080,000 for the Class (*Kindle v. Dejana*, No. 14-cv-06784 (E.D.N.Y.)).

46. S&G has also served in leadership positions and as class counsel in numerous data breach and privacy matters, including having been appointed lead settlement class counsel in *Carter, et al. v. Vivendi Ticketing US LLC d/b/a See Tickets*, No. 8:22-cv-01981 (C.D. Cal.), which received final approval for a settlement involving 437,310 class members and a \$3,000,000 non-reversionary settlement fund; *Armstrong et al. v. Gas South, LLC*, Civil Action No. 22106661 (Sup. Ct. Cobb Cty., Ga.) which received final approval for a settlement involving 38,671 class members and valued at over \$9 million; *Medina v. Albertsons Companies, Inc.*, Case No. 1:23-cv-00480 (D. Del.), which received final approval for a settlement involving 33,000 class members and a \$750,000 non-reversionary settlement fund; and *In re Sovos Compliance Data Security Incident Litigation*, Case No. 1:23-cv-12100-AK (D. Mass.), which received preliminary approval for a settlement involving roughly half a million class members and a \$3,534,128.50 non-reversionary settlement fund. S&G is also currently serving as interim lead or co-lead class counsel in dozens of data breach actions, including *Pulliam et al. v. West Technology Group*, Case No. 8:23-cv-159 (D. Neb.), *Perez v. Carvin Wilson Software LLC*, Case No. cv-23-00792 (D. Ariz.), *Nulf v. Alvaria, Inc., et al.*, Case No. 1:23-cv-10999 (D. Mass.), *Rasmussen et al. v. Uintah Basin Healthcare*, Case No. 2:23-cv-00322 (D. Ut.), *Skurauskis, et al. v. NationsBenefits Holdings, LLC, et al.*, Case No. 0:23-cv-60830 (S.D. Fl.), *In re Family Vision Data Security Incident Litigation*,

Case No. 2023CP0401671 (S.C., County of Anderson), *In re Data Security Litigation Against Brightline, Inc.*, Case No. 3:23-cv- 02132, and *Scott et al v. Union Bank and Trust Company*, Case No. 4:23-cv-03126 (D. Neb.) (the court commenting that “proposed interim co-lead counsel are experienced and qualified attorneys, and each has knowledge of the applicable law, experience in managing and prosecuting cases involving data security and privacy, notable successes against large corporate defendants, and resources they are willing to expend to litigate these cases”). Additional information regarding Siri & Glimstad can be found in the Milberg Firm Resume, attached hereto as **Exhibit 4**.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 16, 2024

/s/ Nickolas J. Hagman  
Nickolas J. Hagman

# **EXHIBIT 1**

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

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In re: Kannact, Inc. Data Security Incident

Lead Case No. 6:23-cv-1132-AA

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**SETTLEMENT AND RELEASE**

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This Settlement Agreement, dated as of April 29, 2024, is made and entered into by and among the following Settling Parties (as defined below): Terry Dukes, Ann Fongheiser, and Alan White (collectively, “Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), by and through their counsel of record (Proposed Settlement Class Counsel, as defined below), and Kannact, Inc. (“Kannact” or “Defendant”) (together with Plaintiffs, the “Parties”), by and through its counsel of record, Michael P. Lowry and David M. Ross of Wilson Elser Moskowitz Edelman & Dicker LLP. The Settlement Agreement (as defined below) is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

## **I. THE LITIGATION**

Plaintiffs allege that on or around March 13, 2023, cybercriminals breached Kannact’s computer and information systems and accessed personally identifying information, financial account information, and private health information (collectively “Private Information”) belonging to Kannact’s current and former patients and employees (the “Data Incident”). Specifically, Plaintiffs allege that the following categories of information were potentially compromised in the Data Incident, including, but not limited to: full names, email addresses, employee ID numbers, dates of birth, Social Security numbers, and medical and health insurance information. Kannact discovered this intrusion on March 13, 2023, and took steps to secure its systems. On August 23, 2023, Kannact sent notice of the Data Incident to 109,210 individuals.

On August 3, 2023, Plaintiff Terry Dukes (“Dukes”) filed a putative class action complaint against Kannact concerning the Data Incident in the United States District Court for the District of Oregon. Plaintiffs Ann Fongheiser (“Fongheiser”) and Alan White filed their putative class actions

in the District of Oregon on September 5 and 6, 2023, respectively. Dukes, Fongheiser, and White thereafter filed a joint motion to consolidate the three cases on September 21, 2023. On September 26, 2023, the Court granted consolidation and, on October 25, 2023, Plaintiffs filed their Consolidated Amended Class Action Complaint.

In January 2024, the Parties began settlement discussions. Shortly thereafter, the Parties agreed to attend a full-day mediation on February 27, 2024, before the honorable Judge Wayne Andersen (Ret.) of JAMS. Prior to the mediation, the Parties engaged in an informal exchange of information and documents, and presented their positions and arguments in confidential submissions to Judge Andersen. At the February 27, 2024 mediation, the Parties reached an agreement. This accepted settlement is memorialized in this agreement (“Settlement Agreement”).

Pursuant to the terms set out below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Kannact and the Released Persons (as defined below) relating to the Data Incident, by and on behalf of Representative Plaintiffs and the Settlement Class (as defined below).

## **II. CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTLING**

Plaintiffs believe the claims asserted in the Litigation, as set forth in their complaint, have merit. Plaintiffs and Proposed Settlement Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Kannact through motions practice, trial, and potential appeals. Plaintiffs have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Proposed Settlement Class Counsel are highly experienced in class action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. Proposed

Settlement Class Counsel have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

### **III. DENIAL OF WRONGDOING AND LIABILITY**

Kannact denies each and all of the claims and contentions alleged against it in the Litigation. Kannact denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, Kannact has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Kannact has considered the uncertainty and risks inherent in any litigation. Kannact has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

### **IV. TERMS OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Settlement Class; Proposed Settlement Class Counsel; and Kannact that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties and the Settlement Class, except those members of the Settlement Class who lawfully opt-out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

#### **1. Definitions**

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 “Agreement” or “Settlement Agreement” means this agreement.

1.2 “CAFA Notice” means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act (“CAFA”), 28 U.S.C. Sec. 1711, *et seq.*, to be served upon the appropriate State official in each State where a Settlement Class Member resides and the appropriate federal official. Costs for preparation and issuance of the CAFA Notice will be paid by Defendant from the Settlement Fund.

1.3 “Claim Form” means the claim form to be used by Settlement Class Members to submit a Settlement Claim, either through the mail or online through the Settlement Website, substantially in the form as shown in Exhibit A to this Settlement Agreement.

1.4 “Claims Deadline” means the date by which all Claim Forms must be submitted by a Settlement Class Member to the Settlement Administrator to be timely. This date shall be set as ninety (90) days after the Notice Commencement Date.

1.5 “Costs of Settlement Administration” means all actual costs associated with or arising from Settlement Administration, including, without limitation: all expenses and costs associated with providing Notice to Settlement Class Members, locating Settlement Class Members, performing National Change of Address searches or skip tracing, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the portions and benefits of the Settlement Fund to Settlement Class Members. Costs of Settlement Administration also includes all reasonable fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

1.6 “Court” means the United States District Court for the District of Oregon.

1.7 “Cy Pres Designee” means an entity mutually agreed upon by the Parties and submitted to the Court in a subsequent filing who may receive unclaimed residual funds, as set forth in Paragraph 8.6, subject to approval by the Court.



1.8 “Data Incident” means the data security incident affecting Kannact which occurred on or around March 13, 2023.

1.9 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 1.10 herein have occurred and been met.

1.10 “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of litigation costs to be awarded by the Court to Settlement Class Counsel.

1.11 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any Fee Award and Costs or Service Award made in this case shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

1.12 “Judgment” means a judgment rendered by the Court.

1.13 “Litigation” means the action titled *In re: Kannact, Inc. Data Security Incident*, Case No. 6:23-cv-1132-AA (D. Or).

1.14 “Long Notice” means the long form notice of settlement posted on the Settlement Website, substantially in the form as shown in Exhibit B to this Settlement Agreement.

1.15 “Net Settlement Fund” refers to the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for the payment from the Settlement Fund for (i) the

Costs of Settlement Administration; (ii) Taxes and Tax-Related Expenses; (iii) Service Award; and (iv) Fee Award and Costs.

1.16 “Notice Commencement Date” means thirty (30) days following entry of the Preliminary Approval Order. The Notice Commencement Date shall be used for purposes of calculating the Claims Deadline, deadlines concerning the Opt-Out Date and Objection Date, and all other deadlines that flow from the Notice Commencement Date.

1.17 “Objection Date” means the date by which members of the Settlement Class must mail to Proposed Settlement Class Counsel and counsel for Kannact or, in the alternative file with the Court, their objection to the Settlement Agreement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.18 “Opt-Out Date” means the date by which Settlement Class Members must mail or submit their requests to be excluded from the Settlement Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.19 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.20 “Participating Settlement Class Member” means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Date.

1.21 “Plaintiffs” and “Representative Plaintiffs” mean Terry Dukes, Ann Fongheiser, and Alan White.

1.22 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached as Exhibit C to this Settlement Agreement.

1.23 “Related Entities” means Kannact’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was, or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

1.24 “Released Claims” shall collectively mean any and all past, present, and future claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality; violations of state consumer protection statutes; and violations of state privacy-protection; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a

receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal 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 Persons based on, relating to, concerning or arising out of the Data Incident and alleged theft of other personal information 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 Persons 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.

1.25 “Released Persons” means Kannact and its Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers.

1.26 “Request for Exclusion” is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in this Agreement.

1.27 “Service Award” or “Service Awards” means the amount of remuneration to be paid to the Class Representatives in recognition of their efforts on behalf of the Settlement Class, in an amount to be ordered by the Court, as set forth in Section 7.

1.28 “Settlement Administration” means the process of identifying members of the Settlement Class, notifying Settlement Class Members, and Settlement Distribution.

1.29 “Settlement Administrator” means Postlethwaite & Netterville APAC, now known as EisnerAmper (“EisnerAmper”) a company experienced in administering class action

settlements generally and specifically those of the type provided for and made in data breach litigation.

1.30 “Settlement Benefit” means any Settlement Payment, the Credit Monitoring and Insurance Services, and any other benefits Settlement Class Members receive pursuant to this Settlement, including non-monetary benefits and relief, the Fee Award and Costs, and Costs of Settlement Administration.

1.31 “Settlement Claim” means the process through which a Settlement Class Member, after receiving due notice, submits a Valid Claim to the Settlement Administrator identifying the Settlement Benefit elected by the Settlement Class Member.

1.32 “Settlement Class” means all persons in the United States whose information may have been impacted in the Data Incident, including persons to whom Kannact mailed a notification that their information may have been impacted in the Data Incident. The Settlement Class specifically excludes: (i) Kannact and its respective officers and directors; (ii) all members of the Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

1.33 “Settlement Class Member(s)” means all persons meeting the definition of the Settlement Class.

1.34 “Settlement Class Counsel” means Cafferty Clobes Meriwether & Sprengel LLP; Milberg Coleman Bryson Phillips Grossman PLLC; Siri & Glimstad LLP; and Tousley Brain Stephens PLLC.

1.35 “Settlement Distribution” means the process by which the Settlement Administrator will disburse the Net Settlement Fund to Settlement Class Members.

1.36 “Settlement Fund” means the sum of Seven Hundred Thousand Dollars and Zero Cents (\$700,000) paid by or on behalf of Kannact, as specified in Paragraph 2.1.

1.37 “Settlement Payment” means any payment to be made to any Settlement Class Member who submits a valid and timely Claim Form pursuant to Paragraphs 2.2-2.4.

1.38 “Settlement Website” means a website, the URL for which shall be mutually selected by the Settling Parties, that will inform Settlement Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information, as well as provide Settlement Class Members with the ability to submit a Settlement Claim online.

1.39 “Settling Parties” means, collectively, Kannact and Plaintiffs, individually and on behalf of the Settlement Class.

1.40 “Short Notice” means the short form notice of the proposed class action settlement, substantially in the form as shown in Exhibit D to this Settlement Agreement. The Short Notice will direct recipients to the Settlement Website and inform members of the Settlement Class of, among other things, the Claims Deadline, the Opt-Out and Objection Deadlines, and the date of the Final Fairness Hearing (if set prior to the Notice Commencement Date (as defined above)).

1.41 “Tax and Tax-Related Expenses” means any and all applicable taxes, duties, and similar charges imposed by any government authority (including any estimated taxes, interest, or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect to the Settlement Fund.

1.42 “Unclaimed Funds” means the sum of the Net Settlement Fund that remain after the payment of the Costs of Settlement Administration, Service Award, Fee Award and Costs,

Taxes and Tax-Related Expenses, Credit Monitoring and Insurances Services, and after the expiration of checks issued to Settlement Class Members who submitted a valid and timely Claim Form for Documented Loss Payments and/or Cash Awards, and any Subsequent Settlement Payment (described herein).

1.43 “Unknown Claims” means any of the Released Claims that any Plaintiff does not know or suspect to exist in his or her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana Code § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Settling Parties acknowledge that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.44 “United States” as used in this Settlement Agreement includes the District of Columbia and all territories.

1.45 “Valid Claims” means Settlement Claims Form submitted by a Settlement Class Member that indicate the Settlement Class Member’s Settlement Benefits election, and provide the Settlement Administrator with correct information for disbursement of a Documented Loss Payment or Cash Award, and that are sent to the Settlement Administrator prior to the Claims Deadline.

## **2. Settlement Benefits**

### **2.1 The Settlement Fund:**

- (a) Within twenty-one (21) days of the Preliminary Approval Order, Kannact shall deposit or cause to be deposited the total sum Seven Hundred Thousand Dollars and Zero Cents (**\$700,000**) into an interest bearing account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator and Kannact (the Settlement Fund).
- (b) The Settlement Fund is the limit and extent of the monetary obligations of Kannact, its respective predecessors, successors, assigns, parents, subsidiaries, affiliates, departments, and any and all of their past, present, or future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing, with respect to this Agreement and the settlement of the Litigation.



- (c) The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.
- (d) As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay the following: (i) Costs of Settlement Administration; (ii) Taxes and Tax-Related Expenses; (iii) Service Awards; (iv) Fee Award and Costs; and (v) the Settlement Benefits elected by Settlement Class Members who submit valid and timely Settlement Claim pursuant to the terms of this Settlement.

2.2 Settlement Payments. Each Settlement Class Member who submits a valid and timely Claim Form may qualify for one of the following:

- (a) Cash Award. Settlement Class Members who submit a valid and timely Claim Form may elect a claim to receive a payment (a “Cash Award”).

The amount of the Cash Award will be calculated in accordance with Paragraph 2.4(b).

- (b) Documented Loss Payment. In the event a Settlement Class Member does not elect a Cash Award, the Settlement Class Member may submit a claim for a Settlement Payment of up to \$5,000 for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, a Settlement Class Member must choose to do so on their given Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss; and (iii) reasonable documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement.

2.3 Credit Monitoring and Insurance Services. Each Settlement Class Member who submits a valid and timely Claim Form may elect to receive three (3) years of Credit Monitoring and Insurance Services (“CMIS”) regardless of whether they also make a claim for a Settlement Payment pursuant to Paragraph 2.2. The CMIS will have an enrollment period of twelve (12) months after the enrollment codes are sent to Class Members claiming this benefit. The CMIS will include the following services to be provided to each Settlement Class Member who submits a valid and timely Claim Form and elects the CMIS: (i) up to \$1 million dollars of identity theft insurance coverage; (ii) three bureau credit monitoring providing notice of changes to the Settlement Class Members’ credit profile; (iii) alerts for activity including new inquiries, new accounts created, change of address requests, changes to public records, postings of potentially negative information, and other leading indicators of identity theft; (iv) customer care and

dedicated fraud resolution agent; (v) comprehensive educational resources; and (vi) extended fraud resolution.

2.4 Distribution of Settlement Payments.

- (a) The Settlement Administrator will first apply the Net Settlement Fund to pay for CMIS claimed by a Settlement Class Member who submits a valid and timely Claim Form. If funds remain in the Net Settlement Fund after paying for the CMIS, the Settlement Administrator will next use the Net Settlement Fund to pay all Documented Loss Payments. The amount of the Net Settlement Fund remaining after all Documented Loss Payments are applied and the payments for the CMIS are made shall be referred to as the “Post Loss Payment Net Settlement Fund.”
- (b) The Settlement Administrator shall utilize the Post Loss Payment Net Settlement Fund to make all Cash Award payments pursuant to Paragraph 2.2(a). The amount of each Cash Award payment shall be calculated by dividing the Post Loss Payment Net Settlement Fund by the total number of valid and timely Claim Forms submitted by Settlement Class Members who elected a Cash Award.

2.5 Business Practices Changes. Plaintiffs have received assurances that Kannact has implemented or will implement certain reasonable steps to adequately secure its systems and environments presently and in the future.

2.6 Confirmatory Discovery. Kannact has provided or will provide reasonable access to confidential confirmatory discovery regarding the number of Settlement Class Members and state of residence, the facts and circumstances of the Data Incident and Kannact’s response thereto,

and the changes and improvements that have been made or are being made to further protect Settlement Class Members' Private Information.

2.7 Settlement Expenses. All costs for notice to the Settlement Class as required under Paragraphs 3.3 and 3.4 and the Costs of Settlement Administration under Paragraph 8 shall be paid out of the Settlement Fund.

2.8 Settlement Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

**3. Order of Preliminary Approval and Publishing of Notice of Fairness Hearing**

3.1. Preliminary and Final Approval of the Settlement Agreement shall be sought in the United States District Court for the District of Oregon.

3.2. As soon as practicable after the execution of the Settlement Agreement, Proposed Settlement Class Counsel and counsel for Kannact shall jointly submit this Settlement Agreement to the Court, and Proposed Settlement Class Counsel will file a motion for preliminary approval of the Settlement with the Court requesting entry of a Preliminary Approval Order in the form to

be agreed upon by the Parties, or an order substantially similar to such form in both terms and cost, requesting, among other things:

- a) certification of the Settlement Class for settlement purposes only pursuant to Paragraph 2.8;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Proposed Settlement Class Counsel as Settlement Class Counsel;
- d) appointment of Plaintiffs as Settlement Class Representatives;
- e) approval of a customary form of Short Notice to be mailed to Settlement Class Members in a form substantially similar to the one attached as Exhibit D to this Settlement Agreement;
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the one attached as Exhibit B to this Settlement Agreement, which, together with the Short Notice, shall include a fair summary of the parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the Settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing; and
- g) appointment of EisnerAmper as the Settlement Administrator.

The Short Notice and Long Notice have been reviewed and approved by the Settlement Administrator but may be revised as agreed upon by the Settling Parties prior to submission to the Court for approval.

3.3. The cost of providing notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Settlement Administration shall be paid from the Settlement Fund. Fee Award and Costs for Settlement Class Counsel, and Service Awards to Representative Plaintiffs, as approved by the Court, shall also be paid from the Settlement Fund as set forth in Paragraphs 7.2, 7.3 and 7.4. Notice shall be provided to Settlement Class Members by the Settlement Administrator as follows:

- a) *Class Member Information*: No later than fourteen (14) days after entry of the Preliminary Approval Order, Kannact shall provide the Settlement Administrator with the name, email address (where available), and last known physical address of each Settlement Class Member (collectively, “Class Member Information”) that Kannact possesses.
  - The Class Member Information and its contents shall be used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Settlement Agreement and shall not be used for any other purpose at any time. Except to administer the Settlement as provided in this Settlement Agreement, or provide all data and information in its possession to the Settling Parties upon request, the Settlement Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.
- b) *Settlement Website*: Prior to the dissemination of the Short Form Notice, the Settlement Administrator shall establish the Settlement Website that will inform Settlement Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include,

in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; (v) the operative Complaint filed in the Litigation; and (vi) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically.

c) *Short Notice:* Within thirty (30) days after the entry of the Preliminary Approval Order, and to be substantially completed not later than forty-five (45) days after entry of the Preliminary Approval Order, and subject to the requirements of this Agreement and the Preliminary Approval Order, the Settlement Administrator will provide notice to the Settlement Class as follows:

- To all Settlement Class Members for whom Kannact is in possession of an email address, via email to the email address provided to the Settlement Administrator by Kannact;
- To all Settlement Class Members for whom Kannact does not have in its possession a valid email address (including email addresses that were returned as undeliverable), via mail to the postal address provided to the Settlement Administrator by Kannact. Before any mailing under this Paragraph occurs, the Settlement Administrator shall run the postal addresses of Settlement Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS;

- In the event that a mailed Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice;
  - In the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out and Objection Deadline, a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Settlement Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.
- d) Publishing, on or before the Notice Commencement Date, the Short Notice, Claim Form, and Long Notice on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period;
- e) A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement. The Settlement Administrator



also will provide copies of the forms of Short Notice, Long Notice, and paper Claim Form, as well as this Settlement Agreement, upon request; and

- f) Contemporaneously with seeking Final Approval of the Settlement, Proposed Settlement Class Counsel and Kannact shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice.

3.4 The Short Notice, Long Notice, and other applicable communications to the Settlement Class may be adjusted by the Settlement Administrator, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The Notice Program shall commence within thirty (30) days after entry of the Preliminary Approval Order and shall be substantially completed within forty-five (45) days after entry of the Preliminary Approval Order.

3.5 Proposed Settlement Class Counsel and Kannact counsel shall request that after notice is completed, the Court hold a hearing (the “Final Fairness Hearing”) and grant final approval of the settlement set forth herein.

#### **4. Opt-Out Procedures**

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written notice must clearly manifest a Person’s intent to opt-out of the Settlement Class. To be effective, written notice must be postmarked no later than sixty (60) days after the Notice Commencement Date.

4.2 All Persons who submit valid and timely notices of their intent to opt-out of the Settlement Class, as set forth in Paragraph 4.1, referred to herein as “Opt-Outs,” shall not receive

any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not opt-out of the Settlement Class in the manner set forth in Paragraph 4.1 shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

## **5. Objection Procedures**

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name and address; (ii) the case name and docket number—*In re: Kannact, Inc. Data Security Incident*, Case No. 6:23-cv-1132-AA (D. Or); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable and any supporting documents; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing, and; (vi) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date no later than sixty (60) days from the Notice Commencement Date, to the Settlement Administrator at a designated post office box, as well as to Proposed Settlement Class Counsel, Nickolas J. Hagman, Cafferty Clobes Meriwether & Sprengel LLP, 135 S. LaSalle Street, Suite 3210, Chicago, IL 60603; and counsel for Kannact, David M. Ross, Wilson Elser, 1500 K Street, NW, Suite 330, Washington, DC 20005. The objector or his or her counsel may also file objections with the Court, with service on Proposed Settlement Class Counsel and Kannact's counsel. For all objections mailed to Proposed Settlement Class Counsel and counsel for Kannact that are not otherwise filed with the Court, Proposed

Settlement Class Counsel will file them with the Court as an exhibit to the Motion for Final Approval of the Settlement.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in Paragraph 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of Paragraph 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

## **6. Releases**

6.1 Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

6.2 Upon the Effective Date, Kannact shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Representative Plaintiffs, each and all of the Settlement Class Members, Proposed Settlement

Class Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation, except for enforcement of the Settlement Agreement. Any other claims or defenses Kannact may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, employment, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation are specifically preserved and shall not be affected by the preceding sentence.

6.3 Notwithstanding any term herein, neither Kannact nor its Related Parties shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Representative Plaintiffs, each and all of the Settlement Class Members, and Proposed Settlement Class Counsel.

**7. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Service Award to Representative Plaintiffs**

7.1 Proposed Class Counsel may file a motion for the Fee Award and Costs to be paid from the Settlement Fund. The motion shall be filed at least fourteen (14) days before the Objection Date. Prior to the disbursement of the Fee Award and Costs under this Agreement, Class Counsel shall provide to Kannact and the Settlement Administrator a properly completed and duly executed IRS Form W-9.

7.2 Proposed Settlement Class Counsel will seek, and Kannact has agreed not to oppose, an order from the Court awarding one-third (33.3%) of the Settlement Fund (\$233,333.00) to Proposed Settlement Class Counsel for attorneys' fees, in addition to the costs and expenses incurred in connection with the prosecution of this matter.

7.3 Unless otherwise ordered by the Court, Proposed Settlement Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs among themselves.

7.4 Proposed Settlement Class Counsel will seek, and Kannact has agreed not to oppose, an order from the Court awarding One Thousand Five Hundred Dollars (\$1,500.00) in Service Awards to each of the Class Representatives, to be paid from the Settlement Fund.

7.5 If awarded by the Court, the Settlement Administrator shall pay the Fee Award and Costs, and Service Awards to Plaintiffs, as set forth in Paragraphs 7.2 and 7.3, within thirty (30) days after the Effective Date. Service Awards to Class Representatives Fee Award and Costs will be wired to Daniel O. Herrera, Cafferty Clobes Meriwether & Sprengel LLP, 135 S. LaSalle Street, Suite 3210, Chicago, IL 60603. Proposed Settlement Class Counsel shall thereafter distribute the award of Fee Award and Costs among Plaintiffs' Counsel and Service Awards to Plaintiffs consistent with Paragraphs 7.2, 7.3 and 7.4.

7.6 The amount(s) of any award of Fee Award and Costs, and the Service Award to Plaintiffs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. These payments will not in any way reduce the consideration being made available to the Settlement Class as described herein, except as set forth in Paragraphs 1.15, 7.2, 7.4 and 7.5. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any Fee Award and Costs, and/or Service Award ordered by the Court to Proposed Settlement Class Counsel or Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

**8. Administration of Claims**

8.1 The Settlement Administrator shall administer the Settlement Fund and Unclaimed Funds described in Paragraphs 2.1, 8.3, 8.5, and 8.6. The Notices provided to Settlement Class Members shall require the Class Member to indicate their preferred disbursement methods and provide the required financial information.

8.2 Within thirty (30) days of the Effective Date, the Settlement Administrator shall make best efforts to provide Settlement Class Members who submitted a valid and timely claim for CMIS benefits with enrollment instruction for the CMIS.

8.3 For each Settlement Class Member from which the Settlement Administrator receives a valid, completed and timely Claim Form with correct financial information, the Settlement Administrator shall disburse any monies due to that Settlement Class Members (*i.e.*, the “Settlement Payment”) using the Settlement Class Member’s preferred method within twenty-one (21) days from the Effective Date.

8.4 Settlement Class Members who do not provide their preferred method of disbursement or do not provide valid financial account information by the Claims Deadline shall be deemed to have unclaimed their Settlement Benefit.

8.5 All Settlement Payments issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within ninety (90) days after the date of issuance (the “Check Void Date”). If a Settlement Class Member requests their Settlement Payment via check and the check is not cashed within ninety (90) days, the Settlement Class Member shall be deemed to have unclaimed their Settlement Payment.

8.6 To the extent any monies remain in the Net Settlement Fund more than one hundred fifty (150) days after the distribution of Settlement Payments to participating Settlement Class

Members, a “Subsequent Settlement Payment” will be evenly made to all Participating Settlement Class Members whose claims for monetary benefits (Settlement Payments) were approved and, in the event the Settlement Class Member requested payment via check, also cashed or deposited their initial Settlement Payment, provided that the average Subsequent Settlement Payment is equal or greater to Ten Dollars and No Cents (\$10.00). In the event that a Subsequent Settlement Payment would exceed Two Hundred and Fifty Dollars and No Cents (\$250.00), then the Parties will seek guidance from the Court on how to disburse the remaining Net Settlement Fund. If the average Subsequent Settlement Payment would be less than \$10.00, the remaining Net Settlement Fund will be used to extend for as long as possible the CMIS benefits claimed and utilized by Settlement Class Members. Any amount remaining in the Net Settlement Fund after said extension is accomplished (the “Unclaimed Fund”), if any, shall be distributed to the Cy Pres Designee.

8.7 Proposed Settlement Class Counsel and counsel for Kannact shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate.

8.8 All Settlement Class Members who fail to timely submit a claim within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.9 No Person shall have any claim against the Settlement Administrator, claims referee, Kannact, Proposed Settlement Class Counsel, Plaintiffs, and/or Kannact’s counsel based on distributions of benefits to Settlement Class Members.

**9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

- a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing, as required by Paragraph 3.2;
- b) Kannact has not exercised its option to terminate the Settlement Agreement pursuant to Paragraph 4.3;
- c) the Court has entered the Judgment granting final approval to the settlement as set forth herein;
- d) the Judgment has become Final, as defined in Paragraph 1.11; and
- e) the number of Opt-Outs is fewer than indicated in the Parties' separate filing under seal with the Court

9.2 If all conditions specified in Paragraph 9.1 are not satisfied, the Settlement Agreement shall be canceled and terminated subject to Paragraph 9.4 unless Proposed Settlement Class Counsel and Kannact's counsel mutually agree in writing to proceed with the Settlement Agreement.

9.3 Within seven (7) days after the Opt-Out Date, the Settlement Administrator shall furnish to Proposed Settlement Class Counsel and to Kannact's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

9.4 In the event that the Settlement Agreement or the releases set forth in Paragraphs 6.1, 6.2, and 6.3 are not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation



deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of Fee Award and Costs, and/or Service Awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Kannact shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class and Settlement Administration and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

**10. Miscellaneous Provisions**

10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that

such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.5 This Agreement contains the entire understanding between Kannact and Plaintiffs regarding the Litigation settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between Kannact and Plaintiffs in connection with the Litigation settlement. Except as otherwise provided herein, each party shall bear its own costs.

10.6 Proposed Settlement Class Counsel, on behalf of the Settlement Class, is expressly authorized by Plaintiffs to take all appropriate actions required or permitted to be taken by the

Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

10.7 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

10.8 Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

If to Plaintiffs or Class Counsel:	If to Defendant or Defendant’s Counsel:
<p>Nickolas J. Hagman  <b>Cafferty Clobes Meriwether &amp; Sprengel LLP</b>                      135 S. LaSalle, Suite 3210                      Chicago, Illinois 60603                      Phone: (312) 782-4880                      Email: <a href="mailto:nhagman@caffertyclobes.com">nhagman@caffertyclobes.com</a></p> <p>Gary M. Klinger  <b>Milberg Coleman Bryson Phillips Grossman PLLC</b>                      227 W. Monroe Street, Suite 2100                      Chicago, IL 60606                      Phone: (866) 252-0878                      Email: <a href="mailto:gklinger@milberg.com">gklinger@milberg.com</a></p> <p>Mason A. Barney                      Tyler J. Bean  <b>SIRI &amp; GLIMSTAD LLP</b>                      745 Fifth Avenue, Suite 500                      New York, New York 10151                      Tel: (212) 532-1091  <a href="mailto:mbarney@sirillp.com">mbarney@sirillp.com</a>  <a href="mailto:tbean@sirillp.com">tbean@sirillp.com</a></p> <p>Kim D. Stephens                      Kaleigh N. Boyd</p>	<p>Michael P. Lowry  <b>Wilson Elser Moskowitz Edelman &amp; Dicker LLP</b>                      6689 Las Vegas Blvd. South, Suite 200                      Las Vegas, NV 89119                      Phone (702) 727-1267                      Email: <a href="mailto:michael.lowry@wilsonelser.com">michael.lowry@wilsonelser.com</a></p> <p>David M. Ross  <b>Wilson Elser Moskowitz Edelman &amp; Dicker LLP</b>                      1500 K Street, NW, Suite 330                      Washington, DC 20005                      Phone (202) 626-7687                      Email: <a href="mailto:david.ross@wilsonelser.com">david.ross@wilsonelser.com</a></p>

<b>TOUSLEY BRAIN STEPHENS PLLC</b> 1200 Fifth Avenue, Suite 1700 Seattle, WA 98101 Telephone: 206-682-5600 Facsimile: 206-682-2992 <a href="mailto:kstephens@tousley.com">kstephens@tousley.com</a> <a href="mailto:kboyd@tousley.com">kboyd@tousley.com</a>	
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10.9 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

10.10 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

10.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

10.12 As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,” and “him” means “him, her, or it.”

10.13 All dollar amounts are in United States dollars (USD).

10.14 Submitting a valid Claim Form (providing the Settlement Administrator with the preferred disbursement method and correct information) to claim a Settlement Benefit from this Settlement is a condition precedent to any Settlement Class Member’s right to receive settlement benefits. If any Settlement Class Member does not submit a valid Claim Form, they will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member’s right to receive monetary relief shall be extinguished, and Kannact shall have no obligation to

make payments to the Settlement Class Member. The same provisions shall apply to any void checks.

10.15 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have caused the Settlement Agreement to be executed by their duly authorized attorneys.



/s/  
Daniel O. Herrera  
Nickolas J. Hagman  
**Cafferty Clobes Meriwether & Sprengel  
LLP**  
135 S. LaSalle, Suite 3210  
Chicago, Illinois 60603  
Phone : (312) 782-4880  
Email : [dherrera@caffertyclobes.com](mailto:dherrera@caffertyclobes.com)  
[nhagman@caffertyclobes.com](mailto:nhagman@caffertyclobes.com)

Gary M. Klinger  
**Milberg Coleman Bryson Phillips  
Grossman PLLC**  
227 W. Monroe Street, Suite 2100  
Chicago, IL 60606  
Phone : (866) 252-0878  
Email : [glkinger@milberg.com](mailto:glkinger@milberg.com)

Mason A. Barney  
Tyler J. Bean  
**SIRI & GLIMSTAD LLP**  
745 Fifth Avenue, Suite 500  
New York, New York 10151  
Tel: (212) 532-1091  
[mbarney@sirillp.com](mailto:mbarney@sirillp.com)  
[tbean@sirillp.com](mailto:tbean@sirillp.com)

Kim D. Stephens  
Kaleigh N. Boyd  
**TOUSLEY BRAIN STEPHENS PLLC**  
1200 Fifth Avenue, Suite 1700  
Seattle, WA 98101  
Telephone: 206-682-5600  
Facsimile: 206-682-2992  
[kstephens@tousley.com](mailto:kstephens@tousley.com)  
[kboyd@tousley.com](mailto:kboyd@tousley.com)

*Attorneys for Plaintiffs and the Putative  
Class*

**Michael Lowry**

Digitally signed by: Michael Lowry  
DN: CN = Michael Lowry email =  
michael.lowry@wilsonelser.com C =  
AD O = Wilson Elser OU = Las Vegas  
Date: 2024.04.29 20:11:59 -07'00'

/s/  
Michael P. Lowry  
**Wilson Elser Moskowitz Edelman & Dicker  
LLP**  
6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, NV 89119  
Phone (702) 727-1267  
Email: [michael.lowry@wilsonelser.com](mailto:michael.lowry@wilsonelser.com)

David M. Ross  
**Wilson Elser Moskowitz Edelman & Dicker  
LLP**  
1500 K Street, NW, Suite 330  
Washington, DC 20005  
Phone (202) 626-7687  
Email: [david.ross@wilsonelser.com](mailto:david.ross@wilsonelser.com)

*Counsel for Defendant Kannact Inc.*

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

In re: Kannact, Inc. Data Security Incident	Lead Case No. 6:23-cv-1132-AA
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**CONFIDENTIAL AGREEMENT TO BE FILED UNDER SEAL**

Pursuant to Paragraph 9.1 of the Settlement Agreement reached in *In re: Kannact, Inc. Data Security Incident*, No. 6:23-CV-1132-AA, this Confidential Agreement is made by and among the Parties to the Settlement Agreement:

All capitalized terms in this Confidential Agreement have the same meanings as in the Settlement Agreement. Defendant shall have the option to withdraw from the Settlement Agreement and to render it null and void pursuant to Paragraph 9.1 of the Settlement Agreement if within ten (10) days after the Opt-Out Date (as approved by the Court), more than two percent (2%) of the Settlement Class Members have validly opted out of the Settlement Class.

IN WITNESS WHEREOF, the Parties have executed and caused this Confidential Agreement to be executed by their duly authorized attorneys below.

<p>/s/ </p> <p>Daniel O. Herrera Nickolas J. Hagman <b>Cafferty Clobes Meriwether &amp; Sprengel LLP</b> 135 S. LaSalle, Suite 3210 Chicago, Illinois 60603 Phone : (312) 782-4880 Email : <a href="mailto:dherrera@caffertyclobes.com">dherrera@caffertyclobes.com</a> <a href="mailto:nhagman@caffertyclobes.com">nhagman@caffertyclobes.com</a></p> <p>Gary M. Klinger <b>Milberg Coleman Bryson Phillips Grossman PLLC</b> 227 W. Monroe Street, Suite 2100 Chicago, IL 60606 Phone : (866) 252-0878</p>	<p style="text-align: right; font-size: small;">Digitally signed by: Michael Lowry DN: CN = Michael Lowry, email = michael.lowry@wilsonelser.com, C = AD, O = Wilson Elser, OU = Las Vegas Date: 2024.04.29 20:12:25 -0700</p> <p><b>Michael Lowry</b></p> <p>/s/ Michael P. Lowry <b>Wilson Elser Moskowitz Edelman &amp; Dicker LLP</b> 6689 Las Vegas Blvd. South, Suite 200 Las Vegas, NV 89119 Phone (702) 727-1267 Email: <a href="mailto:michael.lowry@wilsonelser.com">michael.lowry@wilsonelser.com</a></p> <p>David M. Ross <b>Wilson Elser Moskowitz Edelman &amp; Dicker LLP</b> 1500 K Street, NW, Suite 330 Washington, DC 20005 Phone (202) 626-7687 Email: <a href="mailto:david.ross@wilsonelser.com">david.ross@wilsonelser.com</a></p>
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<p>Email : <a href="mailto:glkinger@milberg.com">glkinger@milberg.com</a></p> <p>Mason A. Barney Tyler J. Bean <b>SIRI &amp; GLIMSTAD LLP</b> 745 Fifth Avenue, Suite 500 New York, New York 10151 Tel: (212) 532-1091 <a href="mailto:mbarney@sirillp.com">mbarney@sirillp.com</a> <a href="mailto:tbean@sirillp.com">tbean@sirillp.com</a></p> <p>Kim D. Stephens Kaleigh N. Boyd <b>TOUSLEY BRAIN STEPHENS PLLC</b> 1200 Fifth Avenue, Suite 1700 Seattle, WA 98101 Telephone: 206-682-5600 Facsimile: 206-682-2992 <a href="mailto:kstephens@tousley.com">kstephens@tousley.com</a> <a href="mailto:kboyd@tousley.com">kboyd@tousley.com</a></p> <p><i>Attorneys for Plaintiffs and the Putative Class</i></p>	<p><i>Counsel for Defendant Kannact Inc.</i></p>
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# **EXHIBIT A**

**CLAIM FORM**

*In re: Kannact, Inc. Data Security Incident*, Case No. 6:23-cv-1132

**The DEADLINE to submit or mail this Claim Form is: [MONTH \_\_, 2024]**

**GENERAL INSTRUCTIONS**

This class action litigation arose from a March 2023 data security incident involving Kannact, Inc. (“Kannact”) that was perpetrated by an unauthorized third party that potentially accessed full names, email addresses, employee ID numbers, dates of birth, Social Security numbers, and medical and health insurance information of certain current and former Kannact patients and employees (the “Data Incident”). If you received a notice about this class action Settlement addressed to you, then the Settlement Administrator has already determined that you are a Settlement Class Member.

As a Settlement Class Member, you are eligible to receive three years of three credit bureau Credit Monitoring and Insurance Services. You are also eligible to receive compensation for unreimbursed documented losses or, alternatively, a cash award.

**CLAIMANT INFORMATION**

The Settlement Administrator will use this information for all communications regarding this Claim Form and the Settlement. If this information changes before the Settlement benefits are issued, you must notify the Settlement Administrator.

First Name M.I. Last Name

--	--	--

Alternative Name(s)

--

Mailing Address, Line 1: Street Address/P.O. Box

--

Mailing Address, Line 2:

--

City: State: ip Code:

--	--	--

Telephone Number (Home) Telephone Number (Mobile)

--	--

Email Address (Required for Credit Monitoring Services)

--

Claim Number Provided on mailed Notice or Obtained from Settlement Administrator

--

**BENEFIT SELECTION**

You may select 1) Credit Monitoring and Insurance Services AND 2) Documented Loss Payment OR a Cash Award.

**1. CREDIT MONITORING AND INSURANCE SERVICES:**

If you wish to receive Credit Monitoring and Insurance Services (“CMIS”), check the box below, provide your email address in the space provided in the “Claimant Information” section above, and sign and return this Claim Form. Submitting this Claim Form will not automatically enroll you in CMIS. To enroll, you must follow the instructions that will be sent to you using the email address you provided above within twelve months after the Settlement is approved and becomes final (the “Effective Date”).

I would like to receive Credit Monitoring and Insurance Services. I have provided my email address above.

**2. COMPENSATION FOR DOCUMENTED LOSSES OR CASH PAYMENT:**

You may also choose to claim either the documented monetary loss payment offered below OR a cash award. You may only choose either Category A or Category B below.

**A. Monetary Losses**

**Documented Loss Payment:** All members of the Settlement Class who submit a Valid Claim using this Claim Form are eligible for reimbursement of the following **documented** out-of-pocket losses, not to exceed \$5,000 per member of the Settlement Class, that were incurred as a result of the Data Incident:

Cost Type (Fill all that apply)	Approximate Date of Loss	Amount of Loss
Out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel.	<div style="text-align: center;"> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/>                      (mm/dd/yy)                 </div>	<div style="text-align: center;">                     \$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/> </div>
<p><b>Examples of Supporting Third Party Documentation:</b> Telephone bills, cell phone bills, gas receipts, postage receipts, bank account statements reflecting out of pocket expenses. Please note that these examples of reimbursable documented out of pocket losses are not meant to be exhaustive, but exemplars. You may make claims for any documented out of pocket losses that you believe are reasonably related to the Data Incident or to mitigating the effects of the Data Incident.</p>		
Fees for credit reports, credit monitoring, or other identity theft insurance products purchased between March 13, 2023 through the close of the Claims Period DATE .	<div style="text-align: center;"> <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/>                      (mm/dd/yy)                 </div>	<div style="text-align: center;">                     \$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/> <input type="text"/> </div>
<p><b>Examples of Supporting Documentation:</b> Receipts or account statements reflecting purchases made for Credit Monitoring or Identity Theft Insurance Services.</p>		



# **EXHIBIT B**

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## Notice of Kannact, Inc. Data Incident Class Action Settlement

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**If your personal information was potentially compromised in a Data Incident that took place at Kannact, Inc. on or around March 13, 2023, you could get a payment from a class action Settlement.**

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

**Please read this Notice carefully and completely. Your legal rights are affected whether you act or don't act.**

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

A Settlement has been proposed in a class action lawsuit against Kannact, Inc. (“Kannact” or “Defendant”). The Settlement resolves claims brought by individuals impacted by the data security incident that took place on or around March 13, 2023, that resulted in the potential compromise of the personal information of Kannact’s current and former patients and employees (the “Data Incident”).

You may be eligible to claim 3 years of credit monitoring and identity theft insurance services.

You also may be eligible to claim reimbursement for documented monetary losses (maximum payment of up to \$5,000) from the proposed Settlement. To receive a payment, you must complete and submit a Claim Form.

Instead of (and not in addition to) the documented monetary loss payment, you may elect to receive a cash award, the total of which will depend upon the number of valid claims for credit monitoring, documented monetary loss payments, and cash awards that are filed.

Summary of Your Legal Rights and Options		Deadline
<b>SUBMIT A CLAIM FORM</b>	The only way to get a payment and/or credit monitoring.	Online or Postmarked by <b>[DATE]</b> .
<b>EXCLUDE YOURSELF BY OPTING OUT</b>	Get no payment. Keep your right to file your own individual lawsuit against Kannact for the same claims resolved by this Settlement.	Postmarked by <b>[DATE]</b> .
<b>OBJECT TO THE SETTLEMENT</b>	Tell the Court the reasons why you do not believe the Settlement should be approved.	Received by <b>[DATE]</b> .

<b>AND/OR ATTEND A HEARING</b>	You can also ask to speak to the Court at the hearing on <b>[DATE]</b> about the fairness of the Settlement, with or without your own attorney.	
<b>DO NOTHING</b>	Get no payment or credit monitoring and be bound by the terms of the Settlement.	

These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement after any appeals are resolved.

**HAT THIS NOTICE CONTAINS**

**BASIC INFORMATION.....**

- 1. Why did I get this notice
- 2. What is this lawsuit about
  - . What is a class action
- 4. Why is there a settlement

**WHO IS IN THE SETTLEMENT .....**

- . Who is in the settlement
- . Are there exceptions to being included
- . What should I do if I'm not sure whether I am included

**THE SETTLEMENT BENEFITS.....**

- . What does the Settlement provide
- . What can I get from the Settlement
- 10. What am I giving up if I stay in the class

**HOW TO GET A PAYMENT MAKING A CLAIM.....**

- 11. How can I get a payment
- 12. How much will my payment be
  - 1 . When will I get my payment

**THE LAWYERS REPRESENTING YOU .....**

- 14. Do I have a lawyer in this case
  - 1 . Should I get my own lawyer
  - 1 . How will the lawyers be paid

**EXCLUDING YOURSELF FROM THE SETTLEMENT ..... 10**

- 1 . How do I get out of the Settlement
- 1 . If I am a settlement class member and don't opt out, can I sue the Defendant for the same thing later
- 1 . What happens if I opt out

**COMMENTING ON OR OBJECTING TO THE SETTLEMENT ..... 10 11**

- 20. How do I tell the Court I don't like the settlement
- 21. What's the difference between objecting and opting out



**THE COURT'S FAIRNESS HEARING ..... 11 12**

**22. When and where will the Court decide whether to approve the Settlement**

**23. Do I have to come to the Fairness Hearing**

**24. May I speak at the hearing**

**IF I DO NOTHING.....12**

**25. What happens if I do nothing at all**

**GETTING MORE INFORMATION.....12**

**26. Are more details about the Settlement available**

**27. How do I get more information**

## BASIC INFORMATION

### 1. Why did I get this notice

You received this notice because you have been identified as a person whose information may have been accessed or exposed during the Data Incident, and you may have previously received a notice from Kannact mailed in or around August 2023 that your information may have been impacted in the Data Incident. Three individuals who received a notice from Kannact regarding the Data Incident brought proposed class action lawsuits against Kannact in 2023, alleging that Kannact was negligent due to its data security practices. Kannact denied the allegations and denied that it would be found liable should this case proceed to trial. The parties have now reached a proposed Settlement of the lawsuits.

A Court authorized this notice because you have a right to know about your rights under the proposed class action Settlement before the Court decides whether to grant final approval to the Settlement. If the Court approves the Settlement, a Settlement Administrator appointed by the Court will provide the benefits and make the payments that the Settlement allows, and the pending legal claims against Kannact will be released and dismissed.

This package explains the lawsuit, the Settlement, your rights, what benefits are available, who is eligible for them, and how to get them. The case is *In re: Kannact, Inc. Data Security Incident*, Case No. 6:23-cv-1132, currently pending in the United States District Court for the District of Oregon.

### 2. What is this lawsuit about

This matter is a putative class action (the “Litigation”) arising from an incident whereby a cybercriminal gained unauthorized access to certain of Kannact’s computer systems and the data stored thereon, resulting in potentially accessing sensitive personal information associated with current and former patients and employees of Kannact (and/or its affiliates). The lawsuit asserts common law claims against Kannact for alleged negligent data security practices, alleged breach of contract, and statutory claims.

Kannact denies any allegation of wrongdoing and denies that Plaintiffs would prevail or be entitled to any relief should this matter proceed to be litigated.

### 3. What is a class action

In a class action, one or more people called “Class Representatives” sue on behalf of themselves and other people who they allege have similar claims. This group of people is called the “class,” and the people in the class are called “Settlement Class Members” or the “Settlement Class.” One court resolves the issues for all Settlement Class Members, except for people who exclude themselves from the class. The persons who sued here—Terry Dukes, Ann Fongheiser, and Alan White—are called the Plaintiffs. The entity they sued—Kannact—is called the Defendant.

### 4. Why is there a Settlement

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a Settlement. That way, they avoid the costs and risks of a trial, and Settlement Class Members can get benefits or compensation. The Class Representatives and Class Counsel think the Settlement is in the best interest of the Settlement Class.

## HO IS IN THE SETTLEMENT

### . Who is in the Settlement

The Settlement Class is defined as: “all persons in the United States whose information may have been impacted in the Data Incident, including persons to whom Kannact mailed a notification that their information may have been impacted in the Data Incident.” There are approximately 109,210 Class Members, all of whom are current or former Kannact patients and employees.

### . Are there exceptions to being included

Yes, the following are not included in the Settlement Class: Kannact and its respective officers and directors; all members of the Settlement Class who timely and validly request exclusion from the Settlement Class; the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

### . What should I do if I am not sure whether I am included

If you are not sure whether you are included in the Settlement Class, you can ask for free help by calling the Settlement Administrator, at [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX) or you can visit [www.XXXXXX.com](http://www.XXXXXX.com) for more information.

## THE SETTLEMENT BENEFITS

### . What does the Settlement Provide

Under the Settlement, Kannact will establish a non-reversionary settlement fund in the amount of Seven Hundred Thousand Dollars (\$700,000.00). These funds will be used to pay for all valid claims made by Settlement Class Members, notice and administration costs, service awards, and attorneys’ fees and costs. In no event shall Kannact pay more than \$700,000.00.

### . What can I get from the Settlement

Settlement Class Members may file a claim for one or more of the following settlement benefits.

**CASH AWARD.** As an alternative to filing a claim for a Documented Loss Payment, Settlement Class Members may submit a claim to receive a payment from the Settlement Fund, which will be calculated by dividing (i) the amount of cash left in the Post Loss Payment Net Settlement Fund, which is the amount remaining in the Settlement Fund after the payment of the costs of Settlement Administration, Taxes and Tax-Related Expenses, attorneys’ fees and costs, Service Awards to Representative Plaintiffs, and approved claims for Documented Loss Payments and Credit

Monitoring by (ii) the number of valid and timely Claim Forms submitted by Settlement Class Members electing to receive a Cash Award.

**IF YOU SELECT THE CASH AWARD, YOU MAY NOT CLAIM THE DOCUMENTED LOSS PAYMENT.**

**Documented Loss Payment:** In the alternative to a Cash Award, Settlement Class Members may make a Claim for a Settlement Payment of up to \$5,000 for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, Settlement Class Members must choose to do so on their Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss; and (iii) reasonable documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement.

**Credit Monitoring and Insurance Services:** In addition to the other monetary benefits listed above, all Settlement Class Members can enroll in three years of three bureau credit monitoring with at least \$1 million in identity theft insurance coverage. Settlement Class Members claiming this option will be given the opportunity to sign up within one year of the Settlement being finally approved.

**10. What am I giving up if I stay in the Class**

If you are a Settlement Class Member and you do not exclude yourself from the Settlement, you will give up your right to sue, continue to sue, or be part of any other lawsuit against Defendant or other released parties concerning the claims released by this Settlement. The Settlement Agreement describes the legal claims that you give up if you remain in the Settlement Class. The entire Settlement Agreement can be viewed at [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com).

**How to Get a Payment Making A Claim**

**11. How can I get a payment**

You must complete and submit a Claim Form by [DATE]. Claim Forms may be submitted online at [www.XXXX.com](http://www.XXXX.com) or mailed to the address on the Claim Form. Be sure to read the Claim Form instructions carefully, include all required information, and add your signature.

The Settlement Administrator will review your claim to determine the validity and amount of your payment.

This is a closed class. The benefits are available only to Settlement Class Members with a unique ID. All claims submitted by non-Settlement Class Members, or individuals who do not have a unique ID, will be rejected. If you believe you are a Settlement Class Member but do not have a unique ID, you can call the Settlement Administrator at [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX) to verify that you are a Settlement Class Member and obtain your unique ID.

**12. How much will my payment be**

The amount of your payment will depend on the approved amount of your claim and the total value of all approved claims. If you are claiming Documented Losses under the Settlement, you must attest to the loss and any out-of-pocket expenses, their amount, and submit documentation demonstrating the loss. Documents submitted may include credit card or bank statements, emails, invoices, receipts, or telephone records, including photographs of these documents. Personal statements, declarations, or other “self-prepared” documents are not considered reasonable documentation, but may be used to provide clarification, context, or support for other documentation.

#### 1 . When will I get my payment

The Court will hold a hearing on [DATE] to decide whether to approve the Settlement. Payments will be made after the Settlement is approved and becomes final (meaning there is no appeal from the order approving the Settlement). Updates regarding the Settlement will be posted on the Settlement Website, [www.XXXX.com](http://www.XXXX.com).

### THE LAWYERS REPRESENTING YOU

#### 14. Do I have a lawyer in this case

The law firms of Cafferty Clobes Meriwether & Sprengel LLP; Milberg Coleman Bryson Phillips Grossman PLLC; Siri & Glimstad LLP; and Tousley Brain Stephens PLLC represent the Settlement Class. These lawyers are called Class Counsel. You will not be charged for their services.

#### 1 . Should I get my own lawyer

If you want your own lawyer, you may hire one, but you will be responsible for any payment for that lawyer’s services. For example, you can ask your own lawyer to appear in court for you if you want someone other than Class Counsel to speak for you. You may also appear for yourself without a lawyer.

#### 1 . How will the lawyers be paid

The attorneys representing the Class have not yet received any payment for their legal services or any reimbursement of the costs or out-of-pocket expenses they have incurred. Class Counsel plans to ask the Court to award attorneys’ fees from the Settlement Fund, not to exceed one third of the Settlement Fund (*i.e.* not more than \$233,333.00). Class Counsel may also petition the Court for their out-of-pocket costs and expenses incurred in connection with the prosecution of the Litigation.

The Settlement Class is represented by three named individuals—Terry Dukes, Ann Fongheiser, and Alan White (the “Class Representatives”). In addition to the benefits that the Class Representatives will receive as a member of the Settlement Class—and subject to the approval of the Court—Class Counsel will ask the Court to award a \$1,500 Service Award to each of the Settlement Class Representatives for the efforts they have expended on behalf of the Settlement Class.

The Court will determine whether to approve the amount of fees and costs and expenses requested by Class Counsel and the proposed Service Awards to the Class Representatives. Class Counsel will file an application for fees, expenses, and Service Awards no later than [DATE]. The application will be available on the Settlement Website, [www.XXXXXX.com](http://www.XXXXXX.com), or you can request a copy by contacting the Settlement Administrator.

## E EXCLUDING YOURSELF FROM THE SETTLEMENT

### 1 . How do I get out of the Settlement

If you are a Settlement Class Member and you do not want the benefits from the Settlement, and you want to keep your right, if any, to sue Defendant on your own about the legal issues in this Litigation, then you must take steps to get out of the Settlement. This is called excluding yourself from—or “opting out” of—the Settlement Class.

You may opt out of the Settlement Class by [DATE]. To opt out, you must send a letter or postcard via U.S. mail to the address below. You should include the following in your letter or postcard:

The name of the Litigation, *In re: Kannact, Inc. Data Security Incident Litigation*, Case No. 6:23-cv-1132 (D. Or.), or a decipherable approximation;

Your full name, address, telephone number, and original signature (or the original signature of a person authorized by law to act on your behalf, along with evidence of appointment of such person acting on your behalf);

The words “Requests for Exclusion” at the top of the document or a clear statement that you want to opt out of the settlement.

You must mail your opt-out request via First-Class postage prepaid U.S. Mail, postmarked no later than [DATE] to:

*Kannact Settlement Administrator*  
P.O. Box XXXX  
XXXXXX

If you fail to include the required information, your request will be deemed invalid and you will remain a Settlement Class Member and be bound by the Settlement, including all releases.

### 1 . If I am a Settlement Class Member and don t opt out, can I sue the Defendant for the same thing later

No. You must opt out of the Settlement to keep your right to sue Defendant or other released parties for any of the claims resolved by the Settlement.

### 1 . hat happens if I opt out

If you opt out of the Settlement, you will not have any rights as a member of the Settlement Class. You will not receive a payment as part of the Settlement. You will not be bound by the Settlement, releases, or by any further orders or judgments in this case. You will keep the right, if any, to sue on the claims alleged in the Litigation at your own expense.

In addition, if you opt out of the Settlement you cannot object to this Settlement because the Settlement no longer affects you. If you object to the Settlement and request to exclude yourself, your objection will be voided and you will be deemed to have excluded yourself.

## COMMENTING ON OR OBJECTING TO THE SETTLEMENT

### 20. How do I tell the Court if I don't like the Settlement

If you are a Settlement Class Member and you do not opt out of the Settlement, you can object to the Settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. You cannot ask the Court to change or order a different settlement; the Court can only approve or deny this Settlement. If the Court denies approval, no settlement payments will be sent out and the Litigation will continue. If that is what you want to happen, you must object.

You may object to any part of the proposed Settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

All notices of an intent to object to the Class Settlement Agreement must be written and should include all of the following: (i) the objector's full name and address; (ii) the case name and docket number—*In re: Kannact, Inc. Data Security Incident*, Case No. 6:23-cv-1132-AA (D. Or); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection; (vii) proof that the Settlement Class Member is a member of the Settlement Class (e.g., copy of settlement notice, copy of original notice of the Website Usage Disclosure); (viii) provide copies of any documents that the Settlement Class member wishes to submit in support of his/her position; and (ix) a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years.

Completed objections must also be submitted via postal mail to the Settlement Administrator at the following address.

*Kannact Settlement Administrator*  
P.O. Box XXXX  
XXXXX

Completed objections must also be submitted via postal mail to Proposed Settlement Class Counsel, Nickolas J. Hagman, Cafferty Clobes Meriwether & Sprengel LLP, 135 S. LaSalle Street,

Suite 3210, Chicago, IL 60603; and counsel for Kannact, David M. Ross, Wilson Elser LLP, 1500 K Street, NW, Suite 1500, Washington, DC 20005. The objection must be filed with the Settlement Administrator, and must be postmarked – no later than [DATE].

## 21. What is the difference between objecting and opting out

Objecting is telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you are a Settlement Class Member and do not opt out of the Settlement. Opting out of the Settlement is telling the Court that you don't want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because it does not affect you.

## THE COURT'S FAIRNESS HEARING

## 22. When and where will the Court decide whether to approve the settlement

The Court will hold a Final Approval Hearing (also called the Fairness Hearing) on **Month**, 2024, at **: 0 .m.** at the Wayne L. Morse United States Courthouse, United States District Court for the District of Oregon, 405 East Eighth Avenue, Room 5500, Eugene, Oregon 97401, before Judge Ann L. Aiken. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate; Class Counsel's application for attorneys' fees, costs, and expenses; and whether to approve Service Awards to the Class Representatives. If there are objections, the Court will consider them. The Court may choose to hear from people who have asked to speak at the hearing. At or after the hearing, the Court will decide whether to approve the Settlement. There is no deadline by which the Court must make its decision.

The Court may reschedule the Fairness Hearing or change any of the deadlines described in this notice. The date of the Fairness Hearing may change without further notice to Settlement Class Members. Be sure to check the Settlement Website, [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) for updates.

Class Counsel will file a motion for final approval of the Settlement by [DATE]. Objectors, if any, must file any response to Class Counsel's motion by [DATE]. Responses to any objections and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses, and Service Awards will be filed by [DATE].

## 23. Do I have to come to the Fairness Hearing

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you send an objection, you do not have to come to the hearing to talk about it. As long as you mailed or filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

## 24. May I speak at the hearing

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you should include a statement in your written objection (*see* Question 20) that you intend to appear at the hearing. Be sure to include your name, address, and signature as well. Notwithstanding the



foregoing, it is in the judge’s discretion to let you speak at the Fairness Hearing. You cannot speak at the hearing if you opt out or exclude yourself from the Class.

## IF I DO NOTHING

### 2 . hat happens if I do nothing at all

If you are a Settlement Class Member and do nothing, you will not get any money from this Settlement, and you will not be able to sue the Defendant or other released parties for the claims released by the Settlement Agreement.

## GETTING MORE INFORMATION

### 2 . Are more details about the Settlement a ailable

This notice summarizes the proposed Settlement—more details are in the Settlement Agreement and other case documents available at [www.XXXXXXX.com](http://www.XXXXXXX.com), by reviewing the case docket and filings at [INSERT], or by visiting the Office of the Clerk, United States District Court, 405 East Eighth Ave., Eugene, OR 97401 between 8:30 a.m. and 4:30 p.m., Monday through Thursday, 9:30 a.m. to 4:30 p.m. Fridays, excluding Court holidays.

### 2 . How do I get more information

Visit the Settlement Website, [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com), where you will find more information, including the Claim Form, a copy of the Settlement Agreement, and answers to questions about the Settlement and other information to help you determine whether you are eligible for a payment.

Contact the Settlement Administrator, [ADMINISTRATOR NAME], at 1-XXX-XXX-XXXX or by writing to Attn: Kannact Settlement at:

*Kannact Settlement Administrator*

P.O. Box XXXX

XXXXXXXXXXXXXXXX

**PLEASE DO NOT CONTACT THE COURT, THE COURT CLERK’S OFFICE, OR DEFENDANT TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

# **EXHIBIT C**

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

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In re: Kannact, Inc. Data Security Incident

Lead Case No. 6:23-cv-1132-AA

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**PROPOSED PRELIMINARY APPROVAL ORDER**

Before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion"), the terms of which are set forth in a Settlement Agreement and Release between Plaintiffs Terry Dukes, Ann Fongheiser, and Alan White ("Plaintiffs") and Defendant Kannact, Inc. ("Kannact" or "Defendant") (together with Plaintiffs, the "Parties"), with accompanying exhibits, attached as **Exhibit** to the Motion (the "Settlement Agreement").<sup>1</sup>

Having fully considered the issue, the Court hereby **GRANTS** the Motion and **ORDERS** as follows:

1. **Class Certification for Settlement Purposes Only**. The Settlement Agreement provides for a Settlement Class defined as follows:

**All persons in the United States whose information may have been impacted in the Data Incident, including persons to whom Kannact mailed a notification that their information may have been impacted in the Data Incident.**

Specifically excluded from the Settlement Class are (i) Kannact and its respective officers and directors; (ii) all members of the Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under

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<sup>1</sup> All defined terms in this Order ("Preliminary Approval Order") have the same meaning as set forth in the Settlement Agreement, unless otherwise indicated.

criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

Pursuant to Federal Rules of Civil Procedure 23(e)(1), the Court finds that giving notice is justified. The Court finds that it will likely be able to approve the proposed Settlement as fair, reasonable, and adequate. The Court also finds that it will likely be able to certify the Settlement Class for purposes of judgment on the Settlement because it meets all of the requirements of Rule 23(a) and the requirements of Rule 23(b)(3). Specifically, the Court finds for settlement purposes only that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the Class Representative are typical of and arise from the same operative facts and the Class Representatives seek similar relief as the claims of the Settlement Class Members; (d) the Class Representatives will fairly and adequately protect the interests of the Settlement Class as the Class Representatives have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this Litigation on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this Litigation.

2. **Settlement Class Representatives and Settlement Class Counsel.** The Court finds that Plaintiffs will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as the Class Representatives. Additionally, the Court finds that Cafferty Clobes Meriwether & Sprengel LLP; Milberg Coleman Bryson Phillips Grossman PLLC; Siri & Glimstad

LLP; and Tousley Brain Stephens PLLC will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as Class Counsel pursuant to Rule 23(g)(1).

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds the Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class and accordingly is preliminarily approved. In making this determination, the Court has considered the monetary and non-monetary benefits provided to the Settlement Class through the Settlement, the specific risks faced by the Settlement Class in prevailing on their claims, the good faith, arms' length negotiations between the Parties and absence of any collusion in the Settlement, the effectiveness of the proposed method for distributing relief to the Settlement Class, the proposed manner of allocating benefits to Settlement Class Members, the Settlement treats the Settlement Class Members equitably, and all of the other factors required by Rule 23 and relevant case law.

4. **jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) and personal jurisdiction over the parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on \_\_\_\_\_, 2024, at the Wayne L. Morse United States Courthouse, United States District Court for the District of Oregon, 405 East Eighth Avenue, Room 5500, Eugene, Oregon 97401, where the Court will determine, among other things, whether: (a) this Litigation should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (b) the Settlement should be approved as fair, reasonable, and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) this Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members who have not

timely and validly excluded themselves from the Settlement should be bound by the releases set forth in the Settlement Agreement; (e) the application of Class Counsel for an award of Attorneys' Fees, Costs, and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (f) the application of the Class Representatives for a Service Award should be approved.

6. **Settlement Administrator.** The Court appoints EisnerAmper as the Settlement Administrator, with responsibility for Class Notice and settlement administration. The Settlement Administrator is directed to perform all tasks the Settlement Agreement requires. The Settlement Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.

7. **Notice.** The proposed Notice program set forth in the Settlement Agreement and the Notices and Claim Form attached to the Settlement Agreement as **Exhibits A, B, and D** are hereby approved. Non-material modifications to these Exhibits may be made by the Settlement Administrator in consultation and agreement with the Parties, but without further order of the Court.

8. **Findings Concerning Notice.** The Court finds that the proposed form, content, and method of giving Notice to the Settlement Class as described in the Notice program and the Settlement Agreement and its exhibits: (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the proposed Settlement, and their rights under the proposed Settlement, including, but not limited to, their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; (d) meet all applicable requirements of law, including Federal Rule of Civil Procedure 23(c); and (e) and meet the

requirements of the Due Process Clause(s) of the United States and Oregon Constitutions. The Court further finds that the Notice provided for in the Settlement Agreement is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members.

The Settlement Administrator is directed to carry out the Notice program in conformance with the Settlement Agreement.

9. **Class Action Fairness Act Notice.** Within ten (10) days after the filing of this Settlement Agreement with the Court, the Settlement Administrator acting on behalf of Defendant shall have served or caused to be served a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b).

10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator in the manner provided in the Notice. The written notice must clearly manifest a person’s intent to be excluded from the Settlement Class. To be effective, such requests for exclusion must be postmarked no later than the Opt-Out Date, which is no later than sixty (60) days from the Notice Commencement Date, and as stated in the Notice.

If Defendant voids the Settlement Agreement according to its terms, Defendant will be obligated to pay all settlement expenses already incurred by the Settlement Administrator through the date of termination, excluding any attorneys’ fees, costs, and expenses of Class Counsel and the Service Award to the Class Representative and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

The Settlement Administrator shall promptly furnish to Class Counsel and to Defendant's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

If a Final Order and Judgment is entered, all persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and the Final Order and Judgment. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any cash benefits of and/or be bound by the terms of the Settlement Agreement.

11. **Objections and Appearances.** A Settlement Class Member (who does not submit a timely written request for exclusion) desiring to object to the Settlement Agreement may submit a timely written notice of his or her objection by the Objection Date and as stated in the Notice. The Long Notice shall instruct Settlement Class Members who wish to object to the Settlement Agreement to send their written objections to the Settlement Administrator, Class Counsel, and counsel for Defendant at the addresses indicated in the Long Notice. The Notice shall advise Settlement Class Members of the deadline for submission of any objections—the "Objection Deadline." Any such notices of an intent to object to the Settlement Agreement must be written and must include all of the following: (i) the objector's full name and address; (ii) the case name and docket number—*In re: Kannact, Inc. Data Security Incident*, Case No. 6:23-cv-1132-AA (D. Or.); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection; (vii) proof that the Settlement Class



Member is a member of the Settlement Class (*e.g.*, copy of settlement notice, copy of original notice of the Website Usage Disclosure); (viii) provide copies of any documents that the Settlement Class member wishes to submit in support of his/her position; (ix) contain a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years.

Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The provisions stated in Paragraph 5.1 of the Settlement Agreement shall be the exclusive means for any challenge to the Settlement Agreement. Any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Final Order and Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

12. **Claims Process.** Class Counsel and Defendant have created a process for Settlement Class Members to claim benefits under the Settlement. The Court preliminarily approves this process and directs the Settlement Administrator to make the Claim Form or its substantial equivalent available to Settlement Class Members in the manner specified in the Notice.

The Settlement Administrator will be responsible for effectuating the claims process. Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirement and procedures specified in the Notice and the Claim Form. If the Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures

specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Final Order and Judgment, including the releases contained therein.

13. **Termination of Settlement.** This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing before the Court entered this Preliminary Approval Order and before they entered the Settlement Agreement, if not all conditions specified in Paragraph 9.1 of the Settlement Agreement are satisfied. In such event, (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

14. **Use of Order.** In the event the Final Order and Judgment is not entered or there is no Effective Date, this Preliminary Approval Order shall be of no force or effect and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. Nor shall this Preliminary Approval Order be construed or used as an admission, concession, or declaration by or against the Class Representatives or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims they may have in this Litigation or in any other lawsuit.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Fairness Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website maintained by the Settlement Administrator. The Court may approve the Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without further notice to the Settlement Class.

16. **Stay of Litigation.** All proceedings in the Litigation, other than those related to approval of the Settlement Agreement, are hereby stayed. Further, any actions brought by Settlement Class Members concerning the Released Claims are hereby enjoined and stayed pending Final Approval of the Settlement Agreement.

17. **Schedule and Deadlines.** The Court orders the following schedule of dates for the specified actions/further proceedings:

**SETTLEMENT TIMELINE**

<b>Action</b>	<b>Deadline</b>
CAFA Notice to be served on State/Federal officials	10 days after filing of Motion for Preliminary Approval of Class Action Settlement
Notice Commencement Date	30 days after entry of the Preliminary Approval Order
File Motion for Attorneys' Fees, Expenses, and Service Awards	14 days prior to Opt-Out deadline
Objection Deadline	60 days after Notice Commencement Date
Opt-Out Deadline	60 days after Notice Commencement Date
Claims Deadline	90 days after the Notice Commencement Date
Motion for Final Approval	14 days before Final Approval Hearing



# **EXHIBIT D**

**A proposed Settlement has been reached in a class action lawsuit known as *In re: Kannact, Inc. Data Security Incident Litigation*, Case No. :2 c 11 2, which is currently pending in the United States District Court for the District of Oregon.**

**What is this case about** A class action Settlement in the amount of \$700,000.00 has been reached in a case known as *In re: Kannact, Inc. Data Security Incident Litigation*, Case No. 6:23-cv-1132 (“Action”) filed in the United States District Court for the District of Oregon. The individuals who sued are called the “Plaintiffs” or “Class Representatives” and the company they sued, Kannact, Inc. (“Kannact”), is known as the “Defendant.” Plaintiffs filed a lawsuit against Defendant individually, and on behalf of anyone whose private information was potentially impacted as a result of a data security incident. The Action alleges that unauthorized access to the private information of the Plaintiffs and Settlement Class Members occurred as a result of unauthorized access to Defendant’s network and systems, which took place on or about March 13, 2023 (the “Data Incident”). Subsequently, this Action was filed asserting claims against Defendant relating to the Data Incident. Defendant denies any wrongdoing.

### **Who is a Settlement Class Member**

**Settlement Class Member:** All persons in the United States whose information may have been impacted in the Data Incident, including persons to whom Kannact mailed a notification that their information may have been impacted in the Data Incident.

Excluded from the Settlement Class are (i) Kannact and its respective officers and directors; (ii) all members of the Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

**What are the benefits** The Settlement provides the following Settlement Class Member benefits:

**Cash Award:** Settlement Class Members may elect to claim a Cash Award, which will be calculated by dividing (i) the amount of cash left in the Post Loss Payment Net Settlement Fund by (ii) the number of valid and timely Claim Forms submitted by Settlement Class Members electing to receive a Cash Award.

**Documented Loss Payment:** In the alternative to a Cash Award, Settlement Class Members may make a Claim for a Settlement Payment of up to \$5,000 for reimbursement in the form of a Documented Loss Payment. To receive a Documented Loss Payment, Settlement Class Members must choose to do so on their Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Loss; and (iii) reasonable documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement.

**Credit Monitoring and Insurance Services:** In addition to a Cash Award or Documented Loss Payment, all Settlement Class Members may also make a Claim for three years of Credit Monitoring and Insurance Services with three bureaus.

**How do I make a Claim** You must file a Claim Form by mail postmarked by [REDACTED], and mailed to the Settlement Administrator's address below, or online at [www.\[INSERT\].com](http://www.[INSERT].com) by [REDACTED] to receive any benefit.

### **What are my other rights**

**Do Nothing:** If you do nothing, you remain in the Settlement. You give up your rights to sue Kannact and all other Released Parties in the Settlement, and you will not get any money or other benefits as a Settlement Class Member.

**Opt Out:** You can exclude yourself from the Settlement and keep your right to sue for the claims being released in the Settlement, but you will not get any money from the Settlement. You must submit a request to opt-out to the Settlement Administrator by [REDACTED].

**Ob object:** You can stay in the Settlement but tell the Court why you think the Settlement should not be approved. Your objection must be submitted by [REDACTED].

Detailed instructions on how to file a Claim Form, opt-out, or object, can be found on the Long Notice found on the Settlement Website, [www.\[INSERT\].com](http://www.[INSERT].com).

The Court will hold the Final Approval Hearing on [REDACTED], at [REDACTED] .m. [REDACTED] to consider whether the proposed Settlement is fair, reasonable, and adequate, to consider an award of attorneys' fees of up to 33.33% of the Settlement Fund, reimbursement of the costs and expenses incurred in connection with the prosecution of the Action, and Service Awards of \$1,500 to the Class Representatives, and whether and if the Settlement should be approved. You may attend the hearing, but you don't have to. For additional information, including a copy of the Settlement Agreement, Long Notice, Claim Form, and other Court documents, visit the Documents section of the Settlement Website, [www.\[INSERT\].com](http://www.[INSERT].com), or call [REDACTED]. You may also contact the Settlement Administrator at *In re Kannact, Inc. Data Security Incident Litigation*, c/o [ADMIN].

# **EXHIBIT 2**





# Cafferty Clobes Meriwether & Sprengel LLP



*Successful Solutions for Complex Litigation*



## Firm Overview

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Cafferty Clobes Meriwether & Sprengel LLP combines the talents of attorneys with a wide range of experience in complex civil litigation. The skill and experience of CCMS attorneys has been recognized on repeated occasions by courts that have appointed these attorneys to major positions in complex multidistrict or consolidated litigation. As the representative sampling of cases listed below demonstrates, these attorneys have taken a leading role in numerous important actions on behalf of investors, employees, consumers, businesses and others. In addition, CCMS attorneys are currently involved in a number of pending class actions, as described on the Firm's web page.

## Antitrust Class Actions and Commodities Litigation

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CCMS is serving as Co-Lead counsel on behalf of a proposed class of cattle ranchers and industry trade groups alleging that some of the country's largest meatpacking companies, including Tyson, Cargill, JBS, and National Beef, have colluded to suppress the prices paid for cattle used in beef production. As discussed in a recent National Law Journal article, a successful outcome in this matter would ensure that cattle ranchers are paid what they deserve for their labor in raising live-fed cattle and bringing them to market.

CCMS serves as interim co-lead counsel in this case involving alleged manipulation through spoofing of Treasury and Eurodollar Futures.

CCMS serves as class counsel for exchange trader plaintiffs in claims involving manipulation in violation of the Commodity Exchange Act against many of the world's largest financial institutions.



r M  
D

As liaison and class counsel in action arising from PIMCO's manipulation of 10-year treasury notes futures traded on the Chicago Board of Trade, CCMS helped secure a \$118 million settlement for the class.

r r d d r D

As class counsel in action arising from manipulation of NYMEX West Texas Intermediate grade crude oil futures contracts, CCMS expended significant resources assisting the class with investigation and discovery. The collective efforts resulted in a \$16.5 million settlement for the class.

r r r R r ,  
D

As class counsel in this action arising from manipulation of foreign exchange rates by international banks and others, CCMS has devoted significant resources toward investigation, discovery, and allocation of more than \$2 billion in settlements for the class.

r r , M D

As class counsel in action arising out of manipulation of the world copper market, CCMS helped achieve settlements aggregating \$134.6 million. In awarding attorneys' fees, Judge Milton Pollack noted that it was "the largest class action recovery in the 75 plus year history of the Commodity Exchange Act." 74 F. Supp. 2d 393 (S.D.N.Y. Nov. 15, 1999).

r r , D

As class counsel in this action against Ferruzzi Finanziaria SpA and related companies for unlawfully manipulating the soybean futures market, CCMS helped recover a \$21.5 million settlement.

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D

Securities fraud class action. CCMS served as local counsel and helped recover a settlement of approximately \$1.6 billion.

r r r r r D D

On December 7, 2005, Chief Judge Mary F. Walrath of the United States Bankruptcy Court for the District of Delaware granted final approval to a settlement that produced 175,000 shares of common stock for a class of former shareholders of ICT Spectrum Constructors, Inc. (a company that merged with ICF Kaiser Group International and ICF Kaiser Advanced



Technology in 1998). The settlement followed Judge Joseph J. Farnan’s ruling which upheld the Bankruptcy Court’s decision to award common stock of the new Kaiser entity (Kaiser Group Holdings, Inc.) to the Class of former Spectrum shareholders based on contractual provisions within the merger agreement. See *Kaiser Group International, Inc. v. James D. Pippin (In re Kaiser Group International)*, 326 B.R. 265 (D. Del. 2005).

D  
D  
Securities fraud class action arising out of the collapse and eventual bankruptcy of USN Communications, Inc. On May 7, 2001, the court approved a \$44.7 million settlement with certain control persons and underwriters. Reported decisions: 73 F. Supp. 2d 923 (N.D. Ill. 1999); 189 F.R.D. 391 (N.D. Ill. 1999); 121 F. Supp. 2d 1183 (N.D. Ill. 2000).

r r r r r MD D  
CCMS served as Co-Lead Counsel for plaintiffs in this class case alleging that insurance brokers and insurers conspired to allocate customers in a complicated scheme to maximize their own revenues at the expense of class members. The litigation concluded in 2013 with final approval of the last of five separate settlements that, in total, exceeded \$270 million. Judge Cecchi observed that “Class counsel include notably skilled attorneys with experience in antitrust, class actions and RICO litigation.” *In re Insurance Brokerage Antitrust Litig.*, 297 F.R.D. 136, 153 (D.N.J 2013); see also *In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 1652303, at \*6 (D.N.J. June 5, 2007).

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D  
CCMS’s client, Burlington Coat Factory Warehouse, and the other plaintiffs, alleged that Visa and MasterCard violated the antitrust laws by forcing retailers to accept all of their branded cards as a condition of acceptance of their credit cards. The parties entered into settlement agreements that collectively provided for the payment of over \$3.3 billion, plus widespread reforms and injunctive relief.

R M rM r M r  
D  
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collectively provided for the payment of over \$3.3 billion, plus widespread reforms and injunctive relief.

r r d D

CCMS represented a former Division 1 college basketball player in this antitrust litigation challenging the cap imposed by the NCAA on grant-in-aid packages. The efforts of the firm and its co-counsel resulted in certification of an injunctive class and a settlement of \$209 million.

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D

CCMS served as Co-Lead Counsel in a cutting edge antitrust case challenging the legality of ethical guidelines promulgated by two professional associations that limited the compensation members were permitted to pay to women providing donor services for in-vitro fertilization. Without the benefit of a parallel government case or investigation, CCMS achieved a groundbreaking settlement that required defendants to eliminate the compensation caps and to refrain from imposing similar caps in the future.

r M r d r r MD  
D M

CCMS served as Class Counsel in multidistrict litigation alleging that automobile manufacturers and other parties conspired to prevent lower priced new motor vehicles from entering the American market thereby artificially inflating prices. The court approved a \$37 million settlement with Toyota and the Canadian Automobile Dealers' Association.

r r r d r r r D D

CCMS served as Lead Counsel for consumer and third-party payor plaintiffs who alleged that defendants engaged in unlawful monopolization in the market for fenofibrate products, which are used to treat high cholesterol and high triglyceride levels. The court approved to a \$65.7 million settlement (an amount that excludes an initial payment to opt-out insurance companies).



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CCMS served as Co-Lead counsel for a plaintiff class of direct purchasers of the prescription drug repaglinide, which is manufactured and marketed by Novo Nordisk under the brand-name Prandin. Plaintiffs alleged that Novo Nordisk blocked FDA approval of generic versions of the drug by wrongfully manipulating the language of the “use code” filed with the FDA in connection with a method of use patent. The court approved a \$19 million settlement.

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MD D

CCMS is a member of the Executive Committee representing a putative class of indirect purchasers of Restasis, an eye-drop used to treat dry-eye syndrome, and allege that Defendant Allergan engaged in various anticompetitive activities to illegally prolong the life of its patents over Restasis, and to otherwise forestall the entry of generic competition into the cyclosporine market.

r D r MD M D

CCMS served on the Defendant Discovery Committee, which was tasked with overseeing all aspects of discovery pertaining to Defendants, who are alleged to have conspired to implement retail price maintenance agreements intended to inflate the prices of disposable contact lenses to supracompetitive levels. The district court certified several horizontal and vertical nationwide antitrust classes, and settlements recovering \$118 million for consumers have been reached.

r r r MD D M

CCMS has served as a member of Plaintiffs’ Executive Committee representing the end-payor class in one of the largest civil antitrust actions in US history. As a member of the Executive Committee, CCMS has played an important role in this groundbreaking litigation in which plaintiffs have recovered over \$1 billion on behalf of end-payor consumers and businesses who allege they purchased or leased new automobiles at prices that were artificially inflated as a result of automotive component manufacturers’ anticompetitive conduct.

r D



CCMS served as Co-Lead Counsel for consumers and third-party payors who alleged that the manufacturer of the brand-name antidepressant Paxil misled the U.S. Patent Office into issuing patents that protected Paxil from competition from generic substitutes. The court approved a \$65 million class action settlement for the benefit of consumers and third-party payors who paid for Paxil.

r R r D M

The court approved a \$75 million class action settlement for the benefit of consumers and third-party payors who paid for branded and generic versions of the arthritis medication Relafen. In certifying an exemplar class of end-payors, the court singled out our Firm as experienced and vigorous advocates. *See In re Relafen Antitrust Litig.*, 221 F.R.D. 260, 273 (D. Mass. 2004). In the opinion granting final approval to the settlement, the court commented that “Class counsel here exceeded my expectations in these respects [*i.e.*, experience, competence, and vigor] in every way.” *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85 (D. Mass. 2005); *see also id.* at 80 (“The Court has consistently noted the exceptional efforts of class counsel.”).

r r r d r MD D D

Multidistrict class action on behalf of purchasers of Coumadin, the brand-name warfarin sodium manufactured and marketed by DuPont Pharmaceutical Company. Plaintiffs alleged that the defendant engaged in anticompetitive conduct that wrongfully suppressed competition from generic warfarin sodium. The Court approved a \$44.5 million settlement.

r rd D r MD D M

Multidistrict class action on behalf of purchasers of Cardizem CD, a brand-name heart medication. Plaintiffs alleged that an agreement between the brand manufacturer and a generic manufacturer unlawfully stalled generic competition. The court approved an \$80 million settlement for the benefit of consumers, third-party payors and state attorneys general.

r r d M r MD D

This multidistrict action arose out of alleged unlawful activities with respect to the marketing of Synthroid, a levothyroxine product used to treat thyroid disorders. The court approved a consumer settlement in the amount of \$87.4 million.



## Consumer Class Actions

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M r D

CCMS served as co-lead counsel in an action brought on behalf of owners of certain MINI Cooper-brand vehicles that contained a latent defect in a part of the engine known as the “timing chain tensioner” which caused the part to fail prematurely, eventually requiring replacement of that part or the entire engine. Following extensive discovery and mediation, the parties reached a global settlement on behalf of a nationwide class of vehicle owners. The efforts of the firm and its co-lead counsel resulted in a settlement which significantly extended warranty coverage, and reimbursed vehicle owners for tens of millions of dollars in out-of-pocket expenses incurred for repair and/or replacement.

R r D M  
R r D

These consumer class cases, first brought by CCMS (D. Mass.) addressed defective water heater and “Floodsafe” branded connectors. The plaintiffs in both cases alleged that the water heater connectors were made of a material that would break down during regular use, causing leaks and ruptures that flooded class members’ homes. The efforts of the firm and its co-lead counsel resulted in a settlement that provides \$14 million to affected homeowners.

r D

CCMS served as co-lead counsel in action arising out of a data breach of Navistar’s computer systems that resulted in a settlement that provided \$1.25 million to affected current and former employees, as well as significant non-monetary compensation.

r D

CCMS served as co-lead counsel in action securing an uncapped settlement entitling class members to refunds in connection with a canceled festival.

d r D

CCMS serves as interim co-lead counsel in action alleging United has wrongfully refused to issue refunds for flights cancelled as a direct and proximate result of the COVID-19 crisis.





r r d r D  
 CCMS served as lead counsel in this action challenging defective deck resurfacing products. The products peeled, cracked, and damaged the surfaces to which they were applied. In February 2017 the parties reached an agreement in principle to settle the case on behalf of a nationwide class. The efforts of the firm and its co-counsel resulted in a settlement that provides \$6.5 million to affected homeowners.

r d rr D  
 This case challenged Apple’s policy of denying warranty claims based on liquid contact indicators located in headphone jacks and dock connector ports of iPhones and iPod touches. Similar class actions were subsequently filed in federal courts on behalf of Apple consumers. CCMS helped negotiate and achieve a \$53 million settlement of the state and federal cases.

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 MD D  
 CCMS worked closely with lead counsel and other class counsel in this class case challenging unlawful actions by the manufacturer defendants to mask the actual diesel emission levels in various vehicle makes and models. Judge Breyer approved a class settlement with defendants worth billions of dollars.

r r r d MD D  
 CCMS represents six named Class Plaintiffs and has been and continues to work closely with lead counsel on this multi-billion dollar case involving defective airbags installed in tens of millions of affected vehicles manufactured by most major manufacturers. Class settlements with Honda and BMW providing class members with hundreds of millions of dollars and substantial programmatic relief have been finally approved and are the subject of pending appeals.

r r M r r r d M r d  
 r MD D M  
 After conducting a significant pre-suit investigation, CCMS filed the first class action in the Eastern District of Michigan seeking relief on behalf of owners of GM vehicles suffering from a defect in the air conditioning system which typically results in total system failure, necessitating significant repairs thereto. Since commencing the action, CCMS has communicated



with dozens of affected consumers and worked with GM assess the scope and nature of an extended warranty program GM implemented in a purported effort to resolve the claims of certain vehicle owners. On April 11, 2018, the Court appointed CCMS co-lead counsel.

r M r r D  
 CCMS investigated, originated and filed the first and only consumer class action brought on behalf of owners of multi-model year Toyota Prius vehicles that suffer from a defect that causes windshields to crack and fail in ordinary and foreseeable driving conditions. Plaintiffs allege that Defendants have breached express and implied warranties, and have violated the consumer protection statutes of various States.

M d M r r D  
 CCMS is lead counsel in a consumer class action brought on behalf of owners of Model Year 2010-15 Mazda3 vehicles with defective clutch assemblies that cause them to prematurely fail. Plaintiffs allege that Defendants have breached express and implied warranties, and have violated the consumer protection statutes of various states. See, e.g., *Gonzalez v. Mazda Motor Corp.*, No. 16-CV-02087-MMC, 2017 WL 345878 (N.D. Cal. Jan. 5, 2017) (denying and granting in part Defendants' motion to dismiss).

r r D  
 CCMS is serving as Co-Lead Counsel in this class action concerning deck resurfacing products sold under the Duckback and SuperDeck brand names. Plaintiffs allege that defendants have breached express and implied warranties, and have violated the consumer protection statutes of various states.

d r r r r D  
 CCMS is serving as Co-Lead Counsel in this class action brought on behalf of purchasers of various deck coating products from 2012 through the present. After many months of mediation and settlement negotiations, and successfully opposing efforts by other plaintiffs and firms to have the JPML centralize pending cases, the parties have agreed to a proposed Class settlement which will provide substantial valuable monetary relief to Class members to refund the cost of product purchased as well as compensate



them for damage to their decks and the costs of restoring and repairing the same.

CCMS served as lead counsel in this class action on behalf of consumers who purchased various models of “XHose” garden hoses, which were flexible outdoor hoses that were predisposed to leaking, bursting, seeping, and dripping due to design defects. The court approved a nationwide settlement providing hundreds of thousands of consumer class members with the opportunity to recover a substantial portion of their damages.

A class action on behalf of customers of Illinois’ largest moving company. A litigation class was certified and upheld on appeal. See *Ramirez v. Midway Moving and Storage, Inc.*, 880 N.E.2d 653 (Ill. App. 2007). On the eve of trial, the case settled on a class-wide basis. The court stated that CCMS is “highly experienced in complex and class action litigation, vigorously prosecuted the Class’ claims, and achieved an excellent Settlement for the Class under which Class members will receive 100% of their alleged damages.”

On May 25, 2006, the court granted final approval to a settlement of a class action brought on behalf of pharmacies that participated in U.S. Healthcare’s capitation program seeking to recover certain required semi-annual payments. At the final approval hearing, the court found that “this particular case was as hard-fought as any that I have participated in” and with respect to the Class’s reaction to the settlement achieved as a result of our firm’s work: “. . . a good job, and the reason there should be no objection, they should be very very happy with what you have done.”

CCMS served as plaintiffs’ counsel in a class action brought on behalf of owners of 2007-09 Honda CRV vehicles that suffered from a defect that predisposed the door-locking mechanisms to premature failure. Following extensive dismissal briefing, discovery and mediation, the parties arrived at a global settlement that provided class members with extended warranty



coverage for the defect and reimbursement of out-of-pocket expenses incurred in connection therewith.

rd M r D

CCMS served as Lead Counsel in this class case brought on behalf of owners of various model 2010-2015 Ford, Volvo and Land Rover vehicles allegedly including a defect in certain Ecoboost engines. Defendant claimed it addressed and repaired the problem through a series of recalls and repairs. After briefing summary judgment and class certification, and several years of hard fought litigation, including substantial discovery, the parties entered into a settlement providing substantial monetary and other relief.

M r r D

CCMS served as class counsel in an action brought on behalf of owners of certain Toyota-brand vehicles that contained a defect which caused vehicles to consume oil at accelerated rates, often resulting in catastrophic engine failure. Following extensive discovery and mediation, the parties reached a private settlement following Toyota's implementation of an extended warranty and reimbursement program for affected vehicles. ECF No. 82.



## Individual Biographies

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### PARTNERS



**R** **R** graduated from the University of Michigan, with distinction, in 1980 and obtained his J.D., *cum laude*, from Michigan State University College of Law in 1983. From 1983 to 1985, he served as a prehearing attorney at the Michigan Court of Appeals and as a Clerk to Judge Glenn S. Allen, Jr. of that Court. Mr. Cafferty is an experienced litigator in matters involving antitrust, securities, commodities, and the pharmaceutical industry. In 2002, Mr. Cafferty was a speaker at a forum in Washington

D.C. sponsored by Families USA and Blue Cross/Blue Shield styled “Making the Drug Industry Play Fair.” At the Health Action 2003 Conference in Washington D.C., Mr. Cafferty was a presenter at a workshop titled “Consumers’ Access to Generic Drugs: How Brand Manufacturers Can Derail Generic Drugs and How to Make Them Stay on Track.” In 2010, Mr. Cafferty made a presentation on indirect purchaser class actions at the American Antitrust Institute’s annual antitrust enforcement conference. See *Indirect Class Action Settlements* (Am. Antitrust Inst., Working Paper No. 10-03, 2010). Mr. Cafferty is admitted to the state bars of Michigan and Illinois, and holds several federal district and appellate court admissions. Mr. Cafferty has attained the highest rating, AV®, from Martindale-Hubbell and is a top rated SuperLawyer®.



**R** is a 1988 graduate of the Villanova University School of Law and received his undergraduate degree from the University of Maryland. Mr. Clobes clerked for Judge Arlin M. Adams of the United States Court of Appeals for the Third Circuit, Judge Mitchell H. Cohen of the United States District Court for the District of New Jersey, and Judge Joseph Kaplan of the Maryland Circuit Court in Baltimore. From 1989 through June, 1992, Mr. Clobes served as

Trial Counsel to the Commodity Futures Trading Commission in Washington, D.C. Mr. Clobes has served as lead counsel in many of the firm’s class cases covering all areas of the firm’s practice, and is widely recognized as an expert in class action litigation. Mr. Clobes has authored briefs filed with the Supreme Court in



a number of class cases, served as a panelist for class action, consumer and antitrust CLE programs, has sustained and maintained the highest rating, AV®, from Martindale-Hubbell, and has been named a “Super Lawyer” for the past twelve years. Mr. Clobes is admitted to the bar in New Jersey and Pennsylvania, and admitted to practice in several federal district and appellate court admissions.



Daniel R. Herrera received his law degree, *magna cum laude*, and his MBA, with a concentration in finance, from the University of Illinois at Urbana-Champaign in 2008. Mr. Herrera received his bachelor’s degree in economics from Northwestern University in 2004. Mr. Herrera joined CCMS as an associate in 2011 and is resident in its Chicago, Illinois Office. Since joining CCMS, Mr. Herrera has successfully prosecuted a wide range of antitrust, consumer and commodities class action. Prior to

joining CCMS, Mr. Herrera was an associate in the trial practice of Mayer Brown LLP, a Chicago-based national law firm, where he defended corporations in securities and antitrust class actions, as well as SEC and DOJ investigations and enforcement actions. Mr. Herrera also routinely handled commercial matters on behalf of corporate clients. Mr. Herrera is licensed to practice in Illinois and holds several federal district and appellate court admissions.



Meriwether R. Sprengel received her law degree from George Washington University, *magna cum laude*, in 1985. She was a member of the *George Washington Law Review* and was elected to the Order of the Coif. Ms. Meriwether received a B.A. degree, *with highest honors*, from LaSalle University in 1981. Ms. Meriwether is on the Board of Directors of the American Antitrust Institute (AAI), is Editorial Board Co-Chair of ANTITRUST, a publication by the section of Antitrust Law of the American Bar Association and serves as

Vice-Chair of the Board of Directors of the Public Interest Law Center, in Philadelphia. Since 2010, Ms. Meriwether has been included in the US News and World Report Publication of “Best Lawyers in America” in the field of Antitrust. She has been named a “Pennsylvania Super Lawyer” since 2005 and has attained the highest rating, “AV”, from Martindale-Hubbell. She is a frequent presenter on topics relating to complex, class action and antitrust litigation and has published a number of articles on subjects relating to class actions and antitrust litigation,



including, among others: “The Fiftieth Anniversary of Rule 23: Are Class Actions on the Precipice?,” *Antitrust*, (Vol. 30, No. 2, Spring 2016); “Motorola Mobility and the FTAIA: If Not Here, Then Where?,” *Antitrust*, Vo. 29, No.2 Spring 2015); “*Comcast Corp. v. Behrend*: Game Changing or Business as Usual?,” *Antitrust*, (Vol. 27, No. 3, Summer 2013). Links to these articles and others authored by Ms. Meriwether can be found on the firm’s website. Ms. Meriwether is admitted to the bar of Supreme Court of Pennsylvania and is admitted in a number of federal district court and appellate court jurisdictions.



R R R received her undergraduate degree *cum laude* from Illinois Wesleyan University in 1995, was awarded a graduate teaching fellowship for law school, and earned her law degree from the University of Oregon School of Law in 1999. Following law school, Ms. Rasche served as a law clerk to the Honorable George A. Van Hoomissen of the Oregon Supreme Court. She is the author of *Protecting Agricultural Lands: An Assessment of the Exclusive Farm Use Zone System*, 77 *Oregon Law Review* 993 (1998) and *Market Allocation through Contingent Commission Agreements: Strategy and Results in In re Insurance Brokerage Antitrust Litigation* (with Ellen Meriwether), *The Exchange: Insurance and Financial Services Developments* (Spring 2015). Since joining CCMS, Ms. Rasche has successfully prosecuted a wide range of antitrust, consumer class, securities and commodities class actions. Ms. Rasche has been admitted to practice in the state courts of Oregon and Illinois, as well as the United States District Courts for the Northern District of Illinois, the Southern District of Illinois, and the District of Colorado. She is also a member of the American and Chicago Bar Associations.



R R R received her law degree from DePaul University College of Law, where she was a member of the DePaul University Law Review. Her undergraduate degree was conferred by Purdue University. Ms. Sprengel is an experienced litigator in matters involving commodities, antitrust, insurance and the financial industries. In addition, Ms. Sprengel is a committee member of the Seventh Circuit Electronic eDiscovery Pilot Program and is a frequent speaker regarding issues of discovery. Links to some of her presentations and articles can be found on the firm’s website. She also



serves as co-chair of the Antitrust Law subcommittee of the ABA Class Action and Derivative Suits committee. She is admitted to practice law in Illinois, holds several federal district and appellate court admissions, and has attained the highest rating, AV®, from Martindale-Hubbell. Ms. Sprengel serves as the managing partner of the Firm.



Mr. Hagman received his undergraduate degree, *magna cum laude*, from the University of Minnesota in 2008. Mr. Hagman earned his law degree from Marquette University Law School, *cum laude*, in 2013, with a Certificate in Litigation. During law school, Mr. Hagman served as an associate editor of the Marquette Law Review, was a member of the Pro Bono Society, and worked as an intern for the late Wisconsin Supreme Court Justice N. Patrick Crooks, and current Wisconsin Supreme Court Justice Rebecca Dallet. Following law school, Mr. Hagman served as a judicial clerk in the Milwaukee County Circuit Court for two years. Prior to joining CCMS in 2019, Mr. Hagman was an associate at a plaintiff-side consumer class action firm for five years. Mr. Hagman is licensed to practice in Illinois and Wisconsin, and before the United State District Courts for the Northern District of Illinois, the Eastern District of Wisconsin, and the District of Colorado. He is also a member of the Wisconsin Bar Association and Chicago Bar Association, where he is a member of the Class Action and Consumer Committees.

## ASSOCIATES



Ms. Naughton received her law degree from the George Washington University Law School in 2019, where she served as managing editor for the *George Washington Journal of Energy & Environmental Law*. Ms. Naughton earned her bachelor's degree in political science and sociology with distinction from Purdue University in 2015. Ms. Naughton joined CCMS in 2019 and is resident in its Chicago, Illinois office. She is licensed to practice in Illinois and before the United State District Court for the Northern District of Illinois.





D R M earned his law degree from the University of Notre Dame Law School in 2019, where he served as Managing Notes Editor for the *Notre Dame Journal of Legislation*. While in law school, Mr. Sweatman served as a judicial extern for the Honorable Thomas Donnelly in the Circuit Court of Cook County and participated in Notre Dame's Public Defender Externship where he represented juveniles in initial hearings, sentencing proceedings, and probation modification hearings. Mr. Sweatman graduated *summa cum laude* from Wheaton College in 2016. Mr. Sweatman joined CCMS in 2021. He is a member of the Chicago Bar Association and is involved in its Antitrust Law Section and Civil Practice and Procedure Committee. Mr. Sweatman is licensed to practice in Illinois.



graduated *cum laude* from the University of Illinois College of Law in 2020. While at law school, he was a staff writer for the *Illinois Business Law Journal* and served in the Illinois Innocence Project where he worked to investigate and exonerate wrongfully convicted individuals in Illinois. Mr. Lee received his BA in political science from Boston College in 2017. While at university, Mr. Lee worked in special needs education for three years. Alex Lee joined Cafferty Clobes Meriwether Sprengel's Chicago office as an associate attorney in 2023. Prior to joining Cafferty Clobes, Mr. Lee worked at several law firms in Chicago and Champaign and worked on cases in consumer law, employment law, civil rights, commercial litigation, and complex litigation.



Mr. Rathur is an Associate at Cafferty Clobes Meriwether & Sprengel LLP's Chicago office. Prior to joining Cafferty Clobes, Mr. Rathur worked at a boutique class action law firm specializing in employment and data privacy rights. Mr. Rathur's prior experience includes serving as a judicial law clerk in the Chancery Division of the Circuit Court of Cook County for two years. Mr. Rathur earned his law degree from the American University Washington College of Law in 2019, where he served as a Student Attorney for the International Human Rights Law Clinic. Mr. Rathur graduated from Michigan State University with a B.A. in International Relations.

## SENIOR COUNSEL



DMR received his B.S. degree from DePaul University in 1957 and his J.D. from DePaul University School of Law in 1961, where he was a member of the *DePaul University Law Review*. From 1961 through 1977, Judge Rizzi practiced law, tried at least 39 cases, and briefed and argued more than 100 appeals. On August 1, 1977, Judge Rizzi was appointed to the Circuit Court of Cook County by the Illinois Supreme Court. After serving as circuit court judge for approximately one year, Judge Rizzi was elevated to the Appellate Court of Illinois, First District, where he served from 1978 to 1996. Judge Rizzi became counsel to the firm in October 1996.

# **EXHIBIT 3**



## **FIRM RESUME**



Milberg Coleman Bryson Phillips Grossman PLLC (“Milberg”) is an AV-rated international law firm with more than 100 attorneys and offices across the United States, the European Union, and South America. Combining decades of experience, Milberg was established through the merger of Milberg Phillips Grossman LLP, Sanders Phillips Grossman LLC, Greg Coleman Law PC, and Whitfield Bryson LLP.

Milberg prides itself on providing thoughtful and knowledgeable legal services to clients worldwide across multiple practice areas. The firm represents plaintiffs in the areas of antitrust, securities, financial fraud, consumer protection, automobile emissions claims, defective drugs and devices, environmental litigation, financial and insurance litigation, and cyber law and security.

For over 50 years, Milberg and its affiliates have been protecting victims’ rights. We have recovered over \$50 billion for our clients. Our attorneys possess a renowned depth of legal expertise, employ the highest ethical and legal standards, and pride ourselves on providing stellar service to our clients. We have repeatedly been recognized as leaders in the plaintiffs’ bar and appointed to numerous leadership roles in prominent national mass torts and class actions.

*Milberg challenges corporate wrongdoing through class action, mass tort, consumer and shareholder right services, both domestically and globally.*

In the United States, Milberg currently holds more than 100 court-appointed full- and co-leadership positions in state and federal courts across the country. Our firm has offices in California, Chicago, Florida, Georgia, Illinois, Kentucky, Louisiana, Mississippi, New Jersey, New York, North Carolina, South Carolina, Tennessee, Washington, Washington D.C., and Puerto Rico. Milberg’s commitment to its clients reaches beyond the United States, litigating antitrust, securities, and consumer fraud actions in Europe and South America, with offices located in the United Kingdom, and the Netherlands. Milberg prides itself on providing excellent service worldwide.

The firm’s lawyers have been regularly recognized as leaders in the plaintiffs’ bar by the National Law Journal, Legal 500, Chambers USA, Time Magazine, and Super Lawyers, among others.

*“A powerhouse that compelled miscreant and recalcitrant businesses to pay billions of dollars to aggrieved shareholders and customers.”*  
- THE NEW YORK TIMES

# PRACTICE AREAS

## SECURITIES FRAUD

Milberg pioneered the use of class action lawsuits to litigate claims involving investment products, securities, and the banking industry. Fifty years ago, the firm set the standard for case theories, organization, discovery, methods of settlement, and amounts recovered for clients. Milberg remains among the most influential securities litigators in the United States and internationally.

Milberg and its attorneys were appointed Lead Counsel and Co-Lead Counsel in hundreds of federal, state, and multidistrict litigation cases throughout its history.

## ANTITRUST & COMPETITION LAW

For over fifty years, Milberg's Antitrust Practice Group has prosecuted complex antitrust class actions against defendants in the healthcare, technology, agriculture, and manufacturing industries engaged in price-fixing, monopolization and other violations of antitrust law and trade restraints.

## FINANCIAL LITIGATION

For over fifty years, Milberg's Antitrust Practice Group has prosecuted complex antitrust class actions against defendants in the healthcare, technology, agriculture, and manufacturing industries engaged in price-fixing, monopolization and other violations of antitrust law and trade restraints.

## CONSUMER PROTECTION

Milberg's Consumer Protection Practice Group focuses on improving product safety and protecting those who have fallen victim to deceptive marketing and advertising of goods and services and/or purchased defective products. Milberg attorneys have served as Lead Counsel and Co-Lead Counsel in hundreds of federal, state, and multidistrict litigation cases alleging the sale of defective products, improper marketing of products, and violations of consumer protection statutes.

## DANGEROUS DRUGS & DEVICES

Milberg is a nationally renowned firm in mass torts, fighting some of the largest, wealthiest, and most influential pharmaceutical and device companies and corporate entities in the world. Our experienced team of attorneys has led or co-led numerous multidistrict litigations of defective drugs and medical devices.

## **EMPLOYMENT & CIVIL RIGHTS**

Milberg's Employment & Civil Rights attorneys focus on class actions and individual cases nationwide arising from discriminatory banking and housing practices, unpaid wages and sales commissions, improperly managed retirement benefits, workplace discrimination, and wrongful termination.

## **ENVIRONMENTAL LITIGATION & TOXIC TORTS**

Milberg's Environmental Litigation & Toxic Torts Practice Group focuses on representing clients in mass torts, class actions, multi-district litigation, regulatory enforcement, citizen suits, and other complex environmental and toxic tort matters. Milberg and its attorneys have held leadership roles in all facets of litigation in coordinated proceedings, with a particular focus on developing the building blocks to establish general causation, which is often the most difficult obstacle in an environmental or toxic tort case.

## **STATE & LOCAL GOVERNMENTS**

Milberg attorneys are dedicated to defending the Constitutional and statutory rights of individuals and businesses that are subjected to unlawful government exactions and fees by state and local governments or bodies.

## **INFORMATION TECHNOLOGY**

Milberg is a leader in the fields of cyber security, data breach litigation, and biometric data collection, litigating on behalf of clients – both large and small – to change data security practices so that large corporations respect and safeguard consumers' personal data.

## **APPELLATE**

Consisting of former appellate judges, experienced appellate advocates, and former law clerks who understand how best to present compelling arguments to judges on appeal and secure justice for our clients beyond the trial courts, Milberg's Appellate Practice Group boasts an impressive record of success on appeal in both state and federal courts.

## LEADERSHIP ROLES

In re: Google Play Consumer Antitrust Litigation  
In re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation  
In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices & Products Liability Litigation  
In re: Blackbaud Inc., Customer Data Breach Litigation  
In re: Paragard IUD Products Liability Litigation  
In re: Seresto Flea & Tick Collar, Marketing Sales Practices & Product Liability Litigation  
In re: All-Clad Metalcrafters, LLC, Cookware Marketing and Sales Practices Litigation  
In re: Allergan Biocell Textured Breast Implant Products Liability Litigation  
In re: Zicam Cold Remedy Marketing, Sales Practices and Products Liability Litigation  
In re: Guidant Corp. Implantable Defibrillators Product Liability Litigation  
In re: Ortho Evra Products Liability Litigation  
In re: Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation  
In re: Kugel Mesh Hernia Patch Products Liability Litigation  
In re: Medtronic, Inc. Sprint Fidelis Leads Products Liability Litigation  
In re: Stand 'N Seal Products Liability Litigation  
In re: Chantix (Varenicline) Products Liability Litigation  
In re: Fosamax (alendronate Sodium) Products Liability Litigation  
In re: Benicar (Olmesartan) Products Liability Litigation  
In re: Onglyza (Saxagliptin) & Kombiglyze Xr (Saxagliptin & Metformin) Products Liability Litigation  
In re: Risperdal and Invega Product Liability Cases  
In re: Mirena IUS Levonorgestrel-Related Products Liability Litigation  
In re: Incretin-based Therapies Product Liability Litigation  
In re: Reglan/Metoclopramide  
In re: Levaquin Products Liability Litigation  
In re: Zimmer Nexgen Knee Implant Products Liability Litigation  
In re: Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation  
In re: Propecia (Finasteride) Products Liability Litigation  
In re: Transvaginal Mesh (In Re C. R. Bard, Inc., Pelvic Repair System Products Liability Litigation; In Re Ethicon, Inc., Pelvic Repair System Products Liability Litigation; In Re Boston Scientific, Inc., Pelvic Repair System Products Liability; In Re American Medical Systems, Pelvic Repair System Products Liability, and others)  
In re: Fluoroquinolone Product Liability Litigation  
In re: Depuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation  
In re: Recalled Abbott Infant Formula Products Liability Litigation  
Home Depot, U.S.A., Inc. v. Jackson  
Webb v. Injured Workers Pharmacy, LLC



## NOTABLE RECOVERIES

### \$4 Billion Settlement

In re: Prudential Insurance Co. Sales Practice Litigation

### \$3.2 Billion Settlement

In re: Tyco International Ltd., Securities Litigation

### \$1.14 Billion Settlement

In Re: Nortel Networks Corp. Securities Litigation

### \$1 Billion-plus Trial Verdict

Vivendi Universal, S.A. Securities Litigation

### \$1 Billion Settlement

NASDAQ Market-Makers Antitrust Litigation

### \$1 Billion Settlement

W.R. Grace & Co.

### \$1 Billion-plus Settlement

Merck & Co., Inc. Securities Litigation

### \$775 Million Settlement

Washington Public Power Supply System Securities Litigation

### \$586 Million Settlement

In re: Initial Public Offering Securities Litigation

# LOCATIONS

## PUERTO RICO

1311 Avenida Juan Ponce de León  
San Juan, Puerto Rico 00907

## CALIFORNIA

280 South Beverly Drive, Penthouse  
Beverly Hills, California 90212

402 West Broadway, Suite 1760  
San Diego, California 92101

## FLORIDA

2701 South Le Jeune Road  
Coral Gables, Florida 33134

## ILLINOIS

227 W. Monroe Street, Suite 2100  
Chicago, Illinois 60606

## KENTUCKY

19 North Main Street  
Madisonville, Kentucky 42431

## LOUISIANA

5301 Canal Boulevard  
New Orleans, Louisiana 70124

## MICHIGAN

6905 Telegraph Road, Suite 115  
Bloomfield Hills, Michigan 48301

## NEW JERSEY

1 Bridge Plaza North, Suite 675  
Fort Lee, New Jersey 07024

## NEW YORK

100 Garden City Plaza, Suite 500  
Garden City, New York 11530

405 E 50th Street  
New York, New York 10022

## NORTH CAROLINA

900 West Morgan Street  
Raleigh, North Carolina 27603

## SOUTH CAROLINA

825 Lowcountry Blvd, Suite 101  
Mount Pleasant, South Carolina 29464

## TENNESSEE

800 S. Gay Street, Suite 1100  
Knoxville, Tennessee 37929

518 Monroe Street  
Nashville, Tennessee 37208

## WASHINGTON

1420 Fifth Ave, Suite 2200  
Seattle, Washington 98101

17410 133rd Avenue, Suite 301  
Woodinville, Washington 98072

## WASHINGTON, D.C.

5335 Wisconsin Avenue NW, Suite 440  
Washington, D.C. 20015-2052

## NETHERLANDS

## UNITED KINGDOM



# **EXHIBIT 4**

# Siri | Glimstad



FIRM RESUME



## Class Action Practice Group

With attorneys across the country, Siri & Glimstad LLP represents clients from coast to coast in class actions and mass torts in state and federal courts. Utilizing decades of experience at major global law firms, we tackle each dispute with a sophisticated, strategic approach, and we fight hard for every one of our clients.

### Offices Nationwide

#### **NEW YORK**

745 Fifth Ave • Suite 500  
New York, NY 10151  
(212) 532-1091

#### **PHOENIX**

11201 N. Tatum Boulevard • Ste 300  
Phoenix, AZ 85028  
(602) 806-9975

#### **WASHINGTON D.C.**

2101 L Street N.W. • Ste 300 Washington,  
D.C. 20037  
(202) 838-1161

#### **AUSTIN**

1005 Congress Avenue • Ste 925-C36  
Austin, TX 78701  
(512) 265-5622

#### **MIAMI**

20200 West Dixie Highway • Ste 902  
Aventura, FL 33180  
(786) 244-5660

#### **DETROIT**

220 West Congress Street • 2nd Floor  
Detroit, MI 48226  
(313) 251-9161

#### **LOS ANGELES**

700 S Flower Street • Ste 1000  
Los Angeles, CA 90017  
(213) 376-3739

### Admitted States

Arizona • California • Connecticut • District of Columbia • Florida • Idaho • Illinois  
Massachusetts • Maryland • Michigan • Mississippi • Nebraska • New Jersey  
New Mexico • New York • North Carolina • North Dakota • Oklahoma • Pennsylvania  
South Carolina • Tennessee • Texas • Virginia



# Attorney Profiles

## Aaron Siri

### *Managing Partner*

Aaron Siri is the Managing Partner of Siri & Glimstad LLP and has extensive experience in a wide range of complex civil litigation matters, with a focus on civil rights, class actions, and commercial litigation.

Mr. Siri has successfully litigated numerous civil rights cases, prosecuted class actions against large corporations resulting in payments to hundreds of thousands of Americans, and has acted as counsel to clients in multiple commercial disputes exceeding one billion dollars, including regarding Oracle Team's challenge for the America's Cup and the collapse of the World Trade Center.



Prior to founding Siri & Glimstad, Mr. Siri was a litigation attorney at Latham & Watkins for over five years. Before Latham, Mr. Siri clerked for the Chief Justice of the Supreme Court of Israel from 2004-2005 where he advised the Chief Justice of relevant American, English (including Commonwealth Countries), and International Law precedents for cases of first impression.

Mr. Siri has also been involved in various pro-bono matters, including representation of asylum applicants, housing discrimination victims, and non-profit organizations in tenant-landlord disputes, as well as being chosen as a Frank C. Newman delegate to present a paper he authored before the United Nations Human Rights Sub-Commission.

Mr. Siri earned his law degree at the University of California, Berkeley School of Law where he received four Prosser Prizes and ten High Honors. He was also the Editor-in-Chief and founder of the Berkeley Business Law Journal, which he developed into a nationally recognized publication, and was ranked as the leading commercial law journal in the country.

Prior to law school, Mr. Siri was an auditor at Arthur Andersen LLP, where he examined internal controls and audited corporate documents for private and public micro-cap technology companies. Mr. Siri is a Certified Public Accountant and an attorney admitted in federal and state courts across the country.

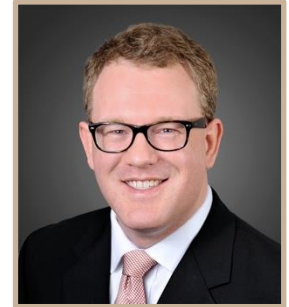
Mr. Siri is regularly interviewed on national television for his expertise regarding certain legal issues. He has also been published in the Washington Post, Stat News, and Bloomberg.



## Mason A. Barney

*Partner*

Mason A. Barney is an experienced trial attorney who for over eighteen years has represented both individuals and corporations in complex litigations. Mr. Barney received his J.D., summa cum laude from Brooklyn Law School, in 2005, where he graduated second in his class of nearly 500 students, and received numerous academic honors, in addition to being an editor on the Brooklyn Law Review. He then served as a law clerk to the Honorable Judge David G. Trager in the U.S. District Court for the Eastern District of New York. After clerking, he joined the litigation department at Latham & Watkins LLP, and later joined Olshan Frome Wolosky LLP a large established New York City law firm. Before law school, Mr. Barney earned his B.A. from Bowdoin College, where he double majored in Computer Science and Studio Art, and after college he served as a lead database developer for three years at a successful Internet start-up in Washington D.C.



Mr. Barney focuses his practice on class actions and representing individuals in complex litigations. In this practice he has won tens of millions of dollars for his clients. Among other matters, Mr. Barney has fought to stop companies from illegally spamming consumers with unwanted phone calls, has worked to stop companies from illegally obtaining their customers' biometric information (e.g., facial scans and fingerprints), and obtained recovery for numerous victims of data breaches.

Mr. Barney has appeared in the New York Super Lawyers Rising Stars list, a Thomson Reuters lawyer rating service for lawyers under 40. He was also recognized by the New York Legal Aid Society for his outstanding pro bono work representing indigent individuals in matters concerning prisoners' rights, immigration, and special education.

Mr. Barney has published a number of articles concerning a variety of legal issues. These include authoring or co-authoring: *The FBI vs. Apple: What Does the Law Actually Say?*, Inc. Magazine (February 2016); *Can Lawyers Be Compelled to Produce Data They Compile? An Emerging Front in the Trenches of e-Discovery Battles*, Bloomberg BNA (May 2015); *Legal Landscape for Cybersecurity Risk is Changing as Federal Government and SEC Take Action*, Inside Counsel Magazine (May 2015); *Tellabs v. Makor, One Year Later*, Securities Law 360 (July 2008); *Not as Bad as We Thought: The Legacy of Geier v. American Honda Motor Co. in Product Liability Actions*, 70 Brooklyn L. Rev. 949 (Spring 2005). Mr. Barney serves as an adjunct professor at the City University of New York, teaching Education Law in its graduate studies program, and separately has presented continuing legal education instruction regarding the Foreign Corrupt Practices Act.





## Elizabeth Brehm

### *Partner*

Elizabeth Brehm graduated from Boston University with a Bachelor of Science and earned her master's degree from Long Island University at C.W. Post. She attended Hofstra Law School and obtained a Juris Doctorate, graduating magna cum laude, in 2008.

After law school, Ms. Brehm spent a year at Winston & Strawn LLP where she focused on products liability litigation. For nine years prior to joining Siri & Glimstad, Ms. Brehm worked for a New York law firm where she focused on antitrust class action lawsuits, health care fraud, and qui tam and whistleblower litigations.

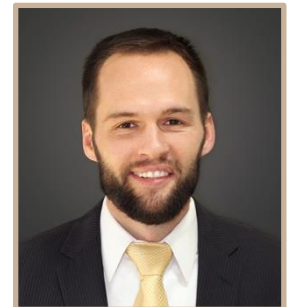
Ms. Brehm has been an attorney at Siri & Glimstad for over two years and has handled numerous complex litigation matters, including class action matters.



## Walker Moller

### *Partner*

Before law school, Walker Moller worked and volunteered for three years in 15 countries throughout Southeast Asia, Oceania, and Africa. While at Mississippi College School of Law, Walker clerked at the Mississippi Supreme Court and was on the Law Review. He graduated summa cum laude in 2014 and earned the highest grade in eight courses. After graduation, Walker clerked for a federal judge at the United States District Court, Western District of Louisiana, where he gained exposure to a large volume of employment discrimination matters, products liability cases, and constitutional litigation.



Walker then worked for the U.S. Army Corps of Engineers from 2015 to 2021, where his practice focused on federal contracts and civil litigation in various administrative courts. Immediately before joining Siri & Glimstad, Walker achieved full dismissal of a lawsuit against the Corps of Engineers that implicated \$68M worth of federal contracts.



## Lisa Considine

### *Partner*

Lisa R. Considine is counsel at Siri & Glimstad LLP and has broad litigation experience, having successfully litigated various class action cases involving violations of State and Federal consumer protection laws, including representing consumers against many of the world's largest companies.



Ms. Considine graduated from Rutgers College with a Bachelor of Arts and attended Seton Hall University School of Law and obtained her J.D., with Honors, in 2004.

Prior to joining Siri & Glimstad, Ms. Considine was a founding member of her own practice that focused exclusively on consumer class actions and individual matters against major auto rental companies, banks, mortgage lenders, auto finance companies, payday lenders and other consumer finance companies in litigation involving the Consumer Fraud Act, Electronic Fund Transfer Act, Truth in Lending Act, Real Estate Settlement Procedures Act, Fair Credit Reporting Act, Fair and Accurate Credit Transaction Act, Truth-in-Consumer Contract, Warranty and Notice Act, predatory lending, loan origination and servicing, banking operations and consumer fraud claims.

Ms. Considine serves on the Board of Directors of the Consumer League of New Jersey and is also Co-Chair of the New Jersey State Bar Association's Class Actions Special Committee. Ms. Considine also serves at the pleasure of the New Jersey Supreme Court on the District IIB Ethics Committee and is President of the Worrall F. Mountain Inn of Court. Ms. Considine is a member of the National Association of Consumer Advocates, the Complex Litigation e-Discovery Form (CLEF), and the New Jersey State Bar Association's Consumer Protection Committee.

## David DiSabato

### *Partner*

David J. DiSabato is counsel at Siri & Glimstad LLP and focuses his practice on complex class actions and consumer protection law. With over two decades of class action experience, Mr. DiSabato has led successful class actions against many of the country's largest financial institutions, retailers, service providers and employers. In addition, Mr. DiSabato has extensive experience handling patients' rights class actions and civil rights claims.





Mr. DiSabato graduated from Tufts University and received his J.D. from Boston University School of Law. Named to the New Jersey Super Lawyers List in 2022 and 2023, Mr. DiSabato is the New Jersey Chair of the National Association of Consumer Advocates and sits on NACA's Judicial Nominations Committee. He also is a member of both the American Association for Justice and the New Jersey Association for Justice (Civil Rights Committee), and sits on the Board of Directors of the Consumer League of New Jersey, where he serves as the Director of Litigation. Mr. DiSabato is also a member of the Class Actions Special Committee and the Consumer Protection Law Committee of the New Jersey State Bar Association, as well as the Complex Litigation e-Discovery Forum (CLEF). He also serves as the Vice Chair of the Land Use Board of the Borough of Peapack and Gladstone.

In addition, Mr. DiSabato regularly lobbies in both Washington D.C. and Trenton, New Jersey on consumer issues such as predatory lending, manufactured housing and forced arbitration, and is a frequent speaker on Constitutional issues, class action practice and consumer rights.

Prior to joining Siri & Glimstad, Mr. DiSabato was a founding member of his own practice where he represented consumers, workers, tenants, patients and other individuals in complex class actions.

## **Tyler J. Bean**

*Attorney*

Tyler J. Bean graduated from the University of Oklahoma's Michael F. Price College of Business in 2015 and obtained a Juris Doctorate from the University of Oklahoma in 2019, where he served as editor for the Oil and Gas, Natural Resources, and Energy Law Review Journal. Mr. Bean also received numerous academic honors as a law student, including being named to the Faculty Honor Roll and Dean's List.



After graduating law school and serving as in-house counsel for a large, multi-billion-dollar retail organization, Mr. Bean turned his focus to complex civil litigation and consumer class actions, with a particular emphasis on data breach and privacy matters. He has years of experience as a data breach and privacy lawyer, having played a significant role as class counsel in successfully litigating numerous data breach and privacy class actions from inception through discovery and court approved settlements, recovering millions of dollars for hundreds of thousands of consumers, patients, students, and employees across the country who have been victims of negligent data security and privacy practices.

## Kyle McLean

### *Attorney*

Kyle McLean obtained his J.D. in 2019 from the University of California, Hastings College of the Law, with an emphasis in Civil Litigation and Alternative Dispute Resolution. He was selected to participate in the Hastings Appellate Program, where he was one of only two students chosen to represent a pro bono client before the Ninth Circuit Court of Appeals and deliver oral and written argument before the Court. He received his B.A. in History and Economics from California Polytechnic University, Pomona in 2015. Prior to joining Siri & Glimstad, Mr. McLean defended a wide variety of complex civil matters.



Mr. McLean presently represents individuals in complex class action privacy litigations, including claims for illegally spamming consumers with unwanted telephone advertisements, unlawful requests for employees' genetic information (e.g., family medical history), and numerous victims of data breaches.

## Oren Faircloth

### *Attorney*

Oren Faircloth graduated from McGill University in 2009 with a Bachelor of Arts degree in Political Science. Before attending law school, he served in the armed forces from 2010 to 2011. Mr. Faircloth graduated from Quinnipiac University School of Law, magna cum laude, in 2016.

Prior to joining Siri & Glimstad, Mr. Faircloth worked for a boutique law firm where he spearheaded ERISA class action lawsuits against Fortune 500 companies, including: Huntington Ingalls, Rockwell Automation, Raytheon, UPS, U.S. Bancorp, Delta Air Lines, and Sprint. Mr. Faircloth was involved in the prosecution of numerous successful class actions in which over \$100 million dollars have been recovered for tens of thousands of employees around the country. In 2022, Mr. Faircloth was recognized by Super Lawyers magazine as a Rising Star in the field of class action.



Mr. Faircloth focuses his practice on class actions and representing individuals in complex litigations. He presently represents individuals who have been denied reimbursement for work-related expenses from their employers, denied sufficient lactation accommodations in the workplace, and denied actuarially equivalent pension benefits. Mr. Faircloth has also represented several individuals on a pro bono basis, negotiating favorable settlements for violations of their constitutional rights.



## **Wendy Cox**

*Attorney*

Prior to joining Siri & Glimstad, Ms. Cox served for 21 years in the United States Army as an Army Nurse Corps officer and as an Army Judge Advocate. As a nurse corps officer, Ms. Cox worked in several clinical settings to include a pediatric unit, a specialty surgical unit, and an orthopedic surgical unit. During her last year as an Army Nurse Corps officer, she taught Army medics in basic life saving skills before being selected by the Army to attend law school. After graduating law school in 2005, Ms. Cox prosecuted soldiers, advised on operational law issues, taught Constitutional Law at West Point, and advised senior leaders on a variety of legal issues. Following her retirement from the United States Army in 2018, she went on to continue serving soldiers as an attorney for the Office of Soldiers' Counsel.



Wendy Cox graduated cum laude from the State University at Buffalo Law School in New York and summa cum laude from Norwich University with a Bachelor of Science in Nursing. She went on to get her Master of Laws (L.L.M.) degree in Military Law in 2008.

## **Catherine Cline**

*Attorney*

Catherine Cline has extensive experience in a wide range of civil law, including constitutional, administrative, employment, and election law. Prior to joining Siri & Glimstad, Ms. Cline served as a judicial law clerk for judges in the U.S. District Court for the Middle District of Pennsylvania, the Commonwealth Court of Pennsylvania, and the Supreme Court of Pennsylvania.



Ms. Cline attended law school on a full tuition scholarship, during which time she served as the Editor-in-Chief of the law review and as intern for a U.S. District Court Judge in the Middle District of Florida. Before attending law school, Ms. Cline received her Bachelor of Arts in Economics with a Minor in Business and the Liberal Arts from Penn State University and worked in the Tax Credit Division of the Pennsylvania Department of Community and Economic Development.



## Dana Smith

### *Attorney*

Dana Smith is a seasoned litigator. Prior to joining Siri & Glimstad, Ms. Smith focused most of her legal career on personal injury litigation, including representing individuals harmed due to corporate negligence. Ms. Smith is also experienced in various domestic areas of practice, including divorce, high-conflict custody disputes, and child welfare law.

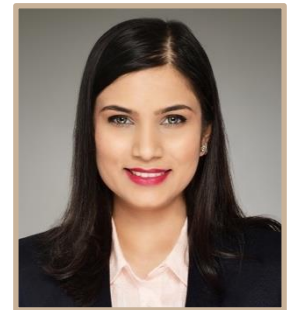
Ms. Smith graduated cum laude from the North Carolina Central University School of Law. Additionally, she received her Bachelor of Arts in Romance Languages from the University of North Carolina at Chapel Hill.



## Sonal Jain

### *Attorney*

Sonal Jain has experience in complex commercial litigations as well as class actions. Ms. Jain graduated from the New York University School of Law with an LLM in International Business Regulation, Litigation and Arbitration in 2020 where she gained experience with international dispute resolution. She received her first degree in law (B.A. LL.B.) from ILS Law College, Pune, a prime legal education institution in India. Prior to joining Siri & Glimstad, Ms. Jain held various internships with top-tier law firms in India where she specialized in complex dispute resolution ranging from consumer and corporate litigation to domestic arbitrations.



## Jack Spitz

### *Attorney*

Jack R. Spitz is a graduate of Rutgers School of Law where he was a member of the Rutgers Law Record Journal and interned with the Essex County Public Defender's Office. Following law school, he served as Law Clerk for two judges at the Middlesex County Superior Court in New Brunswick, New Jersey. Subsequently, Mr. Spitz defended a wide variety of personal injury and property damage matters, as well as represented Plaintiffs in employment litigation matters. Prior to law school, Mr. Spitz graduated from Clemson University in South Carolina.





## Gabrielle Williams

### Attorney

Ms. Williams obtained her J.D. from the University of Maryland Francis King Carey School of Law. During her time in law school, she represented clients in state court through the Justice for Victims of Crime Clinical Law Program. She also served as an Associate Editor on the Journal of Healthcare Law and Policy, Executive Board Member of the Black Law Students Association, and Class Representative for the Student Bar Association. Prior to joining Siri and Glimstad, Ms. Williams served as a Judicial Law Clerk on the Appellate Court of Maryland.



## Notable Class Actions Handled By Siri & Glimstad LLP

### **Buchanan v. Sirius XM Radio, Inc.**

Case No. 3:17-cv-00728 (N.D. Tex.)

Appointed co-lead class counsel in a case alleging violations of the TCPA, which resulted in a settlement of \$25,000,000, plus free satellite radio service, to a class of 14.4 million members.

### **Thomas v. Dun & Bradstreet Credibility Corp.**

Case No. 15-cv-3194 (S.D. Cal.)

Appointed co-lead class counsel in a case alleging violations of the TCPA which resulted in a settlement of \$10,500,000.

### **Gatto v. Sentry Services, Inc., et al.**

Case No. 13 CIV 05721 (S.D. N.Y.)

Appointed co-lead class counsel in a case involving ERISA claims relating to an ESOP which resulted in a settlement of \$11,138,938.

### **Kindle v. Dejana**

Case No. 14-cv-06784 (E.D. N.Y.)

Appointed co-lead class counsel for plaintiffs in an ERISA matter filed as a class action involving breaches of fiduciary duty related to the management and termination of an ESOP, which settled after the beginning of trial for \$1,080,000 for the class.



**Herff Jones Data Breach Litigation**

Case No. 1:21-cv-01329 (S.D. Ind.)

Obtained preliminary approval of a class settlement that includes a settlement fund of \$4,350,000 and, separate from the settlement fund, requires the defendant to pay for data security improvements.

**California Pizza Kitchen Data Breach Litigation**

Case No. 8:21-cv-01928 (C.D. Cal.)

Appointed co-lead class counsel for plaintiffs in a data breach class action where the district court granted final approval to a settlement that provided \$2.1 millions in value to over 100,000 class members, subject to current appeal.

**Carter, et al. v. Vivendi Ticketing US LLC d/b/a See Tickets**

Case No. 8:22-cv-01981 (C.D. Cal.)

Final approval granted, appointing firm as settlement class counsel, in a data breach class action settlement involving 437,310 class members and a \$3,000,000 non-reversionary settlement fund.

**Armstrong et al. v. Gas South, LLC**

Case No. 22106661 (Ga. Sup. Ct., Cobb Cty.)

Obtained final approval of a class settlement involving roughly 40,000 class members and valued at over \$9 million.

**Medina v. Albertsons Companies, Inc.**

Case No. 1:23-cv-00480 (D. Del.)

Obtained final approval of a class settlement involving 33,000 class members and a \$750,000 non-reversionary settlement fund.

**In re Sovos Compliance Data Security Incident Litigation**

Case No. 1:23-cv-12100-AK (D. Mass.)

Obtained preliminary approval of a class settlement that includes a non-reversionary settlement fund of \$3,534,128.50 involving 490,000 and, separate from the settlement fund, requires the defendant to pay for data security improvements.