Christina Perez Hesano, Esq. (SBN 027023)
PEREZ LAW GROUP, PLLC
7508 North 59th Avenue
Glendale, Arizona 85301
Tel: (602) 730-7100
cperez@perezlawgroup.com

John J. Nelson (CA SBN 317598) *(Pro Hac Vice)*
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
402 W. Broadway, Suite 1760
San Diego, CA 92101
Tel: (858) 209-6941
jnelson@milberg.com

Attorney for Plaintiff and the Settlement Class

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

Maria Barrios, individually and on behalf of all others similarly situated, Plaintiff, v. Farmers Investment Co. d/b/a Green Valley Pecan Company, an Arizona corporation, Defendant.	Case No. CV2024-002001 **PLAINTIFF'S MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION LAWSUIT SETTLEMENT**

Plaintiff Maria Barrios ("Plaintiff" or "Class Representative") respectfully submits this Memorandum in support of Plaintiff's Unopposed Motion for Final Approval of Class Action Lawsuit. [1]

[1] Unless otherwise specified, all capitalized terms shall have the same meanings as in the Parties' Class Action Settlement Agreement and Release (the "Agreement"), attached as

I. INTRODUCTION

On August 2, 2024, the Court granted preliminary approval of the Settlement between Plaintiff and Defendant Farmers Investment Co. d/b/a Green Valley Pecan Company. ("FICO" or "Defendant"), and ordered that notice be given to the Class.

The Parties reached this Settlement, which provides meaningful benefits for the Settlement Class, only after an extensive investigation, hard-fought litigation, and arm's-length negotiations. Although Plaintiff believes in the merits of her claims, Defendant denies each and all of the claims and contentions alleged against it in the Litigation, including all charges of wrongdoing or liability or certifiability of a class. The claims involve the intricacies of data security litigation (a fast-developing area in the law), and Plaintiff would face risks at each stage of litigation. Against these risks, Class Counsel and the Class Representative believe that the Settlement achieved is for the benefit of the Settlement Class. After this Court granted preliminary approval, the Claims Administrator, with the assistance of the Parties, disseminated Notice to the Settlement Class as set forth in the Settlement Agreement. Individual Notice was provided directly to Settlement Class Members via first class mail. Class Notice reached 94.37% of the Class, easily meeting the due process standard. *See* Declaration of Bryn Bridley on Notice and Settlement Administration ("Admin. Decl."), attached hereto as Exhibit 1 ¶ 8. The Notice was written in plain language, providing each Settlement Class Member with information regarding*, inter alia*, how to **access** the Settlement Website, submit a claim, and how to opt-out or object to the Settlement. *Id.* at Attachments A and C. Out of 8.455 Settlement Class Members who received direct notice of the Settlement, none have objected to or opted out of the Settlement. Admin. Decl. ¶ 11. Plaintiff now moves the Court for final approval of the Settlement. As the Settlement meets all the criteria for final approval. Plaintiff respectfully submits that the Court should grant final approval.

Exhibit 1 to Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement.

II. THE PROPOSED SETTLEMENT TERMS

A. The Class

The Settlement provides relief to a Settlement Class defined as follows;

> All individuals residing in the United States who provided personally identifiable information to Defendant and to whom Defendant sent a notice concerning the Data Incident. (the "Class").

Settlement Agreement ("SA") ¶ 1.23. The Class consists of close to 9,000 putative members. Excluded from the Class are (i) those persons who timely and validly opt-out; (ii) FICO and its officers and directors; and (iii) the judge presiding over this case and their staff and family. SA. ¶¶ 1.23.

B. Compensation to the Settlement Class Members

i. Expense Reimbursement

Under the Settlement Agreement, Class Members are eligible to receive reimbursement for out-of-pocket expenses of up to $400 per Settlement Class Member that were incurred as a result of the Data Incident. SA ¶ 2.1.1. Eligible expenses include "(i) unreimbursed bank fees; (ii) long distance phone charges; (iii) cell phone charges (only if charged by the minute); (iv) data charges (only if charged based on the amount of data used); (v) postage; (vi) gasoline for local travel; and (viii) fees for credit reports, or other identity theft protection services and plans purchased between May 31, 2022 and seven days after the Court approved Notice is sent to the Settlement Class." *Id*.

ii. Lost Time

Subject to the same $400 cap as each member's out-of-pocket expenses, Settlement Class Members can be reimbursed for "up to three (3) hours of lost time spent dealing with the Data Incident" at a rate of $15 per hour. SA ¶ 2.1.2. Settlement Class Members may receive reimbursement for lost time if the Settlement Class Member includes a brief description of activities engaged in responding to the incident and the time spent on each such activity, and attests that any claimed lost time was spent responding to issues raised by the Data Incident. *Id*.

iii. Extraordinary Losses

Settlement Class Members can also receive reimbursement, not to exceed $4,000 for a documented monetary loss that: (i) is actual, documented, and unreimbursed; (ii) was more likely than not caused by the Data Incident; (iii) occurred between May 31, 2022 and seven days after a Court approved notice of Settlement is sent to the Settlement Class; and (iv) is not already covered by one or more of the ordinary loss expense reimbursement categories and the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion, if applicable, of the Settlement Class Member's credit monitoring insurance and identity theft insurance. SA ¶ 2.1.3.

iv. Identity Theft Protection / Credit Monitoring

Settlement Class members are also eligible to claim "two (2) years of identity theft protection services, which will include one credit bureau monitoring and $1 million in identity theft insurance protections." SA ¶ 2.3. Settlement Class Members are not required to show any supporting documentation to redeem this benefit. *Id*.

v. Cyber Security Enhancements

FICO has implemented or agreed "to implement enhancements to its data system security-related measures through December 31, 2024." SA ¶ 2.4. Defendant has identified these measures for Plaintiff's counsel and provided supporting documentation with such identification and documents treated as highly confidential. *Id*.

III. LEGAL STANDARD

Plaintiff brings this motion pursuant to Arizona Rule of Civil Procedure 23, which requires judicial approval of class action settlements. In considering issues concerning class actions, Arizona courts take guidance from federal cases applying Rule 23 of the Federal Rules of Civil Procedure, on which ARCP 23 is modeled. *See ESI Ergonomic Sols., LLC v. United Artists Theatre Circuit, Inc.,* 203 Ariz. 94, n.2, 50 P.3d 844 (App. 2002) ("Because Rule 23 [of the Arizona Rules of Civil Procedure] is identical to Rule 23 of the Federal Rules of Civil Procedure, we view federal cases construing the federal rule as authoritative"). In determining whether to finally approve a class action settlement, courts must first determine

that the settlement class, as defined by the parties, is certifiable under the standards of Arizona Rule 23(a) and (b). This Court considered and granted preliminary approval of class certification on August 2, 2024.

For the same reasons described in Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, this Court should certify the class for purposes of final approval of the settlement.

Because the Arizona Rule does not provide guidance as to the specific factors a court should look at when determining whether to grant final approval of a settlement, we look to Federal Rule of Civil Procedure Rule 23(e)(2), which states that the Court must determine, after holding a hearing, that it is fair, adequate, and reasonable. In making this determination, the Court must consider whether:

> (A) the 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. Rule 23(e)(2).

In addition to the Rule 23(e)(2) factors, federal courts in the Ninth Circuit look to nine factors in making this determination: (1) the strength of the plaintiff's 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 experience and 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).

IV. ARGUMENT

Courts strongly favor and encourage settlements, particularly in class actions and other complex matters 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"); NEWBERG ON CLASS ACTIONS § 11.41 (4th ed. 2002) (citing cases). Here, with a strong settlement that enjoys robust support from the Settlement Class, and to which there is no opposition, the Court should grant final approval to this settlement.

a. The Settlement Satisfies All the Rule 23(e)(2) Factors

i. The Class Was Adequately Represented

"[T]he adequacy requirement is met when: (1) the named plaintiff does not have interests antagonistic to those of the class; and (2) plaintiff's attorneys are qualified, experienced, and generally able to conduct the litigation." *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 567 (E.D. Va. 2016) (citation omitted). Here, the Class Representative has the same interests as all other Settlement Class Members as she is asserting the same claims and shares the same injuries. Further, the Court has already recognized Class Counsel's experience and qualifications in appointing them to lead this litigation and the record shows Class Counsel worked diligently to litigate and ultimately bring this case to resolution. *See* Order Granting Preliminary Approval; *see also In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Practices & Prod. Liab. Litig.*, 952 F.3d 471, 485 (4th Cir. 2020) (finding counsel's experience in complex civil litigation supported fairness of settlement).

ii. The Settlement was Negotiated at Arm's Length

The negotiations in this matter occurred at arm's length. *See* Declaration of John J. Nelson in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Nelson MPA Decl.") ¶ 12. Settlements negotiated by experienced counsel that result from arm's-length negotiations are presumed to be fair, adequate and reasonable. *See Leonardo's Pizza by the Slice, Inc. v. Wal-Mart Stores, Inc.*, 544 U.S. 1044, 125 S. Ct. 2277, 161 L.Ed.2d 1080 (2005) (a "'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's- length negotiations between experienced, capable counsel after meaningful discovery.'" (quoting MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.42 (1995))). This deference reflects the understanding that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness consideration of FRCP23(e).

iii. The Relief is Adequate Under Rule 23(e)(2)(C)

The relief offered to Class Members in the proposed Settlement addresses the types of repercussions and injuries arising from the Data Incident and is more than adequate under the factors outlined in FRCP 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. The Court may rely upon such experienced counsels' judgment. *See, e.g.*, *Nat'l Rural Telecommunications 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).

1. The Costs, Risk, And Delay of Trial and Appeal

As outlined in the preliminary approval motion and motion for attorneys' fees, Plaintiff faced significant risks and costs should she have continued to litigate the case. First, there was a risk that Plaintiff's claims would not have survived, or survived in full, on a class-wide basis after a motion for class certification, and motion(s) for summary judgment, among other motions. Second, if Plaintiff prevailed on a motion for class certification, successfully defeated all the other objections and motions Defendant filed, and proceeded to

trial, Plaintiff still would have faced significant risk, cost, and delay including likely interlocutory and post-judgment appeals.

In contrast to the risk, cost, and delay posed by proceeding to trial, the proposed Settlement provides certain, substantial, and immediate relief to the proposed Settlement Class. It ensures that Settlement Class Members with valid claims for Out-of-Pocket Losses or Lost Time will receive guaranteed compensation now and provides Settlement Class Members with access to credit monitoring and identity theft protection services (benefits that may not have been available at trial). The substantial costs, risk, and delay of a trial and appeal support a finding that the proposed Settlement is adequate.

2. The Method of Distributing Relief Is Effective

The proposed distribution process will be efficient and effective. The available relief is detailed clearly in the Notice, which was provided to all Settlement Class Members laying out the benefits to which they are entitled, including benefits provided regardless of whether a Settlement Class Member files a claim. Noticing the Settlement Class of the available relief was efficient and effective. Notice included dissemination of individual notice by direct mail, in the form of the Short Form postcard notice. This direct mail notice reached 94.37% of the Class. Admin. Decl. ¶ 8. Therefore, Settlement Class Members received effective and efficient notice of the relief offered. Because Settlement Class Members were able to make claims through a simple online form or by mail, the method of distributing the relief was both efficient and effective, and the proposed Settlement is adequate under this factor.

3. The Terms Relating to Attorneys' Fees Are Reasonable

Class Counsel have requested $143,750 in a combined award of attorneys' fees and reimbursement for litigation expenses. This request is on par with awards routinely granted by courts in Arizona and the Ninth Circuit, and is reasonable and appropriate in this case, as laid out in Plaintiff's previously filed Motion for Attorneys' Fees, Costs, and Service Awards. This factor supports approval of the proposed Settlement.

4. Any Agreement Required To Be Identified Under Rule 23(e)(3)

Apart from the Settlement Agreement, there are no additional agreements between the Parties or with others made in connection with the Settlement. Accordingly, this factor weighs in favor of final approval of the Settlement.

iv. The Proposed Settlement Treats Class Members Equitably.

The Settlement Class Members are treated equitably because they all assert similar claims arising from the same data breach, and they all are treated the same under the Settlement. Fed. R. Civ. P. 23(e)(2)(D). All Settlement Class Members are eligible to claim the various benefits provided by the Settlement, including compensation for Ordinary and Extraordinary Losses, compensation for time spent responding to the Data Incident, and identity protection services. Accordingly, the factors under Rule 23(e) support final approval. As discussed below, the *Bluetooth* factors are similarly satisfied.

b. The Settlement Satisfies All of the *Bluetooth* Factors

i. The Strength of Plaintiffs' Case

"When assessing the strength of [the] plaintiff's case, the court does not reach 'any ultimate conclusions regarding the contested issues of fact and law that underlie the merits of this litigation.'" *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012) (quoting *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1388 (D. Ariz. 1989)). The Court must "evaluate objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach these agreements." *Id*. Accordingly, where a court determines that a claim may have "some measure of merit," but that it also faces inherent weaknesses, the court should find that the "strength of Plaintiff's case" factor "weighs in favor" of final approval of the Settlement. *Van Lith v. iHeartMedia + Entm't Inc.,* No. 1:16-CV-00066-SKO, 2017 WL 1064662 at *11 (E.D. Cal. Mar 20, 2017).

Plaintiff believes she has a strong case for liability. As described in Plaintiff's Motion for Preliminary Approval of Class Action Settlement, Plaintiff believes her claims are viable and that she has a reasonably good chance of proving that Defendant was liable under at least

some of the theories Plaintiff pleaded in her complaint. While Plaintiff believes she has strong claims and would be able to prevail, her success is not guaranteed. It is "plainly 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." *Dennis v. Kellogg Co*., No. 09-cv-1786-L(WMc), 2013 WL 6055326, at *3 (S.D. Cal. Nov. 14, 2013). "Here, as with most class actions, there was risk to both sides in continuing towards trial. The settlement avoids uncertainty for all parties involved." *Chester v. TJX Cos*., No. 5:15-cv-01437-ODW(DTB), 2017 WL 6205788, at *6 (C.D. Cal. Dec. 5, 2017). However, given the heavy obstacles and inherent risks that Plaintiff faces with respect to the novel claims in data breach class actions, including class certification, summary judgment, and trial, the substantial benefits the Settlement provides favors final approval of the settlement. *Id.*

ii. The Risk, Expense, Complexity, and Duration of Further Litigation

"Another relevant factor is the risk of continued litigation against the certainty and immediacy of recovery from the [s]ettlement." *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 489 (E.D. Cal. 2010) (citation omitted). "In assessing the risk, expense, complexity, and likely duration of further litigation, the court evaluates the time and cost required." *Adoma*, 913 F. Supp. 2d at 976. "[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Id.* (quoting *Nat'l Rural Telecomms*, 221 F.R.D. at 526). "The parties…save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something that they might have won had they proceeded with litigation." *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982) (quoting *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971))

Although Plaintiff believes her case has merit, she recognizes the substantial risk inherent to all litigation. This case involves: a proposed class of over 8.000 individuals (each of whom, FICO has argued, would need individually to establish cognizable harm and

causation); a complicated and technical factual background that would require extensive expert investigation and testimony; and a motivated Defendant that, absent settlement, was aggressively postured to contest Plaintiff's claims.

Although nearly all class actions involve a high level of risk, expense, and complexity- undergirding the strong judicial policy favoring amicable resolutions, *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998), this is an especially complex class in an especially risky and developing legal area. Indeed, this action will likely become more complex over time and require further resource expenditure the longer it lasts, as new issues may emerge through discovery or simply determinations relating to case strategy. As such, this factor clearly weighs in favor of final approval. *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 447 (E.D. Cal. 2013) (concluding that this factor favored approval where 'there remained significant procedural hurdles for the putative class to confront, including certification" and "there were significant risks in continued litigation and no guarantee of recovery."). As one federal district court recently observed in finally approving a settlement with similar class relief, data breach litigation is evolving; there is no guarantee of the ultimate result. *See 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."); *Fox v. Iowa Health Sys*., No. 3:18-CV-00327-JDP, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021). 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 (S.D.N.Y. June 25, 2010) (collecting cases).

To the extent the law has gradually accepted this relatively new type of litigation, 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 most uncertain of all class action litigation, making settlement the more prudent course when a reasonable one can be reached. The damages methodologies, while theoretically sound in Plaintiff's view, remain untested in a disputed class certification setting and unproven in front of a jury. And 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 would result in zero recovery to the class. "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). Thus, this factor favors final approval.

iii. The Risk of Maintaining Class Action Status Through Trial

Absent settlement, contested class certification in consumer data breach cases has only occurred in a few cases. *See, e.g., Smith v. Triad of Ala.*, LLC, No. 1:14-CV-324-WKW, 2017 WL 1044692, at *15 (M.D. Ala. Mar. 17, 2017), *on reconsideration in part*, 2017 WL 3816722 (M.D. Ala. Aug. 31, 2017). Even when certification is granted, there are appeals. *See Green- Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883, 890 (11th Cir. 2023) (vacating class certification in part and remanding for additional analysis on the predominance element). While certification of additional consumer data breach classes may follow, the dearth of precedent adds to the risks posed by continued litigation.

iv. The Amount Offered in Settlement

In light of the substantial risks and uncertainties presented by data security litigation generally and this litigation specifically (as evidenced by the motions' practice in this case), the value of the Settlement strongly favors approval. The Settlement makes significant relief available to Settlement Class Members, in the form of out-of-pocket expense and extraordinary loss reimbursements, compensation for lost time, and credit monitoring and identity theft protection services.

The Settlement Agreement's benefits set out above are tailored to address the fundamental concerns raised in the Action. The per Class Member benefits are substantial, providing up to $45 in lost time reimbursement, reimbursement of ordinary and extraordinary losses up to $4,000, and two years of credit monitoring and identity theft protection services. This settlement is a strong result for the Class and exceeds or is in line

with other settlements in cases involving data breaches of similar scope.[2] In light of the difficulties and expenses Class Members would face pursuing individual claims, and the likelihood that they might be unaware of their claims, this Settlement Amount is appropriate. Accordingly, this factor favors approval.

v. The Extent of Discovery Completed and the Stage of Proceedings

As to the factors pertaining to the extent of discovery completed and the stage of proceedings, the amount of discovery completed prior to reaching a settlement is important because it bears on whether the Parties and the Court have sufficient information before them to assess the merits of the claims. *See, e.g., Lewis v. Starbucks Corp.*, No. 2:07-cv-00490-MCE-DAD, 2008 WL 4196690, at *6 (E.D. Cal. Sept. 11, 2008); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 617 (N.D. Cal. 1979). However, formal discovery having occurred is not a requirement to settlement, and in fact, Courts have found that informal discovery is sufficient so long as the Parties had an opportunity to "form a clear view of the strengths and

[2] *See, e.g., Fehlen v. Accellion, Inc*., Case No. 21-cv-01353 (N.D. Cal.) (settlement of $8.1 million for 9.2 million class members who had their Social Security Numbers compromised; $0.90 per class member); *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 Litigation,* MDL No. 1:19md2915 (AJT/JFA) ECF No. 2251 (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); *Cochran v. Accellion, Inc., et al*., No. 5:21-cv-01887-EJD (N.D. Cal.), ECF No. 32 (June 30, 2021) ($5 million settlement fund for 3.82 million class members or approximately $1.31 per Class member); *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) and ECF No. 181-2 , report and recommendation 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).

weaknesses of their cases." *See, e.g.*, *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 454 (E.D. Cal. 2013) ("While the parties did not fully complete discovery prior to settlement negotiations, but rather engaged in a process of informal discovery, approval of a class action settlement is proper as long as discovery allowed the parties to form a clear view of the strengths and weaknesses of their cases.") (citing *In re Immune Response Secs. Litig.*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007)); *cf. Vasquez,* 266 F.R.D. at 489 (finding that the parties engaged in sufficient discovery where the plaintiffs "conducted significant discovery of the underlying . . . documents in [the] case" and conducted interviews of "numerous" members of the potential class). Stated another way, "[w]hat is required is that sufficient discovery has been taken or investigation completed to enable counsel and the court to act intelligently." *Barbosa*, 297 F.R.D. at 447 (citation omitted).

To inform settlement negotiations, Plaintiff gathered all available information regarding FICO and the Data Incident-including publicly-available documents concerning announcements of the Data Incident and notice of the Data Incident to its customers. The parties also informally exchanged non-public information concerning the Data Incident, the information compromised in the Data Incident, the size of the Class, and Defendant's security precautions following the Data Incident.

Accordingly, the litigation has proceeded to the point where "the parties have sufficient information to make an informed decision about settlement," including an informed and realistic assessment of the strengths and weakness of their respective cases. *See Linney*, 151 F.3d at 1239.

vi. The Experience and Views of Counsel

"In considering the adequacy of the terms of a settlement, the trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties." *Barbosa*, 297 F.R.D. at 447 (citation omitted). "Great weight is accorded to the recommendation of counsel, who are the most closely acquainted with the facts of the underlying litigation." *Adoma*, 913 F. Supp. 2d. at 977 (citation omitted). "This is because parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." *Id*. (citation omitted). "Thus, 'the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.'" *Nat'l Rural Telecomms.*, 221 F.R.D. at 528 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

Class Counsel initiated this lawsuit shortly after FICO announced the Data Incident, which, based upon publicly-available information and information produced by Defendant during settlement negotiations, apparently impacted over one thousand individuals. Class Counsel have substantial experience litigating complex class cases of various types, including data-related cases such as this one. *See* Nelson MPA Decl. ¶¶ 2-9. Having worked on behalf of the putative class since the Data Incident was announced, evaluated the legal and factual disputes, and dedicated significant time and monetary resources to this litigation, proposed Class Counsel fully endorse the Settlement. A great deal of weight is accorded 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. CV 1:14-0030 WBS, 2017 WL 1424636, at *6 (D. Idaho Apr. 17, 2017); *Nat'l Rural Telecomms*, 221 F.R.D. at 528. Thus, this factor supports approval.

vii. Governmental Participants

There is no governmental participant in this matter. Therefor this facto favors approval.

viii. The Positive Reaction of the Class Favors Final Approval

The reaction of the Settlement Class to this Settlement is overwhelmingly positive. The deadline to object or opt out of the settlement was November 15, 2024. Out of a total of 8,455 Class Members who received direct notice, none sought exclusion from the Settlement. *See* Admin. Decl. ¶ 11.

In addition, of the 8,455 Class Members who received direct notice, none objected to the Settlement. *Id.* ¶ 11. "It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members." *Nat'l Rural Telecomm*, 221 F.R.D. at 529; 4 NEWBERG ON CLASS ACTIONS § 11:48 ("Courts have taken the position that one indication of the fairness of a settlement is the lack of or small number of objections [citations omitted]"). The fact that no Settlement Class Members objected to or opted out of the Settlement reflects a highly positive response by the Settlement Class. *See, e.g.*, *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC, 2010 WL 1687832, at *14 (N.D. Cal. Apr. 22, 2010) (finding that only one objector to settlement and fee request represented an "overwhelmingly positive" response from the class of 24,358 members); *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 456 (C.D. Cal. 2014) ("The negligible number of opt-outs and objections indicates that the class generally approves of the settlement.").

ix. Lack of Collusion Among the Parties

The parties negotiated a substantial, multifaceted Settlement, as described above. Class Counsel and FICO's counsel are well-versed in handling data-related class actions such as this one and fully understand the values recovered in similar cases. Moreover, settlement was reached only after several hard-fought rounds of negotiation and informed by Defendant's production of informal discovery. Nelson MPA Decl. ¶¶ 11-12. Therefore, the Court can be assured that the negotiations were not collusive.

V. NOTICE SATISFIED DUE PROCESS AND RULE 23

Notice provided to the class must be sufficient to allow class members "a full and fair opportunity to consider the proposed decree and develop a response." *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950). While individual notice should be provided where class members can be located and identified through reasonable effort, notice may also be provided by U.S. Mail, electronic mail or other appropriate means. Fed. R. Civ. P. 23(c)(2)(B).

The direct mail Notice, utilized here, is the traditionally preferred standard, and is consistent with notice programs approved by other courts. *See Stott v. Capital Financial Services*, 277 F.R.D. 316, 342, (N.D. Tex. 2011) (approving notice sent to all class members by first class mail); *Billittri v. Securities America, Inc*., Nos. 3:09-cv-01568-F, 3:10-cv-01833-F, 2011 WL 3586217, *9 (N.D. Tex. Aug. 4, 2011) (same). The Notice adequately informed Settlement Class Members that the Court will exclude the member from the class if the member so requests by a specified date, the Settlement, whether favorable or not, will include all members who do not request exclusion; and any member of the Settlement Class who does not request exclusion may, if the member desires, enter an appearance through the member's counsel. *See* ARCP 23(e)(1).

The Notice utilized clear and concise language that is easy to understand and was organized in a way that allowed Class Members to easily find any topic that they may be looking for about the Settlement. Thus, it was substantively adequate. *See Espinosa v. United Student Aid Funds, Inc*., 553 F.3d 1193, 1202 (9th Cir. 2008), aff'd, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010) ("The standard for what amounts to constitutionally adequate notice, however, is fairly low; it's 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.'"). As outlined in detail in the Claims Administrator's supporting declaration, the Notice Plan here, and its execution, satisfied all the requirements of the Arizona rules and due process.

On August 13, 2024 Atticus received a data file from Defense Counsel containing the names and addresses of 8,964 Settlement Class Members. Admin. Decl. ¶ 4. The Class Member information was processed through the National Change of Address base and on September 16, 2024, Atticus mailed 8,960 Short Notices via first-class mail. *Id*. ¶ 5-6. Of the 8,960 Short Notices mailed, 807 were returned to Atticus as undeliverable. *Id*. ¶ 7. One (1) of the undeliverable pieces included a forwarding address information and the notice was promptly remailed to the forwarding address. *Id*. The remaining 806 undeliverable records were sent to a professional service for mailing address tracing. Address updates were obtained for 361 undeliverable records and were not obtained for 442 records. *Id.* Short Notices have been remailed to the 361 addresses obtained through address tracing. *Id*. After all re-mailings, the Claims Administrator reasonably believes that notice likely reached 8,455 of the 8.960 persons to whom the Postcard Notice was mailed, which equates to a reach rate of the direct mail notice of approximately 94.37%. *Id*. ¶ 8. This reach exceeds other court-approved, best-practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches over 70% of targeted class members is considered a high percentage and the "norm" of a notice campaign. *Yates v. Checkers Drive-In Restaurants, Inc.*, No. 17 C 9219, 2020 WL 6447196, at *4 (N.D. Ill. Nov. 3, 2020) (noting that "a reach rate of 75% is normally adequate")

The dedicated Settlement Website, www.FICODataSettlement.com, "went live" on September 15, 2024. Admin Decl. ¶ 9. The Settlement website provides information about the Settlement, gives Settlement Class Members the opportunity to view important documents, including the Complaint and Settlement Agreement, and to submit a claim form online. The Claims Administrator also established a toll-free telephone number for Settlement Class Members to call and obtain additional information about the Settlement and speak with a live operator during business hours. *Id*. ¶ 10.

Notice here was robust, effective, and met all due process requirements, as well as the requirements of Rule 23(c). This weighs in favor of final approval.

VI. CERTIFICATION OF THE SETTLEMENT CLASS

In the Preliminary Approval Order, the Court preliminarily certified the Settlement Class, finding that the Class satisfies the requirements for certification. Nothing has changed since then that could conceivably undermine class certification. Accordingly, Plaintiff respectfully requests that the Court finally certify the Settlement Class for Settlement purposes.

VI. CONCLUSION

Plaintiff has negotiated a fair, adequate, and reasonable Settlement that guarantees Settlement Class Members the opportunity to claim significant benefits. For the reasons discussed above, and for those described in Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Awards, Plaintiff respectfully requests that this Court enter the proposed Final Approval Order, order the release of the Released Claims as of the Effective Date, finally certify the Settlement Class, appoint Settlement Class Counsel and Plaintiffs as representatives for the Class, and grant final approval of this Settlement.

Dated: December 27, 2024

Respectfully Submitted,
/s/ Christina Perez Hesano
Christina Perez Hesano, Esq.
PEREZ LAW GROUP, PLLC
7508 North 59th Avenue
Glendale, Arizona 85301
Tel: (602) 730-7100
cperez@perezlawgroup.com

John J. Nelson (P*ro Hac Vice*)
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
402 W. Broadway, Suite 1760
San Diego, CA 92101
Tel: (858) 209-6941
Fax: (865) 522-0049
jnelson@milberg.com