

MONTANA EIGHTH JUDICIAL DISTRICT COURT 5 PM 1:11
CASCADE COUNTY

WILLIAM HENDERSON et. al., on behalf
of themselves and all others similarly
situated,

Plaintiff,

vs

KALISPELL REGIONAL HEALTHCARE,

Defendant.

FILED
Cause No. CDV-19-0761
JAN 21 2021

STATE OF MONTANA } ss
County of Cascade

Judge Elizabeth A. Best I hereby certify that the instrument to
which this certificate is affixed is a true,
correct and compared copy of the original
of the office of the Clerk of the District
Court.

ORDER AND JUDGMENT

Witness my hand and seal of the
District Court of Cascade County this
15th day of January 2021

TINA HENRY, Clerk of Court

Deputy Clerk



WHEREAS, on November 3, 2020, a Preliminary Approval Order was entered by the Court preliminarily approving the proposed Settlement pursuant to the terms of the Parties' Settlement Agreement, and directing that notice be given to the Settlement Class.

WHEREAS, pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement, of the right of members of the Settlement Class to opt-out, and of the right of members of the Settlement Class to be heard at a Final Approval Hearing to determine, inter alia: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this Action with prejudice;

WHEREAS, a Final Approval Hearing was held on January 5, 2021. Prior to the Final Approval Hearing, a declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as prescribed in the Preliminary Approval Order. Class Members were therefore notified of their right to appear at

the Final Approval Hearing in support of or in opposition to the proposed Settlement, the award of Attorney's Fees and Costs to Class Counsel, and the payment of the Incentive Award.

NOW, THEREFORE, the Court having heard the presentation of Class Counsel and counsel for Defendants, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, adequate and reasonable, having considered the Attorney's Fees and Cost application made by Class Counsel and the application for an Incentive Award to the Settlement Class Representative, and having reviewed the materials in support thereof, and good cause appearing:

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Final Approval Order and Judgment shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.
2. The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all Parties thereto, including the Settlement Class.
3. The Court hereby approves the Settlement, including the plans for implementation and distribution of the settlement relief, and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Class Members, within the authority of the parties and the result of extensive arm's-length negotiations. The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.
4. There are four (4) objections and twelve (12) opt outs to the Settlement.

5. The Court has carefully reviewed and considered the objections, as well as the arguments from Class Counsel, and overrules the objections in their entirety. The Court specifically finds that:

- a. Mr. Heselwood excluded himself from the Settlement, and therefore has no standing to object. *Meta v. Manpower, Inc. / Cal. Peninsula*, No. 14-cv-03787-LHK, 2017 WL 7035754, at *4 (N.D. Cal. July 24, 2017). To the extent this Court could consider Mr. Heselwood's objection, he has failed to demonstrate how the Settlement is inadequate or unfair. *In re Google Referrer Header Priv. Litig.*, 87 F. Supp. 3d 1122, 1137 (N.D. Cal. 2015); *Schechter v. Crown Life Ins. Co.*, No. 13-cv-5596, 2014 WL 2094323, at *2 (C.D. Cal. May 19, 2014).
- b. Ms. Creighton's objections are overruled. In approving a Settlement, the Court is not tasked with determining a defendant's culpability; stated differently, any objection to a litigant's culpability does not bear on the issue of whether the Settlement is fair and adequate. *In re Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 WL 4079226, *12 (N.D. Cal. Sep. 13, 2011). Additionally, Ms. Creighton has not carried her burden in demonstrating how, based on her objections, the Settlement is inadequate or unfair to Class Members. *In re Google*, 87 F. Supp. 3d at 1137; *Schechter*, 2014 WL 2094323, at *2.
- c. Ms. Keeley's objections are overruled. Ms. Keeley has failed to demonstrate how the Settlement is inadequate or unfair. *Ibid*. The amount of monetary and injunctive relief available to Class Members is substantial, including three

years of credit monitoring, five years of identity theft restoration services, up to \$15,000.00 for out-of-pocket expenses, and up to \$75.00 for time spent remediating issues from the data breach. This relief is adequate and fair, especially considering the risks of trial. *In re TD Ameritrade*, 2011 WL 4079226, at *12.

- d. Ms. Nelson's objection is overruled. Ms. Nelson has failed to demonstrate how the Settlement is inadequate or unfair. *Ibid.* The relief under the Settlement addresses the concerns Ms. Nelson raises—Class Members are entitled to three years of credit monitoring and five years of identity theft restoration services. Resulting from a settlement, where the parties balance the interests of relief with litigation risks, Ms. Nelson has not demonstrate how the Settlement is inadequate or unfair. *In re Google*, 87 F. Supp. 3d at 1137; *Schechter*, 2014 WL 2094323, at *2; *In re TD Ameritrade*, 2011 WL 4079226, at *2.
- e. Ms. Wallace's objection is overruled. Like with the other objections, Ms. Wallace has failed to demonstrate how the Settlement is inadequate or unfair. *Ibid.* All Class Members are eligible for out-of-pocket damages up to \$15,000.00, \$75.00 for time spent, three years of credit monitoring, and five years of identity theft restoration services. There has been no showing of inadequacy or unfairness in reaching this Settlement.

6. The Settlement Class, which will be bound by this Final Approval Order and Judgment, shall include all members of the Settlement Class who did not submit timely and valid requests to be excluded from the Settlement Class.

7. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby certifies the following Settlement Class: the approximately 130,000 individuals who were sent notification by Kalispell that their Sensitive Information was or may have been compromised in the data breach disclosed by Kalispell in or about October 22, 2019.

8. All persons who have not made their objections to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

9. Within the time period set forth in Article III, section 3 of the Settlement Agreement, the cash distributions provided for in the Settlement Agreement shall be paid to the various Settlement Class members submitting Valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

10. Upon the Effective Date, members of the Settlement Class who did not validly and timely opt-out shall, by operation of this Final Approval Order and Judgment, have fully, finally and forever released, relinquished and discharged Defendant from all claims that were or could have been asserted in the Action. The Court finds that the following individuals have validly and timely excluded themselves from the Settlement:

- a. George Bristol;
- b. Janet Bristol;
- c. Jessica Childress;
- d. Duane Duff;
- e. Jon Heselwood;
- f. Peggy Ann Huber;
- g. Irene Leib;

- h. Karen L. McElvain;
- i. Paul Valley;
- j. Marian Valley;
- k. Fred Walters; and
- l. Arlene Walters.

11. All members of the Settlement Class who did not validly and timely opt-out are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims against Defendant released pursuant to the Settlement Agreement.

12. The terms of the Settlement Agreement and this Final Approval Order and Judgment shall have maximum res judicata, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could have been asserted in the Action or in any third party action.

13. The Final Approval Order and Judgment, the Settlement Agreement, the Settlement which it reflects and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, or used as an admission by or against Defendants of any fault, wrongdoing, or liability on the part of Defendant or of the validity or certifiability for litigation of any claims.

14. Class Counsel applied for an Incentive Award for class representatives of \$3,500 per representative. The Court finds an incentive award of \$3,500 per class representative is fair

and reasonable. These amounts are to be paid out of the Settlement Fund, in accordance with the Settlement Agreement.

15. Class Counsel requested an award of reasonable Attorney's Fees and Costs in the amount of \$1,400,000. The Court finds the requested fees and costs to be fair and reasonable pursuant to the non-exclusive factors approved by the Montana Supreme Court to determine a reasonable fee under the percentage of the recovery calculation. Specifically, the Court finds:

a. The percentage of the fund formula is preferable over the lodestar formula in this case given that the case did not present fee-shifting claims, Class Counsel undertook the case on a 1/3 contingency fee basis and class representatives agreed to this fee structure, the percentage of the fund formula incentivized Class Counsel to be efficient with the prosecution of this case and in seeking maximum relief to the class, particularly given the cannibalizing/wasting insurance policies at issue.

b. A 1/3 contingency fee is the standard for plaintiff's cases in general and common fund class action cases specifically.

c. This was a novel and complex case involving data breach claims and law.

d. Class Counsel expended significant time and resources in the prosecution of this case, warranting a standard 1/3 contingency fee payment.

e. This settlement reflects a significant monetary recovery for the class which could not have occurred without the diligence and hard work of Class Counsel, and is an excellent result.

f. Class Counsel are experienced in the fields of class actions and data breach cases and possessed the experience, skills and reputations to achieve the results secured.


g. Class Counsel undertook the significant risk of no recovery, and had to forego other lucrative work to prosecute this case on behalf of the class.

16. Class Counsel's request for attorney's fees and costs in the amount of \$1,400,000 is approved and awarded. These amounts are to be paid out of the Settlement Fund, in accordance with the Settlement Agreement.

17. The above-captioned Action is hereby dismissed against these Defendants in its entirety, with prejudice. Except as otherwise provided in this Final Approval Order and Judgment, the parties shall bear their own costs and attorney's fees. Without affecting the finality of the Judgment hereby entered, the Court reserves jurisdiction over the implementation of the Settlement, including enforcement and administration of the Settlement Agreement.

18. The Court hereby approves the distribution of the remaining value from the Settlement Fund to the Montana Justice Foundation pursuant to M.R.Civ.P. 23.

So Ordered this 5th day of January, 2020.


Elizabeth A. Best
District Court Judge

CERTIFICATE OF MAILING
This is to certify that the foregoing was
duly served by mail upon counsel of
record at their address in... 5th
day of January 20 21
TINA HENRY, CLERK OF COURT
By ECS DEPUTY

cc: John Heenan
David Paoli
John Yanchunis/Jonathan Cohen
Gary Zadick
Jon Kardassakis