

Benjamin A. Schwartzman, ISB No. 6512
ANDERSEN SCHWARTZMAN PLLC
800 W. Main St., Ste. 1460
Boise, ID 83702
Telephone: (208) 342-4411
Email: bas@ansclegal.com

Steve Wieland, ISB No. 8282
Jaren Wieland, ISB No. 8265
MOONEY WIELAND PLLC
802 W. Bannock St., Ste 500
Boise, ID 83702
Telephone: 208.401.9219
Email: steven.wieland.service@mooneywieland.com
jaren.wieland.service@mooneywieland.com

Counsel for Plaintiffs

[Additional counsel in signature block]

**SIXTH JUDICIAL DISTRICT, STATE OF IDAHO
BANNOCK COUNTY**

**Kyle Nelson, Michael Lewis, and Christie
Lewis**, *on behalf of themselves and all others similarly
situated*,

Plaintiffs,

v.

Idaho Central Credit Union,

Defendant.

Case No. CV03-20-00831
CV03-20-03221

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND FOR
CERTIFICATION OF SETTLEMENT
CLASS**

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I. INTRODUCTION

Plaintiffs Michael Lewis, Christie Lewis, and Kyle Nelson (“Plaintiffs”) individually and on behalf of the proposed Settlement Class,¹ seek preliminary approval of a proposed Settlement of claims against defendant Idaho Central Credit Union (“ICCU”). The Settlement Agreement, if approved, will provide for a \$1,550,000 common fund and will resolve the claims of Plaintiffs and the Class Members arising from two data breaches resulting in the unlawful access and compromise of personal identifying information (“PII”) of approximately 17,831 of ICCU’s customers (the “Data Breaches”).

Under the Settlement Agreement, ICCU will pay \$1,550,000 into a non-reversionary common fund. Class Members who submit a valid claim will be entitled to compensation for out-of-pocket losses and lost time. In addition to the common fund, ICCU shall offer to all Settlement Class Members twelve months of credit monitoring services at no cost. The proposed Settlement of this action is the product of extensive arms-length negotiations by experienced and informed counsel and warrants preliminary approval, as the terms are fair, reasonable, and adequate. Accordingly, Plaintiffs request that the Court (1) preliminarily approve the proposed Settlement, (2) certify the Settlement Class for settlement purposes only, (3) appoint Michael Lewis, Christie Lewis, and Kyle Nelson as Class Representatives, (4) appoint Plaintiffs’ counsel as Class Counsel, (5) order that Class Notice be distributed to the Settlement Class, and (6) schedule a Final Approval Hearing. The settlement also provides for a robust notice program that includes direct notice to each of the members notified about the Breaches. Plaintiffs and their undersigned counsel believe the Settlement to be in the best interests of the Settlement Class Members and seek to begin the Court approval process that is required for all class action settlements.

II. BACKGROUND

Plaintiffs Michael Lewis and Christie Lewis commenced litigation against ICCU on

¹ Unless otherwise specifically defined herein, all capitalized terms have the same meanings as those set forth in the parties’ Settlement Agreement, attached as Exhibit 1 to the Declaration of Hassan A. Zavareei (“Zavareei Decl.”).

February 24, 2020 by filing a complaint in Fourth Judicial District of the State of Idaho on behalf of themselves and other similarly situated ICCU customers who were victims of the Data Breaches. *See* Complaint, *Christie Lewis and Michael Lewis v. Idaho Central Credit Union*, Case No. CV01-20-03733 (the “Lewis case” or “*Lewis*”). On February 26, 2020, Plaintiff Kyle Nelson commenced litigation against ICCU by filing a complaint in this Court on behalf of himself and other similarly situated ICCU customers who were victims of the Data Breaches. *See* Complaint, *Kyle Nelson v. Idaho Central Credit Union*, Case No. CV03-20-00831 (Feb. 28, 2020) (the “Nelson case” or “*Nelson*”). Before filing the complaints, Class Counsel investigated the potential claims against ICCU. *See* Zavareei Decl. ¶ 3. Class Counsel interviewed potential plaintiffs and gathered information about the ICCU Data Breaches and their potential impact on consumers. *Id.* Class Counsel also expended resources researching and developing the legal claims at issue. *Id.*

The complaints both allege two data breaches by ICCU and seek to certify a class of account holders who were injured as a direct result thereof. Specifically, the complaints alleged that ICCU’s inadequate security practices resulted in the compromise of incredibly sensitive PII, including financial information and Social Security Numbers (“SSNs”), of over 17,000 of ICCU’s customers. *See generally* *Nelson* and *Lewis*. The breaches arose out of (1) unknown parties’ unauthorized access to a third-party mortgage portal utilized by ICCU employees; and (2) unknown parties’ unauthorized access to an ICCU employee’s email account. *Id.* The breaches compromised some or all of the following information for each Settlement Class Member: date of birth, Social Security number, financial account information, tax identification number, borrower information, liability information, assets information, employment information, and income information. *Id.*

In May 2020, after discussions among counsel, the Parties agreed to engage in mediation with the assistance of the Honorable Jay Gandhi (Ret.), an experienced class action mediator, to explore whether a negotiated resolution was possible. *See* Zavareei Decl. ¶ 4. The Parties exchanged mediation briefs and ICCU provided informal discovery and necessary class data to Plaintiff’s counsel. *Id.* On July 16, 2020, the parties mediated before Judge Gandhi for a full day, and after hard-fought negotiations, the Parties reached an agreement in principle. *Id.* ¶ 5.

The Parties continued to negotiate by phone and email in order to finalize the details of a preliminary term sheet. *Id.* In August 2020, the parties signed a term sheet. *Id.* Over the following couple months, the parties spent significant time negotiating the specific terms and language of the settlement agreement. *Id.* ¶ 6. On October 19, 2020, the Parties executed a Settlement Agreement, and on November 17, 2020, the parties executed the revised Settlement Agreement that is now before the Court for preliminary approval. *Id.*

III. THE SETTLEMENT AGREEMENT

A. The Proposed Class

The Settlement Agreement contemplates certification of the following Class for settlement purposes only: *All individuals who were mailed a notification by or on behalf of ICCU on or about February 7, 2020 regarding the Data Breach.* Zavareei Decl. Ex. 1 ¶ 36. According to ICCU's records, the Settlement Class will consist of approximately 17,831 of ICCU's customers. Zavareei Decl. ¶ 4.

B. Proposed Plan of Notice

The Parties' proposed notice plan is designed to reach as many Class Members as possible and is the best notice practicable under the circumstances of the instant case. ICCU has committed to providing the Settlement Administrator with the Settlement Class List within two (2) business days of the Preliminary Approval Order. *See* Zavareei Decl. ¶ 28. Within twenty-eight (28) days after receipt of the Settlement Class List, unless such other time is specified in the Preliminary Approval Order, the Settlement Administrator shall disseminate Notice to members of the Settlement Class. Zavareei Decl., Ex. 1 ¶¶ 24, 65 ("Notice Deadline") Notice shall be provided to Settlement Class Members in each of the following ways:

- **Email Notice.** As soon as practicable, but starting no later than 14 days from receipt of the Settlement Class List, the Settlement Administrator shall send the Email Notice to all Settlement Class Members for whom ICCU provided an email address. It will be conclusively presumed that the intended recipients received the Email Notice if the Settlement Administrator did not receive a hard bounce-back message.

- **Postcard Notice.** As soon as practicable, but starting no later than 14 days from receipt of the Settlement Class List, the Settlement Administrator shall disseminate the Postcard Notice via First Class Mail to all Settlement Class Members. Before mailing the Postcard Notice, the Settlement Administrator will update the addresses provided by ICCU with the National Change of Address database. It shall be conclusively presumed that the intended recipients received the Postcard Notice if the mailed Postcard Notices have not been returned to the Settlement Administrator as undeliverable within fifteen (15) days of mailing.
- **Settlement Website.** Prior to the date on which the Settlement Administrator initiates the Notice, the Settlement Administrator shall establish the Settlement Website at the following URL: www.ICCUDataBreachSettlement.com. The Settlement Website shall remain accessible until at least sixty (60) days after all Settlement Payments have been distributed. The Settlement Website shall contain: the Settlement Agreement; contact information for Class Counsel and ICCU's Counsel; contact information for the Settlement Administrator; the publicly filed motion for preliminary approval, motion for final approval and for attorneys' fees and expenses (when they become available); the signed Preliminary Approval Order; and a downloadable and online version of the Claim Form and Longform Notice.

Id. ¶ 66.

C. Opt-Outs and Objections

The Class Notice will advise Class Members of their right to opt out of the Settlement or to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs, and expenses and/or Service Award to the Class Representative, and of the associated deadlines to opt out or object. *See* Zavareei Decl. Ex. 1 ¶ 67.

Class Members who choose to opt out must submit a written request for exclusion to the Settlement Administrator. *Id.* Any request for exclusion must be postmarked on or before the deadline set by the Court and specified in the Class Notice, which shall be no less than sixty

calendar days after the Notice Deadline. *Id.* The Request for Exclusion must include the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. *Id.* Any person who receives the Class Notice and does not submit a request to opt out in accordance with the deadlines and other requirements will be bound by the Settlement absent a court order to the contrary. *Id.*

Class Members who wish to object to the Settlement must send a written Objection to the Settlement Administrator. *Id.* ¶ 68. Objections must be postmarked on or before the deadline set by the Court and specified in the Class Notice, which shall be no less than 30 calendar days after the Notice Deadline. *Id.* The written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. Subject to Court approval, any objecting Class Member may appear at the Fairness Hearing, in person or through counsel, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable.

D. Benefits to the Settlement Class

1. Cash Payments to Settlement Class Members

The Settlement Agreement provides for a Settlement Fund of \$1,550,000, from which (a) all payments to Settlement Class Members, (b) Notice and Administrative Costs, (c) any Taxes and Tax-Related Expenses, (d) any Service Award to Plaintiffs, and (e) any award of Attorneys' Fees and Expenses shall be paid. *See* Zavareei Decl. Ex. 1 ¶¶ 21, 39. After payment of costs of administration and notice and any fees, expenses, taxes, and service awards authorized by the Court, the Net Settlement Fund will be distributed to Class Members submitting a valid and timely

Claim Form, with any remaining funds to be distributed via residual cash payment to any Class Member who does not request exclusion from the Settlement by the opt-out deadline. *Id.* ¶¶ 6, 21, 49-54.

Each Settlement Class Member may submit a Claim for reimbursement for Out-of-Pocket Losses. *Id.* ¶¶ 49-52. Claims will be subject to review for completeness and plausibility by a Settlement Administrator. *Id.* In the event the Settlement Administrator determines a Claim is deficient in whole or part, the Settlement Administrator shall provide the Settlement Class Member with an opportunity to cure the deficiencies. *Id.* ¶ 52. Settlement Class Members may submit a Claim for “Ordinary Losses,” capped at \$1,000 per person, and/or “Extraordinary Losses,” capped at \$20,000 per person. *Id.* ¶ 49.

“Ordinary Losses” include (1) “Out of pocket expenses incurred as a result of the ICCU Data Breach, 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”; (2) “Fees for additional credit reports, credit monitoring, or other identity theft insurance products purchased between February 1, 2020 and the date of the Preliminary Approval Order”; and (3) “Up to 40 hours of Attested Time, at \$25/hour, if at least one full hour was spent dealing with the Data Breach.”² *Id.* “For Attested Time, a sworn attestation detailing how the time was spent shall constitute ‘supporting documentation.’” *Id.*

“Extraordinary Losses” are “losses arising from financial fraud or identity theft if:” (1) “The loss is an actual, documented, and unreimbursed monetary loss”; (2) “The loss is fairly traceable to the Data Breach”; (3) “The loss is not already covered by one or more of the normal reimbursement categories”; and (4) “The settlement class member made reasonable efforts to avoid, or seek reimbursement for, the loss.” *Id.*

Cash payments will be made by the Settlement Administrator and will either (1) be mailed

² Attested Time “means time spent remedying issues related to the Data Breach.” Zavareei Decl. Ex. 1 ¶ 4.

by check (a “Settlement Check”); or (2) sent electronically by PayPal or Venmo. *Id.* ¶ 55 & Ex. 2 (Claim Form). For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. *Id.* ¶ 57. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Participating Settlement Class Member to obtain updated address information. *Id.* Any checks that are not cashed within 180 days (or an additional 90 days in the case of replacement Settlement Checks) shall be voided and the money returned to the Settlement Fund for distribution as required by state law or to the Non-Profit Residual Recipient.³ *Id.* ¶ 58. However, prior to such occurrence, the Settlement Administrator shall attempt to contact the Settlement Class Member to whom the original Settlement Check was issued. *Id.*

From the monies remaining in the Settlement Fund after all payments are made for (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Service Award Payments approved by the Court; (iv) Fee Award and Costs; and (v) reimbursement for Out-of-Pocket Losses and Attested Time (“Remaining Funds”), an additional cash payment will be paid to each Participating Settlement Class Member—i.e., a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out deadline—on a *pro rata* basis, subject to an individual aggregate cap of \$20,000 for total payments under the Settlement. *Id.* ¶ 55.

If there is any amount in the Settlement Fund following the secondary distribution (i.e., if Settlement Checks are not cashed within the provided time limit) then upon approval by the Court, pursuant to the *cy pres* doctrine, the remaining amount shall be paid to the Non-Profit Residual Recipient, The Public Justice Foundation. *Id.* ¶ 59. The Public Justice Foundation’s mission is

³ The “Non-Profit Residual Recipient” means The Public Justice Foundation. Zavareei Decl. Ex. 1 ¶ 22. The Public Justice Foundation is a 501(c)(3) not-for-profit charitable membership organization that supports the litigation efforts of Public Justice on behalf of consumers. Zavareei Decl. ¶ 10.

aligned with the objectives of the litigation, addresses the objectives of the underlying law, and targets the class members. *See Nachshin v. AOL LLC*, 663 F.3d 1034, 1039 (9th Cir. 2011).

2. Free Credit Monitoring Services

In addition to the cash payments, ICCU shall offer to all Settlement Class Members twelve (12) months of Credit Monitoring Services at no cost, regardless of whether the Settlement Class Member submits a claim for Ordinary or Extraordinary Losses. These services will include daily credit monitoring of the Settlement Class Member's credit file at Experian; a \$1 million identity theft insurance policy; identity restoration services; and other additional features ("Credit Monitoring and Identity Restoration Services"). Class Members who already accepted credit monitoring services offered by ICCU in the initial aftermath of the Data Breaches will automatically receive an extra twelve (12) month extension of credit monitoring. For all other Class Members, such Credit Monitoring and Identity Restoration Services shall be provided on an opt-in basis using the same Claims Form that is submitted for Out-of-Pocket Losses and Attested Time. *See Zavareei Decl. Ex. 1 ¶ 53, Exhibit 2 (Claims Form)*. The cost of Credit Monitoring Services will be paid by ICCU separate and apart from the Settlement Fund. *Id.* ¶ 53.

3. Equitable Relief: Data Security Improvements

ICCU represents that, in response to the Data Breaches, it has employed information security enhancements including external review of security controls, implemented whitelisting and multifactor authentication where possible for third party system access; provisioned for free identity protection services for those impacted; increased training of all ICCU team members regarding cybersecurity; reviewed security posture and updated risk assessments for all ICCU vendors and implemented additional controls upon them, where possible; implemented dark web data scans searching for ICCU data; and increased staff in the following areas: Vendor Management, Audit and Compliance.

4. A Timely Resolution With a Strong and Fair Result for the Class

By negotiating a Settlement at this early stage of the litigation, the Parties have ensured that Class Members will receive the substantial benefits described above while avoiding the risks and

potential pitfalls of prolonged litigation. While confident in the strength of their claims, Plaintiffs and Class Counsel are also pragmatic and recognize the risks inherent in litigation of a complex data breach case. Should the case proceed in litigation, Plaintiffs could see their claims dismissed or narrowed at the motion to dismiss stage, summary judgment, at trial, or on a subsequent appeal. They also face the risk that class certification could be denied. And even if Plaintiffs prevailed at trial, any recovery would likely be delayed for years by an appeal. In contrast, the Settlement provides immediate and substantial benefits to over 17,000 Class Members. And that immediate and substantial benefit is similar to that obtained in other data breach class actions – and on a much quicker timeline. *See, e.g.*, Settlement Agreement, *In re: Citrix Data Breach Litigation*, No. 0:19-cv-61350-RKA (S.D. Fla.) (\$2,275,000 common fund involving financial account information and Social Security Numbers and a putative class of 24,316 consumers); Settlement Agreement, *Hutton v. Nat'l Bd. of Examiners in Optometry, Inc.*, No. 1:16-cv-03025-JKB (D. Md.) (\$3,250,000 settlement where names and Social Security Numbers of 61,000 class members were exposed). *See* Zavareei Decl. ¶¶ 27-29, Exs. 5-6.

E. Settlement Administrator and Administration Costs

Subject to Court approval, the Settlement Administrator is Angeion Group, a leading class action administration firm in the United States. *Zavareei Decl. Ex. 1 ¶ 35. See also generally* Declaration of Steven Weisbrot On Settlement Notice Program (“Weisbrot Decl.”). All Notice and Administrative Costs shall be paid from the Settlement Fund. *See* *Zavareei Decl. Ex. 1 ¶¶ 25, 47, 63.* The Settlement Administrator will oversee the provision of notice to the Class Members and administration of the Settlement Fund. *Id.* ¶¶ 69-70.

F. Class Member Release

In exchange for the benefits conferred by the Settlement, all Settlement Class Members will be deemed to have released the Released Parties⁴ from all claims and causes of action pleaded or

⁴ The “Released Parties” are ICCU and its present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys,

that could have been pleaded that are related in any way to the activities stemming from the ICCU Data Breaches. Zavareei Decl. Ex. 1 ¶¶ 82-83.

G. Attorneys' Fees and Costs and Service Award

The Settlement Agreement contemplates Class Counsel petitioning the Court for attorneys' fees, as well as documented, customary costs incurred by Class Counsel. Zavareei Decl. Ex. 1 ¶¶ 15, 20, 88. Class Counsel may seek attorneys' fees and expenses in an amount not to exceed one third of the total settlement value. *Id.* ¶ 88. Any approved attorneys' fees and Litigation Costs and Expenses will be paid from the Settlement Fund prior to distribution to the Settlement Class Members. *Id.* ¶ 63. Class Counsel intends to seek a fee award and will explain why this fee is warranted in a separately-filed petition for attorneys' fees and costs. *See* Zavareei Decl. ¶ 27. Class Counsel may also petition the Court for up to \$5,000 for each of Christie Lewis, Michael Lewis, and Kyle Nelson as a Service Award as compensation for their time and effort in the Action. *See* Zavareei Decl. Ex. 1 ¶ 86. Any approved awards will be deducted from the Settlement Fund prior to distribution to the Settlement Class Members. *Id.* ¶ 63. The Attorneys' Fees and Expenses and Service Award were not negotiated until after other material settlement terms were agreed upon. *See* Zavareei Decl. ¶ 9. Neither final approval, nor the size of the Settlement Fund, are contingent upon approval of the full amount of requested Service Award and/or fees. *See* Zavareei Decl. Ex. 1 ¶ 87.

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL

Idaho Rule of Civil Procedure 77 requires court approval of a class action settlement. I.R.C.P. 77. Idaho Courts consider at preliminary approval whether a proposed settlement "is sufficiently fair, reasonable and adequate to the Settlement Class certified." *Ricky G. & Logan D. Robinson Hill-View Mobile Home Parks et al. v. City of Pocatello*, Case No. CV-2015-1250(OC) (Dist. Ct., Bannock Cty.) (Order Granting Preliminary Approval) (July 08, 2019).

As there is not significant case law addressing the standards for granting preliminary

advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing.

approval under Idaho Rule of Civil Procedure 77, Plaintiffs refer herein to the standards provided by Federal Rule of Civil Procedure 23. See *O’Boskey v. First Fed. Sav. & Loan Ass’n of Boise*, 112 Idaho 1002, 1005 (1987) (“As the Idaho rules on class actions are taken from the federal rules, federal authority is relevant.”).

“[U]nder Rule 23(e)(1), the issue at preliminary approval turns on whether 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.’” *Reyes v. Experian Info. Sols., Inc.*, No. SACV1600563AGAFMX, 2020 WL 466638, at *1 (C.D. Cal. Jan. 27, 2020). The Rule 23(e)(2) factors speak to whether “the settlement is ‘fair, reasonable, and adequate.’” *Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 966 (N.D. Cal. 2019) (quoting Fed. R. Civ. P. 23(e)(2)). Those factors include:

- (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. 23(e)(2).

Before the 2018 revisions to Rule 23(e), the Ninth Circuit had developed its own list of factors to be considered when approving a settlement. See e.g., *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 964 (9th Cir. 2011) (citing *Churhill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). These factors include: (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; and (8) the reaction of the class members of the proposed settlement. *See Churchill Vill.*, 361 F.3d at 575; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *K.W. v. Armstrong*, 180 F. Supp. 3d 703, 723 (D. Idaho 2016). Plaintiffs will address the factors relevant to both standards, many of which overlap.

V. ARGUMENT

A. The Settlement Agreement Warrants Preliminary Approval.

Each of the relevant factors weighs in favor of Preliminary Approval of this Settlement. First, the Settlement was reached in the absence of collusion and is the result of good-faith, informed, arms' length negotiation between competent counsel, in conjunction with an experienced mediator, Hon. Jay Gandhi of JAMS. Second, the Settlement is fair, adequate, and reasonable.

Any settlement requires the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Plaintiffs believe their claims are meritorious and they would prevail if this case proceeded to trial. ICCU argues that Plaintiffs' claims are unfounded, denies any liability, and has indicated a willingness to litigate vigorously. Plaintiffs face the challenge of a motion to dismiss, motion for summary judgment, and opposition to a motion for class certification, as well as the risk of a loss at trial. The only thing that is certain is that if this case continues in litigation, the Class Members will need to wait much longer before receiving any recovery. In Class Counsel's experience and informed judgment, the benefits of settling outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with litigation, discovery, and possible appellate review. *See* Zavareei Decl. ¶¶ 10-14.

1. The Class Representative and Class Counsel Have Adequately Represented The Proposed Class.

Under Rule 23(e)(2)(A), the first factor to be considered is whether the class representative and Class Counsel have adequately represented the class, including the nature and amount of discovery undertaken in the litigation. *See* Fed. R. Civ. P. 23(e)(2)(A), 2018 Advisory Committee

Notes. Here, Plaintiffs assisted Class Counsel by providing documents, reviewing the pleadings, and reviewing the Settlement Agreement. *See* Zavareei Decl. ¶ 25. Plaintiffs do not have any conflicts with the proposed class and have adequately represented them in the litigation. *Id.* ¶ 26.

Class Counsel has also adequately represented the class. Class Counsel is particularly experienced in the litigation, certification, trial, and settlement of class action cases. *Id.* ¶¶ 17-22, Exs. 5-8. Moreover, Class Counsel is currently litigating over 50 other proposed class actions involving data breaches and consumer privacy. *Id.* ¶ 22. In negotiating the Settlement Agreement, Class Counsel had the benefit of years of experience and familiarity with the factual and legal bases for this case, as well as other cases involving data breaches and consumer privacy. *Id.* This understanding of the intricacies of the data breach and consumer privacy space provided Class Counsel with the tools and perspective to achieve an outstanding recovery for the Class—and prepared them to fight this Action to a successful conclusion if necessary.

Before filing the Complaint, Class Counsel investigated the potential claims against ICCU. *Id.* ¶¶ 3, 24. Class Counsel interviewed potential plaintiffs and gathered information about the ICCU Data Breaches and their potential impact on consumers. *Id.* ¶ 3. This information was essential to Class Counsel’s ability to evaluate the risks of this litigation and the benefits to the Class. Class Counsel also expended resources researching and developing the legal claims at issue. *Id.* Armed with its knowledge from other data breach and consumer privacy matters and its investigation into this specific case, Class Counsel was well positioned to evaluate the strengths and weaknesses of Plaintiffs’ and the Class’s claims, and the appropriate basis upon which to settle them. Zavareei Decl. ¶ 10.

2. The Settlement is The Product of Good-faith, Informed, Arms-length Negotiations.

The Settlement Agreement is the result of intensive, arms’ length negotiation between experienced attorneys who are familiar with class action litigation and the legal and factual issues in this Action. Zavareei Decl. ¶ 8. A presumption of fairness applies when a proposed class settlement, which was negotiated at arm’s-length by counsel for the class, is presented for Court approval. *See, e.g., In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 450 (C.D. Cal. 2014) (citing *Rodriguez v. West Publishing Corp.*, 563 F.3d 948,

965 (9th Cir.2009)). Moreover, “[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.” *Adams v. Inter-Con Sec. Sys. Inc.*, No. C-06-05248-MHP, 2007 WL 3225466, at *3 (N.D. Cal. Oct. 30, 2007). *See also Cohorst v. BRE Propts.*, 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 an arms’-length, non-collusive, negotiated resolution.” (internal citation and quotation marks omitted)).

Here, the Parties engaged in a formal mediation before the Hon. Jay Gandhi (Ret.) of JAMS before reaching the Settlement Agreement now sought to be approved. *Zavareei Decl.* ¶¶ 4-5. The Parties mediated for a full day before Judge Gandhi on July 16, 2020. *Id.* ¶ 5. In advance of that mediation, ICCU provided Plaintiffs with information about the scope of the Data Breaches, the number of class members, and remedial efforts undertaken in the wake of the Data Breaches. *Id.* ¶ 4. The Parties also exchanged lengthy mediation briefs wherein they discussed the strengths and weaknesses of their respective claims and defenses. *Id.* This free exchange of information, and the guidance of Judge Gandhi, allowed the parties to reach an agreement in principle as to the material terms of the Settlement, including the size of the common fund and the offer of credit monitoring. *Id.* ¶¶ 4-5. The Parties then continued their settlement discussions as they finalized the terms of the Settlement Agreement. *Id.* ¶ 6. The Parties’ vigorous negotiation of the claims in this action evidences an absence of collusion and the presence of fairness and good faith.

3. The Settlement is Fair, Adequate, and Reasonable.

This proposed Settlement falls within the “range of reason” such that the Court should preliminarily approve the Settlement, order that notice be sent to the Class, and schedule a Final Approval Hearing. While the Class Members cannot react to the settlement until after notice goes out, the Court can “properly consider[] the *Hanlon* factors [discussed in Section IV, *supra*] in deciding that the settlement [i]s fair, reasonable, and adequate” at the preliminary approval stage. *See Russell v. Kohl’s Dep’t Stores, Inc.*, 755 F. App’x 605, 608 (9th Cir. 2018) (affirming district court’s review of *Hanlon* factors in preliminary approval order); *K.W.*, 180 F. Supp. 3d at 723 (applying

Hanlon factors).

First, the Settlement is fair, adequate, and reasonable in light of the strengths and risks of Plaintiffs' case. While confident in the strength of their claims, Plaintiffs and Class Counsel are also pragmatic and recognize the risks inherent in litigation of a complex data breach case. *See* Zavareei Decl. ¶¶ 11-13. Should the case proceed in litigation, Plaintiffs could see their claims dismissed or narrowed at the motion to dismiss stage, summary judgment, at trial, or on a subsequent appeal. They also face the risk that class certification could be denied. *Id.* Each risk, by itself, could impede the successful prosecution of these claims at trial and in an eventual appeal—which would result in a *zero* recovery to the class. *Id.* And even if Plaintiffs prevailed at trial, any recovery would likely be delayed for years by an appeal. *Id.* In contrast, the Settlement provides immediate and substantial benefits to over 17,000 Class Members. *Id.* ¶¶ 10, 14.

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). This factor favors preliminary approval.

Second, the risks, expense, complexity, and likely duration of further litigation support preliminary approval of the Settlement. Zavareei Decl. ¶¶ 11-13. This case is settling in its early stages; if the Settlement is not approved, the parties will likely need to litigate through multiple dispositive motions and a motion for class certification. *Id.* ¶ 12. That process would likely take years to resolve and involve expensive expert discovery. *Id.* ¶ 13. Yet there is no guarantee that lengthy litigation and expensive discovery would lead to greater benefits for the Class Members. *Id.* Instead, there would be multiple points at which the Class's claims could be narrowed or dismissed. *Id.* ¶¶ 11-13. “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); *see also Fenn v. Hewlett-Packard Co.*, No. 1:11-CV-00244-BLW, 2012 WL 6680358, at *1 (D. Idaho Dec. 21, 2012) (“It appears that counsel have reasonably evaluated their respective positions, and that settlement will likely avoid substantial additional costs to the parties. Accordingly, the Court will preliminarily approve the settlement.”). Thus, this factor favors preliminary approval.

Third, the risk of maintaining class action status through trial supports preliminary approval of the Settlement. Zavareei Decl. ¶ 12. The class has not yet been certified, and ICCU will oppose certification if the case proceeds. *See id.* Thus, Ms. Silveira “necessarily risk[s] losing class action status.” *Grimm v. American Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK(MANx), 2014 WL 1274376, at *10 (C.D. Cal. Sept. 24, 2014); *see also Norton v. Maximus, Inc.*, No. CV 1:14-0030 WBS, 2017 WL 1424636, at *5 (D. Idaho Apr. 17, 2017) (“The risk that supervisors would not have been able to maintain class action status throughout trial favors settlement.”). This factor favors preliminary approval.

Fourth, the Settlement Fund amount supports preliminary approval. “In assessing the consideration obtained by the class members in a class action settlement, it is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness.” *Norton v. Maximus, Inc.*, No. CV 1:14-0030 WBS, 2017 WL 1424636, at *5 (D. Idaho Apr. 17, 2017) (quotation marks and citation omitted). The Settlement Fund of \$1,550,000 will allow for reimbursement of up to \$1,000 in out-of-pocket expenses, lost time of up to 40 hours at \$25/hour, up to \$20,000 in documented extraordinary losses, and a residual cash payment. Moreover, the Settlement provides for an additional year of credit monitoring paid for separately by ICCU, an approximately \$100 value for each Settlement Class Member, and assurances from ICCU that it has implemented changes to its data security practices and procedures. This settlement is a strong result for the Class and in line with other settlements in cases involving data breaches of similar scope. *See, e.g., Settlement Agreement, Fox v. Iowa Health System*, No. 3:18-cv-00327-jdp (W.D. Wis.) (in case where PII and health information for 1.4 million hospital patients was exposed, defendant will pay up to \$1,000 in attested out-of-pocket expenses and lost time up to 3 hours at \$15/hour; up to

\$6,000 in document expenses; credit monitoring; and business practice changes); Settlement Agreement, *In re: Citrix Data Breach Litigation*, No. 0:19-cv-61350-RKA (S.D. Fla.) (\$2,275,000 common fund involving financial account information and Social Security Numbers and a putative class of 24,316 consumers); Settlement Agreement, *Hutton v. Nat'l Bd. of Examiners in Optometry, Inc.*, No. 1:16-cv-03025-JKB (D. Md.) (\$3,250,000 settlement where names and Social Security Numbers of 61,000 class members were exposed). *See* Zavareei Decl. ¶¶ 27-29, Exs. 4-6. Because the settlement amount here is similar to other settlements reached and approved in similar cases (when taking into account the size of the class), this factor reflects that the Settlement is fair. *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). In light of the difficulties and expenses Class Members would face to pursue individual claims, and the likelihood that they might be unaware of their claims, this Settlement Amount is appropriate. *See id.*

Fifth, the allocation of the Settlement is fair and reasonable, and the manner of administrating relief will be effective. Payments will be made based on documented out-of-pocket losses and attested lost time, with a pro-rata distribution of remaining funds to all Participating Settlement Class Members. Zavareei Decl. Ex. 1 ¶¶ 49, 54. According to this allocation, Class Members are treated fairly as to one another because they are all offered compensation according to the same standard. *See* Fed. R. Civ. P. 23(e)(2)(D). Moreover, the proposed method of distributing relief is effective. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). The Parties have agreed upon an experienced Settlement Administrator to administer the settlement. *See generally* Weisbrot Decl. Class Members need only submit a simple claims form. And the Settlement Administrator will mail checks to the Class Members or will provide payment directly through the electronic payment platforms PayPal or Venmo.

Sixth, settlement class counsel will seek fair and reasonable attorneys' fees and reimbursement of reasonable litigation expenses. *See* Fed. R. Civ. P. 23(e)(2)(c)(iii). The Settlement Agreement authorizes Class Counsel to seek an award of up to one third of the total settlement value, and authorizes Plaintiffs to each seek a service award of up to \$5,000. Zavareei Decl. Ex. 1

¶¶ 86-88. These amounts are well within the range of approval for class action settlements that provide significant benefits to the class. *See, e.g., Hickcox-Huffman v. U.S. Airways, Inc.*, No. 10-cv-05193, 2019 WL 1571877, at *2 (N.D. Cal. April 11, 2019) (approving service award of \$10,000); *Noroma v. Home Point Fin. Corp.*, No. 17-cv-07205, 2019 WL 1589980, at *4 (N.D. Cal. April 12, 2019) (approving service award of \$10,000); *see also Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000) (upward departure from 25% acceptable); *In re Heritage Bond Litig.*, No. 02-ML-1475-DT(RCX), 2005 WL 1594389, at *9 (C.D. Cal. June 10, 2005) (approving attorneys' fees of one-third of the settlement fund); *Norton*, 2017 WL 1424636, at *7 (approving attorneys' fees award "constitut[ing] approximately 37% of the total money paid by defendant in this settlement").

Seventh, the early resolution of the case, before both sides spend significant sums on litigation costs, is in the best interest of the class. Prior to filing, Class Counsel engaged in investigation of the ICCU Data Breaches and the potential claims that may arise therefrom. Moreover, the parties engaged in a full day of formal mediation before a respected retired judge, and conducted informal discovery prior to reaching the Settlement. *Zavareei Decl.* ¶¶ 4-5. "[T]he efficiency with which the Parties were able to reach an agreement need not prevent this Court from granting preliminary approval." *Hillman v. Lexicon Consulting, Inc.*, No. EDCV 16-01186-VAP(SP_x), 2017 WL 10433869, at *8 (C.D. Cal. April 27, 2017).

Eighth, Class Counsel's view is that this Settlement is an outstanding recovery for the Class. *Zavareei Decl.* ¶ 10. Class Counsel is experienced in class action litigation, including cases concerning data breaches and consumer privacy. *Id.* ¶¶ 17-22. Based on Class Counsel's experience, counsel for ICCU is also experienced and sophisticated. *Id.* ¶ 23. 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*, 2017 WL 1424636, at *6; *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, this factor supports preliminary approval.

Ninth, there is no government participant and, because the Court has not yet approved the notice, the Class has not had an opportunity to react, so these factors are neutral. *See Norton*, 2017 WL 1424636, at *6.

In total, the Settlement Agreement will provide a fair and reasonable recovery for the Class Members, all of which militates towards preliminary approval.

B. Certification of the Settlement Class is Appropriate.

On a motion for preliminary approval, the parties must also show that the Court “will likely be able to ... certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1). The Settlement Class meets all of the requirements of Idaho Rule of Civil Procedure 77.

1. The Settlement Class Satisfies the Numerosity Requirement.

The Settlement Class as defined meets Rule 77(a)’s numerosity requirement. The class definition encompasses more than 17,000 Class Members. This number of Class Members demonstrates that joinder is a logistical impossibility. *See, e.g. Celano v. Marriott Int’l Inc.*, 242 F.R.D. 544, 548-49 (N.D. Cal. 2007) (numerosity is generally satisfied when a class has at least 40 members); *see also Rannis v. Recchia*, 380 Fed. App’x 646, 651 (9th Cir. 2010) (same).

2. The Settlement Class Satisfies the Commonality and Predominance Requirements.

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). Here, as in most data breach cases, “[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). For the same reason, predominance is readily met here “where the class is a ‘cohesive group of individuals [who] suffered the same harm in the same way because of the [defendant’s] conduct.’” *In re Google LLC St. View Elec. Commc’ns Litig.*, No. 10-MD-02184-CRB, 2020 WL 1288377, at *5 (N.D. Cal. Mar. 18, 2020) (quoting *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 559 (9th Cir. 2019)). Thus, common questions include, *inter alia*, whether ICCU engaged in the wrongful conduct alleged; whether Class Members’ PII was compromised in the Data Breaches; whether ICCU owed a duty to Plaintiffs and Class members; whether ICCU breached its duties; whether ICCU unreasonably delayed in notifying Plaintiffs and class members

of the material facts of the Data Breach; and whether ICCU violated the common law and statutory violations alleged in the Complaints.

3. The Settlement Class Satisfies the Typicality Requirement.

Plaintiffs' claims are typical of the claims of Settlement Class Members because they arise from the same course of alleged conduct. See I.R.C.P. 77(a)(3). Plaintiffs suffered the same injuries as the putative class members—theft of their PII—and their injuries all arise from a single source: Defendant's unlawful conduct. "The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Gibson v. Credit Suisse AG*, No. CV 10-1-EJL-REB, 2013 WL 5375648, at *4 (D. Idaho Aug. 16, 2013), *report and recommendation adopted*, No. 1:10 CV 001-EJL-REB, 2013 WL 5375597 (D. Idaho Sept. 24, 2013).

4. The Settlement Class Satisfies the Adequacy Requirement.

The adequacy requirement is satisfied when the class representatives will "fairly and adequately protect the interests of the class." I.R.C.P. 77(a)(4). To make this determination, "courts must resolve two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (citing *Hanlon*, 150 F.3d at 1020); *Longest v. Green Tree Servicing LLC*, 308 F.R.D. 310, 325 (C.D. Cal. 2015).

Here, Plaintiffs have no conflicts of interest with other class members, are subject to no unique defenses, and they and their counsel have and continue to vigorously prosecute this case on behalf of the class. *See* Zavareei Decl. ¶ 26; *see supra* Part V.A.1.

5. The Settlement Class Satisfies the Superiority Requirement.

Class certification is appropriate under Rule 77(b)(3) when "questions of law or fact common to the members of the class predominate over any question affecting only individual members, and . . . a class action is superior to other available methods for the [sic] fairly and efficiently adjudicating the controversy." I.R.C.P. (b)(3).

As discussed above, common questions predominate over any questions affecting only individual members here. Class certification here is also “superior to other available methods for . . . fairly and efficiently adjudicating the controversy.” *Id.* Classwide resolution is the only practical method of addressing the alleged violations at issue in this case. There are thousands of class members with modest individual claims, most of whom likely lack the resources necessary to seek individual legal redress. *See 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.”).

C. The Proposed Notice Plan Will Provide The Best Notice Practicable and Should Be Approved.

1. The Proposed Notice Plan is Robust and Warrants Preliminary Approval.

Due process under Rule 77 (and its federal corollary) requires that class members receive notice of the settlement and an opportunity to be heard and participate in the litigation. *See* I.R.C.P. 77(c)(2)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175-76 (1974) (“[I]ndividual notice must be provided to those class members who are identifiable through reasonable effort.”). The mechanics of the notice process are left to the discretion of the Court, subject only to the broad “reasonableness” standards imposed by due process. *See Tapia v. Zale Del. Inc.*, No. 13cv1565-PCL, 2017 WL 1399987, at *4 (S.D. Cal. April 18, 2017); *see also Rosenberg v. I.B.M.*, No. CV06–00430PJH, 2007 WL 128232, *5 (N.D. Cal. Jan. 11, 2007) (stating that notice should inform class members of essential terms of settlement including claims procedure and their rights to accept, object or opt-out of settlement).

Notice here is tailored to this Class and designed to ensure broad and effective reach to it. Notice of the Settlement is to be provided as follows: ICCU will provide class members’ physical addresses and email addresses (where available) to the Settlement Administrator, which will run

those addresses through the National Change of Address database, then send the Postcard Notice via first class mail to all Settlement Class Members. Zavareei Decl. Ex. 1 ¶¶ 65-66. Concurrently, the Settlement Administrator will distribute Email Notice to all Settlement Class Members for whom ICCU provided an email address. *Id.* ¶ 66. The Settlement Administrator will run a skip trace for Postcard Notices returned as undeliverable and will resend the notices to an updated address. *See* Weisbrot Decl. ¶ 15. The Notice will summarize the settlement, and direct class members to a settlement website, established by the Settlement Administrator. *See* Zavareei Decl. Ex. 1, Exs. A & B. The settlement website will contain information about the settlement, the Claim Form, a form to opt out, and information on how to object to the settlement. *See* Zavareei Decl. Ex. 1 ¶ 41; Weisbrot Decl. ¶ 20. Additionally, the settlement website will contain a toll-free number that Class Members may call to request additional information or documents. Weisbrot Decl. ¶ 21. Finally, it will make available for download the operative complaint, the Settlement Agreement, motions and memoranda seeking approval of the Settlement Agreement, and any orders related to the Settlement Agreement. *Id.* ¶ 20.

The operative notice plan is the best notice practicable and is reasonably designed to reach the settlement class members. *See* Zavareei Decl. ¶ 29; Weisbrot Decl. ¶ 23. When available, direct mail notice is generally considered the “best notice practicable.” *See Simpao v. Gov’t of Guam*, 369 Fed. Appx. 837, 838-39 (9th Cir. 2010) (holding potential class members received “best notice practicable under the circumstances” when they received direct mail notice to their last known addresses). Here, class members will receive direct mail notice to their last known mailing address. Contact information will initially be provided from ICCU Bank, which, as a financial institution regularly communicating with class members, is highly likely to have the most accurate contact information. When combined with the Email Notice, as well as a process to confirm addresses through the National Change of Address Database before sending notice and subsequent skip tracing in the unlikely instance that any notice is returned as undeliverable, the notice program should cause nearly every class member to receive direct mail notice at their actual addresses. And in addition to direct notice, there will also be a publicly available website that will allow class

members to view all information regarding their rights under the Settlement. This design will bring awareness to as many class members as practicable and should be approved.

Moreover, the substance of the notice will fully apprise class members of their rights. Under Rule 77(c)(2)(B), notice to class members “must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney” if desired, (v) that class members may request exclusion; (vi) that the judgment will include and bind class members not excluded; and (vii) “the time and manner for requesting exclusion.” I.R.C.P. 77(c)(2)(B). The Notice contains all of this critical information required to apprise Class Members of their rights under the settlement, directs them to the settlement website, where they can obtain more detailed information, and provides a toll-free number for Class Members to call with questions. This approach to notice is adequate. *See e.g. Sarabri v. Weltman, Weinberg & Reis Co., L.P.A.*, No. 10cv1777 AJB (NLS), 2012 WL 3809123, at *2 (S.D. Cal. Sept. 4, 2012) (approving mailed notice where notice would include the settlement website with a full settlement details and the claim administrator’s toll free number); *Knutson v. Schwan’s Home Serv., Inc.*, No. 3:12-cv-00964-GPC-DHB, 2014 WL 3519064, at *5 (S.D. Cal. 2014) (same). This information undoubtedly provides “sufficient detail” to allow class members with adverse viewpoints to conduct further investigation and “come forward to be heard.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012) (holding the sufficient detail standard “does not require detailed analysis of the statutes or causes of action forming the basis for the plaintiff class’s claims”). Accordingly, this notice program will fully apprise Class Members of their rights under Rule 77 and should be approved.

D. The Court Should Schedule a Final Approval Hearing.

One of the primary advantages of early resolution is the ability of Class Members to receive the benefits of the Settlement in short order. Moreover, for those Class Members who will opt-in to credit monitoring services, time is of the essence to ensure that they do not unknowingly become victims of identity theft while waiting for approval of the Settlement. To that end, Plaintiffs and

Class Members respectfully request that the Court schedule a Preliminary Approval Hearing as soon as possible, and schedule a Final Approval Hearing as soon as the court deems appropriate after entry of the Preliminary Approval Order.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court preliminarily approve the Settlement, enter the Preliminary Approval Order, appoint them as Class Representatives, appoint Benjamin Schwartzman of Andersen Schwartzman PLLC; Hassan Zavareei of Tycko & Zavareei LLP; Gary M. Klinger of Mason Lietz & Klinger LLP; and Brandon Wise of Peiffer Wolf Carr & Kane, APLC as Class Counsel, direct that the Notice Plan be implemented, and schedule a Final Approval Hearing.

Dated: December 1, 2020

Respectfully submitted,

ANDERSEN SCHWARTZMAN PLLC

/s/ Benjamin A. Schwartzman

Benjamin A. Schwartzman, ISB No. 6512
ANDERSEN SCHWARTZMAN PLLC
800 W. Main St., Ste. 1460
Boise, ID 83702
Telephone: (208) 342-4411
Email: bas@ansclegal.com

Hassan A. Zavareei

TYCKO & ZAVEREEI LLP

1828 L Street NW, Suite 1000
Washington, DC 20036
Telephone: (202) 973-0900

Sabita J. Soneji

TYCKO & ZAVEREEI LLP

The Tower Building
1970 Broadway, Suite 1070
Oakland, CA 94612
Telephone: (510) 254-6808
Email: hzavareei@tzlegal.com
ssoneji@tzlegal.com

Attorneys for Plaintiffs Christie Lewis and Michael Lewis

Steve Wieland, ISB No. 8282
Jaren Wieland, ISB No. 8265
MOONEY WIELAND PLLC
802 W. Bannock St., Ste 500
Boise, ID 83702
Telephone: 208.401.9219
Email:
steven.wieland.service@mooneywieland.com
jaren.wieland.service@mooneywieland.com

Brandon M. Wise
PEIFFER WOLF CARR & KANE, APLC
818 Lafayette Avenue, Floor 2
St. Louis, MO 63104
Telephone: (314) 833-4827
Email: bwise@pwcklegal.com

Gary M. Klinger
MASON LIETZ & KLINGER LLP
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: (202) 975-0477
Email: gklinger@masonllp.com

Attorneys for Plaintiff Kyle Nelson

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December 2020, a true and correct copy of the foregoing was served electronically on the following parties or counsel via the Idaho iCourt E-File system at the service addresses set forth below.

Kenneth C. Howell
Andrea J. Rosholt
**HAWLEY TROXELL ENNIS &
HAWLEY LLP**
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
E-mail: khowell@hawleytroxell.com
arosholt@hawleytroxell.com

Attorneys for Defendant Idaho Central Credit Union

Brandon Wise (*pro hac vice*)
**PEIFFER WOLF CARR KANE &
CONWAY**
818 Lafayette Avenue, Floor 2
St. Louis, MO 63104
E-mail: bwise@pwcklegal.com

Gary M. Klinger (*pro hac vice*)
MASON LIETZ & KLINGER LLP
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
E-mail: gklinger@masonllp.com

Attorneys for Plaintiff Kyle Nelson

Claudia McCarron (*pro hac vice*)
James Monagle (*pro hac vice*)
MULLEN COUGHLIN LLC
1275 Drummers Lane, Suite 302
Wayne, PA 19087
E-mail: cmccarron@mullen.law
jmonagle@mullen.law

Steve Wieland
Jaren Wieland
MOONEY WIELAND PLLC
802 W. Bannock St., Ste. 500
Boise, ID 83702
E-mail:
steven.wieland.service@mooneywieland.com
jaren.wieland.service@mooneywieland.com

/s/ Benjamin A. Schwartzman
Benjamin A. Schwartzman