

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Laura Grace Van Note, Esq. (S.B. #310160)
3 Mark T. Freeman, Esq. (S.B. #293721)
4 **COLE & VAN NOTE**
5 555 12th Street, Suite 2100
6 Oakland, California 94607
7 Telephone: (510) 891-9800
8 Facsimile: (510) 891-7030
9 Email: sec@colevannote.com
10 Email: lvn@colevannote.com
11 Email: mtf@colevannote.com

12 Attorneys for Representative Plaintiff
13 and the Plaintiff Class

14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF RIVERSIDE**

16 ANA FUENTES, individually, and on
17 behalf of others similarly situated,

18 Plaintiff,

19 v.

20 FESMIRE & WILLIAMS, ATTORNEYS
21 AT LAW and DOES 1 through 100,
22 inclusive,

23 Defendants.

Case No. CVRI2300506

CLASS ACTION

[PROPOSED] ORDER AND JUDGMENT:

- (1) GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT;
- (2) AWARDING ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL;
- (3) AWARDING SERVICE AWARD TO THE REPRESENTATIVE PLAINTIFF; AND
- (4) AWARDING REIMBURSEMENT OF SETTLEMENT ADMINISTRATION FEES

Date: October 4, 2024
Time: 8:30 a.m.
Dept.: 1
Judge: Hon. Harold W. Hopp

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 04 2024

E. Escobedo

1 This matter came before the Superior Court of the State of California, in and for the County
2 of Riverside, Department 1, at 8:30 a.m. on October 4, 2024 with Cole & Van Note appearing as
3 counsel for Representative Plaintiff Ana Fuentes, individually, and on behalf of the Settlement
4 Class, and Murphy Pearson Bradley & Feeney appearing for Defendant Fesmire & Williams,
5 Attorneys at Law. The Court, having carefully considered the briefs, argument of counsel and all
6 matters presented to the Court and good cause appearing, hereby **GRANTS** Plaintiff's Motion for
7 Final Approval of Class Action Settlement.

8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

11 1. All terms used herein shall have the same meaning as defined in the Class Action
12 Settlement Agreement ("Agreement"). The Agreement was filed with this Court as "**Exhibit A**"
13 to the Corrected Declaration of Scott Edward Cole, Esq. in Support of Plaintiff's Motion for
14 Preliminary Approval of Class Action Settlement on March 14, 2024.

15 2. This Court has jurisdiction over the subject matter of the above-captioned litigation
16 and over all Parties to this litigation, including the Settlement Class.

17 **Preliminary Approval of the Settlement**

18 3. On May 29, 2024, the Court granted preliminary approval of a class-wide
19 settlement. At this same time, the Court approved certification of a provisional Settlement Class
20 for settlement purposes only.

21 **Notice to the Settlement Class**

22 4. In compliance with the Preliminary Approval Order, the Class Notice was mailed
23 by first class mail to the Settlement Class Members at their last known addresses on or about July
24 19, 2024. Mailing the Class Notice to their last known addresses was the best notice practicable
25 under the circumstances and was reasonably calculated to communicate actual notice of the
26 litigation and the proposed settlement to the Settlement Class. 579 Notices were undeliverable.

27 5. The deadline for opting out or objecting has passed. 10 Settlement Class Members
28 filed valid requests for exclusion and 1 objected. There was an adequate interval between mailing

1 of the Notice and the deadline to permit Settlement Class Members to choose what to do and act
2 on their decision.

3 **Fairness of the Settlement**

4 6. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*,
5 48 Cal.App.4th 1794, 1801 (1996).

6 7. There has been no collusion between the parties in reaching the proposed
7 settlement.

8 8. Plaintiff's investigation and discovery have been sufficient to allow the Court and
9 counsel to act intelligently.

10 9. Counsel for both parties are experienced in similar data breach class action
11 litigation. All counsel recommended approval of the Agreement.

12 10. The consideration to be given to the Settlement Class Members under the terms of
13 the Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the
14 claims asserted in this action and is fair, reasonable, and adequate compensation for the release of
15 Settlement Class Members' claims, given the uncertainties and risks of the litigation and the delays
16 which would ensue from continued prosecution of the action.

17 11. The proposed Agreement is approved as fair, adequate, and reasonable and in the
18 best interests of Settlement Class Members.


19 **Attorneys' Fees/Expenses**

20 12. The Agreement provides for (and Class Counsel seeks) an award of \$150,000 to
21 Class Counsel as attorneys' fees and expenses in this action. This was negotiated separately from
22 and will be paid separately and independently from the monies paid to Settlement Class Members
23 for their claims. As such, this award will not affect the amount of money any Settlement Class
24 Member will receive for their claims.

25 13. The award of attorneys' fees and reimbursement of litigation expenses are
26 reasonable, in light of the contingent nature of Class Counsel's fee, the substantial amount of work,
27 actually performed such that Class Counsel will not receive a windfall incommensurate with the
28 time and effort dedicated to the case, the risks assumed, the results achieved by Class Counsel, and

1 due to the significant amount of work Class Counsel anticipates post-final approval of the
2 Settlement.

3 **Service Award**

4 14. The Agreement provides for a Service Award of ~~\$ 500.00~~ ^{} for Representative
5 Plaintiff Ana Fuentes, subject to the Court's approval. This money is to be separately from the
6 Settlement Fund out of which Settlement Class Members' claims will be paid. The Court finds this
7 Service Award reasonable in light of the risks and burdens undertaken by Representative Plaintiff
8 in this action and for her time and effort in bringing and prosecuting this matter on behalf of the
9 Settlement Class.

10 **Excluded Individuals**

11 15. The following Settlement Class Members filed valid requests for exclusion from
12 the Settlement: Kevin Guyton, Randal Locke, Wisconsin Lim, Augusto Sanchez, Anitza Gutierrez,
13 Danielle Shipman, Elizabeth Egan, Delmy Portillo, Patricia Figueroa, Eric Whisler, Diane
14 Smrkovsky, Daniel Mercado, John Jordan and Nelly Gongora.

15 **IT IS HEREBY ORDERED THAT:**

16 1. The Settlement Class is certified for the purposes of settlement only. The Settlement
17 Class is hereby defined as:

18 "[T]he estimated 9,914 individuals who received data breach notification letters
19 from Defendant related to the Data Breach."

20 2. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
21 best interest of the Settlement Class.

22 3. Class Counsel are awarded attorneys' fees in the amount of \$150,000, inclusive of
23 litigation costs. Class Counsel shall not seek or obtain any other compensation or reimbursement
24 from Defendant, Plaintiff, or members of the Settlement Class.

25 4. Payment of a Service Award in the amount of \$2,250 shall be made to Plaintiff Ana
26 Fuentes.

27 5. Any envelope transmitting a settlement distribution to a Class Member shall bear
28 the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED."

1 6. Any settlement check shall be negotiable for at least 90 days but not more than 180
2 days from the date of mailing.

3 7. The Settlement Administrator shall mail a postcard reminder to any Class Member
4 whose settlement distribution check has not been negotiated within 60 days after the date of
5 mailing.

6 8. If (i) any of the Class Members are current employees of the Defendant, (ii) the
7 distribution mailed to those employees is returned to the Settlement Administrator as being
8 undeliverable, and (iii) the Settlement Administrator is unable to locate a valid mailing address,
9 the Settlement Administrator shall arrange with the Defendant to have those distributions delivered
10 to the employees at their place of employment.

11 9. A Final Judgment in this action is hereby entered and this shall constitute a
12 Judgment for purposes of California Rules of Court, Rule 3.769(h).

13 10. This Final Judgment shall bind each Settlement Class Member and shall operate as
14 a full release and discharge of the Released Claims against the Released Parties. All rights to appeal
15 the Final Judgment have been waived.

16 11. The Agreement and Settlement are not an admission by Defendant, nor is this Final
17 Approval Order a finding, of the validity of any claims in this action or of any wrongdoing by
18 Defendant. Neither this Final Approval Order, this Final Judgment, the Agreement, nor any
19 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
20 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
21 whatsoever in any subsequent action between Plaintiff and Defendant. The entering into or
22 carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not in
23 any event be construed as, or deemed to be evidence of, an admission or concession with regard
24 to the denials or defenses by Defendant and shall not be offered in evidence in any action or
25 proceeding by Plaintiff against Defendant in any court, administrative agency or other tribunal for
26 any purpose whatsoever other than to enforce the provisions of this Final Approval Order, this
27 Final Judgment, the Agreement, or any related agreement or release. Notwithstanding these
28 restrictions, any of the Released Parties may file in this case or any other proceeding brought by

1 Plaintiff against Defendant, this Final Approval Order, this Final Judgment, the Agreement, or any
2 other papers and records on file in the case as evidence of the Settlement to support a defense of
3 *res judicata*, collateral estoppel, release, or other theory of claim or issue preclusion or similar
4 defense as to the Released Claims.

5 12. Notice of Entry of Judgment, in the form of Judicial Council Form CIV-130, with
6 this Order as an attachment, shall be posted on the settlement website. Class Counsel will file
7 Judicial Council Form CIV-130 with this Court. It shall not be necessary to send notice of entry
8 of this Final Approval Order and Final Judgment to individual Settlement Class Members.

9 13. The time for any appeal shall run from service of notice of entry of the Final
10 Approval Order and Final Judgment by Class Counsel on Defendant.

11 14. After entry of this Order and Final Judgment, the Court shall retain jurisdiction to
12 construe, interpret, implement, and enforce the Agreement and this Judgment, to hear and resolve
13 any contested challenge to a claim for settlement benefits, and to supervise and adjudicate any
14 dispute arising from or in connection with the distribution of settlement benefits.

15 15. In the event the Settlement does not become final and effective in accordance with
16 the terms of the Settlement Agreement, or is terminated, cancelled, or otherwise fails to become
17 effective for any reason, then this Final Approval Order and Final Judgment, and all orders entered
18 in connection herewith shall be rendered null and void and shall be vacated.

19 16. If any portion of the Common Fund remains unclaimed, or any check sent to any
20 Settlement Class Members remains uncashed after it is no longer administratively feasible to
21 provide for an additional distribution to Settlement Class Members, then such unclaimed or
22 uncashed funds will, subject to approval by the Court, shall be distributed to the National
23 Consumer Law Center (NCLC), 7 Winthrop Square, Boston, MA 02110-1245, as *Cy Pres*
24 beneficiary.

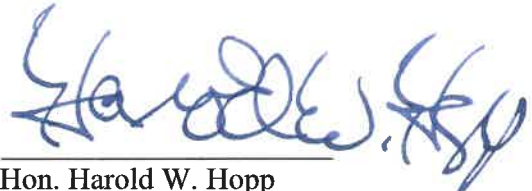
25 17. A Compliance Hearing is hereby set for *June 25, 2015* at 8:30 a.m. in Department
26 1 of this Court. At least ten (10) court days before the Compliance Hearing, Class Counsel shall
27 submit a Case Management Conference Statement, accompanied by a Declaration from the Claims
28 Administrator (including a summary accounting identifying the distributions made, the number

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and value of any uncashed checks, the status of any unresolved issues, and any other matters appropriate to evaluate the effectiveness and completeness of the distribution).

IT IS SO ORDERED.

Dated: Oct. 4, 2024

By: 
Hon. Harold W. Hopp
JUDGE OF THE
SUPERIOR COURT

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